

COMMENTS OF RSCWS ON THE APPEAL BY GOVT OF INDIA

IN HON' HIGH COURT NEW DELHI
WP 1535-2012 AGAINST OA 655-2010

IN THE MATTER OF :

Union of India & Ors.

... Petitioners.

Versus

Central Government SAG & Ors.

.... Respondents.

GROUND OF APPEAL BY GOVT	COMMENTS OF RSCWS	REMARKS OF GOVT COUNCILER
33. It is submitted that impugned order is against principle of law and the same is liable to be set aside, inter-alia, on the following grounds	Order dated 01.11.2011 passed by Central Administrative Tribunal in O.A. No. 0655/2010, O.A. No. 3079 of 2009, O.A. No. 0306 of 2010 and O.A. No. 0507 of 2010 are absolutely valid and as per settled law; and may please be upheld inter-alia on the following grounds:	
GROUNDS	GROUNDS	
A. For that Hon'ble CAT erred in not appreciating that memorandums dated 03.10.2008, issued clarifying memorandum dated 01.09.2008 are in no way deviating from the decision of the government for acceptance of recommendation of 6 th Pay Commission under Resolution dated 29.08.2008 nor do the same give a go-by to the principle of modified parity. Therefore, while issuing memorandums dated 03.10.2008 and 14.10.2008, modified parity / formula adopted by Central Government pursuant to recommendation of 6 th pay commission was neither changed nor the same on the face of it go-o to introduce or demonstrate any change or go-by to the principles of modified parity accepted vide Resolution dated 29.08.2008.	CAT was right in holding that memorandums dated 03.10. 2008 was NOT clarificatory in nature but had rather mutilated and deviated - both in letter & spirit - from the content, meaning and implications of the memorandum dated 01.09.2008 as well as of the decision of the government for acceptance of recommendation of 6 th Pay Commission under Resolution dated 29.08.2008.	
B. For that Hon'ble CAT failed to appreciate that the following two phrases (a) and (b) only explain the exact meaning of <i>"That the revised pension in no case shall be 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 petitioner had retired"</i> for the purpose of application without introducing any change. (a) That the revised pension in no case, shall be 50% of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the petitioner had retired. (b) That the pension calculated at 50% of the minimum of the pay in the pay band plus grade pay would be calculated	CAT had rightly held that OM dated 3-10-2008 was not a clarification but an amendment of the Resolution dated 29-8-2008 – as apparent from the following comparison drawn by the Hon CAT vide Para 25 of its impugned judgment: <u>AS PER GOVT DECISION & RESOLUTION DATED 29-8-2008, THE FIXATION VIDE PARA 4.2 WILL BE SUBJECT TO FOLLOWING PROVISION</u> <i>"4.2 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 prerevised pay scale from which the pensioner had retired."</i> <u>AS PER OM DATED 1-9-2008, FIXATION VIDE PARA 4.2 WILL BE SUBJECT TO</u>	

