

\* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN  
AND  
HON'BLE SRI JUSTICE M.GANGA RAO

+ Writ Petition Nos.9770, 9779 and 9844 of 2017

% 05-12-2017

- # 1. The Commissioner of Customs, Central Excise & Service Tax,  
P.B. No.331, C.R. Buildings, Kannavari Thota, Guntur-522 004
2. The Chairman, Central Board of Customs, Excise & Service Tax,  
5<sup>th</sup> Floor, HUDCO Visala Bldg., Bhikaji Cama Place,  
New Delhi-110 066
3. The Secretary to Govt. of India, Ministry of Pers. PG and Pensions,  
Deptt. of Pensions & Pensioners Welfare, Lok Nayak Bhavan,  
Khan Market, New Delhi-110 003
- ... Petitioners

Vs.

- \$ P.Bhavanipathi Rao, S/o Late Kondaiah, Retd. Superintendent of  
Central Excise, Flat No.104, Sai Teja Residency, Sainathpuram,  
Near A.S. Rao Nagar, Hyderabad-500 062  
... Respondent No.1 (in W.P.No.9770/2017)
- G.Ganga Rao, Retd. Superintendent of Central Excise,  
D.No.17-2-16/1/1, Jyothi Nagar, Lalaguda, Secunderabad-500 017  
... Respondent No.1 (in W.P.No.9779/2017)
- A.S.M. Mohan Rao, Retd. Superintendent of Central Excise,  
H.No.27-2-152, 4<sup>th</sup> Main, 10<sup>th</sup> Cross, Kopperuvari Street,  
Balaji Nagar, Nellore-524 002  
... Respondent No.1 (in W.P.No.9884/2017)
2. The Central Administrative Tribunal, Rep. by the Registrar,  
Hyderabad Bench, HACA Bhavan, Hyderabad  
... Respondent

! Counsel for Petitioners : Mr. M.V.J.K. Kumar

Counsel for Respondent No.1: Mr. E.Krishna Swamy

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> Head Note:

? Cases referred:

1. (1983) 1 SCC 305
2. (2008) 9 SCC 125

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN  
AND  
HON'BLE SRI JUSTICE M.GANGA RAO

Writ Petition Nos.9770, 9779 and 9844 of 2017

Common Order: (per V.Ramasubramanian, J.)

The Department of Customs, Central Excise and Service Tax has come up with the above writ petitions challenging the orders passed by the Central Administrative Tribunal, Hyderabad Bench, directing the Department to re-fix the pension of the respondents herein at the rate of Rs.9,375/- per month with effect from 01-01-2006 under the Sixth Central Pay Commission, in the pay scale of Rs.9,300-34,800 plus G.P. Rs.4,800/- by duly taking into account the revised scale of pay as notified in the OM dated 21-4-2004.

2. Heard Mr. M.V.J.K. Kumar, learned Senior Standing Counsel for the petitioners/Department and Mr. E.Krishna Swamy, learned counsel appearing for the respondents.

3. While the respondent in W.P.No.9770 of 2017 retired from service as Superintendent of Central Excise on 31-10-1993, the respondent in W.P.No.9779 of 2017 retired on 31-01-1992 as Superintendent of Central Excise and the respondent in W.P.No.9844 of 2017 retired on 31-12-1993. In other words, the respondents retired about 24/25 years ago. Admittedly, the last pay drawn by the respondents on the date of retirement, was in the pay scale of Rs.2,000-3,200, fixed under the Fourth Central Pay Commission.

4. The Scale of pay of the post of Superintendent of Central Excise was revised to Rs.6,500–10,500, in the Fifth Central Pay Commission with effect from 01-01-1996. The scale of pay was further revised to Rs.7,500–12,000 by an order dated 21-4-2004.

