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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO. 2160/2003

New Delhi, this the 20th day of November, 2004

HON'BLE MR. JUSTICE M.A. KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.A. SINGH, MEMBER (A)

Shri S.K. Dasgupta, S/o late Sh. K.B. Dasgupta,
Aged about 70 years,
R/o K1/57, Chittranjan Park,
New Delhi - 19
and retired as Research Officer from
Dept. of Agriculture & Cooperation,
Directorate of Economics & Statistics,
Under M/O Agriculture, Shastri Bhawan,
New Delhi - 110 001.

...Applicant

(By Advocate: Shri S.S.Tiwari)

-versus-

Union of India through:

1. Department of Agriculture & Cooperation,
Directorate of Economics & Statistics,
Ministry of Agriculture,
F-Wing, Shastri Bhawan, New Delhi.
2. Secretary,
Dept. of Pension & Pensioners' Welfare,
Ministry of Personnel, Public Grievances & Pensions,
Lok Nayak Bhawan,
Khan Market, New Delhi.
3. Under Secretary,
Department of Agriculture & Cooperation,
Directorate of Economics & Statistics,
Ministry of Agriculture, F-Wing,
Shastri Bhawan, New Delhi.

....Respondents

(By Advocate: Shri R.P. Aggarwal)

ORDER

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J):

Applicant has filed this OA for fixation of his pay as on 1.10.1990 and pension w.e.f. 1.8.1991, in terms of OM dated 19.12.2000 with consequential benefits.

2. Facts are short and simple. Applicant was working as Research Investigator (Grade-I) in the office of the respondents. He was drawing his salary

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in the pay scale of Rs. 1640-60-2600-EB-75-2900. Vide order dated 16.4.1990 he was granted one ad hoc increment of Rs. 75/- as "personal pay" w.e.f. 1.1.1990. Order provided that the element of personal pay would be taken into account for all purposes as admissible under the normal rules including that of determining the class of railway travel, whether on duty/transfer or for travel concession and further that the ad hoc increment would be absorbed as 'personal pay' at the time of fixation of pay on promotion. The applicant retired from service on 31.7.1991 on attaining the age of superannuation. At that time his basic pay was Rs. 2900/- + one stagnation increment/ad hoc increment of Rs. 75/-. After his retirement, by an order dated 6.8.1993, he was given notional promotion to the post of Research Officer w.e.f. 1.10.1990 in the pay scale of Rs. 2200-75-2800-EB-100-4000. Applicant's pay was fixed on 1.10.1990 at Rs. 3000/- in the scale of Rs. 2200-4000. He was drawing his basic pay in the pay scale of Rs. 1640-2900/- with other admissible allowances when he retired from service on 31.7.1991. He was paid pension and other retirement benefits accordingly. On being granted notional promotion in the pay scale of Rs. 2200-4000 his pay was refixed as on 1.10.1990. His pension and other retrial dues were also fixed and paid accordingly.

3. Subsequently the respondents issued OM dated 19.12.2000 (Annexure-E) wherein it was clarified that for the purpose of pay fixation on notional basis for pre-1986 retirees who were in the receipt of stagnation increment, same would be taken into account by treating those retirees as in service on 1.1.1986. This OM was not applied to the persons who had retired on or after 1.1.1986 consequently the stagnation increment/ad hoc increment which they were drawing at the time of their retirement was not taken into account in fixing their pay and pension. As such for post 1.1.1986 retirees in the matter of fixation of pay and pension, the OM dated 19.12.2000, made an earlier OM dated 31.3.1994 (Annexure-A)

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inapplicable. This OM was issued with reference to the OM dated 30.9.1993 which allowed reckoning of the stagnation increment for the fixation of pay in the event of promotion. The reason for this clarification was that the Ministry of Finance had been receiving references from different Ministries and Departments to give effect to the orders from retrospective date so that the Government servants who were promoted before 30.9.1993 would also get the benefit of OM dated 30.9.1993. However, the Ministry declined to give the OM dated 30.9.1993 a retrospective effect and clarified that the Government servants who were in receipt of stagnation increment(s) and were promoted prior to 30.9.1993 would have an option to get their pay fixed w.e.f. 30.9.1993 taking into account ad hoc increment. The applicant also requested for giving him also the benefit of OM dated 30.9.1993. But this prayer was refused by the respondents by order dated 15.11.2001 which is now impugned in this OA. The grounds of rejection of the request of the applicant were that his pay on notional promotion was re-fixed as per the extant rule retrospectively w.e.f. 1.10.1990 and at the time of retirement on 31.7.1991 he was not in receipt of a stagnation increment. Furthermore OM dated 30.9.1993 and 31.3.1994 were clear and provided that the stagnation increment would be taken into account for fixation of pay on promotion w.e.f. 30.9.1993 on exercise of option by the government servant and retrospective effect to these orders was not to be given. Since the applicant had retired from Government service on 31.7.1991 the option for fixation of the pay on promotion w.e.f. 30.9.1993 was not available to him.