<p>(i) at the minimum of the pay in the pay band (irrespective of pre-revised scale of pay) plus the grade pay corresponding to the pre-revised pay scale.</p>	<p><u>FOLLOWING PROVISION</u></p> <p><i><u>“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 plus (and) the grade pay (thereon) corresponding to the prerevised pay scale from which the pensioner had retired.</u></i></p> <p><u>AS PER OM DATED 3-10-2008,</u></p> <p><i><u>“Pension Calculated at 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] plus grade pay would be calculated (i) 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.”</u></i></p> <p><i><u>(Please see Table of Distortions made in the Resolution Attached as Annexure I & – cited in Para 25 of Judgment in OA 655-2010.)</u></i></p>	
<p>(C) For that Hon’ble CAT failed to appreciate that “minimum of the pay in the pay band” refers to the starting point of the pay band, therefore, pension of S-29 grade retirees (retired before 01.01.2006) was to be calculated in the pay band of Rs.37400 – Rs.67000, by taking Rs.37400 (starting point of pay band) as minimum pay for the purpose of pension.</p>	<p>The Petitioners in this Writ Petition (UOI) are wrongly trying to equate the minimum Pension to minimum “Pay in the Pay Band” and the minimum “Pay of the Pay Band”,</p> <p>The expression “minimum of the pay in the pay band” is not to be seen in isolation but as per resolution of 29-8-2008, it has to be read as “minimum of the pay in the pay band corresponding to the pre revised pay scale from which the pensioner had retired.” Thus the pay so determined has a link with the pre revised scale and cannot be the starting point of the pay band as erroneously inferred by petitioners.</p> <p>As per Govt decision & Resolution dated 29-8-2008, the minimum Pension was to be linked with minimum “Pay <u>in</u> the Pay Band” whereas, as per OM dated 3-10-2008 it was wrongly linked with the the minimum Pay <u>of</u> the Pay Band”</p> <p>‘Further, it is to be noted that in contrast to the expression ‘<u>minimum of the pay in the pay band....corresponding to the pre-revised pay scale from which the pensioner had retired</u>’ as used for past pensioners in Para 5.1.47, the Commission has used the expression ‘the minimum of the pay band’ in Para 2.3.18 in the context of giving higher initial pay (above the minimum of the pay band) in certain categories of</p>	

	<p>Armed Forces. It clearly establishes that recommendation made in Para 5.1.47 (notified in the Resolution dated 29-8-2008) cannot have the meaning as now interpreted in the quashed OM of 3-10-2008 i.e. minimum of the pay band applicable to all scales grouped therein. If this was the intention, Commission would have used this expression of the “minimum of pay band” here also.’</p>	
<p>D. For that Hon’ble CAT failed to appreciate that when there was no arbitrariness in fixing cut-off dated (as 01.01.2006) and issuing to separate memorandums / schemes for pre-2006 and post-2006 retirees respectively, then how pension of pre-2006 retirees could be directed for re-fixation, on erroneous comparison of pension amount payable to retiree in December 2005 with the pension amount of retiree of January 2006.</p>	<p>The retiree in question have retired prior to 1-1-2006 from a post carrying a scale of 18400-22400 (S 29). As per the accepted principle of modified parity (Resolution of 29-8-2008) , he is entitled to a pension which is 50% of the corresponding pay to 18400 which is the minimum of the scale from where he has retired.</p> <p>Pay in the PB that corresponds to a given pay in the pre revised scale has a relation with the figure alone and cut- off date does not change the equation of corresponding pay.</p>	
<p>E. For that Hon’ble CAT failed to appreciate that when it found no illegality and infirmity in the memorandum dated 01.09.2008, then it was not justified to quash memorandums dated 03.10.2008 and 14.10.208 as these memorandums only clarified the meaning of memorandum dated 01.09.008, for the sole purpose of practical application dated calculation of pension of pre-2006 retirees.</p>	<p>Hon CAT had rightly quashed OM dated 3-10-2008 and not OM dated 1-9-2008.</p> <p>A careful examination of the OM of 3-10-2008 (purported to be in clarification/modification of OM 1-9-2008) will reveal that though on LH side Para 4.2 of OM 1-9-2008 is mentioned but the contents therein relate to the Resolution of 29-8-2008. In other words the intent of accepted recommendations vide Resolution of 29-8-2008 has been totally changed by OM of 3-10-2008 which is the operative order for fixing pension of pre 2006 pensioners. Thus for all purposes Para 4.2 of OM of 1-9-2008 has become inoperative.</p>	
<p>F. For that Hon’ble CAT erred in not appreciating that fitment tables (Annexure 1 to Memorandum dated 30.08.2008) were to be applied for revising pay of Government servants who were in service as on 01.01.2006, therefore, pre-2006 retirees can not demand for re-fixation of their pension on the basis of revised pay fitment tables in general and in particular on the basis of minimum revised pay of pre-revised scales.</p>	<p>Minimum Pension had to be fixed on the basis of minimum pension corresponding to pre-revised scales since as per Govt decision & Resolution dated 29-8-2008, the fixation vide Para 4.2 will be subject to the provision “that the revised pension, in no case, shall be lower than <u>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.</u>”</p>	
<p>G. For that Hon’ble CAT erred in not appreciating and further erred in quashing memorandum dated 14.10.2008, Annexure 1 whereof provides for table based on which pension of pre-2006 pensioners is to be calculated and that the said table is in accordance with decision of the Government in accepting the recommendations of 6th Pay Commission</p>	<p>Hon’ble CAT was perfectly right in quashing the OM dated 3-10-2008 & OM dated 14-10-2008, as both these orders deviated and mutilated the decision of the Government in accepting the recommendations of 6th Pay Commission vide Resolution dated 29.08.2008.</p>	

