

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
PRINCIPAL BENCH, NEW DLEHI

ORIGINAL APPLICATION NO. 655 OF 2010

**IN THE MATTER OF :**

Central Government SAG (S-29) Pensioners' Association  
... APPLICANT

VERSUS

Union of India & Anr. ... RESPONDENTS

PAPER BOOK  
(FOR INDEX KINDLY SEE INSIDE)

NEW DELHI  
DATED :

TARUN GUPTA  
ADVOCATE  
D-4/1, VASANT VIHAR  
NEW DELHI – 110 057

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### **SYNOPSIS AND LIST OF DATES**

That by way of the present Application, the Applicants before this Hon'ble Tribunal are impugning Office Memoranda (OMs) dated 1.9.2008, 3.10.2008, 14.10.2008 and 11.2.2009 issued by Ministry of Personnel, Pensions and Pensioners Welfare, Department of Pensions and Pensioners Welfare (DOP & PW), whereby the petitioners herein had been discriminated against and the respondents herein have acted in a manner which is completely violative of the settled law laid down by the Hon'ble Supreme Court of India in various judgments. Briefly stated, the grievance of the applicants herein, who belong to Fifth Central Pay Commission (FCPC) S-29 (18400-22400) Senior Administrative Grade is that these officers who had retired prior to 1.1.2006 are being given pension at a far lower rate than those who have retired from the same grade after 1.1.2006. The said action on the part of the respondents is in complete violation of the settled law laid down by the Hon'ble Supreme Court of India in various judgments, including the judgment in D.S. Nakara vs. Union of India [ (1983) 1 SCC 305] and also the recent judgment of the Hon'ble Supreme Court of India in Union of India Vs. SPS Vains [(2008) 9 SCC 125]. In addition, the respondents have, by making changes in the recommendations of the Sixth Central Pay Commission (SCPC), included those officers who were belonging to S-24, S-25, S-26, S-27, in Pay Band 4. As per SCPC recommendations Pay Band 4 comprised SAG and HAG scales from S 28 to S32 and Pay Band 3 included JAG scales from S 24 to S 27 along with other lower scales ranging from S 16 to S 23. At the stage of acceptance of SCPC Report, scales S31 and S 32 were taken out of Pay Band 4 by carving out a separate scale and scales S 24 to S 27 (originally in Pay Band 3) were clubbed in Pay Band 4 along with S 28 and S 29. It is to be noted that officers in scale S-24 etc. were always junior to

and were reporting to S-29 officers. Further, they had always received pay at a lower scale than S-29 officers. The Government, at the stage of acceptance of Report, clubbed officers belonging to scales S 24 to S 27 in Pay Band 4 contrary to the recommendations of the Sixth Central Pay Commission. Hence, whereas the Sixth Central Pay Commission recommended Pay Band 3 of Rs.15,600-39,100/- + Grade Pay of Rs.7,600/- to 8400 for S 24 to S 27 officers, the S-29 officers have been recommended by the Sixth Central Pay Commission Rs. 39200-67,000/- + Grade Pay of Rs.9,000/-. However, by clubbing all of the aforementioned Scales from S-24 onwards up till S-29 a common Pay Band named Pay Band 4 ranging from Rs.37,400-67,000/- plus Grade Pay has been created. Pay band 4 as originally recommended by SCPC encompassed Senior Administrative Grade Officers and HAG only but the Govt. by making changes have made it a conglomerate of different grades including Junior Administrative Grade Officers. The Applicants herein have been discriminated by clubbing S-29 with those officers who are of a far lower scale and who regularly report to S-29. The further illegality which has been perpetrated is that those Officers of S-29 grade who had retired prior to 1.1.2006 would now effectively receive pension of only fifty per cent of minimum of Pay Band 4 plus Grade Pay, which in fact results in the equivalent of the S-24 officers who too receive the same pension, with only a very nominal difference in grade pay. Hence, the entire service which has been rendered by S-29 officers in their particular scale has been virtually negated and made almost equivalent to the service rendered by officers belonging to the lower scales of pay viz. S-24 onwards till S-28. Moreover, the Applicants would receive less than post 1.1.2006 retirees from S-25, S-26, S-27 grades, whereas they are entitled

to higher pension than all (i.e. pre and post 1.1.2006 retirees) S-24, S-25, S-26, S-27 and S-28 retirees.

