

**Central Administrative Tribunal
Principal Bench**

OA No. 3559/2017

MA No.3252/2018

Order reserved on: 26.09.2018
Order pronounced on : 16.10.2018

Hon'ble Mr. Pradeep Kumar, Member (A)

Sh. Kuldip Prakash Kalra,
Aged around 82 years,
Retired Deputy Director, DDA,
R/o Block N-1, 3rd floor,
Green Park Extension,
New Delhi-110016.

... Applicant

(By Advocate: Sh. Ranvir Singh)

Versus

1. The Union of India through
The Secretary,
Ministry of Finance,
Department of Expenditure,
New Delhi-110001.
2. The Secretary,
Ministry of Personnel, Public Grievances & Pensions,
3rd floor, Lok Nayak Bhawan,
Khan Market,
New Delhi-110003.
3. The Lieutenant General of Delhi,
Through Chairman,
Delhi Development Authority
Rajpur Road,
Delhi-1100054.
4. The Vice Chairman,
Delhi Development Authority,

Vikas Sadan,
New Delhi-110023.

... Respondents

(By Advocate: Sh. R.K.Jain, counsel for respondents no.1 & 2
Ms. Sriparna Chatterjee for respondents No.3 & 4)

ORDER

Heard Sh. Ranvir Singh, learned counsel for applicant, Sh. R.K.Jain, learned counsel for respondents no.1 & 2 and Ms. Sriparna Chatterjee, learned counsel for respondents no.3 & 4.

2. The applicant brought out that he had joined the respondent-DDA in the year 1952 and in due course he was promoted as Deputy Director in the scale of Rs.1100-50-1600 in the year 1978. Thereafter he had taken voluntary retirement and retired on 11.06.1986 after completion of 33 years of total service. While working in this scale at that time, he has reached at the level of Rs.1450/-. His pension was accordingly fixed at Rs.1646/- on 24.10.1987.

The applicant pleaded that thereafter, his pension was fixed at Rs.12,600 p.m. w.e.f. 01.01.2006 vide respondents letter dated 15.10.2015. It was also pleaded that this fixation of pension was not in accordance with Ministry of Finance letter dated 30.08.2008 and this is the grievance in this OA. Accordingly following reliefs were sought:

“In view of the facts mentioned in para 6 above this Hon’ble Tribunal may be pleased to summon the record of the case and:-

A. Quash letter No. Sr. A.P. (Pension)/DDA P.P.O. No.215/294 dated 15th October 2015 Annexure A-1, from respondent No.4, erroneously fixing applicant’s basic pension at Rs.12,600/- per month;

B. Direct respondents to fix applicants pension in terms of Ministry of Finance, Department of Expenditure F.No.1/1/2008-IC dated 30th August 2008;

C. Award cost of the Original Application;

D. Pass any other Order/s that this Hon’ble Tribunal may deem fit in the facts and circumstances of the case.”

3. The applicant pleaded that subsequent to his retirement on 11.06.1986, various Central Pay Commissions (CPCs) have also been implemented. Such implementation orders were always issued from a date subsequent to the date of effect and the Pay Commissions relevant for the instant applicant are as under:

(i) 3rd CPC was effective when applicant retired on 11.06.1986 as 4th CPC orders have not been received by that time. Scale of pay applicable was Rs.1100-50-1600. Applicant was drawing Rs.1450 in this scale while in service and Rs.1646/- as pension which was fixed on 24.10.1987.

(ii) 4th CPC was made applicable w.e.f. 01.01.1986. Scale of pay applicable was Rs.3000-100-3500-125-4500.

(iii) 5th CPC was made applicable w.e.f. 01.01.1996. Scale of pay applicable was Rs.10,000-325-15,200.

(iv) 6th CPC was made applicable w.e.f. 01.01.2006. Scale of pay applicable was Rs.15,600-39,100 + GP 6600 with annual increment being 3%.

(v) 7th CPC was made applicable w.e.f. 01.01.2016. Scale of pay applicable was Rs.67,700-2,08,700 with annual increment being 3%.