<p>vide Resolution dated 29.08.2008.</p>		
<p>H. For that Hon'ble CAT failed to appreciate that improvement of pay scale of S-29 category from 39200-67000+grade pay of Rs. 9000/- with minimum pay of Rs. 43280/- to Rs.37400/- - Rs.67000/- with grade pay Rs.10,000/- with minimum pay of Rs.44700/- was meant for existing Government employees who were in service as on 01.01.2006 and had nothing to do with the Government employees who retired before 01.01.2006, therefore, no benefit could have been granted to pre-2006 retirees on the ground that the Government did not intend to reduce the pension of pre-2006 retirees while improving the pay scale of S-29 grade.</p>	<p>The terms of reference of the pay commission were to review existing services conditions of the employees and pensioners and recommend improvements required including pay scales. For pre 2006 pensioners 6CPC has recommended for continuance of modified parity as conceptualized by 5th CPC and accepted by the Govt. This envisages fixation of notional pay at minimum of the pay in the revised system of payment corresponding to minimum (18400) of the pre revised scale of pay from which the pensioner had retired and pension has to be fixed at 50% of the notional pay so arrived. The Hon'ble CAT appreciated our just submission and rightly ordered for payment accordingly.</p>	
<p>I. For that Hon'ble CAT failed to appreciate that financial constraints and implications are always vital and important factor in interpretation of economic / fiscal policies of Government as paying capacity of employer cannot be ignored in granting and denying monetary benefits to employees including ex-employees.</p>	<p>Financial constraints & implications cannot over-ride the end of justice. In this regards the following observations of the Apex Court in Nakara's case are vital and still very much relevant: <i>".....when the employee was physically and mentally alert, he rendered unto his master the best, expecting him (his master) to look after him in the fall of life and that socio-economic justice would be rendered to those who in the heyday of their life, ceaselessly toiled for the employer on an assurance that in their old age, they would not be left in the lurch. Pension and Medical facility are such assurances, which are most needed when physical & mental prowess is ebbing, corresponding to aging process.</i></p>	
<p>J. For that Hon'ble CAT, on the one hand find two separate schemes of pension respectively for pre-2006 and post-2006 retirees as good in law and held that they are governed by their respective schemes, on the other hand erred in comparing of pension of pre and post 2006 retirees and holding that pension of Rs.23700/- of pre-2006 retirees (retired in December 2005) being less than the pension of Rs.27,350/- of post 2006 retiree (retired in January 2006) has the principal of modified parity.</p>	<p>Same remarks as for D</p>	
<p>K. For that Hon'ble CAT failed to appreciate that pre-2006 retirees and post 2006 retirees are not similarly situated, therefore, there could not be equality among unequal, as such pre-2006 retirees could not claim the same benefit of pension as that of available to post-2006 retirees.</p>	<p>There cannot be two ways to fix pay in the revised pay structure corresponding to the same pay of 18400 (minimum of the scale of pre 2006 pensioner) and the same figure of 18400 for a post 2006 retiree.</p>	