The above mentioned illegality is further apparent from the fact that serving S-29 officers drawing minimum salary of Rs.18400 in scale 18400-22400 (same as applicants) would receive a minimum pay of Rs.44,700 plus Grade Pay of Rs.10,000/- and consequently will receive pension of Rs.27350/- based on the above-mentioned figures. In the case of S 29 officers retiring before 1-1-2006, the pay is considered as 37400 (minimum of Pay Band) + Grade Pay of 10000. Thus, there is a wide disparity between pre and post 2006 S-29 officers, apart from the pre-2006 S-29 officers being compared now with S-24 to S-28 officers insofar as pension is concerned.

<u>DATE</u>	<u>EVENT</u>
05.10.2006	The Government of India constituted Sixty Central Pay Commission to examine the principles which should govern the structure of pension, death-cum-retirement gratuity, family pension and other terminal or recurring benefits having financial implications to the present and former Central Govt. employees appointed before January 1, 2004.
24.03.2008	Concept of Pay Bands and Grade Pay covering the existing (pre-revised) 34 pay scales.  The concluding portion of para 1.2.25 reads as: “All the recommendations are inter-connected and need to be treated as an organic whole. Partial implementation of these recommendations will destroy the underlying spirit, break the common thread and bring in several anomalies and inconsistencies. <u>The Report would, therefore, need to be</u>

treated in a holistic manner and the recommendations considered as a package”.

29.08.2008 The pre-revised scales S 31 and S32 were taken out of PB4 and new scale HAG+ (75500-80000) was created.

S 24 to S 27 (essentially JAG posts) upgraded from Pay Band 3 (15600-39100) to Pay Band 4 (37400-67000) - a substantial increase.

Pay Band 4, as recommended by SCPC was 39200-67000 comprising S 28 to S 32(SAG & HAG).

Now Pay Band 4 is 37400-67000 (*reduction of 1800 – probably to accommodate scales S 24 to S 27*) and comprises scales S 24 to S 29.

Pensionary benefits contained in Chapter 5 - para 5.1.47 were accepted , key features being as under :

1. Maintain modified parity between present and future retirees i.e. Pre 2006 and Post 2006
2. Same fitment benefits to past pensioners as recommend for existing employees and pensions to be fixed as per table annexed.
3. With a view to maintain ‘Modified Parity’ above, the fixation as per this table 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 prerevised pay scale from which the pensioner had retired. To this extent change allowed from the fitment shown in the fitment table.
4. No modification was made in respect of the aforesaid para and was accepted as it is by GOI vide item 12 of the statement annexed to the above Resolution dated 29.8.2008.
5. As per the above accepted recommendations, the pension of pre-2006 pensioners of S-29 works out to Rs 27350 i.e.50% of (Minimum of the pay in the Pay band 44,700+ 10,000 GP=54,700)

Pay in the pay band is defined in CCS (Revised pay) Rules 2008 in sub-para 3(5) “meaning pay drawn in the running pay bands specified in Column 5 of the first Schedule”.

30.08.2008 Tables for fixation of revised basic pay in the revised pay structure as per above Rule issued as annexure to Ministry of Finance OM for each stage in each of the pre-revised 34 pay scales.

For the purpose of pension of pre-2006 pensioners, the notional pay is obviously to be based on the minimum of the pay in pay band as given in the tables.

01.09.2008 DOP OM dated 1.9.2008 issued for implementing the accepted recommendations of the Commission. Para 4.2 of OM was worded differently as follows:-

“4.2 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) minimum of the pay in the pay band (AND) *plus* the grade pay (THEREON) corresponding to the pre-revised pay scale from which the pensioner had retired. In the case of HAG + and above scales, this will be 50% of the minimum of the revised scale .....

The words “sum of” and “thereon” were deleted, and the word plus was inserted.

*This it appears was intentionally done to create confusion among implementing Authorities and force them to ask for clarification.*

Thereupon, the petitioners individually and through their associations submitted a number of representations to the various authorities, including, The President of India, Prime

Minister of India, that minimum of the pay in the pay band should be taken as the same shown in the tables of revised basic pay issued by MOF OM dated 30.8.2008.