5. In the Sixth Central Pay Commission, the post of Superintendent of Central Excise was identified with pay band 2. In other words, it was identified with a scale of pay of Rs.9,300–34,800 with grade pay of Rs.4,800/-. The minimum pay of the Superintendent of Central Excise in this pay band as on 01-01-2006 was Rs.13,950/- + grade pay of Rs.4,800/-, totalling to Rs.18,750/-.

6. As per the stipulations contained in paragraph-4.2 of the Government of India, Pension and Pensioners Welfare, OM F.No.38/3708-P&W(A), dated 01-9-2008, the fixation of pension under the revised pension scheme shall not be lower than 50% of the minimum of the pay in the pay band + the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. The Department appears to have fixed the revised pension for the respondents at Rs.8,264/- per month. Not satisfied with such a fixation and contending that the Department should have taken a minimum of Rs.13,950/- + Rs.4,800/-, working out to Rs.18,750/-, and arrived at 50% of the same at Rs.9,375/-, the respondents filed separate original applications before the

Tribunal. The Tribunal allowed the original applications on the basis of a decision of the Full Bench of the Central Administrative Tribunal in O.A.No.655/2010, dated 01-11-2011. Therefore, challenging the said orders of the Tribunal, the Union of India have come up with the above writ petitions.

7. In brief, the case of the Union of India can be summarized as follows:

(a) that it is true that the Sixth Central Pay Commission made a recommendation that the fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than 50% of the sum of the minimum of the pay in the pay band and the grade pay thereon, corresponding to the pre-revised pay scale from which the respondents had retired;

(b) that the said recommendation of the Commission was accepted by the Government by a resolution dated 29-8-2008 with a modification that the fixation of pension shall be based on a multiplication factor of 1.86 i.e. basic pay + dearness pay (wherever applicable) + dearness relief of 24% as on 01-01-2006;

(c) that thereafter the Ministry of Finance, Department of Expenditure, issued an office memorandum dated 30-8-2008, for fixation of pay of those serving as on 01-01-2006, but this office memorandum contained detailed fitment tables, providing for revised basic pay of employees in service as on 01-01-2006, which fitment tables, were not intended to be used for calculation of pension of pre-2006 retirees;

(d) that another resolution dated 29-8-2008 and an office memorandum dated 01-9-2008 issued by the Department of Pension and Pensioners' Welfare separately provided for revision of pension of pre-2006 retirees;

(e) that as per this office memorandum dated 01-9-2008, the pension/family pension of existing pre-2006 retirees will be consolidated with effect from 01-01-2006 by adding together – (i) the existing pension/family pension, (ii) dearness pension where applicable, (iii) dearness relief up to AICPI (DV) average index 536 (base year 1982 = 100) i.e. at the rate of 24% of basic pension/basic family pension + dearness pension as applicable and (iv) fitment weightage at the rate of 40% of the existing pension/family pension;

(f) that para-4.2 of this office memorandum dated 01-9-2008 also provided that the revised pension shall, in no case, be lower than 50% of the minimum of the pay in the pay band + the grade pay corresponding to the pre-revised pay scales from which the pensioner had retired;

(g) that by a further memorandum dated 03-10-2008, a clarification was issued to the earlier memorandum dated 01-9-2008, stipulating that pension at 50% of the minimum of pay in the pay band + grade pay would be calculated at the minimum of the pay in the pay band (irrespective of the pre-revised scale of pay) plus the grade pay corresponding to the pre-revised pay scale;

(h) that aggrieved by the office memorandum dated 01-9-2008 and the clarification dated 03-10-2008, several applications came to be filed by pre-2006 pensioners on the file of

the Central Administrative Tribunal, on the ground that as per the original resolution of the Government, pre-2006 pensioners are entitled to a minimum guaranteed pension at 50% of the minimum of pay in the pay band as arrived at with reference to the fitment tables for revision of pay of the serving employees plus grade pay thereon, and not 50% of the starting point of the pay band plus the grade pay;