<p>L. For that Hon'ble CAT though noticed that pre-2006 retirees before it, had not challenged memorandum dated 02.09.2008 issued for determining of pension of post-2006 retirees and memorandum dated 01.09.2008 for pre-2006 retirees found to be valid and legal, yet Hon'ble CAT comparing the pension of Post-2006 retirees and pre=2006 retirees granted those benefit of pension to pre-2006 retirees which were not meant for them but for post 2006 retirees.</p>	<p>Same remarks as for K</p>	
<p>M. For that revised pay rules providing for revised pay were applicable to Government employees as on 01.01.2006, therefore, by taking into consideration and importing minimum revised pay of Government employee as on 01.01.2006, no benefit of pension could be granted to pre-2006 employees on the basis of minimum revised pay.</p>	<p>Same remarks as for K</p>	
<p>N. For that Hon'ble CAT failed to appreciate that though the phraseologies used in the resolution dated 29th August, 2008, para 4.2 of the OM dated 1st September 2008 and the clarificatory OM dated 3rd October 2008 were not identical, in so far as the Government is concerned, the intent when reference is drawn to minimum of the pay in the pay band, was always to refer to the starting point of the pay band i.e. the minimum of the pay band. The minimum of pay in the pay band is the pay from which the pay band starts and not the minimum of pay which a serving employee is entitled to in accordance with the fitment table. As such the petitioners who were not in service as on 01.01.2006 cannot claim replacement of pay on the ground of modified parity at par with those who were in service it has accrued to the latter only by virtue of their being in service in the respective pay scales as on 01.01.2006. The contention of the petitioners that their pension must be fixed at 50% of the minimum of the pay in the pay band in accordance with the Fitment Tables for serving employees cannot be conceded by the Government. The fitment tables in Annexure 1 of Ministry of Finance (Department of Expenditure)'s OM No. 1/1/2008-IC dated 30.08.2008 are of very limited application. They are meant to only indicate the pay fixation of serving employees as on 1.1.2006 who are moving over from the 5th CPC to 6th CPC Scales. These pay fitment tables are not relevant even for subsequent drawals of increment and/or pay fixation on promotion of serving employees. The contention of the</p>	<p>The Petitioners in OA 655-2010 had not claimed replacement of pay on the ground of modified parity at par with those who were in service, but had only sought the modified parity as recommended by the Sixth Pay Commission and as approved by the Govt vide Resolution dated 29-8-2008 and only asked for the minimum Pension to be linked with minimum "Pay <u>in</u> the Pay Band" whereas, as per OM dated 3-10-2008 it was wrongly linked with the minimum Pay <u>of</u> the Pay Band".</p> <p>CAT had rightly accepted the implementation of the accepted recommended of the Sixth Pay Commission as approved by the Govt vide Resolution dated 29-8-2008.</p>	

<p>petitioners that their pension must be fixed with reference to the minimum of the pay in the pay band as depicted by the pay fixation tables is, accordingly, based on a completely incorrect understanding of the principles of pay and pension fixation and is without merits.</p>		
<p>O. For that in regard to the difference in pension of those who retired from S-29 grade in December 2005, Hon'ble CAT failed to appreciate that in comparison to an officer in the same or lower grade who retired in January 2006, fixation of a cut-off date for the purpose of extending retiral benefits is perfectly permissible and legitimate for the Government. Pre-2006 and Post-1.1.2006 retirees cannot be extended the same pensionary benefits as the Government of India have, on the recommendations of the 6th CPC, issued two different schemes for pre-2006 and post-2006 retirees. It is, therefore, not correct to compare a retiree in December 2005 with a retiree in January 2006, both of whom are governed by a separate scheme of pensionary benefits.</p>	<p>Same remarks as for K</p>	
<p>P. For that Hon'ble CAT failed to appreciate that the 5th CPC had enunciated the concept of 'Modified Parity' which has also been adopted by the 6th CPC for revision/consolidation of pre-2006 pensioners. At the same time, with a view to de-layering the Government, the 6th CPC also introduced, for the first time, the concept of pay bands and grade pay. A number of pre-revised scales of pay, which were in operation before 6th Central Pay Commission, have, accordingly, been merged into running pay bands. The present disparities that have been referred to by the CAT are mainly on account of this fact.</p>	<p>The reason for the disparity is not on account of the introduction of Pay Bands & the Grade Pay by the Sixth Pay Commission but on account of deviation & mutilation of the accepted recommendations of the Sixth Pay Commission vide Para 4.2 ii of the Resolution dated 29-8-2008 – as rightly held by the Hon' Cat.</p>	
<p>Q. For that Hon'ble CAT failed to appreciate that the Government has allowed a uniform fitment benefit of 40% of basic pension in all cases. Over and above this, if the pension, after consolidation falls short of 50% of the minimum of the pay in pay band + grade pay, stepping up is done. It is logical that when a number of pre-revised pay scales are merged into a single pay band it may happen that those individuals who are in the higher pay scales do not get benefits in the same ratio and proportion as those who are in the lower pay scales. The pre-revised scales of S-24 to S-29 ranging from Rs.14330-18300 and going upto Rs.18400 – 22400 have all been merged in</p>	<p>If the recommendation regarding giving the same fitment benefit of 40% to pensioners as given to employees was truly implemented, it would have resulted in equal %age rise both in pension and pay for the same minimum of pre revised scale. This , however, is not the case</p> <p>The position will be clear from the enclosed note and the accompanying table (<i>Placed as Annexure 2</i>)</p>	

