**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.24248 of 2013 (O&M)
Date of decision: May 04,2015

Nirmal Mehta ...Petitioner

Versus

State of Haryana and ors. ...Respondents

**CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

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Present: - Mr. Rupinder S. Khosla, Senior Advocate with
Mr. Aman Sharma, Advocate for the petitioner.

Mr. Lokesh Sinhal, Addl. A.G., Haryana
for the respondents-State.

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HARINDER SINGH SIDHU, J.

This petition has been filed praying for quashing the notification dated 10.06.2011 (Annexure P-3) relying on which the representation of the petitioner for revising the family pension in the pay scale of Rs.37400-67000 + Grade Pay Rs. 8700/- was rejected vide letter dated 03.07.2013.

The petitioner is the widow of Late Sh. H.C.Mehta. Her husband Sh.Mehta had joined the Punjab Irrigation Department as a Temporary Engineer (TE) on 28.03.1962. He was promoted as an Executive Engineer on 13.10.1971/21.10.1971. He was given the selection grade as available to 20% of the cadre posts. Just as he was on the verge of promotion to the post of Superintending Engineer, he expired on 28.09.1989. By then he had put in about 27 years six months of service.

The petitioner is getting family pension of Rs.15647/- per month. She submitted a representation for revision of her family pension in the pay- scale of Rs.34700 - 67000 with grade pay of Rs.8700/-. The basis of her claim was that the pay scales of Engineers in the three wings of the PWD were revised w.e.f., 01.01.2006 vide notification issued in December 2008 and thereafter re-revised in August 2009 vide notification dated 19.08.2009 (Annexure P-1). It was claimed that as per the notification dated 19.08.2009 the pay of SDE/AE/AEE/AEE's, XEN's and SE's who had put in 17 years satisfactory service would be fixed in the pay scale of Rs.34700 - Rs.67000/- with grade pay of Rs.8700/-. This selection grade was limited to 20% of the cadre posts. As the husband of the petitioner was already in the selection grade before he expired, his service would fall in the above scale for the purpose of family pension of his widow.

However, the respondents rejected the representation of the petitioner vide letter dated 03.07.2013 stating that she was not entitled to pension in the aforementioned scale in view of the Notification dated 10.06.2011 (Annexure P-3).

Accordingly, the petitioner has filed this writ petition and has impugned the notification dated 10.06.2011 as well as the order whereby her representation was rejected.

The relevant part of impugned notification dated 10.06.2011 is as under:

> *"**Subject: Implementation of Government's decision on Pension & Family Pension related matters – Clarifications regarding post/scale of pay held by the pre-2006 pensioners.***
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> *The undersigned is directed to invite your attention towards FD's notification issued vide no.1/2(8)98-2FR-II (Part-VIII) dated 07.01.2002 wherein it was clarified that `pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum of the corresponding scale on 01.01.1996, of the scale of pay held by the pensioner at the time of superannuation/retirement". It was also clarified that minimum of the scale as on 01.01.1996 does not include special pay/NPA or any other component for this purpose. This was further clarified that the "basic family pension of all pensioners irrespective of their date of retirement/death while in service shall not be less than*

> *30% of the minimum of the corresponding scale as on 01.01.1996, of the scale of pay held by the Government employee at the time of retirement or death while in service, as the case may be". The corresponding revised pay scale of pre-revised pay scale have been mentioned at Annexure `A' of Finance Department's notification dated 07.01.2002."*

This notification states that basic family pension of all pensioners irrespective of their date of retirement/death while in service shall not be less than 30% of the minimum of the corresponding scale as on 01.01.1996, of the scale of pay held by the Government employee at the time of retirement or death while in service, as the case may be.

In the written statement filed on behalf of the respondents, it has been stated the the claim of the petitioner is wholly unjustified and that the notification in question is legal and valid.

Elaborating and justifying their stand, it has been stated that vide Government Notification dated 19.08.2009 the pay scales of AE/SDE(Group-B), A.E(Group-A), XEN and S.E. of three wings were further revised after the general revision of pay scale on the demand of these employees. The petitioner is claiming the benefit of consolidation of her family pension on the basis of this notification which claim is untenable.

