

**Central Administrative Tribunal
Ernakulam Bench**

**OA/180/00192/2015, OA/180/00438/2015, OA/180/00050/2016,
OA/180/00291/2016, OA/180/00429/2016, OA/180/00525/2016 &
OA/180/00639/2016**

Dated 27th March Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. E.K.Bharat Bhushan, Member(A)
&
Hon'ble Mr.P.Madhavan, Member(J)
&
Hon'ble Mr.Ashish Kalia, Member(J)**

OA/180/00192/2015

- 1. Manichandra Kumar G.R.
S/o P.V.Ramachandran Pillai,
'Amrutham', Peroor, TKMC P.O.,
Kollam 691005.
- 2. Sanin G.
S/o M.N.Gopala Pillai,
Ragam,
Poovattoor West, Mavady P.O.,
Puthur, Kollam 691 507. .. Applicants
By Advocate **Mr.Johnson Gomez**

Vs.

- 1. Union of India rep by its
Secretary to the Government
Department of Posts, Dak Bhavan,
New Delhi 110 011.
- 2. Chief Post Master General,
O/o the CPMG,
Thiruvananthapuram 695 033.
- 3. Senior Superintendent of Post Offices,
O/o Senior Superintendent of Post Offices,
Kollam Division, Kollam 691 001. .. Respondents
By Adovacte **Mr.N.Anilkumar, Sr.PCGC(R)**

OA/180/00438/2015

- 1. Asok Kumar T.,
S/o C.Thankappan
Soorej, Nestle Apartment,
PWD Road, Nettoor P.O.,
Kochi 682 040.
- 2. Benny P.George,
S/o P.J.George,
Pulimoottil House, LBS Road,
Thiruvankulam P.O.,
Ernakulam 682 305.
- 3. Manoj Abraham Mampilly,
S/o Abraham Joseph,
Mampilly House, Don Bosco Church Road,
North Paravur, Pin-683 513.
- 4. Viju P.V.,
S/o P.K.Vijayan,
Padmatheertham,
Kumbalam P.O., Kochi 682 506.
- 5. Rajesh Puthalath,
S/o M.C.Narayana Kurup,
Cheriyakurungote,
Kurinhaliyode P.O.,
Vadagara, Kozhikode 673 542.
- 6. V.Sudhakar,
S/o K.Vasudevan,
Gokulam, Palliyamkara,
HMT Colony P.O.,
Kalamassery.
- 7. Vijayasenana Nair B.,
S/o N.Bhaskaran Pillai,
Nakshathra (Sivalayam),
Bhoothakulam P.O., South Paravoor,
Kollam 682 509.
- 8. Unnikrishnan B.B.,
S/o late Balakrishnan Menon,
Blayil House, Blayil Road,
Eroor P.O., Thripunithura,
PIN 682 306.
- 9. V.J.Varghese,
S/o Joseph,
Kalarickal House,
Varanam P.O., Cherthala,
Alappuzha 688 555.
- 10. Shelin P.,

S/o late Sri V.K.Purushan,
Veliyil House,
Kumbalam P.O.,
Kochi 682 506.

- 11. C.K.Sethumadhavan,
S/o K.G.Nair,
Type II, D 87/8, Periyar Vihar,
Ambalappady, NAD P.O.,
Aluva 683 563.
 - 12. Nair Vinod Gopalakrishnan,
S/o K.Gopalakrishnan Nair,
Ramalayam, Meenam North,
Maloor College P.O.,
Pathanampuram, Kollam 689 695.
 - 13. Viju M.V.,
S/o Vishwanathan,
Manattuparambil House,
Narayambalam P.O.,
Ernakulam 682 509.
 - 14. A.Kornelius,
S/o Anthony Muthu,
Type I, C 25,
Dawson Vihar, Thykoodam,
Vytilla 682 019.
- By Adocate **Mr.M.R.Hariraj**

.. Applicants

Vs.

- 1. Union of India, rep by its
Secretary to Government of India,
M/o Personnel & Training,
New Delhi 110 001.
- 2. Secretary,
Government of India,
M/o Defence,
New Delhi 110 001.
- 3. Flag Officer Commanding in Chief,
Southern Naval Command, Kochi 682 004.
- 4. Joint Controller of Defence Accounts,
Area Accounts Office,
Perumanoor, Thevara,
Kochi 682 015.