4. The respondents contesting the application submitted that the applicant had retired on 1.8.1991. He was promoted w.e.f. 1.10.1990. Stagnation increment sanctioned to him as on 1.1.1990 by order dated 16.4.1990 vide Annexure-B to the OA was absorbed while fixing his pay in the higher grade w.e.f. 1.10.1990 in accordance with the instructions regulating fixation of pay on promotion as

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existed and were applicable to him at that point of time. It was stated that the applicant was in receipt of the pay of Rs. 2975/- p.m. i.e. Rs. 2900/- as basic pay and Rs. 75/- as stagnation increment in the lower grade. Accordingly, his pay was fixed at Rs. 3000/- in the higher grade w.e.f. 1.10.1990 vide Annexure-D to the OA. His pension was also accordingly revised vide order dated 9.12.1993 (Annexure -D to the OA). He was not in receipt of any stagnation increment as on 31.7.1991, the date on which he had retired from service as such his case was not covered by OM dated 19.12.2000 which specifically covered the pre-1986 pensioners. It was further submitted that the stagnation increment had been allowed to be taken into account for fixation of pay on promotion w.e.f. 30.9.1993 vide OM of the even date for those who were in service on 30.9.1993. Upon receipt of reference from different Ministries/Departments to give effect to these orders from retrospective effect, the Ministry of Finance after examining the matter had stated that it was not possible to give retrospective effect to the orders but had allowed a government servant promoted before 1993 to exercise option for fixation of pay w.e.f. 30.9.1993 after taking into consideration stagnation increment by OM dated 30.9.1993, Annexure-A to the OA. Reference to OM dated 19.12.2000, by the applicant was, therefore, wrong, since it related to the fixation of pay as a result of implementation of recommendation of Vth Pay Commission and revision of pension of the persons, who had retired prior to 1.1.1986. This OM did not regulate fixation of pay of serving employees on promotion. On his notional promotion the applicant's pay was correctly fixed as on 1.10.1990. Since he was not getting any stagnation increment on the date of his retirement on 31.7.1990, his pension was also correctly fixed. The OM referred to is not applicable to the applicant.

5. We have given careful consideration to the submissions made at the bar and have perused the record.

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6. Counsel for applicant has vehemently argued that OM dated 19.12.2000 (Annexure-E) has benefited the pre-1986 retirees and their pay and pension has been re-fixed taking into account the stagnation increment which those retirees were drawing on the date of their retirement. Same benefit has not been extended to those government servants who had retired on or after 1.1.1986. It is discriminatory and unjust to deny equality and parity to the government servant in the matter of fixation of their pension by fixing 1.1.1986 as a cut of date arbitrarily. He argued that benefit of OM dated 19.12.2000 be made available to the applicant and his pension should also be fixed taking into account the stagnation increment of Rs.75/- which he was getting vide order dated 16.4.1990.

7. He also contended that the Government by OM dated 31.3.1994 (Annexure - A) had clarified that the stagnation increment would be taken into account while fixing the pay of the Government servants who were promoted before 30.9.1993, if they opt for it. He contended that both the category of the Government servants, who retired before 1.1.1986 and those who were promoted and were in service on or after 30.9.1993, would have their pension/pay, as the case may be, fixed taking into account the ad hoc increment. But on account of this arbitrary and discriminatory treatment meted out by the Government servants who were promoted or retired between 1.1.1986 and 30.9.1993 the applicant was unjustifiably deprived of the fixation of pay/pension taking into consideration the stagnation increment of Rs. 75/- w.e.f. 1.10.1990. He argued that if the stagnation increment is taken into account, the applicant's pay will be fixed at Rs. 3100/- as on 1.10.1990 and since he would be getting this amount as basic pay, his pension would also be more than what he had been granted. He strenuously argued that the fixation of the cut off date of 30.9.1993 by OM dated 31.3.1994 was without any sound reasoning and logic. Though not specifically averred in the relief clause of the OA he prayed that the OM dated 31.3.1994 so far it has fixed the

For and on behalf of the applicant

cut off date as 30.09.1994 be quashed and it be directed that the benefit of this OM would be available even to those who were promoted or had retired prior to 30.9.1993.