4. The applicant pleaded that on the basis of his salary fixation at the time of his retirement, he had reached a level of Rs.1450 in scale of Rs.1100-50-1600, which is equivalent to seven annual increments in this scale. On this basis, in 5th CPC by working out seven increments from minimum of pay scale in relevant scale Rs.10,000-325-15,200, his basic pay works out to Rs.12,275/- and the orders issued by Ministry of Finance dated 30.08.2008 for 6th CPC indicate that for this level of Rs.12,275/- the salary needs to be fixed at Rs.22,840 + GP 6600. Accordingly, his pension should have been fixed at Rs.14,720/- p.m. w.e.f. 01.01.2006 (Rs.22,840 + GP 6600) / 2 = 14,720).

As against this, his pension was first fixed at Rs.12,600/- w.e.f. 24.09.2012 based upon Row No.21 of Annexure to DoP&W letter dated 28.01.2013, and the date of its application was thereafter revised to 01.01.2006 (Refer para 11.0 below) vide respondents order dated 15.10.2015 and this fixation at

Rs.12,600/- is claimed to be erroneous and needs to be corrected to Rs.14,720/-.

5. The applicant brought out that in the wake of 6th CPC recommendations the Government had issued notification vide Ministry of Finance letter dated 30.08.2008 wherein no distinction was made between those who are in service and those who have since retired and a concordance table was also given from which it can be seen that the seventh stage in equivalent 5th CPC scale Rs.10,000-325-15,200 was Rs.12,275 and its 6th CPC equivalent works to Rs.22,840 + GP 6600.

The Department of Pension and Pensioners Welfare (DoP&PW) issued office memorandum dated 01.09.2008 indicating therein the method of fixation of pension for both, those who retired prior to 01.01.2006 as well as for those who retired post-01.01.2006. Particular attention was drawn to para 4.1 and 4.2 of this letter reproduced below:

“4.1 The pension/family pension of existing pre-2006 pensioners/family pensioners will be consolidated with effect from 1.1.2006 by adding together:-

- i. The existing pension/family pension.
- ii. Dearness Pension, where applicable
- iii. Dearness Relief upto AICPI (IW) average index 536 (Base year 1982=100) i.e. @ 24% of Basic Pension/Basic family pension plus dearness pension as admissible vide this Department's O.M. No.42/2/2006-P&PW(G) dated 5.4.2006
- iv. Fitment weightage @ 40% of the existing pension/family pension.

Where the existing pension in (1) above includes the effect of merger of 50% of dearness relief w.e.f. 1.4.2004, the existing

pension for the purpose of fitment weightage will be re-calculated after excluding the merged dearness relief of 50% from the pension.

The amount so arrived at will be regarded as consolidated pension/family pension with effect from 1.1.2006.

4.2 The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. In the case of HAG+ and above scales, this will be fifty percent of the minimum of the revised pay scale.”

These instructions were applicable to those who retired w.e.f.

02.09.2008 onwards.

6. Subsequently, a clarification was issued on 03.10.2008 by DoP&PW wherein para 4.2 was clarified/modified as under:

“The pension calculated at 50% of the minimum of pay in the pay band plus grade pay would be calculated (i) at the minimum of the pay in the pay band (irrespective of the pre-revised scale of pay) plus the grade pay corresponding to the pre-revised pay scale. For example, if a pensioner had retired in the pre-revised scale of pay of Rs.18400-22400, the corresponding pay band being Rs.37400-67000 and the corresponding grade pay being Rs.10,000/- p.m. his minimum guaranteed pension would be 50% of Rs.37,400+Rs.10,000 (i.e. Rs.23,700). A statement indicating the minimum pension corresponding to each of the pre-2006 scales of pay is enclosed at Annexure.

The pension will be reduced pro-rata, where the pensioner had less than the maximum required service for full pension as per rule 49 of the CCS (Pension) Rules, 1972 as applicable on 01.01.2006 and in no case it will be less than Rs.3500/- p.m.

In case the pension consolidated as per para 4.1 of OM.No.38/37/08-P&PW(A) dated 1.9.2008 is higher than the pension calculated in the manner indicated above, the same (higher consolidated pension) will be treated as Basic Pension.

