

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**Original Application No.290/00071/2017**

**RESERVED ON: 11.10.2018**

Jodhpur, this the 26<sup>th</sup> October, 2018

**CORAM**

**Hon'ble Smt Hina P. Shah, Judicial Member**

B.L. Sharma S/o Shri Phusa Ramji Sharma, Aged about 84 years, B/c Brahman, R/o H.No. 5-D-1, Duplex Colony, Bikaner-334 003 (Raj.) (Office Address :- Retired from service on 28.02.1991 as Superintendent of Post offices.)

.....Applicants

By Advocate : Mr S.P. Singh.

**Versus**

1. Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi.
2. The Secretary, Ministry of Personnel, Public Grievances & Pensions, Dept. of Pension & Pensioners' Welfare, Lok Nayak Bhawan, New Delhi-110003.
3. The Chief Post Master General, Rajasthan Circle, Jaipur – 302 007.
4. The Post Master General, Western Region, Rajasthan, Jodhpur.
5. Director of Accounts (Postal), Jhalana Dungri, Jaipur.

.....Respondents

By Advocate : Mr. K.S. Yadav.

**ORDER**

The present Original Application has been filed U/s 19 of the Administrative Tribunals Act, 1985 seeking following reliefs:

- (i) That the fixation of pension in pursuance of letter dated 19.10.2016 (Annex. A/1) deserves to be quashed and set aside

and the fixation of pension Rs 10075/- be ordered to be fixed and consequential benefits may be granted in accordance with law.

- (ii) That by writ order or direction the respondents may kindly be directed to grant arrears during the period from 01.01.2006 to 23.09.2012 with interest which is not paid till date.
- (iii) That any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iv) That the costs of this application may be awarded to the applicant.

2. Brief facts necessary as stated by the applicant are that the applicant was superannuated from the post of Superintendent. His pay scale of PSS Group 'B' was Rs 2000-60-2300-75-3200-100-3500) in respondent-department (Postal) w.e.f. 28.02.1991. His pension was fixed at Rs 1,338/-. On implementation of 5<sup>th</sup> CPC and 6<sup>th</sup> CPC w.e.f. 01.01.1996 and 01.01.2006, his pension was revised to Rs 4039 and Rs 9130/- respectively. The grievance of the applicant is that on implementation of 6<sup>th</sup> CPC recommendations for pensioners vide order dated 01.09.2008 (Annex. A/9), the pension of the applicant should have been revised to Rs 10,075/- instead of Rs 9,130/- in view of para 4.2 of OM dated 01.09.2008 (Annex. A/9) as the pay scale attached to the post of Superintendent of Posts in 4<sup>th</sup> CPC was RS 2000-60-2300-EBTS 3200-100-3550, in 5<sup>th</sup> CPC Rs 7500-250-12000 and in 6<sup>th</sup> CPC is Rs 9300-34800 + G.P. 4800 and Rs 5400 (after 04 years continues service). Since, the respondents fixed the pension of the applicant at Rs 9230/- vide

letter dated 04.07.2013, the applicant filed OA No. 290/00068/14 before this Tribunal and this vide order dated 12.08.2016 (Annex. A/8) quashed the letter dated 04.07.2013 and directed the respondents to re-examine the matter in wake of law laid down by various judgments as well as M/o Personnel, PG and Pensions, Department of Pension and Pensioners' Welfare OM No. 38/37-P&PW (A) dated 06<sup>th</sup> April, 2016 and refix the pension of the applicant accordingly. In pursuance of order passed by this Tribunal in OA No. 290/00068/14, the respondents issued letter dated 19.10.2016 (Annex. A/1) and stated that the pension of the applicant is already fixed at Rs 9130/- w.e.f. 01.01.2006 which is more than minimum prescribed Rs 8145 at row 13 (corresponding to pay scale of 2000-60-2300-75-3200-100-3500 in which the applicant retired). OM No. 38/37/08-P&PW (A) dated 30.07.2015 & OM 38/37/08-P&PW(A) dated 06.04.2016 do not affect pension of the applicant as his pension is already more than minimum prescribed pension corresponding to the pre-revised scales at which he retired, i.e. 2000-60-2300-75-3200-100-3500. Hence, pension of the applicant is rightly fixed at Rs 9130/- w.e.f. 01.01.2006. It has been averred by the applicant that the respondents did not re-examine the matter in wake of the law laid down by various judgments passed by Hon'ble High Courts, Hon'ble Apex Court and directions passed by this Tribunal. Despite matter being squarely covered by judgments passed in