8. The learned counsel for the respondents has repudiated the claim of the applicant and has argued that the applicant's case has no merit. It is submitted that OM dated 31.3.1994 applied to the government servants who were in service on 30.9.1993. They were given option to get their pay fixed on promotion w.e.f. 30.09.1993, if they were in receipt of a stagnation increment in the lower grade. Applicant had retired on 31.7.1991 and at that time, on account of his notional promotion to the next higher grade of Rs. 2200-4000 he was not in receipt of an ad hoc increment. It was argued that ad hoc increment of Rs.75/- which the applicant was in receipt in the lower scale of pay of Rs.1640-2900 had been reckoned while fixing his pay on promotion to the higher grade of Rs. 2200-4000. He justified the fixation of the pay of the applicant at Rs. 3000/- in the higher grade of Rs. 2200-4000. Counsel also argued that OM dated 31.3.1994 did not apply to the retired Government servants like the applicant. It was also argued that OM dated 19.12.2000 applied to a specified category, i.e., those Government servants who had retired before 1.1.1986, to get their pension fixed in accordance with the recommendation of IVth Pay Commission. The said benefit has not been extended to post-1985 retirees by the Government. He argued that there is no discrimination inter-se the post-1985 retirees in the matter of fixation of pay. It is, therefore, prayed that the application has no merit and it be dismissed.

9. Though the preliminary objection has been raised on behalf of the respondents that the present OA is beyond the period of limitation prescribed by Section 21 read with Section 20 of the AT Act but at the time of hearing this objection was not raised and rightly as the applicant wanted his pay and pension to be re-fixed at the time of his retirement on 1.8.91. His contention is that the

For the applicant

ad hoc increment which he was granted vide order dated 16.4.1990 (Annexure-B) in the lower scale of Rs.1640-2900 was not taken into account while refixing his salary in the higher grade of Rs.2200-4000 on his notional promotion to the post of Research Officer w.e.f. 1.10.90 by virtue of order dated 6.8.1993 (Annexure-C) and had it been done he would have been drawing much more pay and his pension would have also been determined at a higher level when he retired from service on 31.7.1991. According to the applicant he was being paid lesser amount of pension which is a continuing wrong against him and has given rise to recurring cause of action each time he was paid his pension, which was not computed in accordance with the standing Government instructions. There is force in this submission. If the pension of the applicant is held to have not been fixed as per rules and the applicant is getting lesser amount of pension than what he was entitled to taking into account his ad hoc increment at the time of fixation of his pay in the higher grade of Rs.2200-4000, it would give him recurring cause of action every month when he is paid less amount as pension. The application, which was filed on 25.8.2003 for the aforesaid reason, cannot be held to be hit by Section 21 read with Section 20 of the AT Act, 1985. This view is fortified by the decision of Hon'ble Supreme Court in N.Balakrishnan vs. M.Krishnamurthy reported in 1998 (7) SCC 123 and M.R.Gupta vs. Union of India and others reported in 1995 (5) SCC 628. The OA is not barred by time and the preliminary objection raised on behalf of the respondents in the counter is rejected.