<p>PB-4 separated only by different grade pays of Rs.8700, Rs.8900 and Rs.10000. Accordingly, the pension of pre-2006 retiree in the pre-revised pay scale of S-24 shall be worked out at 50% of the minimum of the pay in the pay band corresponding to the pre-revised scale of pay along with grade pay thereon (in terms of OM dated 1st September 2008) and this shall be 50% of Rs.37400+8700 which is equal to Rs.23050. In so far as the pre-revised pay scale of S-29 is concerned, by the same formula, the revised pension shall work out to Rs.23700. It would be seen that there is a difference of only RS.650 (Rs.23700 – Rs.23050) in the pension of pre-2006 retiree at the minimum of the pre-revised S-24 scale i.e. Rs.14300 and the maximum of the pre-revised S-29 scale which is Rs.22400. This is, not because of any illegal, arbitrary or capricious move by the Government but merely on account of the bundling of several pre-revised pay scales into one pay band. In case succeeding Pay Commissions continue with the concept of running pay bands, the individual discrepancies or aberrations currently arising, because of first time application, shall no loner arise.</p>		
<p>R. For that Hon'ble CAT failed to appreciate that the Pay Commissions are expert bodies and their recommendations are to be accepted as part of an overall package. It, therefore, cannot be anybody's contention that recommendations which are manifestly to the advantage of pensioners shall be wholeheartedly accepted while those which may not yield the same degree of relative benefits are liable to challenged and struck down in Court of Law.</p>	<p>CAT had rightly directed for the implementation of the accepted recommended of the Sixth Pay Commission as approved by the Govt vide Resolution dated 29-8-2008.</p>	
<p>S. For that Hon'ble CAT failed to appreciate that in a catena of judgements, various Courts, including the Apex Court, have held that it is the prerogative of the executive authorities to fix cut-off dates and to determine issues of pay and pension fixation. The executive takes these decisions based on a variety of considerations including financial, administrative and other constraints. The Courts do not generally interfere in this regard unless the principles adopted are patently arbitrary or malafide. This is not the case in the present instance.</p>	<p>CAT had in the operative part of the judgment had not referred to the issue of the cut-off date but had rightly directed for the implementation of the accepted recommended of the Sixth Pay Commission as approved by the Govt vide Resolution dated 29-8-2008.</p>	
<p>T. For that Hon'ble CAT failed to appreciate that granting of benefit of pay and pension is a matter of policy and the Government is entitled to take into</p>	<p>Hon' CAT had rightly directed for the implementation of the accepted recommended of the Sixth Pay Commission as approved by the Govt</p>	