The fixation of family pension will be subject to the provision that the revised family pension, in no case, shall be lower than thirty percent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale in which the pensioner/deceased Government servant had last worked. In case the family pension consolidated as per para 4.1 of OM No.38/37/08-P&PW(A) dated 1.9.2008 is higher than the family pension calculated in the manner indicated above, the

same (higher consolidated family pension) will be treated as Basic family Pension.”

It was pleaded that with this clarification, the original meaning and import of para 4.2 (para 5 supra) was unauthorizedly altered to cause adversity to existing pensioners.

7. Thereafter, another notification was issued by DoP&PW on 11.12.2008, wherein the instructions dated 01.09.2008 (para 5 supra) were made applicable to those who were retiring w.e.f. 01.01.2006 onwards in place of 02.09.2008 as was notified earlier (Para 5 supra).

The applicant pleaded that with this, the method for calculation of pension in respect of those who retired w.e.f. 01.01.2006 were liberalised substantially with respect to the method for calculation of pension for those who had retired prior to 01.01.2006. Basically this method of calculation of pension for pre 01.01/2006 and post 01.01.2006 is as under:

Pre 01.01.2006

Qualifying service was 33 years

Post 01.01.2006

Qualifying service was 20 years. Pension was to be fixed as per 50% of either last ten months average pay or last pay, whichever is higher.

Thus two classes of pensioners got created who were being discriminated and this was challenged in OA No.655/2010 in the Tribunal which was decided on 01.11.2011.

In their decision dated 01.11.2011 the Tribunal set aside the clarification issued on 03.10.2008 and alongwith this, two other letters of DoP&PW dated 14.10.2008 and 11.02.2009 were also set aside. With this decision, the method of calculation of pension in respect of those who retired prior to 01.01.2006 was modified to be same as what was applicable for those who retired after 01.01.2006.

8. The decision of Tribunal (para 7 supra) was challenged by the respondents in Hon'ble High Court of Delhi in WP (C) no.1535/2012 and batch cases titled **Union of India & anr. vs. Central Govt. SAG & ors.** This Writ Petition was decided on 29.04.2013. However, by this time DoP&PW had already issued another office memorandum dated 28.01.2013. In view of this notification dated 28.01.2013, while delivering their judgment on this Writ Petition, the Hon'ble High Court observed as under:

"2. The only issue therefore which survives is, with respect to paragraph 9, of the office memorandum aforementioned which makes it applicable with effect from September 24, 2012, and thereby denying arrears to be paid to the pensioners with effect from January 01, 2006.

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8. We are in complete agreement with the reasoning of the Division Bench of the Punjab & Haryana High Court and adopt the same and do not burden ourselves any further. We conclude by noting that regards the substance of the view taken by the

Tribunal, even the Central Government accepts its correctness, but insists to make the same applicable prospectively.

9. The writ petitions are dismissed. The decision of the Full Bench of the Tribunal is upheld but without any order as to costs.”

9. This decision by Hon'ble High Court (para 8 supra) was thereafter challenged by respondents in Hon'ble Supreme Court also. However, petition of the respondents was dismissed.

10. In view of the foregoing, the Tribunal's order (Para 7 supra) and date of its application as modified by Hon'ble High Court (para 8 supra) obtained finality.

11. In compliance thereof (Para 10 supra), DoP&PW issued another notification dated 30.07.2015 wherein the date of applicability of the new instruction was also revised to 01.01.2006 in place of 24.09.2012.

With this the method of calculation of pension for pre and post 01.01.2006 retirees became uniform and the date of giving effect to pension and arrears became 01.01.2006 for all retirees.

12. Thereafter, when the 7th CPC recommendations were received, a notification for implementation of the same was issued by Department of Expenditure vide their resolution dated 25.07.2016 which was effective from 01.01.2016.

13. In respect of pension, 7th CPC had made certain recommendations which needed close examination and accordingly,

instructions for revision of pension on provisional basis were issued by DOP&T on 04.08.2016. Thereafter, once this examination of pension as per 7th CPC was completed, following directions were issued vide DoP&PW resolution dated 12.05.2017:

“2. Based on the decisions taken by the Government on the recommendations of the 7th CPC, orders for revision of pension of pre-2016 pensioners/family pensioners in accordance with second Formulation were issued vide this Department’s OM No. 38/37/2016-P&PW (A) (ii) dated 04.08.2016. It was provided in this O.M. that the revised pension/family pension w.e.f. 1.1.2016 of pre-2016 pensioners/family pensioners shall be determined by multiplying the pension/family pension as had been fixed at the time of implementation of the recommendations of the 6th CPC, by 2.57.