10. Coming to the merit of the case, it is noteworthy that the applicant, who was Research Investigator (Grade-I), was working in the pay scale of Rs.1640-60-2600-EB-75-2900 when he retired from service on attaining the age of superannuation on 31.7.1991. By order dated 6.8.1993 he was promoted to the post of Research Officer in the pay scale of Rs.2200-75-2800-EB-100-4000 with

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retrospective effect from 1.10.1990. Earlier his pension was fixed on the basis of his emoluments which he was drawing on 31.7.91. After his promotion, his salary was refixed in the higher grade of Rs.2200-4000 on 1.10.1990. The ad hoc/stagnation increment, which was granted to the applicant vide order dated 16.4.1990 (Annexure-B), was reckoned for fixation of his pay in the higher grade. In accordance with the order dated 16.4.1990, the ad hoc increment in the pay scale of Rs.1640-2900 which was a personal pay was to be absorbed as such at the time of fixation of his pay on promotion. The pay of the applicant was refixed on 1.10.1990 in accordance with the extant rules at Rs.3000/-. The amount of ad hoc increment was absorbed in the increment. The applicant has not disputed that in case he is not entitled to the benefit of the Office Memorandum dated 19.12.2000 (Annexure-E) or the Office Memorandum dated 31.3.1994 (Annexure-A) his pay has been rightly fixed at Rs.3000/-. Reference for it may be made to his representation made to the Department of Personnel and Pension Welfare on 19.3.2001 (Annexure-F).

11. The question, therefore, arises whether the applicant should also be given the benefit of OM No. 45/86/97-P&W(A) dated 19.12.2000 whereby the notional pension of pre-1986 retirees is allowed to be refixed taking into account the stagnation increment which they were drawing at the time of their retirement. This OM does not apply to post-1985 retirees. On the other hand, OM dated 31.3.1994 applied to the serving Government employees. It had allowed fixation of the salary of serving Government servants, who were promoted to the higher grade prior to 30.9.1993 by exercising an option to get their pay refixed from 30.9.1993 after taking into account the stagnation increment. The applicant retired on 31.7.1991, i.e., after 1.1.1986. Therefore, OM dated 19.12.2000 did not apply to him. He was not in service on 30.9.1993 though he was in receipt of a stagnation increment prior to 30.9.1993 before his notional promotion on

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1.10.1990. Therefore, in terms of OM dated 31.3.1994 he was not eligible for getting his pay refixed from 30.9.1993 after taking into account the stagnation/ad hoc increment.

12. The grievance of the applicant, in short, is that OM dated 19.12.2000 permitted the stagnation increment to be taken into account for fixation of the notional pay and pension of the Government servants who had retired before 1.1.1986. OM dated 31.3.1994 has given more or less benefit of similar nature to those Government servants who were in service and were in receipt of stagnation increment to get their pay refixed on promotion after reckoning the stagnation increment from 30.9.1993. The retirees/Government servants like applicant, who retired between 1.1.1986 and 30.9.1993, however, have been deprived of the benefit of refixation of their salary on promotion to the higher grade by taking into account the stagnation increment. According to the applicant, it is highly discriminatory and cannot be sustained in law.

13. Conversely the case of the respondents is that the ad hoc increment which the applicant was receiving at the time of his promotion on 1.10.90 had been taken into account at the time of refixation of his pay in the higher grade of Rs.2200-4000 on 1.10.91 in accordance with the extant rules applicable and the clarification of the Government on this point as given in OM dated 3.7.1987. He, however, castigated the case of the applicant that the OM dated 19.12.2000 and 31.3.1994 were discriminatory in nature and Tribunal should direct the respondents to extend the similar benefits to those Government servants, like the applicant, who had retired after 1.1.86 or who were in service but retired prior to 30.9.1993. According to the respondents, applicant strived to mislead and confuse the Tribunal since OM dated 19.12.2000 was applicable to a specified class of pensioners who had retired before 1.1.1986 whereas OM dated 31.3.1994 applied to another deferred group of Government servants who were in service as

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on 30.9.1994. It was contended that the Government was free to fix a cut of date from which the benefit of the OM was available to a deferred group and it was not open to judicial scrutiny. It is submitted that there was no discrimination inter se the set of pensioners or the set of the Government employees who were covered by the two OMs dated 19.12.2000 and 31.3.1994 as the case may be. Therefore, these OMs could not be considered as discriminatory.

14. Concisely the contention of the applicant is that either the benefit of OM dated 19.12.2000 be extended to post- 1.1.1986 retirees and his pay and pension be refixed on the same principle as it was fixed in the case of pre-1.1.1986 retirees or the cut of date of 30.9.1993 fixed by OM dated 31.3.1994 be quashed and the option to get the pay fixed on promotion be made operational from 1.1.1986 to bring both post-retirees and pre-retirees of 1.1.1986 at par.