similar matters, the respondents denied the basic pension of Rs 10,075/-. It has been further averred that as per OM dated 01.09.2008 (Annex. A/9), the pay scale of Superintendent of Posts in 4<sup>th</sup> CPC was RS 2000-60-2300-EBTS 3200-100-3550 was upgraded to Rs 7500-250-12000 in 5<sup>th</sup> CPC and thereafter in 6<sup>th</sup> CPC is Rs 9300-34800 + G.P. 4800 and Rs 5400 (after 04 years continuous service). According to last pay drawn by the applicant on retirement, the pay of the applicant in the grade of 7500-250-12000 (5<sup>th</sup> CPC) comes to RS 8250/- (notionally) which is equivalent to Rs 15350 + 4800, i.e. Rs 20150/- (notionally) in the 6<sup>th</sup> CPC. The 50% of the same comes to Rs 10,075/- as pension in the grade of Rs 9300-34800 + GP 4800 as per 6<sup>th</sup> CPC recommendations. However, respondents ignoring all the relevant judgments of the Hon'ble Courts annexed with the OA and as well as, recommendations of the 6<sup>th</sup> CPC re-fixed the pension of the applicant at Rs 9130/- instead of Rs 10,075. Therefore, aggrieved of the same, the applicant has preferred the present OA.

3. In reply, respondents have submitted that coming into force the Central Civil Services (Revised Pay) Rules, 2008, the pension of the existing pensioners was to be revised w.e.f. 01.01.2006 as per fitment table attached to the OM. However, vide OM dated

01.09.2008 (Annex. A/9), the pension of the pre-2006 retirees was to be revised as per fitment table annexed to the aforesaid OM.

As per para 4.2 of the said OM, "the fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than 50% of the minimum of the pay in the pay band plus 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 50% of the minimum of the revised pay-scale." Applying such principles, a fitment table was also appended to the said OM. and as per fitment table attached to the said OM, the applicant's pension was to be fixed at Rs 9130 w.e.f. 01.01.2006. The applicant was getting salary in pay scale of Rs 2000-60-2300-75-3200-100-3500 when he retired, which was revised to pay scale of Rs 6500-10500 in 5<sup>th</sup> CPC and pay scale of Rs 9300-34800 + GP 4200 in 6<sup>th</sup> CPC. Therefore, taking into account para 4.2 of the OM dated 01.09.2008, the pay of the applicant in pay band comes to Rs 12090 + GP 4200 = Rs 16,290/- as per fitment table attached to revised pay scale rules. The 50% of the same for the purpose of pension comes to Rs 8,145/- and as per fitment table, pension of Rs 9,130/- has been authorized to the applicant, which is not less than Rs 8,145/-. Regarding OM dated 03.10.2008 (Annex. A/14) clarifying the applicability of OM dated 01.09.2008 (Annex. A/9), the respondents have stated that

provision of payment of 50% pension to all who have completed 20 years of qualifying service was required to be given effect prospectively and thus, pension was to be decreased on pro-rata basis in proportion of years of services rendered by the employees. OM dated 03.10.2008 and 14.10.2008 were quashed by the Principal Bench of this Tribunal vide its order dated 01.11.2011 and directed the departments to fix the pension as per OM dated 01.09.2008. In pursuance of order passed by the Tribunal, DoP&T issued OM dated 28.01.2013 (Annex. A/3) containing the same provision as was there in para 4.2 of the OM dated 01.09.2008. The OM dated 28.01.2013 had come up for consideration before Hon'ble Delhi High Court in WP (C) No. 1535/2012 (Union of India & Anr. Vs. Central Government SAG and Ors.) alongwith other connected matters and para 9 of the OM dated 28.01.2013 lost its sanctity as the Hon'ble High Court vide its order dated 29.04.2013 declared the pensioners concerned were entitled for arrears of pension w.e.f. 01.01.2006 in case of stepping up of pension under para 4.2 of OM dated 01.09.2008. The said judgment attained finality as SLP against the same has been dismissed by the Hon'ble Supreme Court vide its order dated 29.07.2013. The net effect of these judgments as affirmed by the Hon'ble Supreme Court is that the pensioner concerned becomes entitled for arrears of pension w.e.f. 01.01.2006 and in case of stepping up of pension as per para 4.2 of OM dated

