

STATUS OF THE CASES OF PRE 2006 PENSIONERSS IN VARIOUS COURTS :
AS ON 01.05.2011 (Compiled by M L Kanaujia).

S. N.	BEING HEARD BY	PETITION NO. & YEAR OA /WPC	LEAD PETITIONER	NEXT DATE FIXED FOR HEARING	REMARKS. (Details appended below this table)
1	CAT-PB Delhi	OA 3079/2009	LR Khatana	19.05.2011	For hearing
2	CAT-PB Delhi	OA 201/2010	M L Gulati	19.05.2011	For hearing
3	CAT-PB Delhi	OA 306/2010	D L Vohra	19.05.2011	For hearing
4	CAT-PB Delhi	OA 507/2010	PPS Gambhir	19.05.2011	For hearing
5	CAT-PB Delhi	OA 937/2010	s30 pensioners	19.05.2011	For hearing
6	CAT-PB Delhi	OA 2087/2009	Ran Vir Singh	19.05.2011	For hearing
7	CAT-PB Delhi	OA 655/2010	s29 pensioners	19.05.2011	For hearing
8	CAT-PB Delhi	OA 2101/2010	CG Pensioners	19.05.2011	For hearing
9	CAT Hyderabad	OA 568/2010	s29 Dr. Kotra		For hearing
10	CAT Hyderabad	OA/2010 Clubbed	s26 Dr. Kotra		For hearing
11	CAT Hyderabad	OA 2413/2009	AJ Gurushanker		For hearing
12	CATernakulam	OA 834/2010	s29 &s26 DRDO		For hearing
13	Lucknow HC	Ser.Ben.203/2010	s29 UP Officers	04.04.2011+1 wk	For hearing
14	Delhi HC	WP(C)3359/2010	s29,s26 Ex.ParaMil.	07.07.2011	For hearing
15	Haryana HC	CWP19641/2009	RK Agarwal (s29)	02.08.2011	For hearing
16	Haryana HC	CWP19642/2009	Satish Bhalla (s29)	02.08.2011	For hearing
17	Haryana HC	CWP3452/2010	O P Kapur (s29)	16.05.2011	For hearing
18	Haryana HC	CWP12638/2010	M L Kansal (s29)	16.05.2011	For hearing
19	Haryana HC	CWP20725/2010	RK Sehgal (s29)	16.05.2011	For hearing
20	Haryana HC	CWP20726/2010	R K Bali (s29)	16.05.2011	For hearing
21	Haryana HC	CWP20727/2010	B K Jain (s29)	16.05.2011	For hearing
22	Haryana HC	CWP20753/2010	CK Gupta (s29)	16.05.2011	For hearing
23	Supreme Court	WP(Con) 64/2009	SPS Vains M.Gen.	02.05.2011	For hearing
24	AFT-PB Delhi	OA 24/2010	Lt.Com.AvtarSingh	DOJ 14.09.2010	Appeal allowed.
25	AFT-PB Delhi	OA 270/2010	Sq.Ldr. VK Jain	DOJ 14.09.2010	Appeal allowed.
26	AFT-PB Delhi	OA 139/2009	Lt.Col.PK Kapur	DOJ 30.06.10	Appeal allowed.
27	AFTChandigarh	OA 277/2010	Romesh Chand	DOJ 01.11.2010	Appeal allowed.
28	AFTChandigarh	OA 312/2010	OP Singh	DOJ 01.11.2010	Appeal allowed.
29	AFT Chandig	OA 313/2010	MS Minhas	DOJ 01.11.2010	Appeal allowed.
30	AFTChandigarh	OA 314/2010	YS Nijjar	DOJ 01.11.2010	Appeal allowed.
31	AFTChandigarh	OA 325/2010	Dildar Singh Sahi	DOJ 01.11.2010	Appeal allowed.
32	AFTChandigarh	OA 326/2010	Gurlochan Singh	DOJ 01.11.2010	Appeal allowed.
32	AFTChandigarh	OA 327/2010	Gurmeet Singh	DOJ 01.11.2010	Appeal allowed.
33	AFTChandigarh	OA 445/2010	Balwant Singh	DOJ 01.11.2010	Appeal allowed.
34	AFTChandigarh	OA 476/2010	Karam Chand	DOJ 01.11.2010	Appeal allowed.
35	AFTChandigarh	OA 257/2010	Jagdish Chandar	DOJ 25.11.2010	Appeal allowed.
36	AFTChandigarh	OA 409/2010	N N Sud	DOJ 25.11.2010	Appeal allowed.
37	AFTChandigarh	OA 410/2010	HS Tongue	DOJ 25.11.2010	Appeal allowed.
38	AFTChandigarh	OA 521/2010	GS Kang	DOJ 25.11.2010	Appeal allowed.
39	AFTChandigarh	OA 522/2010	SS Matharu	DOJ 25.11.2010	Appeal allowed.
40	AFTChandigarh	OA 346/2010		DOJ 25.11.2010	Appeal allowed.
41	AFTChandigarh	OA 728/2010		DOJ 25.11.2010	Appeal allowed.
42	AFTChandigarh	OA 100/2010	SPS Vains M.Gen.	DOJ 04.03.2010	Appeal allowed.
43	CAT Patna	OA	MMP Sinha	DOJ 28.05.2010	Appeal Dismissed.
44	CAT Delhi	OA 1732 / 2010	Ram Murti Raina	DOJ 25.05.10	Appeal allowed.
45	CAT Mumbai	OA 780/2009 + 8	Dr. KR Munim	DOJ 22.02.2011	Appeals dismissed.