3. In accordance with the decision mentioned in this Department’s Resolution No. 38/37/2016-P&PW (A) dated 04.08.2016 and OM No. 38/37/2016-P&PW (A) (ii) dated 04.08.2016, the feasibility of the first option recommended by 7th CPC has been examined by a Committee headed by Secretary, Department of Pension & Pensioners’ Welfare.”

In follow up of this resolution, the office memorandum in respect of pension was issued by Department of Expenditure on 23.05.2017 wherein following was specified:

“4. In order, therefore, to put the procedural issues in this regard in perspective and to provide for coordinated action amongst the concerned agencies, the following procedural points of action are to be taken by the concerned agencies as brought out below:-

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(B) **Department of Pension & Pensioners’ Welfare**

(i) The appropriate guidelines/instructions for revision of pension based on fitment tables for notional pay will be issued for use by the pension revising administrative authorities, PAOs and pension accounting organisations in the Central Government.”

The final orders in respect of pension were subsequently issued by DoP&PW on 06.07.2017 wherein following directions were given:

“The undersigned is directed to refer to this Department's OM of even number dated 12.05.2017 on the above subject and to say that instructions were issued for revision of pension / family pension with effect from 01.01.2016 in respect of Central civil pensioners / family pensioners who retired/died prior to 01.01.2016 by notionally fixing their pay in the pay matrix recommended by the 7th Central Pay Commission in the level corresponding to the pay in the pay scale / pay band and grade pay at which they retired/died. It was provided that 50% of such notional pay shall be the revised pension and 30% of the notional pay shall be the revised family pension w.e.f. 01.01.2016.

2. It was also provided that the revision of pension will be done by notional pay fixation under each intervening Pay Commission based on the formula for revision of pay. Based on the fitment tables provided by the Department of Expenditure, concordance tables for fixation of notional pay and pension / family pension of employees who retired/died in various grades during the 4th, 5th and 6th Pay Commission periods have been prepared and the same are enclosed herewith. In the case of those employees who retired/died before 01.01.1986, these concordance tables may be used based on their notional pay as on 01.01.1986, which was fixed in accordance with this Department's OM No. 45/86/97-P&PW(D)(iii) dated 10.02.1998.”

14. The applicants thus pleaded that in respect of pension also, since the resolution was issued by Department of Expenditure on 25.07.2016 and since pension fitment tables were to be issued by Department of Expenditure only (Para 12 supra), the appropriate authority to issue instructions for pension was Department of Expenditure only and not DoP&PW. Accordingly, all letters issued by DoP&PW in respect of pension, including their earlier letters based on which his pension was fixed as Rs.12,600/- w.e.f. 01.01.2006 (para 4 supra), cannot be taken cognizance of.

15. The applicant has pleaded that his pension fixation has now to be arrived at all intervening stages, i.e. 4th, 5th & 6th CPC etc. with respect to the seventh stage of the corresponding pay scales (Para 3 supra). It was pleaded that similar contentions were gone into by the Tribunal while deciding OA No.655/2010. Relevant paras of the observations made by the Tribunal in this OA are reproduced below:

“5. Thus the Apex Court in the case of D.S. Nakara (supra) has not held that the cut off date when an upward revision is introduced cannot be prescribed and is arbitrary. At this stage it may also be useful to notice the decision of the Constitution Bench of the Apex Court in the case of Indian Ex-Servicemen League and others v. Union of India, (1991) 2 SCC 104, whereby the Apex Court explained the ratio laid down in the case of D.S. Nakara (supra) and has also relied upon its earlier constitution Bench decision in the case of Krishena Kumar v. Union of India, (1990) 4 SCC 207 and held that the Court's decision in D.S. Nakara (supra) has to be read as one of limited application and its ambit cannot be enlarged to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different.