.. Respondents

By Advocate **Mr.M.K.Padmanabhan Nair, ACGSC**

OA/180/00050/2016

- 1. K.Anilkumar,
S/o K.V.Padmanabhan Nair,
“Kuniyil House” Kootteri Desom,
Puthur P.O., Panoor via, Kannur 670 692.
- 2. T.P.Renjith,
S/o P.Sekharan,
“Karuvvari House”, Poduvachery PO,
Kannur 670 621.
- 3. T.I.Johnson
S/o T.P.Ittiachan,
Thakolkaran House, Thumbakode,
Kanjirappilly P.O.
- 4. Jose Pappachan,
S/o V.D.Pappachan,
Vadakumcherry House, Anappara P.O.-683 581,
Ernakulam District.
- 5. T.K.Pauly,
S/o late Shri T.V.Kunjipoulo,
Thekiniyan House, Koratty South P.O.,
Thrissur District 680 308.
- 6. K.Ajith Kumar,
S/O V.A.Kumaran,
Vadakkunnathumalil House, Punnayam,
Asamannoor (P.O.), Ernakulam 683 549.
- 7. Babu John,
S/o John,
Kachira House, Avoly PO,
Avoly 686 670.
- 8. K.N.Vinod Kumar,
S/o K.M.Narayanan Kutty,
Kollerithara House,
Chendamangalam Junction, N.Paravur,
Ernakulam(Dist.) 683 513.
- 9. R.Jayakumar
S/o R.Narayanan Nair,
Ramanthra House, Anandapuram PO,
Thrissur 680 305.
- 10. S.Sency Nath,
S/o Sadasivan Pillai,
Door 216, 2nd floor, Prasadam Apartment,
South Nada, Koodalmanikyam,
Irinjalakuda PO,
Thrissur 680 121.

- 11. K.Rajesh,
S/o C.Parameswaran,
Sreejayam, CCRA-4, Chakolas County,
Viyyur, Thrissur 680 010.
- 12. A.Unnikrishnan
S/o A.Balakrishnan,
Ayyappanparambil House,
Mulagunnathukavu PO,
Thrissur 680 581.
- 13. K.R.Unnikrishnan
S/o K.M.Rajan,
Kadampuzha House,
Elinjipara Post, Pariyaram Via,
Chalakudy 680 721,
Thrissur District.
- 14. K.Prakash,
S/o K.Aravindan,
“Chaithram”, Adat PO,
Thrissur 680 551.
- 15. C.Subash,
S/o K.K.D.Nambiar,
Sree Nelayam (P.O.,Arili), Arili PO,
Pappinissery, Kannur 670 561.
- 16. K.R.Latheesh,
S/o Ramanathan K.V.,
PRA-14, Nandanam, Kollamkulangan House,
Priyadarsini Nagar, Kannapuram,
Chettupuzha P.O.,
Thrissur, Kerala 680 012.
- 17. K.Unnikrishnan,
S/o late C.Kelu Nair,
“Krishna”, Kannookara PO,
Madapally College,
Vadakara 673 102.
- 18. Rajesh Valoth,
S/o V.Balachandran Nambiar,
“Chandra House”, Valoth Kunnumpuram,
Mudallur PO, Kannur 670 622.
- 19. V.P.Manoj
S/o V.P.Balakrishnan Adiyodi,
“Ambadi”, Chelakkad PO, Kallachi 673 506. .. Applicants
By Advocate **Mr.Shafik M.A.**

Vs.

- 1. Union of India, rep by its Secretary, Department of Posts, M/o Communications & IT, New Delhi-110 001.
- 2. The Secretary, Department of Personnel & Training, M/o Personnel, Public Grievances & Pensions, New Delhi 110 001.
- 3. The Assistant Director General (Estt.), Establishment Division, Department of Posts, M/o Communications & IT, Dak Bhavan, Sansad Marg, New Delhi 110 001.
- 4. The Chief Postmaster General, Kerala Circle, Trivandrum 695 033.

.. Respondents

By Advocate **Mr.Thomas Mathew Nellimoottil, Sr.PCGC**

OA/180/00291/2016

- 1. Binoy Simon, S/o K.Chummar, “Kumblakushi House”, Eachome P.O., Panamaram, Wynad 670 721.
- 2. E.K.Madhu S/o late E.K.Sankaran Chettiyar, “Sivasakthi House”, Kaloore P.O., Via Nanminda, Calicut 673 613.
- 3. N.Sathian, S/o Madhavan Nair, “Thakshikha House”, Kunnamangalam, MIE P.O., Calicut 673 571.
- 4. K.Muraleedharan, S/o Gopalankutty Kurup, “Lekha Sadan” Vengeri P.O., Calicut 673 010.

.. Applicants

By Adocate **Mr.Shafik M.A.**

Vs.

- 1. Union of India, rep by its Secretary, Department of Posts, M/o Communications & IT, New Delhi 110 001.
- 2. The Secretary, Department of Personnel & Training, M/o Personnel, Public Grievances & Pensions,

New Delhi 110 001.

- 3. The Chief Postmaster General,
Kerala Circle, Trivandrum 695 033.
 - 4. The Senior Superintendent of Post Offices,
Calicut Division, Calicut 673 003.
- By Advocate **Mr.K.C.Muraleedharan, ACGSC**