01.09.2008 and such restriction of the arrears provided under para 9 of the OM dated 28.01.2013, lost its sanctity. It has been averred by the respondents that it cannot be presumed that provisions contained in para 4.2 of OM dated 01.09.2008 invite fresh fixation of pay of pensioner according to their pay stage as were getting at the time of retirement. Chandigarh Bench of the Hon'ble Tribunal in OA No. 912/2015 (Lachman Das & Ors Vs. Union of India & Ors) in similar issue has taken into consideration all these OMs and has held that the very basis of claim of the applicants that their pay has to be notionally fixed in revised pay scale (for revising their pension) does not exist in any of the relevant OMs. It has been further averred that OM dated 01.09.2008 (Annex. A/9), 28.01.2013 (Annex. A/2) and 06.04.2016 (Annex. A/14) have not been challenged before any court of law and provisions contained therein do not provide any fresh fixation of pay of pre-2006 retiree as claimed by the applicant in the instant OA for the purpose of effecting the protection or revision of pension under 6<sup>th</sup> CPC. Thus, respondents have prayed for dismissal of the OA as the same is misconceived, baseless and devoid of any merit.

4. In rejoinder, applicant reiterated the averments made in the OA. While annexing GOI, Ministry of Finance, DoE OM dated 13.11.2009 as Annex. A/18 with the rejoinder, applicant stated that

Grade Pay of Inspector of Post Office has been upgraded from Rs 4200/- to Rs 4600/- w.e.f. 01.01.2006. The ASPOs will get grade pay of Rs 4600/- then next grade pay is Rs 4800/-, which is meant for the post of PSS Group 'B'. The applicant thus contended that the notional pay while fixing the pension should be taken into account in the Grade Pay of Rs 4800/- instead of Rs 4200/-.

5. The respondents filed additional reply and stated that bare perusal of OM dated 13.11.2009 (Annex. A/18) makes it clear that it has nothing to do with the pensioners who have already retired from service prior to coming into force recommendations of 6<sup>th</sup> CPC. Provisions contained in para 4.2 of OM dated 01.09.2008 do not require re-fixation of pay of an employee again treating him into active services and to provide any benefit subsequently extended to serving employee just like upgradation of pay scale or providing higher pay scale for the post. The applicant retired in the year 1991 itself and the pay scale of Rs 6500-10500 was corresponding pay-scale of from which he was retired.

6. Heard both the parties.

7. The basic arguments advanced by learned counsel for the applicant is that the applicant retired from the post of Superintendent of Post Offices and worked as Head of Division. The respondents has not taken into consideration the upgradation of post applicant held and in consequence, the upgraded scales of

PB-2 G.P. Rs 4800/-. Rather, respondents fixed the pension in accordance with replacement pay scales/corresponding scales. Referring to para 4.2 of OM dated 01.09.2008 (Annex. A/9), counsel for the applicant contended that in 5<sup>th</sup> Central Pay Commission, there was pay scale of Rs 7500-250-12000 and there was no introduction of pay band and grade pay. But, on implementation of 6<sup>th</sup> CPC, system of pay band and grade pay was introduced and since the applicant's post falls under Grade Pay of Rs 4800 in Pay Band-2, pension of the applicant is re-fixed taking into account the same, it should have been Rs 10,075/- instead of Rs 9,230/-. He further contended that as per judgment of Hon'ble High Court of Delhi in WP (C) No. 1535/2012 dated 29.04.2013 and similar matter decided by Division Bench of Hon'ble Punjab & Haryana High Court in WP (C) No. 19641/2009 in case of R.K. Agarwal & Ors Vs. State of Haryana & Ors, pension of pre-2006 retirees should not be less than 50% of the sum of minimum of the pay in the Pay Band and the grade pay thereon corresponding to the pre-revised pay scale held by the pensioner at the time of retirement. Summing up his arguments, he submitted that the respondents did not re-examine the matter in wake of the law laid down by various judgments passed by Hon'ble High Courts and Hon'ble Apex Court in pursuance of the direction passed by this Tribunal. He thus prayed that respondents be directed to re-fix the pension of the applicant

taking into account the Grade Pay of Rs 4800/- in PB-2 attached to the post applicant held at the time of retirement by refixing his pay.