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8. If the matter is seen in the light of the law laid down by the Apex Court, as noticed above, it cannot be said that fixation of cut off date of 1.1.2006 for the purpose of extending retiral benefits is arbitrary and it is permissible for the Government to fix a cut off date for introducing any new pension/retirement scheme or for discontinuing of any existing 10 | Page scheme. Thus, the challenge made by the applicants based upon the judgment in D.S. Nakara (supra) that pre-2006 retirees should be extended the same pensionary benefits as that of post-2006 retirees cannot be accepted.

9. Yet for another reason, pre-1.1.2006 and post-2006 retirees cannot be extended the same pensionary benefits inasmuch as the respondents on the basis of the recommendations of the VI CPC have issued two different Schemes for pre-2006 and post-2006 retirees. As regards, post-2006 retirees respondents have issued OM dated 2.9.2008 (Annexure R-1) as to how the pension has to be computed. As can be seen from this scheme, emoluments have to be computed on the basis of the revised pay structure and further as can be seen from paras 5.2 and 5.3 of the said OM “qualifying service” for the purpose of pension has been reckoned

as 20 years as against 33 years, which was prevalent in respect of the employees who retired before 1.1.2006 and also that emoluments for the purpose of pensionary benefits have to be determined on the basis of 10 months average emoluments or emoluments last drawn by the employee before his retirement, whichever is more beneficial. Applicants have not challenged the validity of the OM dated 2.9.2008. As such, on these grounds pre-2006 retirees cannot claim benefit at par with post-2006 retirees, who are governed by the separate set of Scheme.

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12. Now let us advert to last grievance raised by the applicants viz. that even if the modified parity, as recommended by the Pay Commission and accepted by the resolution dated 29.08.2008 is to be taken as criteria for determining pension of pre-2006 retirees, still on account of subsequent clarification issued to para 4.2 of the OM dated 1.9.2008 by the officers of the respondents vide OM dated 3.10.2008 and 14.10.2008 criteria and principles for determining the pension has been given a complete go-bye. Thus, these clarificatory OMs are illegal, arbitrary, discriminatory, unreasonable, unjust and are required to be quashed and set aside. At this stage, we wish to mention that this issue was not raised and considered by the Patna and Bombay Benches of the Tribunal, as such no finding on this aspect was given. However, in paras 66 and 67 of the judgment Patna Bench has given a direction that the Government should examine this aspect of S-29 pay scales retirees being able to retire at the maximum of the pay band 4 pay scale with the grade pay of Rs.10,000/- which would bring their pension to Rs.38,500/-. Suffice it to say that the observation made by the Patna Bench was given without taking into consideration the modified parity as recommended by the Pay Commission and accepted by the Central Government vide its resolution dated 29.08.2008, which formed the basis to grant pension to pre-2006 retirees.

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30. In view of what has been stated above, we are of the view that the clarificatory OM dated 3.10.2008 and further OM dated 14.10.2008 (which is also based upon clarificatory OM dated 3.10.2008) and OM dated 11.02.2009, whereby representation was rejected by common order, are required to be quashed and set aside, which we accordingly do. Respondents are directed to re-fix the pension of all pre-2006 retirees w.e.f. 1.1.2006, based on the resolution dated 29.08.2008 and in the light of our observations made above. Let the respondents re-fix the pension and pay the arrears thereof within a period of 3 months from the date of receipt of a copy of this order. OAs are allowed in the aforesaid terms, with no order as to interest and costs.”

16. In view of the foregoing, the applicant pleaded that his 6th CPC pension w.e.f. 01.01.2006 needs to be fixed in accordance with

Department of Expenditure letter dated 30.08.2008 at seventh stage and not on the basis of letter dated 28.01.2013 issued by DoP&PW as they were issued without authority.

17. The respondents pleaded that in view of the quashing of clarification to para 4.2 which was issued on 03.10.2008 (Para 5 supra), what survives is the letter issued by DoP&PW on 01.09.2008 and accordingly the original para 4.2 comes into force. This letter dated 01.09.2008 specified two methods of working out the pension. The first was to work it out as per para 4.1. Apparently, in certain cases the pension worked out as per para 4.1 may be lesser vis-a-vis what is worked out as per para 4.2. In all such cases, the higher of the two, was to be the applicable pension as per 6th CPC. The respondents plead that the same has since been implemented in respect of the applicant also as his pension has been fixed at Rs.12,600/- w.e.f. 01.01.2006 as per DoP&PW notification dated 28.01.2013. Hence it is the correct fixation.