.. Respondents

OA/180/00429/2016

- 1. V.Surjith,
S/o K.Viswanathan,
“Mayamayooram”, Rajiv Gandhi Lane,
Kallummoodu, Vallakadavu P.O.,
Trivandrum 695 008.
- 2. S.Pramod,
S/o S.Sasidharan,
“Preethi”, Manvila, Kulathur P.O.,
Trivandrum 695 583.
- 3. G.Vijayadevan Nair,
S/o C.K.Gopinathan Nair T.P.,
Palamuttathu Veedu,
Kannimel, Pattazhy P.O.,
Kollam 691 522.
- 4. V.Gopalakrishnan,
S/o P.V.Vasudevan Nair,
“Nandanam” Kedamangalam,
N.Parur P.O., Ernakulam 683 513.
- 5. P.T.Sibichan,
S/o P.C.Thomas,
“Puthenpurackal” House,
Asokapuram P.O., Aluva,
Ernakulam 683 101.
- 6. R.Balamuralikrishna,
S/o K.G.Ramachandran Pillai,
Chandra Vilasam, TC-18/485,
Aramada P.O., Trivandrum 695 032.
- 7. K.A.Musthafa,
S/o Muhammed Kalathingal,
B/134, VSSC Staff Quarters,
Pallithura P.O., Thumba, Trivandrum.
- 8. G.Ajayakumar,
S/o R.Govindhan,
TC-36/110, Padmalayam,
Vallakadavu P.O., Trivandrum 695 008.
- 9. A.Rajeshkumar,

S/o V.Gopalan Nambiar,
TC-9/685-1, Vinayakanagar,
Kallampalli, Sreekariyam,
Trivandrum.

- 10. R.Unnikrishnan,
S/o K.Raveendran,
“Krishnavilasam”, Kesavadev Road,
Thamalam, Poojappura P.O.,
Trivandrum 695 012.
- 11. S.Abhilesh Kumar,
S/o V.Sivasankaran Nair,
“Abhisoudham”, Vayalikkada,
Vattiyoorkavu P.O., Trivandrum 695 012.
- 12. Anil V.Raju,
S/o C.V.Raju,
“Leela Sadanam”, Padinjatta Kizhakku,
Sooranadu P.O., Kollam 690 522.
- 13. C.Rajesh Kumar,
S/o K.P.Chellappan Pillai,
“Bharatham”, Durga Nagar (H-19),
Poomalliyoorkonam, Peroorkada P.O.,
Trivandrum 695 005.
- 14. V.Baiju,
S/o G.Vijayan,
TC-9/2229(3) “Sambhusree”,
Edavacode, Sreekariyam,
Trivandrum 695 017.
- 15. R.Ajith Varma,
S/o Taveendra Varma,
21-A, Sreelakam, NCC Nagar,
Peroorkada P.O., Trivandrum 695 005.
- 16. K.Baiju,
S/o K.Chandran,
Kalathil House,
Odhayamangalam Paramba,
Nallalam P.O., Calicut 673 027.
- 17. E.Keny Pereira,
S/o Edison,
TC-44/889, “Roshan Villa”,
Vallakadavu P.O., Valiyathura,
Trivandrum 689 008.
- 18. N.S.Anilkumar,
S/o GNK Nair,
“Sreedevi Sadanam”,

Maranalloor, Kuvalasseri P.O.,
Trivandrum.

- 19. Jestine Thomas John,
S/o P.K.John,
“Parakandathil” House,
Mekkadumpu P.O., Muvattupuzha,
Ernakulam 682 316.
- 20. Premraj Mantala,
S/o late M.K.Krishnan,
“Cherammal House”,
Kavumbhagam P.O., Thalasserry,
Kannur 670 110.
By Advocate **Mr.Shafik M.A.**

.. Applicants

Vs.

- 1. Union of India, rep by its
Secretary, Department of Space,
3rd Floor, Lok Nayak Bhavan,
New Delhi 110 001.
- 2. The Secretary,
Department of Personnel & Training M/o Personnel, Public Grievances & Pensions,
New Delhi 110 001.
- 3. The Secretary,
Department of Ex-Servicemen Welfare,
M/o Defence, South Block,
New Delhi 110 001.
- 4. The Director,
Vikram Sarabahi Space Centre,
Trivandrum 695 022.
- 5. The Senior Administrative Officer,
Establishment Section,
Vikram Vikram Sarabahi Space Centre,
Trivandrum 695 022.
By Advocate **Mr.N.Anilkumar, Sr.PCGC(R)**

.. Respondents 15

OA/180/00525/2016

- 1. S.Muraleedharan Pillai,
S/o Sachitanandan Pillai,
“Thayyil”, Evoor North,
Cheppad PO, Alappuzha 690 507.
- 2. M.S.Rajeev,
S/o M.U.Sukumaran,
“Madathiparampil House”, Puthenpally,

Varapuzha PO, Ernakulam 683 517.

- 3. S.Chandrasenan,
S/o M.Sadanandan,
Lakshmi Vilasam, Kamukumchery,
Piravanthoor, Kollam 689 696.
- 4. A.J.Topson,
S/o A.M.Joseph,
“Arackal House”, Manjummel PO,
Ernakulam 683 501.
By Advocate **Mr.Shafik M.A. & Mr. N.M.Siyad**

.. Applicants

Vs.