<p>account various factors including financial implications and availability of resources to decide what benefit or how much benefit should be granted and from which particular time. Such a policy is not open to judicial review unless the same is arbitrary and against the public policy with the object to be achieved.</p>	<p>vide Resolution dated 29-8-2008. Apparently the Govt must have taken care of the financial imprecations of the recommendations approved by it – as per resolution dated 29-8-2010. The quashing of impugned deviation thereof as enshrined in the OM dated 3-8-2008 cannot be cited as arbitrary judicial review of the Govt policy – but a mere direction for implementation of the accepted policy of the Govt.</p>	
<p>U. For that Hon'ble CAT failed to appreciate that the wisdom in a policy decision of the Government as such is not justiciable unless such policy decision is wholly capricious, arbitrary and whimsical thereby offending the rule of law as enshrined in Article 14 of the Constitution or such policy decision violates any statutory provision or the provisions of the Constitution. Save as aforesaid, the Court need not embark on unchartered area of public policy.</p>	<p>Hon' CAT had not offended any of the rules of law or Article of the Constitution. CT had also not done any judicial review of the Govt policy, but had only directed for the implementation of the accepted recommended of the Sixth Pay Commission as approved by the Govt vide Resolution dated 29-8-2008.</p>	
<p>V. For that findings of Hon'ble CAT are self contradictory, therefore, liable to be set aside.</p>	<p>Findings of Hon'able CAT are correct, just, logical and as such, may please be upheld.</p>	
<p>W. For that findings Hon'ble CAT failed in the impugned order are contrary to material on record.</p>	<p>Finding of the CAT are very much based on the material on record as CAT had only directed for the implementation of the accepted recommended of the Sixth Pay Commission as approved by the Govt vide Resolution dated 29-8-2008 – which had not been modified by the Govt in any manner whatsoever.</p>	
<p>X. For that impugned order of Hon'ble CAT is not tenable nor is the same in accordance with the law.</p>	<p>Decision of the Hon' CAT is fully in accordance with the law and tenable.</p>	
<p>38. The impugned order is liable to be set-aside as the same is mechanical, perverse and contrary to material on record.</p>	<p>The decision of of the CAT is very just, legal and based on the material on record and as such cannot be set-aside. It is sought to be upheld in the interest of justice.</p>	



(Harchandan Singh),
Secretary General, RSCWS & CCCGPA

ANNEXURE 1

**CHANGES & DISTORTION MADE IN
CABINET DECISION & RESOLUTION OF GOVT OF INDIA**

No.38/37/8-P&PW(A) dated 29.08.2008-Para 5.1.47

**Vide DOP&PW OM No 38/37/08-P&PW (A) dated 1.09.2008 (Page38 of OA) and
Distortion as per OM DOP&PW OM No 38/37/08-P&PW (A) dated 03.10.2008
(See Table in Para 25 of CAT Judgment in OA 655-2010)**

<p align="center">Resolution No.38/37/8-P&PW(A) dated 29.08.2008-Para 5.1.47</p>	<p align="center">1st Distortion as per OM DOP&PW OM No 38/37/08-P&PW (A) dated 1.09.2008 (Page38 of OA)</p>	<p align="center">2nd distortion as per OM DOP&PW OM No 38/37/08- P&PW (A) dated 03.10.2008</p>
<p>The fixation as per ii above will be subject to the provision “that the revised pension, in no case, shall be lower than <u>50% of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the prerevised pay scale from which the pensioner had retired.</u>”</p>	<p>The fixation as per ii above will be subject to the provision “that the revised pension, in no case, shall be lower than <u>50% of the (sum of the) minimum of the pay in the pay band plus (and) the grade pay (thereon) corresponding to the prerevised pay scale from which the pensioner had retired.</u></p>	<p>The Pension Calculated at 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] plus grade pay would be calculated (i) 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. For example, if a pensioner had retired in the pre-revised scale of pay of Rs 18400-22400, the corresponding pay band being Rs 37400-67000 and the corresponding grade pay being Rs 10000 pm, his minimum guaranteed pension would be 50% of Rs 37400+Rs 10000 (i.e. Rs 23700)</p>
	<p align="center">Strike out are deletions and bold letter addition</p>	<p align="center">Strike out are deletions and bold letters addition</p>

ANNEXURE II - A

DENIAL OF EQUAL FITMENT BENEFIT TO PENSIONERS AND SERVING EMPLOYEES

(BY N.P. Mohan, Ex CE/ Railways & Working President, RSCWS)