18. The respondents also pleaded that in accordance with the Government of India (Allocation of Business) Rules, 1961, issued by Hon'ble President of India, subject matter of pension has been allocated to DoP&PW.

The relevant entries in Allocation of Business Rules under Department of Expenditure and DoP&PW are reproduced below:

“Department of Expenditure

(2) Financial sanction relating to all Ministries and offices of the Government of India, which are not covered by powers delegated or conferred by the rules or by any general or special orders.

(4) Advice to Ministries and Government undertakings on Cost Accounts matters and attending to cost Investigation work on their behalf.

(6) Matters relating to the Controller General of Accounts including

(i) disbursement of Pension through Public Sector Banks (PSBs) in respect of Central Civil Pensioners, Freedom Fighters, High Court Judges, Ex-MPs and Ex Presidents.

DEPARTMENT OF PENSION AND PENSIONERS' WELFARE

1. Formulation of policy and co-ordination of matters relating to retirement benefits to Central Government employees (Civil, Defence and Railway Pensioners).

2. Administration of –

(a) The Central Civil Services (Pension) Rules, 1972; the Central Civil Services (Commutation of Pension) Rules, 1981; the Central Civil Services (Extraordinary Pension) Rules, 1939; the All India Services (Death-cum-retirement benefits) Rules, 1958, and

(b) any other scheme relating to Central Government pensioners, entrusted to the Department.

3. Pension structure and relief to pensioners.

4. New facilities of fringe benefits to the Central Government pensioners.

5. Matters relating to amendment to, or relaxation of, Pension rules or any other rule concerning retirement benefits.

6. Policy and co-ordination relating to welfare of Central Government Pensioners.

NOTE: The action in respect of 3 above shall be subject to the concurrence of Ministry of Finance. Action in respect of other matters involving recurring financial implications by way of relaxation or liberalisation of any rule shall be subject, to guidelines, as agreed to between the Department of Pension and Pensioners' Welfare and the Ministry of Finance, Department of Expenditure.”

For all Pay Commissions including the latest 7th CPC, the directions in respect of pension have been accordingly issued by

DoP&PW only and therefore a mention by Department of Expenditure that certain tables which will be issued by Department of Expenditure, may be relied upon by DoP&PW, does not take away the policy making role of DoP&PW. In fact this mention is also in accordance with Allocation of Business Rules mentioned above.

Thus, DoP&PW are the appropriate authority for issuing directions in respect of pension.

19. The respondents also mentioned that the scale immediately below that of Dy. Director in the year 1986 was Rs.700-40-1300. Accordingly, someone who would have been promoted from the scale of Rs.700-1300 to Rs.1100-1600, will get fixed in the higher scale at a certain level depending upon what he was drawing while working in the lower scale of Rs.700-40-900-EB-40-1100-50-1300. Thus, this fixation may be either at minimum level of Rs.1100/- or it may be somewhere in between Rs.1100-1600. Thus, it cannot be conclusively said that someone who was at the stage of Rs.1450 in the pay scale of Rs.1100-1600 had actually earned seven increments while working in this scale. The actual number of increments earned in this scale will count from the stage where an officer was fixed in this scale at the time of promotion.

Accordingly, the method of pay fixation from one Pay Commission to another Pay Commission does not correlate to increments earned but had a separate set of instructions, based on

basic pay and corresponding scale, to arrive at the fixation in the new pay scale and it did not depend on number of increments related to the stage reached.