(i) that the Full Bench of the Central Administrative Tribunal sustained the above plea of the pre-2006 retirees in a batch of cases in O.A.No.655 of 2010;

(j) that challenging the said order of the Principal Bench of the Central Administrative Tribunal, the Union of India filed a batch of writ petitions on the file of the High Court of Delhi;

(k) that during the pendency of the writ petitions, the Government of India issued another office memorandum dated 28-01-2013, for stepping up the pension of pre-2006 retirees with reference to the fitment table annexed to the office memorandum dated 30-8-2008;

(l) that the said office memorandum dated 28-01-2013 was issued pursuant to a Cabinet decision and it was to be implemented prospectively from 24-9-2012;

(m) that thereafter the Delhi High Court dismissed the batch of writ petitions on 29-4-2013, upholding the decision of the Principal Bench (Full Bench) of the Central Administrative Tribunal;

(n) that while dismissing the writ petitions filed by the Union of India, the Delhi High Court took note of the Cabinet decision and the latest office memorandum dated 28-01-2013;

(o) that the Union of India filed special leave petitions on the file of the Supreme Court, as against the orders of the Delhi High Court, but those special leave petitions were dismissed;

(p) that the Government filed a review petition, which was also dismissed by the Supreme Court on 12-11-2013;

(q) that a curative petition was filed, but the same was also dismissed on 30-4-2014;

(r) that therefore the judgment of the Full Bench of the Central Administrative Tribunal was implemented in respect of the petitioners in O.A.No.655 of 2010;

(s) that thereafter the pension of Government servants who retired after 01-01-2006 was delinked from qualifying service of 33 years, but the said decision was set aside by the Ernakulam Bench of the Central Administrative Tribunal in O.A.No.715 of 2012, which came to be upheld by the High Court of Kerala as well as the Supreme Court;

(t) that even during the Fifth Central Pay Commission, an office memorandum dated 11-5-2001 was issued allowing minimum pension with reference to the corresponding pay scale and not the upgraded pay scale and the said office memorandum was upheld by the Supreme Court in *K.S. Krishnasamy v. Union of India*;

(u) that the Ahmedabad Bench of the Central Administrative Tribunal, also held in O.A.No.183 of 2013 that the revised pension

can be with reference to the minimum of the upgraded pay scale instead of the minimum of the corresponding pay scales; and

(v) that the High Court of Delhi also observed in a decision dated 04-11-2016 in W.P.(Civil) No.7821 of 2012 that the issue of upgradation was not covered by the decision of the Full Bench of the Central Administrative Tribunal in O.A.No.655 of 2010 and that therefore pre-2006 pensioners are entitled to revised pension only with reference to the minimum of revised corresponding pay scale and not with reference to the upgraded pay scale.

8. A careful look at the grievance of the Union of India that we have extracted in simple terms in the preceding paragraph would show that ***the dispute between the pre-2006 retirees and the Government of India revolves around only one question namely whether the revised pension is to be calculated with reference to the minimum of the revised corresponding pay scales or with reference to the upgraded pay scales.*** This question has arisen on account of one fact namely that the respondents herein were drawing pay in the pay scale of Rs.2,000-3,200 at the time of their retirement. All of them retired before 01-01-1996. On the recommendations of the Fifth Central Pay Commission, the scale of pay of Rs.2,000-3,200 was revised to Rs.6,500-10,500, with effect from 01-01-1996. If the pay scale has remained the same as Rs.6,500-10,500, from 01-01-1996 up to 01-01-2006, the issues that were raised before

the Full Bench of the Central Administrative Tribunal, based upon which the respondents have also made a claim, would not have arisen. But inbetween the period 01-01-1996 to 01-01-2006, the scale of pay of Rs.6,500-10,500 was revised to Rs.7,500-12,000, by an order dated 21-4-2004. Thereafter, the pay scale was revised to Rs.9,300-34,800 with grade pay of Rs.4,800/-, with effect from 01-01-2006, under the Sixth Central Pay Commission.