46	HC Patna	CWJC10757/2010	MMP Sinha, s30	22.04.2011	Admitted.
47	Supreme Court	T.P.(C) No.56/2007	UOI & Ors. Vs NK Nair & Ors.	06.05.2011	Final disposal matter.

Detailed Remarks :

Item 1 to 8 : These cases are being heard all together. Initially, Govt. Counsel took time at several occasions on some pretext or other and gained time. The last hearing 16.03.2011 was fixed with final warning to the Govt. Counsel that no further time would be given and case would be heard straight away. On 16.03.2011 the CAT Mumbai Judgment (DOJ 22.02.2011) was mentioned wherein Pensioners plea of striking down of cut off date of 1.1.06, point to point fixation of pension and inclusion of NPA while computing revised pension were declared bereft of merit by the CAT Mumbai and case dismissed. Shri Nidehsh Gupta, Advocate of Petitioners, argued that CAT Mumbai case was different than ours where modified parity has been prayed for which was recommended by the SCPC vide para 5.1.47 and which was approved by Union Cabinet and Notified by Govt. vide MOP, DOP&PW Resolution dated 29.08.2008. After hearing, the case was adjourned for next hearing on 13.04.2011. CAT Mumbai case is based on arguments given in hon.ble Supreme Court Judgment of march 2008 in case of Govt. of AP Vs. N. Subbaranayudu. Shri Nidehsh Gupta, Advocate of Petitioners is expected to give his further plea with thread bare examination of CAT Mumbai Judgment as compared to Petitioners case. The case was adjourned on 13.04.11 for 28.04.11 but heard on 29.04.11 and finally heard and it was felt that the issue involved is serious and therefore, decided to be transferred to Full Bench of the CAT-Principal Bench for further hearing on 19.05.11.

Item 9 to 10 : Clubbed cases. Details awaited. Dr. Kotra has returned from foreign tour and now perusing the case. Date of next hearing is not yet known.

Item 11 : Govt. Counter was received. Rejoinder was given. Next date of hearing not yet fixed.

Item 12 : No further date yet fixed for hearing.

Item 13 : This case was listed in Lucknow High Court several times in the past, as per directives given by the Hon.ble Supreme Court, but after hearing, has now been "admitted" on 01.03.2011 with direction that Govt. should submit Counter within two weeks and Petitioners then submit Rejoinder in further two week. On 04.04.11 Hon.ble Devi Prasad Singh J and Hon.ble SC Charausia J ordered : "As prayed by the learned Counsel for the Petitioners, a week's time is allowed to file rejoinder affidavit. "

Item 14 : Affidavit submitted by Petitioners with copies of Memorandum of Association, Rules and Regulations, Names of Office bearers and Executive Committee etc as required by the Hon. Court . On 01.04.11, Govt. Advocate dealing with the case, failed to turn up. Instead a new Govt. Advocate turned up and informed that the earlier one has become member of some tribunal and he would now not be able to come back. The new Advocate then, sought the time to study the case. New date fixed is 07.07.11.