- 1. Union of India, rep by its
Secretary, Department of Space,
3rd Floor, Lok Nayak Bhavan,
New Delhi 110 001.
- 2. The Secretary,
Department of Personnel & Training,
M/o Personnel, Public Grievance & Pensions,
New Delhi 110 001.
- 3. The Secretary,
Department of Ex-Servicemen Welfare,
M/o Defence, South Block,
New Delhi 110 001.
- 4. The Director,
Vikram Sarabahi Space Centre,
Trivandrum 695 022.
- 5. The Senior Administrative Officer,
Establishment Section,
Vikram Sarabahi Space Centre,
Trivandrum 695 022.
By Advocate **Mr.T.C.Krishna, Sr.PCGC**

.. Respondents 15

OA/180/00639/2016

- 1. Anil Kumar,
S/o K.S.Vamadevan,
“Santhanilayam”, Kuthirappanthu P.O.,
Thazhava, Kollam 690 523.
- 2. Benny Joseph,
S/o Devassia Joseph,
“Veliyil House” Kalavamcodam P.O.,
Cherthala, Alappuzha District 688 586.
- 3. P.T.Joseph,

S/o P.V.Thomas (late),
 “Puthooppallil” Kapicadu,
 Kallara P.O., Muttuchira Village,
 Kottayam 686 611.

- 4. Sunil Abraham,
 S/o Thomas Abraham,
 Padavupurackal House,
 Keezhoor P.O., Thalayolaparambu,
 Kottayam 686 605.
- 5. P.N.Mruthunjayan,
 S/o P.E.Narayanan,
 Pulitharanikathil House,
 Mulavukadu P.O., Ernakulam 682 504.
- 6. O.P.Kuriakose,
 S/o O.V.Paulose,
 “Odolil” House,
 Peringole Kara, Kolenchery P.O.,
 Ernakulam District, Kerala 682 311.
- 7. K.K.Sajan,
 S/o Kunhambu (late),
 Kuttikattil House,
 Champad P.O., Thalassery (via),
 Kannur District 670 694.
- 8. V.M.Sunil Kumar,
 S/o K.Achuthan (late),
 Vilakkumadathil House, Korappuzha,
 Vengalam P.O., Elathu (via),
 Kozhikode District, Kerala 673 303.
- 9. T.Aboo,
 S/o Kunhimoideen Kutty T.,
 Pazhachinilath, Kinanur P.O.,
 Balussery (via), Kozhikode Distract,
 Kerala 673 612.
- 10. T.Padmanabhan,
 S/o N.Krishnan(Late),
 Aswathi House,
 Maniyara Kanayi P.O., Payannur (via),
 Kannur District, Kerala 670 307.
- 11. V.J.Thomas,
 S/o V.C.Joseph (late),
 Valiyil Puthanpurayil,
 Thavalakkundu, Kadumeni P.O.,
 Cherupuzha (via), Kasaragod District,
 Kerala 670 511.

- 12. A.Rajan,
S/o late T.Govindan Kutty Tharavanar,
Type-II, B-11, Dawson Vihar,
Naval Civilian Residence, Thykoodam,
Vytilla, Kochi 682 019.
- 13. N.Padmanabhan,
S/o P.Narayanan Chettiyaar,
“Priya Vilasam”, Vellaikadavu,
Kodunganoor P.O., Trivandrum 695 013.
By Advocate **Mr.Shafik M.A.**

.. Applicants

Vs.

- 1. Union of India, rep by its
Secretary,
M/o Defence, South Block,
New Delhi 110 001.
- 2. The Secretary,
Department of Personnel & Training,
M/o Personnel, Public Grievance & Pensions,
New Delhi 110 001.
- 3. The Secretary,
Department of Ex-Servicemen Welfare,
M/o Defence, South Block,
New Delhi 110 001.
- 4. The Flag Officer Commanding in Chief,
Southern Naval Command, Naval Base,
Kochi 682 004.
- 5. The Asst. Controller of Defence Accounts,
Area Accounts Office, CDA(Navy),
Perumanoor P.O., Kochi 682 015.
By Advocate **Mr.P.R.Sreejith, ACGSC**

.. Respondents

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OAs were filed seeking the following relief:-

OA 192/2015:

“(i) To declare that the applicants are entitled to pay fixation in accordance with para 4d of the “CCS (fixation of pay of re-employed pensioners) Orders, 1986, issued vide the Department's OM No.3/1/85-Estt.(Pay II) dated 31st July 1986 (as revised from time to time), reckoning their last pay drawn in the Indian Air Force.

(ii) To call for the records leading to Annexure A9 and to quash the same.

(iii) To direct the respondents two and three to re-fix the pay of applicants reckoning their last drawn pay as contained in Annexure A1 and A2 in the Indian Air Force.

(iv) Grant such other relief or reliefs that may be urged at the time of hearing or that this Tribunal may deem fit and proper in the nature and circumstances of the case. .”

OA 438/2015:

“(i) To declare that clause 4(b)(i) of the Central Civil Service (Fixation of Pay of Re Employed Pensioners) Orders, 1986 (Annexure A1) is void as it is discriminatory and violative of Art. 14, 16 and 21 of the Constitution of India, to the extent it refuses the benefit of pay fixation reckoning the last pay drawn to the persons who retired from the post of Personnel Below Officer Rank or Group B, C and D of Civil services, and to quash Annexure A1 to the above extend;

(ii) to quash Annexure A9, A12, A14 and A15

(iii) to direct the respondents to grant the applicants fixation of pay on re-employment reckoning their last pay drawn in the armed forces with all consequential benefits including arrears of pay and allowances with interest of 12% per annum on delayed payment;

(iv) grant such other reliefs as may be prayed for and the court may deem fit to grant and

(v) to grant the costs of this OA.”