- 25.09.2008 The noting in file F.No. 38/37/08-P&PW(a) (Pt.I) at (ii) dated 25/9/08 relevant to para 4.2 of OM of 1-9-2008 is initiated by an Under Secretary mentions of two alternatives- i) delinking pension with the scale from which a pensioner has retired by introducing a new concept of pay in the pay band being irrespective of the pre-revised scale of pay and the other ii) Corresponding to the scale from which a pensioner retired (which was recommended by SCPC and accepted by the Cabinet. In the proposed amendment by the Under Secretary, he has himself chosen the first alternative i.e. (i) irrespective of the scale from which a pensioner retired.
- 26.09.2008 Contrary to the Resolutions of 29/08/2008 and the Implementation orders vide OM dated 01/09/2008, the Central Pension Accounting Office (CPAO), (Vide letter CPAO/Tech/6thCPC/Misc/1265) issued instructions to all nodal officers of the authorized banks that "The fixation of the pension will be based on the provisions of the above OM of 01/09/2008 including the requirement that the revised pension shall be in no case lower than the fifty per-cent minimum of the pay band plus grade pay corresponding to the pre-revised pay scale from which the pensioner had retired." These instructions were also placed in their web site.



The CPAO had unilaterally/ emphatically used the expression “minimum of the pay band” instead of the original expression “minimum of the pay in the pay band as per DOP OM of 1-9-2008”.

03.10.2008 The Department of Pension and Pensioners Welfare issued a clarification/modification in regard to para 4.2 of the OM dated 1.9.2008 by adding and deleting certain words which completely changed its meaning as per the Commission’s recommendation as accepted by the Government. While the Resolution dated 29.8.2008 was issued with Cabinet approval, the clarification/modification was issued by the Department without reference to the Cabinet but with a formal file endorsement by the MOS (PP). This clarification/modification has resulted in substantial reduction of pension payable to pre-2006 pensioners in terms of the government decision on the Commission’s recommendation and denial of modified parity to pensioners as originally conceded by 5thCPC, recommended by SCPC in para 5.1.47 and accepted by the Government.

A table annexed with this OM indicates the pension of pre-2006 pensioners of S-29 as Rs 23, 700 i.e. 50% of (Minimum of the Pay band 37,400+ 10,000 GP=47,400).

It needs to be clarified that ‘Minimum of Pay Band’ and ‘Minimum of the Pay in the Pay Band’ are not one and the same. While ‘Minimum of the Pay Band’ is one and the same for all the pre-revised pay scales bunched in a particular pay band, ‘Minimum of the Pay in the Pay Band’ is

different for each pre-revised pay scale. It is the revised basic pay as per pay Fixation Tables (referred above) corresponding to minimum of the pre-revised pay scale. In the case of petitioners, Minimum of the pay band is Rs.37,400 while the Minimum of the Pay in the Pay Band is Rs.47400. As per Cabinet decision, 'Minimum of the Pay in the Pay Band' is to be considered for calculation of pension and not the 'Minimum of Pay Band' so as to retain modified parity as was granted with effect from 1.1.96.

14.10.2008 A table of revised pension based on the aforesaid clarification was again annexed with the OM dated 14.10.2008 specifying in the foot note -1, that pension can not be less than (50% of the sum of the minimum of pay band and grade pay).

21.10.2008 The DOP, in response to the appeals for remedy, made by the pre-2006 pensioners, had sent the following proposal to DOE/MOF in their File NO 38/37/08-P&PW(A)(pt- I) vide note dated 20/21.10.2008 for ensuring a minimum pension for the pensioners in each of the pre-revised pay scales as:

“THE REVISED PENSION IN NO CASE SHALL BE LOWER THAN FIFTY PERCENT OF THE SUM OF THE REVISED PAY IN THE RUNNING PAY BAND AND THE GRADE PAY THEREON CORRESPONDING TO THE MINIMUM BASIC PAY IN THE PRE-REVISED PAY SCALE FROM WHICH THE PENSIONER HAD RETIRED AND ARRIVED AT IN ACCORDANCE WITH THE FITMENT TABLES GIVEN IN ANNEXURE I OF THE CENTRAL CIVIL SERVICES (REVISED PAY) RULES 2008”. (RTI source)

Ministry of Finance, Department of Expenditure, Implementation Cell turned down this proposal vide Note

No. 7.32/4/2009-IC dated 27.01.09, on the ground that if accepted, it would entail substantial financial implications.