The husband of the petitioner was working as Executive Engineer in the Respondent Department. He expired on 28.09.1989 after completing service of 27 years 6 months and 1 day at the time of death. He was then drawing pay in the pay scale of Rs.4100-5300/-. Thereafter, the pay scale of Haryana Government Employees were revised in the year 1998 by framing the service rules titled as Haryana Civil Services (Revised Pay) Rules, 1998. Apart from the revised pay rules, incentive schemes i.e. ACP scale scheme was introduced by framing the service rules titled as Haryana Civil Services (ACP) Rules, 1998. Under the provisions of revised pay rules, the revised pay scale of the post of Executive Engineer was Rs.10000-13500/-. However, the Executive Engineer who had completed 11 years regular satisfactory service on the post of SDE/AE/AEE were entitled to the ACP scale of Rs.12000-16500/-. It is stated that the claim of the petitioner in the writ petition that pay scale of Executive Engineer was fixed at Rs.14300-18300/- w.e.f. 01.01.1996 is wrong and consequently the claim of the petitioner for consolidated family pension in the pay scale of Rs.37400-67000/- with Grade Pay of Rs.8700/- is not tenable. Pointing out the correct position, it is stated that the pay-scale of promotional post i.e.

Superintending Engineer w.e.f. 1.1.1996 was Rs.13500-17250/- and Superintending Engineers were entitled to the benefit of pay scale of Rs.14300-18300/- on completion of 13 years' regular satisfactory service as Executive Engineer. Whereas, the husband of the petitioner was never promoted to the post of Superintending Engineer. Reference is also made to the decision of this Court dated 26.02.2008 whereby, Civil Writ Petitions No.15835 of 2001, CWP No.17317 of 2000 and CWP No. 6841 of 2001 filed by Superintending Engineers who had retired prior to 1.1.1996 claiming the benefit of consolidation of pension in the pay scale of Rs.14300-18300/-, were dismissed. It is argued that as the husband of the petitioner was working on the post of Executive Engineer, which is a feeder post to the post of Superintending Engineer, her claim would in any case have no merit.

It is stated that as at the time of death, the husband of the petitioner was drawing his pay in the pay scale of Rs.4100-5300/- while working on the post of Executive Engineer, therefore, the petitioner is entitled to the benefit of minimum of 30% consolidated pension of the corresponding revised pay scale of the pre- revised pay scale of Rs.4100-5300. It is argued that as per law, the petitioner cannot claim the benefit of pension on the basis of further improved pay scales which have been improved after his retirement.

Going into the background of the instructions, it has been stated in paragraph 10 of the written statement as under:

> *"(i) The pensionary matters of Haryana Government employees/pensioners are regulated under the provisions contained in the Punjab Civil Services Rules Volume II as applicable to the State of Haryana. The State Government had decided to broadly follow the Central pattern of pay scales with effect from 1.1.1986 and has continued with the same pattern of pay scales with effect from 1.1.1996 as well. Notwithstanding the provisions contained in the Punjab Civil Services Rules Volume II as applicable to the State of Haryana, the State Government has also been following the Central Govt. pattern in pensionary matters since 1.1.1996. However, for revision of pensions effective from 1.1.1996, the State Government has adopted the Central pattern of pensionary benefits in toto and extended these benefits to its pensioners.*
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> *(ii) The Central Government has revised the pensions of its pensioners by way of various office Memorandums/ Notifications, the details of which, are given below:-*
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> *(a) O.M. F.No. 45/86/97-P&PW(A)-Part I dated 27th October, 1987 (for those who retire/die while in service on or after 1.1.1996);*
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> *(b) O.M. F.No. 45/86/97-P&PW(A) Part II dated 27th October, 1997 (for consolidation of pension of pre Pensioners);*
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> *(c) O.M. No. 42//2/97-P&PW(G) dated 27th October, 1997 (installments of D.R. On revised/consolidated pension).*
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> *(iii) Following the Central Government pattern, the State Government also issued following notifications in relation to the pensioners of*

Haryana Government.