OA 50/2016:

“(i) To call for the records relating to Annexures A1-A16 and to quash A1 to the extent it declines to fix the pay of the applicants on re-employment, without reckoning the basic pay, dearness pay, rank pay, MSP, X Group pay, GCB, classification pay and dearness relief in the scale of re-employed post, as the same is illegal and arbitrary;

(ii) To declare that the applicants is entitled for the pay fixation on the entry in re-employed post as has been done in A11 to A15 orders;

(iii) To direct the respondents to fix the pay of the applicants in the post of Postal Assistants/Sorting Assistants reckoning their pay which they were drawing prior to their retirement with the Grade Pay of the post, as has been done in A-11, A-12, A-13, A-14, A-15 etc and to draw and disburse the arrears of the difference with 18% penal interest;

(iv) To grant such other relief as may be prayed for and this Tribunal may deem fit to grant, and

(v) To award costs of this OA.”

OA 291/2016:

“(i) To call for the records relating to Annexures A1-A16 and to quash A1 to the extent it declines to fix the pay of the applicants on re-employment, without reckoning the basic pay, dearness pay, rank pay, MSP, X Group pay, GCB, classification pay and dearness relief in the scale of re-employed post, as the same is illegal and arbitrary;

(ii) To declare that the applicants is entitled for the pay

fixation on the entry in re-employed post as has been done in A11 to A15 orders;

(iii) To direct the respondents to fix the pay of the applicants in the post of Postal Assistants/Sorting Assistants reckoning their pay which they were drawing prior to their retirement with the Grade Pay of the post, as has been done in A-11, A-12, A-13, A-14, A-15 etc and to draw and disburse the arrears of the difference with 18% penal interest;

(iv) To grant such other relief as may be prayed for and this Tribunal may deem fit to grant, and

- To award costs of this OA.”

OA 429/2016:

“(i) To call for the records relating to Annexures A1-A19 and to quash A1 to the extent it declines to fix the pay of the applicants on re-employment, without reckoning the basic pay, dearness pay, rank pay, MSP, X Group pay, GCB, classification pay and dearness relief in the scale of re-employed post, as the same is illegal and arbitrary;

(ii) To declare that the applicants is entitled for the pay fixation on the entry in re-employed post as has been done in A11 to A15 orders;

(iii) To direct the respondents to fix the pay of the applicants in the post of Postal Assistants/Sorting Assistants reckoning their pay which they were drawing prior to their retirement with the Grade Pay of the post, as has been done in A-11, A-12, A-13, A-14, A-15 etc and to draw and disburse the arrears of the difference with 18% penal interest;

(iv) To grant such other relief as may be prayed for and this Tribunal may deem fit to grant, and

(v) To award costs of this OA.”

OA 525/2016:

“(i) To call for the records relating to Annexures A1 to A18 and to quash A-1a to A-1d to the extent it declines to fix the pay of the applicants on re-employment, without reckoning the basic pay, dearness pay, rank pay, MSP, X Group pay, GCB,

classification pay and dearness relief in the scale of re-employed post, as the same is illegal and arbitrary;

(ii) To declare that the applicants is entitled for the pay fixation on the entry in re-employed post as has been done in A11 to A15 orders;

(iii) To direct the respondents to fix the pay of the applicants in the post of Postal Assistants/Sorting Assistants reckoning their pay which they were drawing prior to their retirement with the Grade Pay of the post, as has been done in A-11, A-12, A-13, A-14, A-15 etc and to draw and disburse the arrears of the difference with 18% penal interest;

(iv) To grant such other relief as may be prayed for and this Tribunal may deem fit to grant, and

(v) To award costs of this OA.”

OA 639/2016:

“(i) To call for the records relating to Annexures A1 to A14 and to quash A-1 and A--2 to the extent it declines to fix the pay of the applicants on re-employment, without reckoning the basic pay, dearness pay, rank pay, MSP, X Group pay, GCB, classification pay and dearness relief in the scale of re-employed post, as the same is illegal and arbitrary;

(ii) To declare that the applicants is entitled for the pay fixation on the entry in re-employed post as has been done in A7 to A10 orders;

(iii) To direct the respondents to fix the pay of the applicants in the post of Postal Assistants/Sorting Assistants reckoning their pay which they were drawing prior to their retirement with the Grade Pay of the post, as has been done as per A-7 to A-10 and to draw and disburse the arrears of the difference with 18% penal interest;

(iv) To grant such other relief as may be prayed for and this Tribunal may deem fit to grant, and

(v) To award costs of this OA.”

2. Since the relief sought and the issues raised therein are of a similar nature,

these OAs are taken up together and this common order is passed.