8. Per contra, learned counsel for the respondents contended that the judgments cited by learned counsel for the applicant deals with quite distinct issue. While taking into consideration provision of para 4.2 of OM dated 01.09.2018, the Hon'ble Courts has held that pension of the retiree cannot be reduced pro-rata basis 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 as on 01.01.2006 and in no case less than Rs 3500/- p.m. before 02.09.2008 as clarified by the Govt. of India vide OM dated 03.10.2008 (Annex. A/17) and 11.02.2009 (Annex. A/11). The Hon'ble Courts has held 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 scale from which the pensioner had retired irrespective of the number of years of service rendered by the retiree. He further submitted that consideration with regard to various judgments and directions issued by the Hon'ble Courts, the Govt delinked the revised pension from qualifying service of 33 years vide OM dated 06.04.2016 (Annex. R/7). The judgments cited by learned counsel for the applicant is dealing with the aforesaid

issue. He further contended that para 4.2 of the OM dated 01.09.2008 has not been interfered by any court of law which clearly stipulates that pension of the applicant should not be less than 50% of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised scale from which the pensioner had retired. The applicant's claim to re-fix his pay again treating him into active service and to provide benefit subsequently extended is not as per policy decision of the Govt. The applicant retired in the year 1991 and benefit of upgradation of pay scale attached to the post at a later stage cannot be extended as para 4.2 of the OM dated 01.09.2008 clearly stipulates that pay band plus grade pay corresponding to the pre-revised scale from which the pensioner had retired and not the post from which the pensioner had retired. OM dated 13.11.2009 (Annex. A/18) annexed by the applicant is applicable to the serving employees for revision of their pay and not to the pensioners who have already retired from service prior to coming into force the recommendations of 6<sup>th</sup> CPC. Relying upon judgment of coordinate bench of this Tribunal at Chandigarh in Lachman Das & Ors Vs. Union of India & Ors, respondents contended that it has been held that notional fixation of revised pay scale (for revising pension) does not exist in any of the relevant OMs. It was further argued that admittedly, the provisions of OM dated 01.09.2008 are not under challenge in the

present OA which was the sole criteria and source for the purpose of revision of pension of existing retired employees prior to 01.01.2006.

9. I have considered contentions of both the parties and perused the record.

10. After giving thoughtful consideration to the arguments advanced and thoroughly going through the record, I find that the main contention of the applicant is that he may be allowed pay fixation notionally treating him in service for the purpose of revising his pension, which comes to Rs 10,075/- . The grounds relied upon for the same is that the post applicant held in the year 1991 has now been upgraded and pay scale attached to the post applicant held in the year is Pay Band-2 Rs 9300-34700 + Grade Pay Rs 4800/- (in 6<sup>th</sup> CPC). Therefore, as per provisions of para 4.2 of the OM dated 01.09.2008 and various judgments annexed with the OA as well as referred during course of arguments, he is entitled for revision of his pension by notionally fixing his pay in the pay scale corresponding to the post. In this regard, he inter-alia relied upon judgment dated 29.01.2015 (Annex. A/12) of Hon'ble Punjab & Haryana High Court at Chandigarh in Union of India Vs Darshan Lal Bali & Ors and other connected matters, judgment dated 03.08.2016 of Hon'ble Delhi High Court in WP (C) 3035/2016 (Ram Phal Vs Union of India & Ors) and judgment dated

18.01.2016 of Hon'ble Kerala High Court at Ernakulam in OP (CAT) No. 169 of 2015. On the other hand, respondents' contentions is that the applicant is mixing the issues as matter pertaining to delinking of pension from qualifying service as per para 4.2 of OM dated 01.09.2009 has attained finality and in pursuance of the same, OM dated 06.04.2016 (Annex. R/7) has already been issued and implemented. However, the claim of the applicant is to re-fix his pay notionally for revising the pension and granting all the benefits of upgradation of pay scale attached to the post treating him as a serving employee for the purpose of revision of pension in terms of para 4.2 of OM dated 01.09.2018 which amounts to misconstruing para 4.2 of the OM. In support of its arguments, respondents relied upon the judgment dated 01.09.2016 passed by Chandigarh Bench of Central Administrative Tribunal in OA No. 912/2015 (Lachman Das & Ors. Vs Union of India & Ors.)

11. It is an admitted position that issue regarding reducing the pension on pro-rata basis with respect to qualifying service by way of clarification has already been set to rest as the Govt. of India has issued OM dated 06.04.2016 (Annex. A/15) in this regard for delinking of revised pension from qualifying service of 33 years while revising the pension of pre-2006 pensioners.