(a) No.1/2(8) 98- 2 FR II (Part II) dated March 9, 1998 (P-3) (for those who retired/ die while in service on or after 1.1.1996);

(b) No.1/2(8) 98- 2 FR II (Part I) dated March 9, 1998 (for consolidation of pension of pre- 1996 Pensioners);

(c) No.1/2(8) 98- 3 FR II (Part III) dated March 9, 1998 (Instalments of D.R. On revised/consolidated pension).

(iv) Subsequently, the Government of India issued another office Memorandum vide their F.No. 45/86/97-P&PW(A) -Part III, dated 10.2.1998 in which a decision was taken to fix the notional pay of all pre- 1996 Pensioners in the pay scale modified/ revised from time to time upto 1.1.1986 and this notional pay in the pay scale as on 1.1.1986 of the post last held was treated as average emoluments for the purpose of calculation of notional pension as on 1.1.1986 as per the pension formula then prescribed and this notional pension was consolidated as on 1.1.1996 in accordance with the provisions contained in Government of India office Memorandum No. 45/86/97-P&PW(A)- Part II dated 27.10.1997. The benefit of the above said office Memorandum of the Central Government was extended to the pensioners of the State Government vide Finance Department Notification (Part IV) , dated 13.1.2000.

(v) Thereafter, the Central Government decided vide O.M. No. 45/10/98-P&PW(A) dated 17.12.98 that full pension of all the pensioners irrespective of their date of retirement shall not be less than 50% of minimum pay in the revised pay scale introduced w.e.f. 1.1.1996 of the post last held by the pensioner and similarly family pensioners shall not be less than 30% of the minimum pay in the revised pay scale introduced w.e.f. 1.1.1996 of the post last held by the pensioners/ deceased Government employee. Haryana Government also adopted the same pattern and decided vide their two different Notification of even number dated 18.1.2000 that full pension and family pension of all the pre-1986 and pre- 1996 pensioners shall not be less than 50%

or 30% respectively of minimum of the pay scale introduced w.e.f. 1.1.1996 of the post last held by the pensioner or the deceased Government employee, as the case may be.

(vi) That Government of India in the Department of Pension and pensioners Welfare, Ministry of Personnel, Public Grievances and Pensions, further issued a clarification regarding minimum pay in the pay scale as on 1.1.1996 of the post last held by the retired Government servants vide their office Memorandum No. 45/86/96-P&PW(A) (Point) dated 11th May, 2001. the contents of this Office Memorandum are reproduced as under:-

> *"The undersigned is directed to refer to this Department's O.M. No. 45/10/98-P&PW(A), dated the 17th December, 98 wherein the criteria to be adopted by the pension sanctioning authorities while stepping-up of the consolidated pension of retirees have been detailed.*
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> *In the Course of implementation of the above order, clarification have been sought by Ministries/ Departments of Government of India about the actual connotation of the 'Post last held' by the Pensioner at the time of his/ her superannuation. The second sentence of O.M. Dated 17.12.1998 i.e. 'Pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay w.e.f. 1.1.1996 of the post held by the Pensioner' shall mean that 'Pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum of the corresponding scale as on 1.1.96, of the scale of pay held by the pensioner at the time of superannuation/retirement'.*

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The State Government of Haryana, having adopted the Central pattern in the matters of pensionary benefits for its pensioners, made the same applicable for its pensioners, and also decided to adopt and implement the clarification of Government of India issued vide O.M. No. 45/ 86 96- P&PW(A) dated 11th May, 2001 vide its *notification bearing No. 1/2 (8) 98-2FR II (Part III) dated 7.1.2002.(Annexure R-1).”*

It is stated that the net effect of the O.M. dated 11.5.2001, of the Government of India, as adopted by the Government of Haryana vide its notification dated 7.1.2002 (supra) is that if any post has been upgraded or the pay scale of any post has been modified/upgraded subsequent to the retirement of the officer, he does not get the benefit of such upgraded post/pay scale while being given protection under this provision with reference to the minimum of the corresponding scale as on 1.1.1996. Further, this protective benefit refers only to the minimum of the pay scale and does not envisage that the components of NPA and Special Pay have to be added to this. As a matter of fact, if the pension of the pensioner consolidated in accordance with the prescribed rules is higher than such minimum (i.e. 50% of the minimum of the scale), he is entitled to get such higher consolidated pension. Thus, it is explained that the notification dated 10.06.2011 is on the same pattern as the Central Government Notification dated 11.5.2001.

