

SALIENT FEATURES OF THE JUDGMENT OF CAT (CHANDIGARH BRANCH)-23 March, 2012

The Chandigarh Branch of C A T, delivered its judgment in the cases filed by Association of IA&AD / Posts. (1) OA No 509/CH/2011 (2) OA No 811/CH/2011 and (3) OA No 45/HR/2012. Shri Manohar Lal, Advocate, appeared on behalf of all the applicants in the above O As.

The respondents:

- (1) Union of India, Min of P P G & P (Dept of P & PW) through its Secretary,
- (2) Secretary, Govt of India, Min of Finance (Dept of expenditure),
- (3) Comptroller & Auditor General of India
- (4) Secretary, Govt of India, min of Telecommunications & Information technology, dept of Posts,
- (5) Chief Post master General, Punjab circle, Chandigarh and
- (6) Chief Post Master General, Haryana circle, Ambala.

The coram ;

Hon'ble Mr justice S D Anand, member (J) and Hon'ble Mr Khushiram member (A).

The three OAs have been disposed by this common order as common questions of facts and law are involved in these OAs. The applicants are Central Govt Pensioners Association and individual pensioners, who have filed these OAs making out a case that those who retired prior to 1.1.2006, and those who retired after this date should not be differentiated as per law laid down by the Apex court in the case of Union of India & Another versus SPS Vains (Retired) & Ors, (2009 (1) R S J Page 5) and the said discrimination amounts to violation of Article 14 of the Constitution. They further contended that it is desirable to grant complete parity in pension to all pensioners irrespective of the date of their retirement..... that parity was maintained in the fixation of pension on acceptance of the pay of 4th Pay report and 5th CPC on 1.1.1996. ... as per the instructions issued, the consolidated pension under 5th CPC shall not be less than 50% of the minimum pay in the post held by the pensioner at the time of retirement. It was also averred that that 6th CPC effective from 1.1.2006 did not recommend that of even pre-1996 pensioners be updated by notional fixation of their pay as on 1.1.1996 by adopting the same formula as for serving employees nor it recommended absolute parity between pre-2006 pensioners and post 2006 pensioners. On 1.9.2008, 6th CPC continued the system of modified parity (by equating the pension at least 50% of the minimum of the revised pay scale plus grade Pay), but the 6th CPC revised the pay scale with effect from 1.1.2006 in such a way that no benefit would accrue to majority of pensioners. On 2.9.2008, the govt issued O M linking of full pension with years of qualifying service to be dispensed once an employee renders minimum qualifying service of 20 years, pension shall be paid at 50 % of the emoluments or average emoluments of last ten months, whichever is beneficial to him. This provision has been given effect from 1.1.2006 only and according to the applicants, this is contrary to the settled principle of law in the case of V Kasturi versus Managing Director SBI (1999 (L&S) page 78). The Association of pensioners representations to the govt / Anomaly Committee to remove disparity between pre-2006 and post -2006 retirees..... and the govt has not considered the demand of parity between pre and post 2006 retirees. Therefore , they have filed this O A praying for the following reliefs:

(i) Applicants may be allowed to file a single O A.

(ii) Action of respondents in not extending parity of pension between pre-2006 and post-2006 pensioners be quashed and set aside being illegal, arbitrary, unjust and discriminatory offending article 14 of the Constitution of India.

(iii) Respondents be directed to extend to the applicants (pre-2006 pensioners) absolute parity in pension with post-2006 pensioners of Govt of India with effect from 1.1.2006 with all consequential benefits.

The respondents contested the claim of the applicants by citing various reasons and points as also in exercise of power under Article 77 of the Constitution of India for taking the

policy decision to revise the provisions for determination of pay of the govt servants with effect from 1.1.2006, which has resulted in higher pension of prospective pensioners.

(After considering the points and arguments put forward by the learned counsels on behalf of the applicant and the respondents, and examining the relevant documents, the Hon'ble Bench of the CAT concluded as per final paras below)

12 We have considered the rival submissions and have gone through the pleadings as well as original record produced before us at the time of final hearing.

13 The contention of the applicants for differentiation of pre-2006 and post 2006 retirees notwithstanding the right of the government to introduce new schemes or to withdraw the existing schemes are policy matters which cannot be gone into by the courts and the Tribunals. However, since the similar matter has been decided by the full bench of the Principal bench, CAT , vide judgment dated 1-11-2011 in OA No 655 of 2010 and other connected OAs , we are bound by the decision of the full bench unless it has been upset by the higher judicial dispensation. The Full bench has directed the respondents to re-fix the pension of all pre-2006 retirees with effect from 1.1.2006 based on the resolution dated 29.8.2008 and in the light of observations made above, in the preceding part of the order. Therefore, we have no option but to allow these three OAs in terms of the same order and direct the respondents to re-fix the pension of the applicants in these OAs without any discrimination between the two set of retirees.

14 All these OAs are disposed of in the above terms. The respondents are directed to re-fix the pension and pay the arrears to the applicants within a period of four months from the date of receipt of copy of this order. No costs.

Sd/-
(KHUSHIRAM)
MEMBER (A)

Sd/-
(JUSTICE S D ANAND)
(MEMBER (J))