9. What happened when the recommendations of the Sixth Central Pay Commission were implemented was that the scale of pay of Rs.6,500-10,500 corresponding to S.12 grade, was revised to Rs.9,300-34,800 with a pay band of Rs.4,200/-. On the other hand, the existing pay scale of Rs.7,500-12,000 relating to grade of S.14 was revised to Rs.9,300-34,800 with a pay band of Rs.4,800/-.

10. If the scale of pay of Rs.2,000-3,200 as it existed before 01-01-1996, which was revised to Rs.6,500-10,500 under the Fifth Central Pay Commission, had continued to remain at Rs.6,500-10,500 till 01-01-2006, the only revised pay scale that would have been applicable would be Rs.9,300-34,800 with a pay band of Rs.4,200/-. But inbetween the period 01-01-1996 to 01-01-2006, a revision took place on 21-4-2004, for existing employees, revising the pay scale of Rs.6,500-10,500 to Rs.7,500-12,000. Therefore, at the time of implementation of the Sixth Central Pay Commission with

effect from 01-01-2006, existing employees who were drawing, as on 01-01-2006, pay in the scale of Rs.6,500-10,500 moved over to the revised pay scale of Rs.9,300-34,800 with a pay band of Rs.4,200/-. But the employees who were in the pre-revised scale of Rs.7,500-12,000 as on 01-01-2006, moved over to the revised scale of pay of Rs.9,300-34,800 with a pay band of Rs.4,800/-.

11. In other words, the entire dispute which is lingering for the past more than 7 years, is on account of an intermediary revision of pay granted on 21-4-2004, inbetween the Fifth and the Sixth Central Pay Commissions. The dispute can be well understood, if it is presented in the form of numbers than in the form of prose. Hence, a tabular statement is furnished as follows:

| Sl. No. | Pay scale wef 1-1-1986                            | Post/Grade and Pay Scale wef 1-1-1996 |                | Name of Pay Band/ scale | Corres-ponding 6 <sup>th</sup> CPC Pay Bands/ scales | Corres-ponding Grade Pay | Pension 50% of sum of minimum pay in the pay band and grade pay/ minimum pay in the scale as per fitment table |
|---------|---------------------------------------------------|---------------------------------------|----------------|-------------------------|------------------------------------------------------|--------------------------|----------------------------------------------------------------------------------------------------------------|
| 13.     | 2000-60-2300-75-3200<br>2000-60-2300-75-3200-3500 | S-12                                  | 6500-200-10500 | PB-2                    | 9300-34800                                           | 4200                     | 8145                                                                                                           |
| 15.     | 2500-4000                                         | S-14                                  | 7500-250-12000 | PB-2                    | 9300-34800                                           | 4800                     | 9375                                                                                                           |

12. It can be seen from the tabular statement given above that if no intermediary revision had taken place on 21-4-2004, revising the scale of pay from Rs.6,500-10,500 to

Rs.7,500-12,000, even the serving employees would have moved after 01-01-2006, only to the scale of pay of Rs.9,300-34,800 with a pay band of Rs.4,200/- and those who retired before 01-01-2006 would have got the minimum pension fixed only at Rs.8,145/-. But it is only because the pay scale of Rs.2,000-3,200, existing before 01-01-1996, got revised to Rs.6,500-10,500 with effect from 01-01-1996 and was further revised to Rs.7,500-12,000 with effect from 21-4-2004, that the serving employees moved to the revised pay scale of Rs.9,300-34,800 with a pay band of Rs.4,800/-.

13. We must also note from the tabular statement given above that on the recommendations of the Fifth Central Pay Commission, it is only the pre-revised scale of pay of Rs.2,500-4,000, which got revised to Rs.7,500-12,000 with effect from 01-01-1996 and it is this scale of pay that was further revised under the Sixth Central Pay Commission to Rs.9,300-34,800 with a pay band of Rs.4,800/-, with effect from 01-01-2006.