It is further stated that O.M. Dated 11.5.2001 issued by Government of India was challenged by the employees of Union of

India, claiming the benefit of further revised pay scales for the purpose of fixation/ consolidation of their pension. The issue was settled by the Hon'ble Supreme Court of India and the validity of the notification was upheld in ***K.S. Krishnaswamy v. Union of India, (2006) 13 SCC 215.***

Sh. Rupinder Singh Khosla, Ld. Senior Counsel appearing for the petitioner argued that the notification dated 10.06.2011 as per which, basic family pension of pensioners irrespective of their date of retirement/ death shall be reckoned on the minimum of the corresponding scale as on 01.01.1996, has the effect of creating an irrational classification amongst the pensioners who are one homogeneous class. Reliance was placed on the decision of the Hon'ble Supreme Court in ***D.S.Nakara vs. Union of India***, **(1983) 1 SCC 305.**

Sh.Lokesh Singal, Ld. Additional A.G. Haryana on the other hand justified the notification by stating that the decision in Nakara's case is not applicable in this case. He argued that Nakara's case has been limited and explained subsequently. He further states that an identical issue has been decided by the Hon'ble Supreme Court in ***Krishnaswamy's case*** *(supra),* wherein, the Central

Government notification dated 11.5.2001 was upheld. The impugned State Government notification dated 10.6.2011 which is identical to the Central Government notification dated 11.5.2001 consequently is to be upheld.

Having heard Ld. Counsel for the parties, we are of the view that there is no merit in the claim of the petitioner.

The ratio of ***Nakara's case*** is not applicable in the facts of the present case. In that case, the issue was with regard to the fixation of a cut-off date for implementation of the liberalised pension scheme. The Hon'ble Court held that all retirees irrespective of their date of retirement were required to be treated as constituting one class and were entitled to the benefits of the liberalised pension which was directed to be recomputed as on the specified date according to the liberalised formula, requiring payment to be made prospectively from the specified date of the revised amount. For this purpose, recomputation was required to be made as on the specified date on the basis of the emoluments payable on the actual date of retirement of each retiree.

It is important to note that in ***Nakara's case,*** the liberalised pension formula was directed to be applied to the retirees on the emoluments that were payable to them on the date of retirement and not on the corresponding revised emoluments, as is being claimed by the petitioner.

Nakara's case was explained by the Hon'ble Supreme Court in the case of ***Indian Ex-Services League v. Union of India, (1991) 2 SCC 104,*** where, a similar claim as in the present case was repelled. Relying on Nakara's case, it was claimed that as all pensioners constitute one homogeneous class, hence all retirees irrespective of their date of retirement should get the same pension. The Hon'ble Supreme Court rejected this contention observing as under:-

> *"**8.** The Armed Forces personnel retiring from commissioned ranks were represented by Shri G. Viswanatha Iyer, while the Armed Forces personnel retiring from ranks below the commissioned rank were represented by Shri K.L. Rathee. The arguments of both of them are substantially the same. According to learned counsel for the petitioners, the result of the decision in Nakara is that all retirees who held the same rank irrespective of their date of retirement must get the same amount of pension and this should be the amount which was calculated and shown in the appendices to the Memorandum (Ex.P-2) challenged in Nakara. Admittedly, the appendices to that Memorandum specified the computation of pension for different ranks of retirees on or after April 1, 1979 made on the basis of the reckonable emoluments on April 1, 1979. It is also admitted that the reckonable emoluments for corresponding ranks on*

earlier dates were not the same to provide identical basis for recomputation of pension according to the liberalised pension scheme of pre-April 1, 1979 retirees. In substance, even though learned counsel for the petitioners do not say so, the arguments amount to the claim of 'one rank, one pension' for all retirees of the Armed Forces irrespective of their date of retirement. It is also admitted that prior to this liberalised pension scheme, the pension amount of the earlier retirees from the same rank was not the same irrespective of their date of retirement or in other words, the principle of 'one rank, one pension' did not apply earlier. It was stated at the bar that the demand of 'one rank, one pension' is pending consideration of the Government of India as a separate issue. It is, therefore, clear that unless the petitioners' claim in substance of 'one rank, one pension' can be treated as flowing from the relief granted in Nakara, the reliefs claimed in these petitions though differently worded cannot be granted. It is for this reason that learned counsel avoided describing the reliefs claimed herein as claim of 'one rank, one pension', even though they were unable to tell us how, if at all, the reliefs claimed in these petitions can be construed differently.