3. All the above OAs were filed challenging the orders passed by the respondents fixing their pay on re-employment. All the applicants are Non-Commissioned Officers of the defence forces and they are employed in Civil services Group C & D posts (now only C). Except in OA 438/15, the main relief sought is that they are entitled fixation of pay on the basis of the last pay drawn, which the respondents denied. The applicant in OA 438/15 has challenged the constitutional validity of **clause 4(b)(i) of CCS (fixation of pay on re-employment) order 1986 as discriminatory to Non-Commissioned Officers and violative of Art. 14,16 & 21 of the Constitution to the extent it refuses the benefit of pay fixation reckoning the last pay drawn to the person who retired from the post of personal below the officer rank or Group B, C & D of the Civil Services and to quash the impugned order A1 to that extent.**

4. When the matter came up for hearing before the Division Bench, it was found that there are conflicting orders passed by various benches and it will be good if the law is settled by a larger bench. The Chairman, Principal Bench ordered for constitution of a Full Bench as per letter No.PB/13/04/2015-JA dated 14.8.2018 and the Full Bench heard the submissions on both sides and found that points referred earlier are not sufficient as even the constitutional validity of Rule 4(b)(i) of CCS (Fixation of Pay of Re-employed Pensioners) Order 1986 was also challenged by the applicants. Hence the matter was sent back to the Division Bench for formulating the points to be decided by the Full Bench.

5. Accordingly, the Division Bench finally referred the following points for decision of the Full Bench:-

“1. Whether Rule 4(b)(i) of the (Fixation of Pay of Re-employed Pensioners) Order 1986 is violative of the Art. 14, 16 & 21 of the Constitution of India due to it being discriminatory against those who are having their entire pension ignored for the purpose of pay fixation and being violative of equality, right to life and liberty?

2. Whether Ex-Servicemen, who are PBOR (Persons Below Officer Rank), entitled to have their fixation of pay with reference to the pay drawn at the time of their discharge from armed forces or whether they are entitled to fixation at minimum of the pay scale of re-employed pensioners?

3. Whether the Ex-Servicemen who are combatant category are entitled to the benefit of fixation of pay of re-employed pensioners in terms of CCS (Fixation of Pay of Re-employed Pensioners) Order 1986 read with OM No.3/19/2009-Estt. Pay II dated 05.4.10 issued by DoPT, G.O.I.”

6. As per the order of the Chairman Principal Bench, a Full Bench was constituted under R-52 of the CAT rules of practice and the matter was heard. At the time of hearing the counsel appearing on both sides, admitted that the Supreme Court had occasion to consider how pay has to be fixed for re-employed Ex-Servicemen in ***Union Territory of Chandigarh 7 Others v. Gurucharan Singh 7 Another reported in (2013) 12 SCR 853*** and the main point to be decided is point No.1 of the reference i.e. Constitutional validity of Rule 4(b)(i) of the CCS (Fixation of Pay of Re-employed Pensioners) Order 1986 whether it is discriminatory and violative of Art. 14 & 16 of the Constitution. The Rule 4 of the CCS (Fixation of Pay of Re-employed Pensioners) Order 1986 is as follows:-

“4.Fixation of pay of re-employed pensioners-

(a).- Re-employed pensioners shall be allowed to draw pay only in the Level in the revised pay structure applicable to the post in which they

are re-employed. No protection of the scales of pay/pay structure of the post held by them prior to retirement shall be given.

Note.- Revised pay structure in relation to a post will be as defined in Rule 3(ix) of the Central Civil Services (Revised Pay) Rules, 2016.

(b)(i) In all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed as per Rule 8 of the Central Civil Services (Revised Pay) Rules, 2016.

Note 1.-The case where pension is fully ignored is given in Order 4(d) below.

Note 2.- Pension is fully ignored means that pension is not deducted from pay.

(b)(ii) In cases where the entire pension and pensionary benefits are not ignored for pay fixation, the initial Basic Pay on re-employment shall be fixed at the same stage as the last Basic Pay drawn before retirement. If there is no such stage in the re-employed post, the pay shall be fixed at the stage next above that pay. If the maximum pay in the Level applicable to the post in which a pensioner is re-employed is less than the last Basic Pay drawn by him before retirement, his initial Basic Pay shall be fixed at such maximum pay of the re-employed post. Similarly, if the minimum pay in the Level applicable to the post in which a pensioner is re-employed is more than the last basic pay drawn by him before retirement, his initial Basic Pay shall be fixed at such minimum pay of the re-employed post. However, in all these cases, the non-ignorable part of the pension shall be reduced from the pay so fixed.”

Note 1.- Revised pay structure in relation to a post will be as defined in Rule 3(ix) of the Central Civil Services (Revised Pay) Rules, 2016.

Note 2.- “Basic Pay” in the revised pay structure means the pay drawn in the prescribed Level in the Pay Matrix.

Note 3.- Last Pay drawn shall be as per definition of pre-retirement pay in terms of Order 3 of the CCS (Fixation of Pay of Re-employed Pensioners) Orders, 1986, read with DoP&T O.M.No.3/19/2009-Estt. (Pay II), dated the 8th November, 2010.

(c) The re-employed pensioner will, in addition to pay as fixed under Para. (b) above shall be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefits.

(d).-In the case of persons retiring before attaining the age of 55 years and who are re-employed, pension (including PEG and other forms of retirement benefits) shall be ignored for pay fixation to the following extent:-

(i) In the case of Ex-Servicemen who held posts below Commissioned Officer rank in the Defence Forces and in the case of civilians who held posts below Group 'A' posts at the time of their retirement, the entire pension and pension equivalent of retirement benefits shall be ignored.