Item 15 to 17 : Argument already started and would continue in next hearing onwards.

Item 18 : Nothing is known about the date for next hearing. Details awaited.

Item 19 to 22 : Argument already started and would continue in next hearing onwards.

Items 24 and 25 : These cases pertain to pre 2006 Rtd. Majors, Sqd. Ldrs. and Lt. Com. from three wings of Defence Forces. Their appeal was "allowed with direction to respondents i. e. UOI to fix/refix the pension of all the petitioners on the basis of minimum of the pay in pay band i.e. Rs. 23,810/- and release all other benefits to them within four months from the date of receipt of this order ." As per latest

information Govt. has submitted an SLP in Supreme Court and Pensioners, too have submitted a CAVEAT petition. Case would be heard first for “admission”. No listing/No date of hearing fixed yet. by the hon.ble Supreme Court.

Item 26 : Disability Pension allowed without cut off date of 01.01.2006 equally to all pensioners.

Items 27 to 42 : Appeal allowed by the AFT with direction to Govt. to fix revise pension and arrange payment giving 4 months time. No further progress is known.

Item 43 : Shri MMP Sinha, an s30 retiree, petitioned for fixation of revised pension on point to point basis without any regard to cut off date of 1.1.06 or higher pay scale. His appeal was dismissed by CAT Patna. Shri MMP Sinha pleaded his own case.

Item 44 : Shri Ram Murti Raina, an s30 retiree, petitioned that his application for higher pension @ 38500 (instead of 33500 already fixed) on the basis of point to point fixation without any regard to cut off date of 1.1.06 should be forwarded by Railway Board to DOP for action. His appeal was allowed accordingly. Nothing further is known about this case.

Item 45 : Dr. Munim petitioned that their pension should be fixed without having any regard to cut off date of 1.1.06 and while doing so, the NPA (Non practicing allowance paid to Doctors) should also be included. The CAT Mumbai dismissed this position on the ground that both the demands are bereft of any merit. CAT Mumbai Judgment has observed :

18. The applicants could have complained of discrimination only if a benefit had been introduced retrospectively by fixing a cut-off date arbitrarily; thereby dividing a single homogeneous class into two groups and subjecting them to different treatments. That is not the case here. The date 01.01.2006 for extending the benefit of pay revision has been fixed by expert body like the Pay Commission. In a catena of decisions, the Hon'ble Apex Court has held that the date is fixed by the executive authorities keeping in view the economic conditions, financial constraints and many administrative and other attending circumstances and, therefore, it is expected from Courts/Tribunals to exercise and maintain judicial restraint in matters relating to legislative and executive domain. In this context, it is pertinent to refer to the decision of the Hon'ble Supreme Court in the case of Government of Andhra Pradesh & others Vs. N.Subbarayudu & others, [2008 (4) SLR 136], relevant paras of which are quoted below - 5. In a catena of decisions of this Court it has been held that the cut off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. This Court is also of the view that fixing cut off dates is within the domain of the executive authority and the Court should not normally interfere with the fixation of cut off date by the executive authority unless such order appears to be on the face of it blatantly discriminatory and arbitrary. 6. No doubt in D.S.Nakara & others Vs. Union of India, 1983 (1) SCC 305, this Court had struck down the cut off date in connection with the demand of pension. However, in subsequent decisions this Court has considerably watered down the rigid view taken in Nakara's case (supra). ¶

19. In N. Subbarayudu (supra), the Hon'ble Supreme Court was dealing with the case of Lecturers in Private College. The age for superannuation was reduced from 60 to 58 years by amendment of the Education Code in 1993. Some retiree Lecturers preferred a Writ Petition challenging the cut-off date 01.11.1992 fixed by the Government for the purpose of pension as arbitrary and discriminatory. The Hon'ble High Court allowed the Writ Petition and on being challenged the same before Hon'ble Supreme Court, the judgment of Hon'ble High Court was reversed.