12. I take note of the fact that it is a second time litigation. Earlier vide order dated 12.08.2016 (Annex. A/8) passed in OA No. 290/00068/2014, the respondents were directed by this Tribunal to re-examine the matter and fix the pension of the applicant accordingly. In pursuance of the same, the respondents have reduced the pension of the applicant from 9,230/- to 9,130/- in 6<sup>th</sup> CPC vide order dated 19.10.2016 (Annex. A/1). Relying upon judgments of Hon'ble Delhi High Court and Hon'ble High Court of Kerala, learned counsel for the applicant stated that as per 6<sup>th</sup> CPC report, pension should not be less than 50% of the pay scale with respect to the scale of pay applicable to the post in question and pension of the applicant should be revised by notionally fixing his pay. It is an admitted position (Refer Annex. A/1) that pay scale of post held by the applicant, at the time of his retirement, was revised to Rs 7500-250-12000 in 5<sup>th</sup> CPC and in 6<sup>th</sup> CPC in Pay Band-2 Rs 9300-34800 +Grade Pay Rs 4800. However, corresponding scales to the pay scale on which applicant had retired is Rs 6500-10500/- in 5<sup>th</sup> CPC and 9300-34800 + Grade Pay 4200/-. Learned counsel for the applicant referred to the judgments of Hon'ble Delhi High Court in WP (C) 3035/2016 (Ram Phal Vs Union of India & Ors) and judgment dated 18.01.2016 of Hon'ble Kerala High Court at Ernakulam in OP (CAT) No. 169 of 2015. After going through these judgments, I find that the issue considered by Hon'ble Delhi High Court and Hon'ble Kerala High

Court is quite distinct from one agitated by the applicant herein. On careful perusal of these judgments, it is clear that the direction of the Hon'ble Courts therein was to take into account 50% of minimum of upgraded scale of pay attached to the post on which an employee had retired only for the purposes of minimum pension in terms of para 4.2 of the OM dated 01.09.2008. Para 24 of judgment passed in Ramphal's case by Hon'ble Delhi High court and relied upon by the applicant is as under :

24. It is apparent that the respondents have not applied their mind while fixing the pension of the petitioner at RS 8701/- per month and it seems that the respondents have placed reliance upon the Office Memorandum dated February 11, 2009 and have placed the petitioner in the pay band S-12 but has not taken into consideration the subsequent upgradation of the post of Subedar Major which would place the petitioner in pay band S-14, and needless to state the pension would also have to be revised accordingly.

Relevant portion of para 7 of Kerala High Court judgment relied upon by the applicant is as under :

7. XXXXXXXX The resultant position that emerges from the pronouncement of the Central Administrative Tribunal as well as the different High Courts and the Apex Court is that, computation of pension in the matter of implementation of the 6<sup>th</sup> Central Commission Report has to be at 50% of the pay scale with respect to the scale of pay applicable to the post in question and not to the corresponding scale of pay to the one at which the incumbent has retired.

Thus, in view of these pronouncements, it is clear that the applicant is entitled to 50% of minimum of the pay scale with respect to the scale of pay applicable to the post in question and not to the corresponding scale of pay to the one at which the

incumbent has retired. It is pertinent to mention that all these judgments have been passed while interpreting para 4.2 of the OM dated 01.09.2008, which is as under:

4.2 The fixation of pension will be subject to the provision that 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.

It is worthwhile to note that in pursuance of directions issued by the Hon'ble Courts while calculating the minimum pension respondents should have taken into account pay applicable to the post from which the applicant had retired while revising the pension under 6<sup>th</sup> CPC and not the corresponding pay scale/replacement scale on implementation of pay commissions. However, nowhere courts have issued directions that it would be determined by refixing the pay of the applicants therein or giving higher pension. The directions of the Hon'ble Courts are limited only to ensuring minimum revised pension. The question which came up before the courts was that the respondents therein fixed the pay of the petitioners/applicants 50% of minimum of pay of corresponding pay scale instead of pay scale attached to the posts (Upgraded) from which they had retired on the plea that posts have been upgraded after retirement. The Hon'ble Courts held that pension should not be lower than 50% of minimum of pay

attached to the posts which were subsequently upgraded (pay scales).