14. In other words, the revision granted under the Fifth Central Pay Commission with effect from 01-01-1996 to the pre-existing scale of pay of Rs.2,500-4,000, with effect from 01-01-1996, got extended on 21-4-2004 even to the pre-existing scale of pay of Rs.2,000-3,200.

15. Once the aforesaid position is clear, it can be easily understood that what happened inbetween the two Central

Pay Commissions, cannot be taken to be a benefit extended to the pensioners, but a benefit extended only to the serving employees as on 21-4-2004. It is only those employees who were in service as on 21-4-2004, who got their pre-1996 scale of pay of Rs.2,000-3,200 revised to Rs.6,500-10,500 with effect from 01-01-1996 and who got it again revised to Rs.7,500-10,000 with effect from 21-4-2004. All the office memorandas based upon which the respondents herein made a claim before the Central Administrative Tribunal, were borne out of the recommendations of the Central Pay Commissions.

16. The situation can be explained in simple terms as follows: Persons who were in service on 21-4-2004 were drawing pay in the scale of pay of Rs.2,000-3,200 before 01-01-1996 and they started drawing a scale of pay of Rs.6,500-10,500 with effect from 01-01-1996 and they moved over to the scale of pay of Rs.7,500-12,000 with effect from 21-4-2004. Persons who retired before 01-01-1996 got their pension revised with reference to the scale of pay allowed under the Fifth Central Pay Commission and the pension drawn by them did not undergo a change between the period 21-4-2004 to 01-01-2006. While the pay of the serving employees underwent a change from 21-4-2004 up to 01-01-2006, the pension of the retired employees did not undergo a change with effect from 21-4-2004 on account of

the intermediary revision. Therefore, we do not think that the claim of the respondents, which was based entirely upon the intermediary revision granted on 21-4-2004 (otherwise than on the basis of the recommendations of any Central Pay Commission), can be sustained in favour of the pensioners.

17. Since the factual position has now been clarified, we shall now go to the decision of the Full Bench of the Central Administrative Tribunal in O.A.No.655 of 2010.

18. The decision of the Full Bench of the Tribunal arose out of a claim by pre-2006 retirees for pension at par with post-2006 retirees based on the recommendations of the Sixth Central Pay Commission, which became effective from 01-01-2006. This can be seen from para-2 of the judgment of the Full Bench of the Tribunal.

19. As seen from para-2 of the judgment of the Full Bench of the Tribunal in O.A.No.655 of 2010, the grievance projected by the applicants before the Tribunal was that those who retired prior to 01-01-2006 and those who retired thereafter, constituted one single class of pensioners and that an attempt to classify them into separate groups was violative of the decisions of the Supreme Court in **D.S. Nakara v. Union of India**<sup>1</sup> and **Union of India v. S.P.S. Vains**<sup>2</sup>. The applicants further claimed before the Full Bench of the Tribunal that their revised pension should not be lower than

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<sup>1</sup> (1983) 1 SCC 305

<sup>2</sup> (2008) 9 SCC 125

50% of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the scale of pay from which they had retired, as accepted by the Government vide resolution dated 29-8-2008. The applicants also sought a declaration that the clarification issued subsequently in the office memoranda dated 03-10-2008 and 14-10-2008 were illegal.

20. As seen from para-4 of the decision of the Full Bench of the Tribunal in O.A.No.655 of 2010, the Tribunal first took up for examination, the challenge made by the applicants on the basis of the decision of the Supreme Court in **D.S. Nakara**. This question was with particular reference to the argument of the applicants as to whether the cut-off date 01-01-2006 was correct or not.