11. *The conclusion of the Constitution Bench in Nakara was that the benefits of liberalisation and the extent thereof given in accordance with the liberalised pension scheme have to be given equally to all retirees irrespective of their date of retirement and those benefits cannot be confined only to the persons who retired on or after the specified date because for the purpose of grant of the benefits of liberalisation in pension, all retirees constitute one class irrespective of their date of retirement. In order to give effect to this conclusion the only relief granted was to strike down that portion of the Memorandum by which the benefit of the liberalised pension scheme was confined only to persons retiring on or after the specified date with the result that the benefit was extended to all retirees, irrespective of their date of retirement. Once this position emerging from the decision* *in Nakara is borne in mind, the fallacy in the petitioners' contention in these writ petitions becomes obvious and their claim based only on Nakara is untenable.*

12. *The liberalised pension scheme in the context of which the decision was rendered in Nakara provided for computation of pension according to a more liberal formula under which "average emoluments" were determined with reference to the last ten months' salary instead of 36 months' salary provided earlier yielding a higher average, coupled with a slab system and raising the ceiling limit for pension. This Court held that where the mode of computation of pension is liberalised from a specified date, its benefit must be given not merely to retirees subsequent to that date but also to earlier existing retirees irrespective of their date of retirement even though the earlier retirees would not be entitled to any arrears prior to the specified date on the basis of the revised computation made according to the liberalised formula. For the purpose of such a scheme all existing retirees irrespective of the date of their retirement, were held to constitute one class, any further division within that class being impermissible. According to that decision, the pension of all earlier retirees was to be recomputed as on the specified date in accordance with the liberalised formula of computation on the basis of the average emoluments of each retiree payable on his date of retirement. For this purpose there was no revision of the emoluments of the earlier retirees under the scheme. It was clearly stated that 'if the pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later'. This according to us is the decision in Nakara and no more.*

14. *Nakara decision came up for consideration before another Constitution Bench recently in Krishena Kumar v. Union of India. The petitioners in that case were retired Railway employees who were covered by or opted for the Railway Contributory Provident Fund Scheme. It was held that PF retirees and pension retirees constitute different* *classes and it was never held in Nakara that pension retirees and PF retirees formed a homogeneous class, even though pension retirees alone did constitute a homogeneous class within which any further classification for the purpose of a liberalised pension scheme was impermissible. It was pointed out that in Nakara, it was never required to be decided that all the retirees for all purposes formed one class and no further classification was permissible. We have referred to this decision merely to indicate that another Constitution Bench of this Court also has read Nakara decision as one of limited application and there is no scope for enlarging the ambit of that decision to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different.*

19. *The petitioners' claim that all pre-April 1, 1979 retirees of the Armed Forces are entitled to the same amount of pension as shown in Appendices 'A', 'B' and 'C' for each rank is clearly untenable and does not flow from the Nakara decision."*

The Hon'ble Supreme Court unequivocally held that the decision in Nakara's case cannot be extended to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different

Similar, claim was also rejected by the Hon'ble Supreme Court yet once again in the case of ***K.L. Rathee v. Union of India,***

(1997) 6 SCC 7 :

> ***"8.*** *The average of the last ten months' emoluments must form the basis for calculation of pension. That means those who were actually drawing larger emoluments in the last ten months of their service will get larger amounts of pension. Nakara case does not lay down that the same amount of pension must be paid to all persons retiring from government service irrespective of the date of retirement. The contention of the petitioner that there is only one class of government employees for the purpose of calculation of pension cannot be disputed. The Constitution Bench in Nakara case has clearly laid down that there cannot be any mini classification of government servants for calculating the amount of pension payable. That means the same method should be adopted for calculating pension for all government servants. But the question is what should be the quantum of pension payable to a government servant? Even if pension is calculated on the basis of the same formula the basis of calculation has to be the average of the last ten months' emoluments. This principle of adopting last ten months' emoluments as the basis for calculating of pension must be uniformly applied to all persons drawing pension from the Central Government. This was all that was laid down in Nakara case. It, however, did not lay down that the quantum of emoluments drawn during the last ten months of service of each government employee must be taken to be the same for this purpose."*