15. OM dated 19.12.2000 was issued for giving benefit of the recommendation of the 5th Central Pay Commission to pre-1986 pensioners/family pensioners. The relevant extract of the OM is as under:-

"The undersigned is directed to refer to this Deptt's O.M. of even No. dated 10th Feb., 1998 as amended from time to time and the clarificatory O.M. dated 19th March, 1999 on the above subject and to say that a number of representations regarding treatment of stagnation increment/special pay/deputation pay etc. while notionally fixing the pay on 1.1.1986 for calculation of pension in terms of orders cited above were received from various Ministries/Deptts. Of Govt. of India as also of individual pensioners and pensioners associations. The matter has been reconsidered in consultation with Ministry of Finance, Deptt. Of Expenditure which has notified the CCS(RP) Rules, 1986. In supersession of this Deptt's O.M. dt. 19th March, 1999 the following clarifications are issued:

Points Raised

1. Stagnation increment- whether stagnation increment is to be taken into account while fixing pay of retired Govt. servants on notional basis.

Clarification

In so far as employees who retired prior to 1.1.86, then pension is required to be updated by fixing their pay as on 1.1.86 by adopting the same formula as for serving employees and as per the CCS(RP) Rules. Stagnation increment if any earned by pre-86 retirees should be taken into account for the purpose of notional fixation. Such of those pre-86 retirees who retired after having drawn IIIrd CPC

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for a year or more will be entitled to an additional increment as per IVth CPC scales as on 1.1.1986 (proviso 3 of rule 8 *ibid*). Similarly for those who have received an ad hoc increment on their stagnation at the maximum for two years or more at the time of their retirement will also be entitled for an additional increment as on 1.1.86 (proviso 4). This in effect will mean that pre-86 retirees will be treated as if they were in service on 1.1.86 for the purpose of notional fixation of pay so as to ensure complete parity."

16. The OM evidently meant to give financial relief to the persons, who had retired from Government service prior to 1.1.1986 in the light of the recommendations of Vth Central Pay Commission and bring them at par with those who retired on or after 1.1.1986. The Government decision was in respect of a specified class of persons, i.e., all Government servants who had retired before 1.1.1986. It is a well-defined group of pensioners. There is no discrimination in the application of this OM to this class of Government pensioners. All pre-1986 retirees were to receive benefit of this OM. The Government, in its administrative exigency, was within its right to decide about the class of the persons to whom the benefit under the OM is to accrue uniformly and also determine the date from which this benefit is to be given to them. It will not be open to the Tribunal to sit over the decision of the Government and decide as to whether this OM should or should not have been applied to post-1.1.1986 retired Government servants as well or whether the date of 1.1.1986 ought not to have been so fixed as a cut off date and this OM should be uniformly applied to all the Government servants who had retired before or after 1.1.1986. The fixation of the cut off date was within the domain of administrative powers of the Government and it had the prerogative of fixing the date from which it was to be made effective and applied. It is an intellectual differentia on the basis of

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rationale considerations. The contention of the applicant in this regard does not have any merit.

17. Moreover assuming, though not deciding that the benefit of OM dated 19.12.2000 is equally available to post 1.1.1986 retirees, the applicant was not in receipt of ad hoc increment of Rs.75/- on the date of retirement, i.e. 1.8.1991 since it has already been taken into consideration while fixing his pay on promotion to the higher grade on 1.10.1990 so the same ad hoc increment could not have been reckoned for fixation of pension on 1.8.1991 again. In other words, the benefit of OM dated 19.12.2000 was not available to him if his contention prevails.

18. OM dated 31.3.1994 contains the Government decision, which is reproduced as under:-

“ The undersigned is directed to refer to this Ministry's Office Memorandum of even number, dated 30.9.1993 (Sl. No.128 of Swamy's Annual 1993), regarding taking into account the stagnation increment for fixation of pay in the event of promotion. This Ministry have been receiving references from different Ministries/Departments to give effect to these orders from retrospective date so that the Government servants promoted before 30.9.1993 may also get the benefit of these orders.

The matter has been examined and it has not been found possible to give the provisions contained in the OM dated 30.9.1993, a retrospective effect. However, it has been decided to allow an option to Government servants promoted before 30.9.1993 on the following lines:-

“The Government servants in receipt of stagnation increment(s) and promoted prior to 30.9.1993 will have an option to get their pay refixed from 30.9.1993 after taking into account the stagnation increment.”