21. After considering the entire case law on the point, as reflected in the other decisions of the Supreme Court, namely **Indian Ex-Servicemen League v. Union of India** [(1991) 2 SCC 104], **Government of Andhra Pradesh v. N.Subbarayudu** [(2008) 14 SCC 702] and **Union of India v. S.R. Dhingra** [(2008) 2 SCC 229], the Tribunal held in para-9 of its judgment that pre-2006 retirees cannot claim benefits on par with post-2006 retirees who are governed by a separate scheme.

22. The Full Bench of the Tribunal next took up for consideration, the decision of the Supreme Court in **S.P.S.**

**Vains.** In para-10 of the decision, the Full Bench of the Tribunal held that the applicants cannot take any assistance from the decision in **S.P.S. Vains**.

23. After rejecting the main plank on which the pre-2006 retirees based their claim (namely, **D.S. Nakara** and **S.P.S. Vains**), the Full Bench then took up for consideration from para-12 onwards of its decision in O.A.No.655 of 2010, the scope and effect of the Government of India's resolution dated 29-8-2008, the office memoranda dated 01-9-2008, 03-10-2008 and 14-10-2008.

24. In the table under the Annexures to the Government of India's resolution GIMF No.38/37/08-P&PW(A), dated 29-8-2008, a statement was given indicating the recommendations of the Sixth Central Pay Commission relating to the principles that should govern the structure of pension and other terminal benefits, vis-à-vis the decision of the Government in respect of the same. Serial No.12 in the table contained in the Annexures to the Government of India's resolution, dated 29-8-2008, reads as follows:

| Sl. No. | Recommendation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Decision of Government                                                                                                                                                                                                                  |
|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12.     | All past pensioners should be allowed fitment benefit equal to 40% of the pension excluding the effect of merger of 50% Dearness Allowance / Dearness Relief as pension (in respect of pensioners retiring on or after 1-4-2004) and Dearness Pension (for other pensioners) respectively. The increase will be allowed by subsuming the effect of conversion of 50% of Dearness Relief / Dearness Allowance as Dearness Pension / Dearness Pay. Consequently, dearness relief at the rate of 74% on pension (excluding the effect of merger) has been taken for the purposes of computing | Accepted with the modification that fixation of pension shall be based on a multiplication factor of 1.86, i.e., basic pension plus Dearness Pension (wherever applicable) plus Dearness Relief of 24% as on 1-1-2006, instead of 1.74. |

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |
|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
|  | revised pension as on 1-1-2006. This is consistent with the fitment benefit being allowed in case of the existing employees. The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from which the pension had retired.<br>(5.1.47) |  |
|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

25. After taking note of serial No.12 in the Annexures to the Government of India's resolution dated 29-8-2008, the Tribunal proceeded to analyse the fitment tables relating to the grades S.24 to S.29 and the examples of few individuals and came to the conclusion that allowing two sets of individuals both of whom are pre-2006 retirees, to receive different rates of revised pension, would hit the principle of modified parity.

26. Therefore, all that the Tribunal did was to direct the Union of India to re-fix the pension of all pre-2006 retirees based upon the resolution dated 29-8-2008. Para-30 of the order of the Full Bench of the Tribunal in O.A.No.655 of 2010 reads as follows:

"30. In view of what has been stated above, we are of the view that the clarificatory OM dated 03-10-2008 and further OM dated 14-10-2008 (which is also based upon clarificatory OM dated 03-10-2008) and OM dated 11-02-2009, whereby representation was rejected by common order, are required to be quashed and set aside, which we accordingly do. Respondents are directed to re-fix the pension of all pre-2006 retirees w.e.f. 01-01-2006, based on the resolution dated 29-8-2008 and in the light of our observations made above. Let the respondents re-fix the pension and pay the arrears thereof within a period of

3 months from the date of receipt of a copy of this order.  
OAs are allowed in the aforesaid terms, with no order as to  
interest and costs.”