10.11.2008 Similarly, appreciating the appeals of the aggrieved pensioners and the disparities in revised pensions of the pre-2006 pensioners, MOS (E,B&I) sent a DO letter no 3534 dated 10.11.2008 to the Hon'ble Prime Minister regarding the same and the Hon'ble PM in turn had sought the views of the DOP&PW in the matter.

19.01.2009 In addition, the MOS (P &PW) in his DO letter B No 6/09 dated 19th Jan 2009 to the MOS (E, B & I) had emphatically reiterated that clarifications of 3.10.2008 have created disparities within pre-2006 pensioners and between pre- and post-2006 pensioners and had sought for the approval/ decision on the proposal sent by DOP&PW to DOE on 21.10.2008 which would not only redress the grievance of the pre-2006 pensioners but would also be in line with the modified parity allowed to the pre- 1996 pensioners on the implementation of the recommendations of 5<sup>th</sup> CPC.

11.02.2009 The Department of Pension and Pensioners Welfare vide their OM No. 38/37/08-P&PW (A) dated 11.2.2009 have rejected all such representations without even discussing the points made in the aforesaid representations and giving any reason for such rejection.

16.07.2009 A Committee comprising 6 Secretaries headed by Cabinet Secretary was appointed by the Govt. to look into the issue 'One Rank One Pension (OROP).

Based on the their recommendations made in para (v) of the SUMMARY OF RECOMMENDATIONS pointing out the need to address the issue of disparity in the pension of pre and post-1-1-2006 pensioners at the level of Lt.General/equivalent/additional Secretary and equivalent civilian categories, a separate pay scale starting from Rs.67000 and going up to Rs. 79000 may be created.

Govt. has issued a Gazette Notification on 16-7-2009 amending GSR 527 (E) and providing against S30 pre-revised pay scale of 22400-24500 an equivalent Revised pay band/pay scale of 67000-79000. Pre-revised pay scale of S 30 (22400-24500) was earlier included in Pay Band 4 along with S 29 (18400-22400) and S 28 to S 24. This has been implemented vide Ministry of Finance, DOE(IC) F.No. 1/1/2008-IC dated 21 07 09 and Ministry of Personnel, DOP&PW OM No. 38/37/08-P&PW (A) Pt. 1 dated 20 08 09 raising the pension of pre- 2006 retiree of S 30 pre-revised pay scale of 22400-24500 from 24700 to 33500.

Disparity in S 30 has been removed by a corrective action of introducing a separate scale of 67000-79000 and restoring modified parity to pre-2006 pensioners by fixing pension at 50% of 67000 (minimum of revised scale).

Selective/partial remedy for removal of disparity in pension and ensuring modified parity in only one scale of S 30 when the same is prevalent in all other scales is against the principle of justice and fairness.

Hence, present Original Application filed.

## ORIGINAL APPLICATION NO. OF 2010

Central Government SAG (S-29) Pensioners' Association  
Through its Secretary  
Shri Sant Bhushan Lal  
C-5/21, Grand Vasant  
Vasant Kunj  
New Delhi – 110 070  
... Applicant

1. Union of India  
Through Secretary to the Government of India  
Department of Pensions and Pensioners Welfare  
Ministry of Personnel, Public Grievances and Pensions  
Lok Nayak Bhawan  
Khan Market  
New Delhi 110 003.
2. Secretary to the Government of India  
Department of Expenditure  
Ministry of Finance  
North Block  
New Delhi.

## DETAILS OF APPLICATION

That by way of the present Application, the Applicants before this Hon'ble Tribunal are impugning Office Memoranda (OMs) dated 1.9.2008, 3.10.2008, 14.10.2008 and 11.2.2009 issued by Ministry of Personnel, Pensions and Pensioners Welfare, Department of Pensions and Pensioners Welfare (DOP & PW), whereby the petitioners herein had been discriminated against and the respondents herein have acted in a manner which is completely violative of the settled law laid down by the