13. I find that as per order dated 19.10.2016 (Annex. A/1), the pay scale of the applicant was 2000-60-2300-75-3200-100-3500 at the time of retirement due to post facto promotion. As per Annex. A/3 document page 29 (Revised Scales of Pay for certain posts in Ministries, Departments and Union Territories), the pay scale of 2000-60-2300-75-3200-100-3500 was revised to Rs 7500-250-12000 in 5<sup>th</sup> CPC and further in pay band 9300-34800 + Grade Pay 4800/- in 6<sup>th</sup> CPC. Considering the judgments of Hon'ble Delhi High Court and Hon'ble Kerala High Court referred by the learned counsel for the applicant, the 50% of minimum of pay in pay band corresponding to the pay of post comes to Rs 9,375/- as per method of calculation given by the respondents themselves at para 4 of the reply (Running page 114 of the OA), i.e. [Minimum of pay scale of post Rs 7500 x 1.86 (fitment of 6<sup>th</sup> CPC) + Rs 4800 Grade Pay attached to the posts of Rs 7500-12000} X 50%]. Thus, the applicant is entitled for minimum of Rs 9,375/- p.m. as revised pension in 6<sup>th</sup> CPC instead of Rs 9,130/-. The respondents in para 4 of the reply (Preliminary submissions – running page 114) have given the calculation while taking into account replacement scales, i.e. Rs 6500-10500 & PB-2 Rs 9300-34800 + GP 4200/- without taking into account the upgradation of pay-scale attached to the post which the applicant held at the time retirement. Therefore, Annex. A/1 dated

19.10.2016 issued by respondents revising the pension of the applicant at Rs 9130/-, which is less than the 50% of minimum of pay scale with respect to the scale of pay applicable to the post applicant is held to be erroneous.

14. However, the applicant prayed that his pension be revised to Rs 10,075/- in 6<sup>th</sup> CPC on the plea that in view of various judgments of Hon'ble Courts and para 4.2 of OM dated 01.09.2008, the respondents should notionally fix pay of the pensioner treating him as in service and then arrive at revised pension which is 50% of the pay. On the other hand, respondents submitted that provisions contained in para 4.2 of the OM dated 01.09.2008 does not require to refix the pay of an employee again treating him into active service. Para 4.2 of the said OM only ensures that revised pension of the applicant should not be less than the 50% of minimum of pay in the pay band plus grade pay. The respondents relied upon judgment dated 01.09.2016 of Chandigarh Bench of the Tribunal passed in OA No. 912/2015.

15. I have considered arguments advanced by both the parties in this regard and also perused para 4.2 of the OM dated 01.09.2008. Bare perusal of para 4.2 of OM dated 01.09.2008 makes it clear that para 4.2 only ensures the minimum pension of a retiree. In other words, it does not provide any equivalence in the pension had the applicant been working till 01.01.2006 and

would have retired. Only pension is to be revised while ensuring that it should not be less than 50% of the minimum of pay scale attached to the post from which pension had retired. There is no provision for notional fixation of revised pay of the pensioners in the corresponding revised pay scales and then revising their pension. Thus, the very basis of claim of the applicant that their pay is to be notionally fixed in the revised pay-scale (for revising their pension) does not exist. However, the respondents shall only ensure that revised pension of the applicant should not be lower than 50% of minimum of revised pay scale/Pay Band + Grade Pay corresponding to pre-revised pay-scale attached to the post only. Therefore, the applicant is not entitled for revised pension of Rs 10,075/- in 6<sup>th</sup> CPC.

16. In view of discussions hereinabove made, order dated 19.10.2016 (Annex. A/1) revising the pension of the applicant to Rs 9130/- taking into consideration replacement pay-scales/Grade Pay instead of pay-scales/Grade Pay attached to the post held (Upgraded) by the applicant when he retired, is held erroneous and illegal. Accordingly, order dated 19.10.2016 (Annex. A/1) is quashed. Respondents are directed to revise the pension of the applicant from 01.01.2006 keeping in view discussions made in para 13 above, and ensure that the applicant shall not get less than 50% of minimum of pay of corresponding pay scale attached to the post (Upgraded) from which applicant

had retired as revised pension (6<sup>th</sup> CPC), within 04 months from the date of receipt of this order with all consequential benefits.

17. In terms of above directions, OA is disposed of. No costs.

**[Hina P. Shah]  
Judicial Member**

Ss/-