27. But unfortunately for the respondents herein, there are at least two glaring distinctions between the applicants before the Full Bench of the Tribunal and the respondents herein. They are:

- (i) The applicants before the Full Bench of the Tribunal belonged to the grade S.29. They pointed out the disparities between S.24 grade employees and S.29 grade employees. But in the case on hand, we are concerned with S.12 grade employees, who make no comparison of themselves with other grade employees.
- (ii) The second distinction is that the judgment of the Full Bench of the Tribunal does not show whether the claim that arose before the Full Bench was on account of any intermediary revision that took place inbetween the two Central Pay Commissions, namely from 01-01-1996 to 01-01-2006. In the case of the respondents herein, persons who were in service in S.12 grade got an intermediary revision on 21-4-2004 on account of which a disparity arose between those who retired before 21-4-2004 and those who retired between 21-4-2004 and 01-01-2006.

28. On account of the aforesaid two obvious dissimilarities, it is not possible to apply the ratio laid down by the Full Bench of the Tribunal in O.A.No.655 of 2010 to

the case of the respondents herein. As a consequence, the decisions of the other High Courts such as Kerala, Punjab and Haryana, and Delhi, which followed the decision of the Full Bench of the Tribunal after its confirmation up to the Supreme Court, cannot also have any application to the case of the respondents herein. Even the decision of the Delhi High Court in W.P.(C) No.3035 of 2016 dated 03-8-2016, was not concerned with any intermediary revision that took place between the two Central Pay Commissions.

29. We have to take note of one more aspect. The entire discussion of the Full Bench of the Tribunal in O.A.No.655 of 2010 revolved around Item No.12 of the table in the Annexure to the Government of India's resolution dated 29-8-2008. We have already extracted the same. At the cost of repetition, we can extract the last sentence, around which alone, the key to the issue on hand lies. The last portion of serial No.12 states that *"the fixation of pension will be subject to the provision that the revised pension in no case shall be lower than 50% of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to **the pre-revised pay scale from which the pensioner had retired**"*.

30. The emphasis in serial No.12, is on the last part namely **"the pre-revised pay scale from which the pensioner had retired"**.

31. The respondents in these writ petitions, retired before 01-01-1996 in the scale of pay of Rs.2,000-3,200, in the grade of S.12. This pay got revised to Rs.6,500-10,500 under the Fifth Central Pay Commission with effect from 01-01-1996 and it got further revised to Rs.9,300-34,800 with a pay band of Rs.4,200/-, under the Sixth Central Pay Commission with effect from 01-01-2006. But those in service as on 21-4-2004 got the benefit of an intermediary revision and moved over to Rs.7,500-12,000 before moving over to Rs.9,300-34,800 with a pay band of Rs.4,800/- with effect from 01-01-2006.

32. If the entire claim of the respondents is based upon serial No.12 in the table given in the Annexures to the Government of India's resolution dated 29-8-2008, they must show the pre-revised pay scale from which they had retired. Those who retired before 21-4-2004 retired in the revised scale of pay of Rs.6,500-10,500 and those who retired after 21-4-2004 retired in the scale of pay of Rs.7,500-12,000.

33. Therefore, we are of the considered view that the Tribunal was not right in the manner of interpretation of the Government of India's resolution dated 29-8-2008. The Tribunal was also wrong in following the decision of the Full Bench of the Central Administrative Tribunal in O.A.No.655 of 2010, as the Full Bench was concerned with retirees belonging to S.29 grade while the respondents herein

belonged to S.12 grade and the disparity in this case arose on account of an intermediary revision.

34. In view of the above, the writ petitions are allowed and the impugned orders are set aside. The original applications filed by the respondents will stand dismissed. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.

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V.RAMASUBRAMANIAN, J.

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M.GANGA RAO, J.

05<sup>th</sup> December, 2017.  
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN  
AND  
HON'BLE SRI JUSTICE M.GANGA RAO

Writ Petition Nos.9770, 9779 and 9844 of 2017  
(per VRS, J.)



05<sup>th</sup> December, 2017.  
(Ak)