The aforesaid decisions were followed in ***Krishnaswamy's case (supra)*** wherein the Government of India notification dated 11th May, 2001 which clarified that pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum of the corresponding scale as on 1-1-1996, of the scale of pay held by the pensioner at the time of superannuation /retirement was upheld. Setting out the challenge involved and repelling the same it was observed:

> ***"3.*** *In all these appeals, the controversy relates to the scale of pay recommended by the Fifth Pay Commission and corresponding acceptance of the Government by a policy decision dated 30-9-1997 and executive instructions dated 17-12-1998 clarified by executive instructions dated 11-5-2001.*
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> *xxxxxx*
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> ***13.*** *As the controversy/confusion still persisted and for the smooth and efficient implementation of the policy resolution, the Government of India issued further executive instructions by way of office memorandum dated 11-5-2001 clarifying the executive instructions issued on 17-12-1998. The substance of the executive instructions dated 11-5-2001 (by which the pensioners are aggrieved and the core question in these appeals) reads as under:*
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>> *"In the course of implementation of the above order, clarifications have been sought by Ministries/Departments of the 'post last held' by the pensioner at the time of his/her superannuation. The second sentence of OM dated 17-12-1998 i.e. 'pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay w.e.f. 1-1-1996 of the post last held by the pensioner', shall mean that pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum of the corresponding scale as on 1-1-1996, of the scale of pay held by the pensioner at the time of superannuation/retirement."*
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> ***14.*** *The clarification brought out in the OM dated 17-12-*

1998 and OM dated 11-5-2001 is clearly discernible. Whereas OM dated 17-12-1998 speaks of the minimum pay in the revised scale of pay w.e.f. 1-1-1996 of the post last held by the pensioner, the OM dated 11-5-2001 clarifies it as minimum of the corresponding scale as on 1-1-1996 of the scale of pay held by the pensioner at the time of superannuation/retirement. The clarification brought about in the OM dated 11-5-2001 is of the last post held by the pensioner as the last scale of pay held by the pensioner at the time of superannuation/retirement.

***15.** It is common knowledge that the corresponding increase in any Pay Commission is of the scale of pay and not of the post.*

***16.** The grievances raised in the two sets of appeals are the same. The basic question that arises for consideration is as to whether the executive instructions in the form of OM dated 11-5-2001 override the OM dated 17-12-1998 and are null and void. In other words, as to whether the OM dated 11-5-2001 overrides the earlier OM dated 17-12-1998 clarifying the Policy Resolution of the Government dated 30-9-1997.*

***17.** The main thrust of the submissions of learned counsel for the appellants is that the OM dated 11-5-2001 overrides the original OM dated 17-12-1998 and creates two classes of pensioners. We are unable to accept this contention. As noticed above, the recommendations of the Fifth Pay Commission were accepted to the extent of policy resolution dated 30-9-1997. The aforesaid Policy Resolution was further clarified by issuing instructions in OM dated 17-12-1998, which were clarified by another executive instructions in OM dated 11-5-2001. It is well-settled principle of law that recommendations of the Pay Commission are subject to the acceptance/rejection with modifications of the appropriate Government. It is also well-settled principle of law that a policy decision of the Government can be reviewed/altered/modified by executive instructions. It is in these circumstances that a policy decision cannot be challenged on the ground of* *estoppel. In the present case, the recommendations of the Fifth Pay Commission were accepted by a Policy Resolution dated 30-9-1997 that the ceiling on the amount of pension will be 50% of the highest pay in the Government. The pension of all pre-1-1-1996 retirees including pre-1986 retirees shall be consolidated as on 1-1-1996, but the consolidated pension shall not be brought on to the level of 50% of the minimum of the revised pay of the post held by the pensioner at the time of retirement. The subsequent OM dated 17-12-1998 clarified the Policy Resolution dated 30-9-1997 by executive instructions in OM dated 17-12-1998 and further clarified in the form of OM dated 11-5-2001 clarifying the contents of Policy Resolution of the Government dated 30-9-1997. They are both complementary to each other. Both clarify the government Policy Resolution dated 30-9-1997. The appellants are not aggrieved by the executive instructions in OM dated 17-12-1998. In our view, therefore, the contention of the appellant that the OM dated 11-5-2001 overrides the original OM dated 17-12-1998, thereby creating two classes of pensioners is absolutely ill-founded and untenable.*