(ii) In the case of Commissioned Service Officers belonging to the Defence Forces and Civilian pensioners who held Group 'A' posts at the time of their retirement, the first Rs.15,000 of the pension and pension equivalent retirement benefits shall be ignored.

7. According to the counsel for the applicants, Rule 4(b)(i) is discriminatory as it does not permit the Non-Commissioned Officers (PBOR) to have their pay fixed on par with the pay they were drawing in the army. On the other hand, the Commissioned Officers are given protection of their pay in the military service under Rule 4(b)(ii). This is discriminatory. The rule states that when the pension is wholly ignored, the pay fixation in the re-employment should be at the minimum of the scale to which they are appointed. By the implementation of successive pay commission orders, the benefit being given to the Non-Commissioned officers is being reduced and at the same time the benefit given to Commissioned Officers is going up substantially. The very object of the rule is to give benefits to people who had put in the best part of their life for the defence of the country. So, according to him, the classification done under Section 4(b)(i) & 4(b)(ii) into two separate category and giving benefits is discriminatory. The classification of military pensioners into Commissioned Officers and Non-Commissioned Officers and treating them differently in the matter of pay fixation is arbitrary and violative of Article 14.

8. The counsel appearing for the respondents on the other hand submits that

the Non-Commissioned Officers are treated in a better way as the entire pension given from army is ignored and they get full pension as well as the basic pay and other allowances in the re-employed post. In no way the total of pension plus basic pay fixed goes below their earlier pay in military service and there is no hardship suffered by the non-commissioned officers. As far as Commissioned Officers are concerned, the non-ignorable portion of pension is reduced from their pay. Only a portion of the pension is ignored. The Hon'ble Apex Court in ***Director General of Posts & Others v. B.Ravindran & Others reported in (1997) 1 SCC 641*** has held that when there is *hardship* caused by fixation, the difference in pay has to be stepped up giving one increment for every completed year. Earlier, only a portion of pension of PBOR was ignored. But when the pension scheme was liberalised by successive pay Commissions, the entire pension of the PBOR is now ignored i.e. the pensioner can take the full pension and allowances and also the pay received from re-employment without any deduction. This provision actually helps those persons who had retired from defence forces before the age of 55 [vide Rule 4(d)(i)]. If we go through the scheme of fixation of pay of Ex-Servicemen, it can be seen that it was intended to give benefit to the Ex-Servicemen. So, according to the counsel for the respondents, there is no discrimination done by the rules as alleged in the case.

9. The counsel for the respondents also contended that the classification of commissioned officers and those who are Non-Commissioned Officers is based on the nature and functions of the job of these officers and also based on qualification and responsibilities of these persons in the Defence Forces. Another aspect pointed

out is that the Non-Commissioned Officers are given reservation on the basis of the Ex-Servicemen (Re-employment in Central Civil Services & Posts) Rules, 1979. As per Rule 3, the Non-Commissioned Officers can apply only to Group C and D posts. The Non-Commissioned officers are given relaxation in age, qualification etc. considering the service in the forces. There is no question of a Commissioned Officer applying to a post in Group C and D as he is serving in commissioned rank i.e. equivalent to Group A post in civil service. It may be true that when a Commissioned Officer is appointed to Group A Post, he is given fixation on the basis of his last pay drawn, but *his non-ignorable portion of pension* is reduced from that pay. His pension is not completely ignored as in the case of the PBOR persons. He also would contend that classification on the basis of qualification and giving higher scale is held to be valid. The Hon'ble Supreme Court in *State of Mysore & Another v. P.Narasimha Rao (AIR 1968 SC 349)* held that granting higher scale for Matriculates and lesser scales to non-Matriculates will not offend Article 14 & 16 of the Constitution. Equality can be considered only among equals and any reasonable classification cannot be challenged as against Article 14. The Hon'ble Supreme Court in *U.T.Chandigarh & Others v. Gurucharan Singh & Another (2013) 12 SCR 853* has approved the scheme of pay fixation of Ex-Servicemen on re-employment, though the constitutional validity was not challenged in that case.

10. We have anxiously heard the arguments advanced by the learned counsel on both sides. **The only point to be considered is whether Rule 4(b)(i) of Central Civil Services (Fixation of Pay on Re-employment) Orders, 1986 is**

discriminatory to PBOR persons and is violative of Article 14 & 16 of the Constitution.

11. The question of reasonable classification was dealt with by the Hon'ble Apex Court in numerous decisions. In *Budhan Chaudhary v. State of Bihar (reported in AIR 1955 Sc 191)*, the Apex Court had laid down a test to know whether classification is discriminatory. **“In order however to pass the test of permissible classification two conditions must be fulfilled namely,**

- **that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group and**
- **that the differential must have a rationale relation to the object to be sought to be achieved by the statute in question.”**

12. How far the classification should be perfect was dealt with by the Hon'ble Supreme Court in *Kedarnath Bajoria v. State of West Bengal (AIR 1953 SC 404)*. It was held that **“Article 14 does not insist that legislative classification should be scientifically perfect or logically complete.** In *Venkateshwara Theatre v.s State of U.P. (AIR 1993 SC 1947)* it was held that **“a court should not interfere unless the classification results in pronounced inequality.”** A classification would be justified if it is not palpably arbitrary. If there is equality and uniformity within each group, the law will not be condemned as discriminatory, though due to some fortuitous circumstances arising out of a peculiar situation where some included in the class get an advantage over others, so long as they are not singled out, for special treatment. The Apex Court had observed in *State of Bombay v. Balsara (1966 SC 1044)* that **“the presumption is always in favour of constitutionality of an**

enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.”