1. 6th CPC in para 5.1.47 of its recommendations relating to 'Fitment benefit to past pensioners' (accepted by Union Cabinet) aimed at identical amelioration in the pension and pay of serving employees by

recommending equal fitment benefit to both. In para 11.33 of the Summary of Main Recommendations, it is also stated that "Fitment formula recommended for serving employees to be extended in case of existing pensioners/family pensioners ". The Commission never intended to create a divide between pre and post 2006 pensioners on account of variation in their pension retiring from the same post/grade at the minimum of pay scale. With this end in view, the Commission recommended that ;

- However, in order to maintain the existing modified parity between present and future retirees, it will be necessary to allow the same fitment benefit as is being recommended for the existing Government employees. The Commission, accordingly, recommends that all past pensioners should be allowed fitment benefit equal to 40% of the pension. *(Tables were accordingly issued vide para 4.1 of DOP OM of 1/9/08 wherein basic pension drawn on 1-1-2006 was increased by 40% for all and termed as consolidated pension working out to 2.26 times of basic pension).*
- It was further laid down that ;

"The fixation as per this table 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 prerevised pay scale from which the pensioner had retired. To this extent, a change would need to be allowed from the fitment shown in the fitment table".

The above stipulation makes it clear that pension worked out as per fitment table cannot be less 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 pensioner had retired.

2. The objective of above accepted recommendations has been frustrated in the implementation orders issued by DOP. The operative orders issued vide OM dated 3/10/2008 (minimum of the pay in the PB to be taken as min. of the pay in the PB irrespective of the pre revised scale of pay) has not only reduced the legitimate pension of pre 2006 pensioners by delinking it from the post/scale one has retired from but also created difference in the fitment benefit which was intended to be the same for serving employees and the pensioners. This has been quantified in the enclosed Table
3. The table gives the %age rise in pay & pension taken at the minimum level of the pre revised scales:
 - For pensioners in PB 1, increase in pension is 21.5% whereas pay for employees increases by over 32%.
 - For pensioners in PB 2, increase in pension is mostly 21.5% whereas an increase in pay for employees is 33 to 45%.
 - For pensioners in PB 3, increase in pension is mostly 21.5% whereas an increase in pay for employees is 32 to 35%.
 - For pensioners in PB 4, the %age difference of increase between pay & pension is nil or marginal (about 8%) except in one isolated case of S 29 where increase in pension is only 38% compared to pay which is 60%.
 - Equal Fitment benefit is evident for pensioners & serving employees in scales 30 to 34 where pre revised scales do not fall in a PB and have been replaced by a revised pay scale. Incidentally, %age increase in pay/pension is the highest - 81.2 % in S 31.

4. It

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.....uld be
seen that the recommended equality in fitment benefit by the Commission is jeopardized by and large
in all scales except S 30 to 34.

5. The objective of Equal Fitment Benefit can only be achieved in all pay bands only if the pension is based on the minimum of the pay in the PB corresponding to the pre revised pay scale from which the pensioner had retired (as per accepted recommendations by CABINET) and not the minimum pay of the PB as per misinterpreted operative orders of OM dated 3-10-2008.