20. The respondents also mentioned that similar question of fixation of pension was agitated in the Tribunal vide OA No.937 and OA No.2101, both of 2010 which was decided by a common order on 06.03.2012, and both OAs were dismissed. It was challenged in Hon'ble High Court vide WP (C) No.4572 of 2012 and vide order dated 19.08.2013, the order by Tribunal was set aside and Tribunal was directed for fresh adjudication on merits on the claim of petitioners for full parity. This has since been re-adjudicated by Tribunal and orders were passed on 20.11.2014 as under:

47. We direct the respondents to consider the revised pay of the applicants corresponding to the pay at which the concerned pensioner had in fact retired, instead of considering the minimum of the said pay scale, thereby determining pension/ family pension to pre-2006 retirees. This will automatically take care of the apprehensions of the applicants that their pension could be fixed below the pension fixed of post-2006 retirees who had worked in the lower pay scales viz. S-24 - S-29 pay scales. We, however, reject the claim of the applicants to confer the minimum notional pay scale starting at Rs.75500/- to the applicants as this is a matter which should be best left to expert bodies like Pay Commissions and the Tribunal would not like to enter into this arena. In any case, seeking parity based on just the 'minimum' of the scales being same is not a convincing argument and would lead to opening up a Pandoras Box. The respondents are directed to refix pension/ family pension of the applicants with effect from 1.01.2006 according to the above direction. The arrears, however, would be payable only from the date of filing of the respective OAs. The respondents shall complete the above exercise and pay the arrears, within three months from the date of receipt of a certified copy of this order, failing which they are liable to pay interest on arrears at G.P.F. rates w.e.f. the date of this order. With these directions, the OAs are disposed of."

This was however challenged by Respondents in Hon'ble High Court of Delhi vide WP (C) No.8080 of 2016, wherein vide order dated 16.09.2016, the judgment by Tribunal was stayed. This matter is still sub-judice.

21. The respondents also mentioned that the method of fixation of pay for serving employees and the method of fixation of pension for retired employees had always been issued separately by Department of Expenditure and DoP&PW respectively at the time of various Pay Commissions. Pension has accordingly been fixed for all pensioners by DoP&PW. In the instant case also, the pension for the applicant was fixed at Rs.12,600/- p.m. w.e.f. 01.01.2006 as per Sl. No.21 of Column No.9 of the annexure enclosed with OM dated 28.01.2013 issued by DoP&PW and as such his pension is correctly fixed.

22. The respondents further brought out that as per the latest instructions issued by DoP&PW dated 06.07.2017, for fixation of pension as per 7th CPC the operative para has already been brought out in para 11 above. Now the fixation of pay is required to be done first notionally from one Pay Commission to the other and arrived at upto 7th CPC and thereafter pension is to be revised as per this notionally fixed basic pay in 7th CPC.

The respondent-DDA also brought out that they are governed by the instructions issued by DoP&PW and accordingly, pension has correctly been fixed at Rs.12,600 w.e.f. 01.01.2006.

23. The matter was heard at length.

(i) As per directions issued in allocation of Business Rules, the DoP&PW are the appropriate authority for issuing policy/instructions in respect of pension. The applicant's plea, to treat DoP&PW as an incapable authority, cannot be accepted. Accordingly, the various OMs issued by DoP&PW, as modified from time to time, have full force of law and are upheld.

(ii) As already brought out above, the method of fixation of pay for serving employees and the method for fixation of pension for retired employees from one Pay Commission to the other was following a different procedure and now with the issue of OM dated 06.07.2017 the pay of a pensioner is required to be notionally fixed first from one Pay Commission to the other till 7th CPC and thereafter pension w.e.f. 01.01.2016 is to be revised. This exercise of pension fixation is very distinct from what was in force hitherto upto 6th CPC, which ended on 31.12.2015. Therefore, in instant case the pension fixed at Rs.12,600/- w.e.f. 01.01.2006 is held as correct and upheld.

24. Accordingly, the instant OA is dismissed being devoid of merit. However, directions are also given to the respondents no.3 & 4 to

issue revised Pension Payment Order in respect of the applicant in follow up of DoP&PW OM dated 06.07.2017. Another statement be also issued clearly indicating therein his notional pay fixation starting from his date of retirement till 7th CPC and thereafter to clearly indicate the revised pension w.e.f. 01.01.2016. This exercise be completed within a time period of eight weeks from the date of receipt of a copy of this order. No order as to costs.

24. In view of the above, MA No.3252/2018 also stands disposed off.

(Pradeep Kumar)
Member (A)

‘sd’