13. On going through Rule 4 of the Central Civil Services (Fixation of Pay on Re-employment) Orders, 1986, we can see that it has given different schemes for pay fixation on re-employment to Commissioned and Non-Commissioned Officers (PBOR). As far as commissioned officers are concerned, only a minor portion of their pension is ignored (now Rs.15000/-) and the remaining non-ignorable portion is deducted from the pay fixed on the basis of pay drawn in the forces. But as regards Non-Commissioned Officers, the entire pension is ignored while fixing pay in the new scale. They are not given any pay protection. It is here that the applicants would contend that they are discriminated. If we go through the samples of pay fixation given by DOPT, it can be seen that if the pension so ignored plus the pay at the initial stage is taken, it can be seen that the persons who are PBOR do not suffer from any short fall in income which they would have got in the forces at the time of retirement. The object of this separate fixation of pay for Ex-Servicemen had an object that these Ex-Servicemen who had served the better half of their age in the service of the country should not suffer any short fall in income when they retire from the defence force. The reservation is provided to the personnel of PBOR based **on Ex-Servicemen (Re-Employment in Central Civil Services & Posts) Rules, 1979.** This rule provides for reservation for Non-Commissioned Ex-Servicemen in Group C

and D posts. This clearly indicates that the commissioned officers who are Group A officers is not given such reservation and no such officer is going to compete with PBOR persons in appointment. Besides the ignoring of pension, they are given various benefits like reservation, relaxation of age, educational qualification etc. also for getting re-employment.

14. As per the conditions of service of Commissioned Officer, he has to undergo various courses and he is assessed on merits throughout his career as they had to lead the forces of the country. They are considered similar to Group A officers of the Civil Services. The functions and responsibilities and qualification of these officers are not similar to that of PBOR. Article 16(1) or (2) does not prohibit the prescriptions of reasonable rules for selection to any employment or appointment to any office. In *State of Mysore & Another v. Narasing Rao* (cited supra) had categorically held that giving different scales classifying tracers in the state as *Matriculate and non-Matriculate* is valid and the said classification was upheld by the Supreme Court. In this case, members retired from the forces were classified as Commissioned Officers and Non-Commissioned Officers for the purpose of re-employment after retirement. The object of giving re-employment is to protect these persons from difficulties on retirement. The classification is mainly made on the basis of qualifications, functions in their employment and the Non-Commissioned Officers are given reservation in Group C and D posts in Central Civil Services. The Commissioned Officers are officers coming under Group A category and there is no possibility of these officers to apply for a Group C and D posts and they are not given

any reservations in the 1979 rules. So, these two categories stand apart. So, the classification is on *intelligible differentia* which distinguishes persons grouped together. The object sought to be achieved is the welfare of the Ex-Servicemen who retire from forces before they attain the age of 55 years. The classification made under Rule 4 of the CCS (Fixation of Pay on Re-employment) Order, 1986 for the purpose of pay fixation is reasonable and cannot be considered as discriminatory to PBOR or Non-Commissioned Officers as alleged by the applicant. We cannot find any injustice manifest in the classification made in the rules. Article 16 of the Constitution provides for equality of opportunity. It is only an incident of the concept of equality under Article 14. The concept of equality cannot be confused with absolute equality. What is guaranteed is equality of opportunity and nothing more. Article 16(1) or (2) does not prohibit the prescription of reasonable rules for classification for selection or appointment. So, we are of the opinion that Rule 4(b)(i) of the CCS (Fixation of Pay on Re-employment) orders, 1986 does not offend Article 14 and 16 of the Constitution as alleged. No discrimination can be found against Non-Commissioned Officers. The principle of fixation of pay for PBOR and Commissioned Officers stand the test laid down by the Hon'ble Apex Court in *BudhanChaudhary v. State of Bihar* (cited supra). There may be differences in the total benefits received by these two categories. But this type of inequalities have to be mitigated by the executive government and such benefits cannot be granted by the Tribunals. All the applicants were re-employed after 1986 and the rules of fixation given in the rules does not suffer from any **arbitrariness or discrimination** which is

violative of Article 14 and 16 of the Constitution.

15. In the result we answer the reference in favour of the respondents. Rule 4(b)(i) of the CCS (Fixation of Pay on Re-employment) Order, 1986 does not violate the principle of equality enshrined under Article 14 and 16 of the Constitution. In the light of above discussion, the other points raised by the Division Bench are also decided accordingly, having no discrimination or arbitrariness and are not violative of principle of equality under Article 14 and 16 of the Constitution of India.

16. The reference is answered accordingly.

(P.Madhavan)
Member(J)

(Ashish Kalia)
Member(J)

(E.K. Bharat Bhushan)
Member(A)

/G/

27.03.2019