***18.** It is common knowledge that an increase in the pay scale in any recommendation of a Pay Commission is a corresponding increase in the pay scale. In our view, therefore, executive instructions dated 11-5-2001 have been validly made keeping in view the recommendations of the Pay Commission accepted by the Policy Resolution of the Government on 30-9-1997, clarified by executive instructions dated 17-12-1998. The executive instructions dated 11-5-2001 neither override the policy resolution dated 30-9-1997 nor executive instructions dated 17-12-1998 clarifying the policy resolution dated 30-9-1997. The executive instructions dated 11-5-2001 were in the form of further clarifying the executive instructions dated 17-12-1998 and do not override the same.*

***19.** Counsel for the appellants heavily relied on the Constitution Bench decision of this Court in D.S. Nakara* *v. Union of India where this Court at SCC p. 345, para 65 observed that*

> *"liberalised pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of retirement".*

20. *Nakara case has been distinguished by this Court in State of Punjab v. Boota Singh; State of Punjab v. J.L. Gupta; State of W.B. v. W.B. Govt. Pensioners' Assns. and State of Punjab v. Amar Nath Goyal.*

21. *Nakara case was a case of revision of pensionary benefits and classification of pensioners into two groups by drawing a cut-off line and granting the revised pensionary benefits to employees retiring on or after the cut-off date. The criterion made applicable was "being in service and retiring subsequent to the specified date". This Court held that for being eligible for liberalised pension scheme, application of such a criterion is violative of Article 14 of the Constitution, as it was both arbitrary and discriminatory in nature. It was further held that the employees who retired prior to a specified date, and those who retired thereafter formed one class of pensioners. The attempt to classify them into separate classes/groups for the purpose of pensionary benefits was not founded on any intelligible differentia, which had a rational nexus with the object sought to be achieved. The facts of Nakara case are not available in the facts of the present case. In other words, the facts in Nakara case are clearly distinguishable.*

22. *In Indian Ex-Services League v. Union of India, this Court distinguished the decision in Nakara case and held that the ambit of that decision cannot be enlarged to cover all claims by retirees or a demand for an identical amount of pension to every retiree, irrespective of the date of retirement even though the emoluments for the purpose of computation of pension be different.*

23. *In K.L. Rathee v. Union of India, this Court, after referring to various judgments of this Court, has held that Nakara case cannot be interpreted to mean that emoluments of persons who retired after a notified date* *holding the same status, must be treated to be the same.*

27. *For the reasons aforestated, the view taken by the Madras High Court that the clarificatory executive instructions in OM dated 11-5-2001 are an integral part of the OM dated 17-12-1998 clarifying the policy resolution of the Government dated 30-9-1997 and do not override the original OM dated 17-12-1998 is correct law and it is, accordingly, affirmed. The view taken by the Delhi High Court that OM dated 11-5-2001 overrides the original OM dated 17-12-1998 and creates two classes of pensioners does not lay down the correct law and is, hereby, set aside."*

In view of the aforementioned decisions, there is no illegality in the impugned notification. as per which the basic family pension of all pensioners irrespective of their date of retirement/death while in service shall not be less than 30% of the minimum of the corresponding scale as on 01.01.1996, of the scale of pay held by the Government employee at the time of retirement or death while in service.

Accordingly, the petition is dismissed.

(SATISH KUMAR MITTAL) **(HARINDER SINGH SIDHU)**
JUDGE **JUDGE**

May 04, 2015
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