Hon'ble Supreme Court of India in various judgments. Briefly stated, the grievance of the applicants herein, who belong to Fifth Central Pay Commission (FCPC) S-29 (18400-22400) Senior Administrative Grade is that these officers who had retired prior to 1.1.2006 are being given pension at a far lower rate than those who have retired from the same grade after 1.1.2006. The said action on the part of the respondents is in complete violation of the settled law laid down by the Hon'ble Supreme Court of India in various judgments, including the judgment in D.S. Nakara vs. Union of India [ (1983) 1 SCC 305) and also the recent judgment of the Hon'ble Supreme Court of India in Union of India Vs. SPS Vains [(2008) 9 SCC 125]. In addition, the respondents have, by making changes in the recommendations of the Sixth Central Pay Commission (SCPC), included those officers who were belonging to S-24, S-25, S-26, S-27, in Pay Band 4. As per SCPC recommendations Pay Band 4 comprised SAG and HAG scales from S 28 to S32 and Pay Band 3 included JAG scales from S 24 to S 27 along with other lower scales ranging from S 16 to S 23. At the stage of acceptance of SCPC Report, scales S31 and S 32 were taken out of Pay Band 4 by carving out a separate scale and scales S 24 to S 27 (originally in Pay Band 3) were clubbed in Pay Band 4 along with S 28 and S 29. It is to be noted that officers in scale S-24 etc. were always junior to and were reporting to S-29 officers. Further, they had always received pay at a lower scale than S-29 officers. The Government, at the stage of acceptance of Report, clubbed officers belonging to scales S 24 to S 27 in Pay Band 4 contrary to the recommendations of the Sixth Central Pay Commission. Hence, whereas the Sixth Central Pay Commission recommended Pay Band 3 of Rs.15,600-39,100/- + Grade Pay of Rs.7,600/- to 8400 for S 24 to S 27 officers, the S-29 officers have been recommended by the Sixth Central Pay Commission Rs. 39200-67,000/- +

Grade Pay of Rs.9,000/-. However, by clubbing all of the aforementioned Scales from S-24 onwards up till S-29 a common Pay Band named Pay Band 4 ranging from Rs.37,400-67,000/- plus Grade Pay has been created. Pay band 4 as originally recommended by SCPC encompassed Senior Administrative Grade Officers and HAG only but the Govt. by making changes have made it a conglomerate of different grades including Junior Administrative Grade Officers. The Applicants herein have been discriminated by clubbing S-29 with those officers who are of a far lower scale and who regularly report to S-29. The further illegality which has been perpetrated is that those Officers of S-29 grade who had retired prior to 1.1.2006 would now effectively receive pension only the fifty per cent of minimum of Pay Band 4 plus Grade Pay, which in fact results in the equivalent of the S-24 officers who too receive the same pension, with only a very nominal difference in grade pay. Hence, the entire service which has been rendered by S-29 officers in their particular scale has been virtually negated and made almost equivalent to the service rendered by officers belonging to the lower scales of pay viz. S-24 onwards till S-28. Moreover, the Applicants would receive less than post 1.1.2006 retirees from S-25, S-26, S-27 grades, whereas they are entitled to higher pension than all (i.e. pre and post 1.1.2006 retirees) S-24, S-25, S-26, S-27 and S-28 retirees.

The above mentioned illegality is further apparent from the fact that serving S-29 officers drawing minimum salary of Rs.18400 in scale 18400-22400 (same as applicants) would receive a minimum pay of Rs.44,700 plus Grade Pay of Rs.10,000/- and consequently will receive pension of Rs.27350/- based on the above-mentioned figures. In the case of S 29 officers retiring before 1-1-2006, the pay is considered as 37400 (minimum of Pay Band) + Grade Pay of 10000. Thus, there is a wide



disparity between pre and post 2006 S-29 officers, apart from the pre-2006 S-29 officers being compared now with S-24 to S-28 officers insofar as pension is concerned.

A true copy of each of the impugned OMs dated 1.9.2008, 3.10.2008, 14.10.2008 and 11.2.2009 are annexed herewith and marked as **Annexure A-1** to **Annexure A-4** respectively.

## 2. JURISDICTION OF THE TRIBUNAL

The Applicants herein state that the subject matter of the orders against which redressal has been sought fall within the jurisdiction of this Hon'ble Tribunal.