19.1 It is evident from the reading of above paras 5 and 6 of the judgment of Hon'ble Supreme Court in N. Subbarayudu that in the ordinary course the Tribunal shall not interfere in the matter of a cut-off date unless the applicants make out a case of glaring discrimination and violation of the principle of equality as envisaged under Articles 14 and 16 of the Constitution of India. It is also

evident from the said judgment of the Hon'ble Supreme Court that rigidity of the ratio of D.S. Nakara (Supra) has been considerably diluted in a catena of subsequent judgments by Hon'ble Supreme Court itself. Therefore, the Tribunal has to maintain judicial restraint in matters relating to the legislative or executive domain.

20. Furthermore, the provisions of the CCS (Pension) Rules are rank-neutral and class-neutral. In cases of all the retirees, pension is basically determined as per the provisions of Rule 49 of the CCS Pension Rules read with the provisions of Rules 33 and 34 thereof which have been reproduced above. That has been done in the case of the applicants. As such there is no case of any discrimination. Also, there is no provision in the Pension Rules for extending the benefit of pay revision retrospectively and, hence, the pay revision which has become effective from 01.01.2006 cannot be ipso facto and in toto made applicable to the present applicants, who have retired prior to 01.01.2006.

22. In fact, as discussed hereinabove, several decisions of the Hon'ble Apex Court have gone to the extent of saying that whenever the Government or an authority frames a Scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the date of superannuation. As such any revised scheme in respect of post-retirement benefits, if implemented with a cut off date, cannot be held to be unreasonable and irrational in the light of Article 14 of the Constitution. It is neither arbitrary nor discriminatory. It shall not amount to 'picking out a date from the hat'. Whenever a revision takes place, a cut-off date becomes imperative because the benefit has to be allowed within the financial resources available with the Government.

Item 46 : Shri MMP Sinha, an s30 retiree, petitioned CAT Patna for fixation of revised pension on point to point basis without any regard to cut off date of 1.1.06 or higher pay scale. His appeal was disallowed by CAT Patna. Shri MMP Sinha, who pleads his own case, has now gone in appeal to Patna High Court against CAT Patna judgment. His appeal has been admitted on 25.03.2011. Govt. Counter is awaited. Case came up for hearing on 22.04.11 when hon.ble Justice T. Meena Kumari and Justice Akhilesh Chandra ordered : “Let the matter be listed before appropriate Bench for hearing after taking due permission of Hon’ble the Chief Justice.”

Item 47 : COURT NO. 12; HON'BLE MR. JUSTICE AFTAB ALAM, HON'BLE MR. JUSTICE R.M. LODHA. PART-A MISCELLANEOUS MATTERS I.A., CMPS, CRLMPS ETC 43. I. A. NO. 9 IN T.P.(C) No.56/2007, UNION OF INDIA & ORS. MR. D.S. MAHRA VIA A/N-H Vs. N.K. NAIR & ORS. GP.CAPT.KARAN SINGH BHATI 106, 0, 0 S.(1801) (FOR MODIFICATION / DIRECTION MR. VISHWA PAL SINGH OF RECALL THE ORDER DATED MR. AJAY KUMAR 08.03.2010 AND OFFICE REPORT) (FOR FINAL DISPOSAL) NOT TO BE LISTED BEFORE : 95, 0, 0 WITH I.A.NO.1 IN W.P (C) No.34/2009 K.K. ROHTAGI & ORS. MR. PRAVEEN JAIN X ADJD-O Vs. UNION OF INDIA & ORS. PETITIONER-IN-PERSON 95,106, 0 S.(3900) (FOR DIRECTION) (FOR FINAL DISPOSAL) PART-B FINAL DISPOSAL MATTERS.

The case had come up for hearing on 25 Apr 2011 in the court of Justice Aftab Alam & Justice RM Lodha. The UOI have filed the affidivit as asked by the court. The Solicitor General was not available for presenting the case as he was busy with a case in another court. The case has been now listed for 06 May 2011.

As compiled by M L Kanaujia.