19. The Government in its wisdom fixed 30.9.1993 as the date for fixation of the pay of the employees on promotion, who got their stagnation increment prior to that date and had opted their pay to be refixed, taking into account the stagnation increment from 30.9.1993. This OM is applicable only on the

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Government servants, who were in service on 30.9.1993. This OM is applicable to a well-defined group of serving Government employees, who were in service on 30.9.1993. The reason and logic in fixing the cut off date of 30.09.1999 is not open to judicial scrutiny by the Tribunal as it uniformly and indiscriminately apply to a well defined class of government servant. It is the prerogative of the Government to decide about the cut of date taking into account its administrative exigency and all other relative factors. The Tribunal cannot interfere with the determination of the cut of date simply because the Government servants, who were not in service as on 30.9.1993, were deprived of the benefit of this order. The discrimination, if any, was between two separate and distinct classes of persons. Those who were in service on 30.9.1993 will get the benefit of this OM. Those who had retired before the cut off date will not get this benefit. There is no discrimination inter-se in each of these two groups. No interference in the Government decision contained in OM dated 31.3.1994 about the cut of date is warranted.

20. The learned counsel for the applicant has relied upon a decision of this Tribunal in Rajaram Shankar Gawade vs. Union of India (1994) 27 ATC 329 in support of the applicant's case. This judgment was on its own peculiar facts and in no way advances the case of the applicant. Assistant Foreman (non-technical) and Chargeman Grade I (non-technical) both were in the grade of Rs.550-750. Chargeman Grade I was feeder post to the promotion to the cadre of Assistant Foreman. In order to rectify this anomaly the Government amended the relevant Rules and Rs.100/- p.m. was granted as special pay to the Assistant Foreman in lieu of separate pay scale. This special pay of Rs.100/- was reckoned for all purposes, including TA/DA, pension, gratuity and House Rent Allowance, still it was not treated as part of basic pay. It was challenged in the OA before the Tribunal. The Tribunal having regard to FR 9(2) (a) (i) and the

Sanjay S. Kulkarni

Government itself taking it into consideration for all other purpose held that the said special pay was part of the basic pay of the Foreman and revised pay and retirement benefit should be granted taking it into account. The facts of the present case are absolutely different. The ad hoc increment (stagnation increment) was not granted in lieu of higher pay scale. It was granted as a relief on account of the Government servant stagnating at the maximum of the pay scale for certain period. Analogy of the case cited is, therefore, misconceived. It would not apply to the case of the applicant.

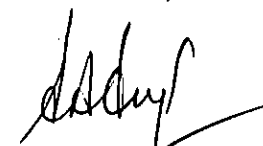
21. The respondents have referred to the Government clarification which is given under FR 22 and copy of which is filed as Annexure R-1 to the counter reply. The clarification so far as it is relevant to the present controversy was as under:-

Sl.No.	Point of doubt	Clarification
1.	Whether stagnation increment will be taken into account for the purpose of fixation of pay on promotion to higher post?	No. However, if pay fixed in the higher post under normal rules happens to be less than the pay plus stagnation increment(s) in the lower post, the difference may be allowed as 'Personal Pay' to be absorbed in future increases in pay.

22. For the reasons stated above, the case of the applicant is ill founded. Applicant is not entitled to the benefit of either of the two OMs; one dated 19.12.2000 and the other dated 31.3.1994. As per the existing rules and the Government clarification reproduced above, his pay had been rightly fixed at Rs.3000/- p.m. as on 1.10.1990. At the time of his retirement on 31.7.1991, he was drawing this amount as pay. He was not in receipt of any ad hoc or stagnation increment. The question of taking into consideration of any ad hoc or stagnation increment for fixation of his pension as on 1.8.1991, therefore, did not arise.

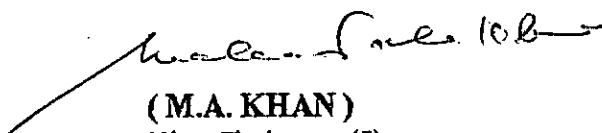
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23. Consequently, there is no merit in the application. O.A. is dismissed leaving parties to bear their own costs in the facts and circumstances of the case.



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Vice Chairman (J)