

Note: - Union of India and Anr vs. Central Government SAG and Ors. –
Proceedings dated 07.05.2012

Mr. Nidesh Gupta, Senior Advocate, commenced his arguments for the Respondent, and submitted the following points: -

1. Mr. Gupta stated that he had two broad submissions:
 - a. Reading of the 6th Pay Commission Recommendation, as accepted by the Central Government, would show that the order of the CAT is correct.
 - b. Supreme Court has held in various cases that classification based on “Pre-Post Date of Retirement” is bad in law.
2. Mr. Gupta submitted that only ‘modified parity’ was sought by the pre-2006 pensioners, and not absolute parity.
3. Mr. Gupta submitted that Post-2006 ‘Serving’ employees will benefit and get much more after implementation of the CAT order, and that it does not affect them adversely.
4. With reference to the notification dated 29.08.2008 and page 121 of the Paper-book, Mr. Gupta submitted to the Court that as per the recommendation of the 6th Pay Commission, the pay-band recommended for S-24 was 15, 600-39, 100. However, the Central Government placed S-24 in the band (37, 400 – 67000).
5. Mr. Gupta submitted that only with reference to S-28 and S-29, the Pay Commission had recommended ‘More than 37, 400-67000), but the Central Government placed S-28 and S-29 in the band (37, 400-67000).
6. Thus, by the above submission, Mr. Gupta sought to show the Court that S-28 and S-29 were clearly prejudiced and were placed in a category lower than that which was recommended, whereas the Post/Grades below S-29, (S-24 onwards) have been upgraded, and given more than that which was recommended.
7. Mr. Gupta proceeded to show the Hon’ble Court that the terms used in Para 5.1.47 of the Resolution dated 29.08.2008 were “...shall in not case be lower than 50% of the **sum of the pay in the pay band** and the grade pay thereon corresponding to the **prevised** pay scale from which the pensioner had retired.”

8. Mr. Gupta proceeded to emphasize that the term “Minimum of the Pay in the Pay Band” is not the same as “Minimum of the Pay Band” , as was the effect of the clarificatory notification struck down by CAT.
9. ***Mr. Gupta stated that the term “Minimum of the Pay in the Pay Band... corresponding to the pre-revised pay scale from which the Pensioners had retired” would necessarily mean the ‘Minimum Pay’ given in the pay band, i.e. Rs. 44, 700/-, and thus the pre-2006 pensioners would be entitled to use Rs. 44, 700/- in the formula for calculation of pension provided. Mr. Gupta submitted that this would form ‘modified parity’, as defined by the Pay Commission, as a post-2006 person continuing after 01.01.2006, would in any case be entitled to a minimum pay of Rs. 44, 700/-, and if and when he/she would retire, his/her pension would be calculated on the pay last drawn by him, which shall necessarily be equal to or more than Rs. 44, 700/-. Thus, the parity achieved would be ‘modified parity’.***
10. Mr. Gupta submitted that even the Govt. realized that the interpretation of OM dated 01.09.2008 will lead to the above interpretation, and thus issued the ‘clarificatory OM’, to rectify their mistake.
11. Mr. Gupta bolstered the above argument by stating that the Pay Commission had never recommended ‘37, 400’ for S-29 level, and had instead recommended ‘39, 200’ in the first place.
12. Mr. Gupta argued that the term “Minimum Pay in the pay band” would correspond to Rs. 44, 700/- and the same thus must be used in the formula provided.
13. Mr. Gupta referred to the submission of Mr. Chandhioke that the OM was pertaining to ‘Fixation of Pay’ and not ‘Fixation of Pension’. Mr. Gupta rebutted the above submission by stating that the fixation of Pension for even Pre-2006 pensioners has been worked out on the basis of the same OM pertaining to ‘Revision of Pay’, and thus it was applicable to Pre-2006 pensioners as well.
14. The Hon’ble Court, before adjourning the matter to the next date of hearing, observed that the word ‘corresponding” as used in 5.1.47 of the notification dated

29.08.2008 and 4.2 of the OM dated 01.09.2008 were only used to determine the pre-revised scale, and not the 'pay' in that pre-revised pay scale.

15. The Hon'ble Court ordered that the contempt application of the Respondent before the CAT shall remain as not pressed till further orders.

16. Mr. Nidesh Gupta shall continue his submissions on 21.05.2012.