ANNEXURE II B

VARIATION IN %AGE RISE OF PENSION & PAY DUE TO MISINTERPRETED ORDERS OF DOP

A	B	C	D	E	F	G	H	I	J
Existing Pay Scales as per 5th PC	Rev-ised Pay Band & Revised Pay Structure	Pension as on 1-1-06	Consolidated pension (DOP OM dt. 1/9/08)	Pension of Pre-2006 retirees (50% of PB & GP)	%age increase in Pension on 1-1-06 (better of cols. D & E with C)	Existing Pay on 1-1-06	Pay on 1-1-06 as per Fixation Table	%age increase in Pay (col. G & H)	Pension of Post-2006 retiree (based on col. H)
S-4(2750-4400)	PB-1 5200-20200+1800	2558	3500	3500	36.8	5115	7330	43.30	3665
S-5(3050-4590)	PB-1 5200-20200+1900	2837	3500	3550	25.1	5673	7780	37.14	3890
S-6(3200-4900)	PB-1 5200-20200+2000	2976	3616	3600	21.5	5952	8060	35.42	4030
S-7(4000-6000)	PB-1 5200-20200+2400	3720	4520	3800	21.5	7440	9840	32.26	4920
S-8(4500-7000)	PB-1 5200-20200+2800	4185	5085	4000	21.5	8370	11170	33.45	5585
S-9 (5000-8000)	PB-2 9300-34800+4200	4650	5650	6750	45.2	9300	13500	45.16	6750
S-10 (5500-9000)	PB-2 9300-34800+4200	5115	6215	6750	32.0	10230	14430	41.06	7215
S-11(6500-6900)	PB-2 9300-34800+4200	6045	7345	6750	21.5	12090	16290	34.74	8145
S12(6500-10500)	PB-2 9300-34800+4200	6045	7345	6750	21.5	12090	16290	34.74	8145
S-13 (7450-11500)	PB-2 9300-34800+4600	6928	8419	6950	21.5	13857	18460	33.22	9230
S-14 (7500-12000)	PB-2 9300-34800+4800	6975	8475	7050	21.5	13950	18750	34.41	9375
S-15 (8000-13500)	PB-2 9300-34800+5400	7440	9040	7350	21.5	14880	20280	36.29	10140
New scale Group A entry) (8000-13500)	PB-3 15600-39100+5400	7440	9040	10500	41.1	14880	21000	41.13	10500
S-16,(9000)	PB-3 15600-39100+5400	8370	10170	10500	25.4	16740	22140	32.26	11070
S-17(9000-9550)	PB-3 15600-39100+5400	8370	10170	10500	25.4	16740	22140	32.26	11070
S-18(10325-10975)	PB-3 15600-39100+6600	9601	11666	11100	21.5	19205	25810	34.39	12905
S-19 (10000-15200)SS	PB-3 15600-39100+6600	9300	11300	11100	21.5	18600	25200	35.48	12600
S-20 10650-15850)	PB-3 15600-39100+6600	9905.12	12035	11100	21.5	19809	26410	33.32	13205
S-21(12000-16500) (JAG)	PB-3 15600-39100+7600	11160	13560	11600	21.5	22320	29920	34.05	14960
S-22 (12750-16500)	PB-3 15600-39100+7600	11858	14408	11600	21.5	23715	31320	32.07	15660
S-23(12000-18000)	PB-3 15600-39100+7600	11160	13560	11600	21.5	22320	29920	34.05	14960
S-24 (14300-18300)	PB-4 37400-67000+8700	13299	NA	23050	73.3	26598	46100	73.3	23050
S-25 (15100-18300)	PB-4 37400-67000+8700	14043	NA	23050	64.1	28086	48390	72.3	24195
S-26 (16400-20000)	PB-4 37400-67000+8900	15252	NA	23150	51.8	30504	48590	59.3	24295
S-27(16400-20900)	PB-4 37400-67000+8900	15252	NA	23150	51.8	30504	48590	59.3	24295
S-28 (14300-22400)	PB-4 37400-67000+10000	13299	NA	23700	78.2	26598	47400	78.2	23700
S-29 (18400-22400)	PB-4 37400-67000+10000	17112	NA	23700	38.5	34224	54700	59.8	27350
S-30 (22400-24500)	HAG 67000-79000	20832	NA	33500	60.8	41664	67000	60.8	33500
S-31 (22400-26000)	HAG+ Scale 75500-80000	20832	NA	37750	81.2	41664	75500	81.2	37750

S-32 (24050-26000)	HAG+ Scale 75500-80000	22367	NA	37750	68.8	44733	77765	73.8	37750
S-33 (26000)(fixed)	Apex 80000 (Fixed)	24180	NA	40000	65.4	48360	80000	65.4	40000
S-34 (30000)	Cab. Sec. 90000 (Fixed)	27900	NA	45000	61.3	55800	90000	61.3	45000