## 3. LIMITATION

It is stated that the present O.A. is being filed within the period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

## 4. **FACTS OF THE CASE**

4.1 That the applicants herein are all retired S-29 officers belonging to various Central Services Group 'A' like Indian Railways, CPWD, MES, Ordnance Factories, DRDO, GSI etc., having retired prior to 2006 and who have formed an Association. Applicant is the Association through its Secretary. It is stated that the present OA is being filed in a representative capacity to seek redressal against the illegal, arbitrary, unjust and discriminatory action on the part of the respondents in the implementation of the recommendations of the Sixth Central Pay Commission thereby causing grave miscarriage of justice to the applicants herein vis a vis their counterparts who have retired subsequent to 1.1.2006 as also their juniors

and subordinates who will retire after 1.1.2006. A copy of the resolution/authorization dated 6.2.2010 permitting the applicant to file the present OA is annexed herewith and marked as **Annexure A-5**.

4.2 For the purpose of appreciating the submissions of the Applicants herein, a brief historical perspective is set out herein:-

For the purpose of understanding the hierarchy in the Central Civil Services, the relevant Fifth Central Pay Commission (FCPC) scales, as given in para 3.3.5 of Sixth Central Pay Commission (SCPC) report are:

Junior Time Scale (JT S):	Rs.8000-13500 ..... (S.-15)
Senior Time Scale (STS):	Rs.10000-15200..... (S-19)
Junior Administrative Grade (JAG):	Rs.12000-16500.....(S-21)
Non-Functional Selection grade (NFSG)	Rs.14300-18300....(S-24)*
Senior Administrative Grade (SAG):	Rs.18400-22400....(S-29)*
Higher Administrative Grade (HAG):	Rs.22400-24500.... (S-30)*
Higher Administrative Grade-I (HAG I):	Rs.24050-26000)...(S-32)
Apex Scale	Rs.26000 (fixed)....(S-33)*

Note: \*In Central Ministries, these scales corresponded to the positions of Director (S24), joint Secretary (S29),Additional Secretary (S30) and Secretary (Apex Scale), in the hierarchy in the ascending order.

4.3. Both in the Central Civil Services and the Central Ministries, the above hierarchy remains unaltered despite merger of a few scales in the same Pay Band suggested by SCPC, distinguished only by the marginal differential in the suggested Grade Pay. It would be appropriate to consider the historical difference in the pay scales for the above distinct levels in the hierarchy since the Third Central Pay Commission:

	III PC		IV PC		V PC		VIPC		After changes made by the Govt. at the acceptance stage and later	
NFSG	1800-2000		4500-5700		14300-18300		15600-39100 plus GP 7600		37400-67000 plus GP 8700	
SAG	2500-2750		5900-6700		18400-22400		39200-67000 plus GP 9000		37400-67000 plus GP 10000	
	Difference over NFSG at Min. & Max. of the Scales:									
	+700	+750	+1400	+1000	+4100	+4100	+23600	+27900	Nil in Grade	
							Plus 1400 in GP		1300 only in GP	
HAG	3000		7300-7600		22400-24500		39200-67000		67000-79000	
	Difference over SAG at Min. & Max. of the Scales:									
	+500	+250	+1400	+900	+4000	+2100	Nil in Grade		+19600	+2000
							+2000 GP		Including. GP	
Apex Scale	3500		8000		26000		80000		80000	
	Difference over SAG at Min. & Max. of the Scales:									
	+1000	+750	+2100	+1300	+7600	+3600	+31800	+4000	+32600	+3000

The up gradation of above four scales in terms of ratio (considering the minimum of scale) from IIICPC to FCPC has been more or less uniform. The resultant up gradation as of now after acceptance of SCPC Report compared to FCPC is 3.22, 2.58, 3.0 and 3.1 for S 24, S29, S 30 and Apex scale respectively. The worst hit is S 29.

#### 4.4. Constitution of Sixth Central Pay Commission (SCPC)

The Government of India constituted Sixth Central Pay Commission on 5-10-06. TOR inter alia included- to examine the principles which should govern the structure of pension, DCRG, family pension and other terminal or recurring benefits having financial implications to the present and former Central Govt. employees appointed before January1,2004. The Report was submitted on 24-3-08. The distinctive feature of this report was the concept of 4 Pay Bands and Grade Pay covering the existing 32 pay scales except two Apex scales 33 & 34 of Secretary and Cabinet Secretary with fixed pay.

The concluding portion of para 1.2.25 of Report reads as- **“All the recommendations are inter-connected and need to be treated as an organic whole. Partial implementation of these recommendations will destroy the underlying spirit, break the common thread and bring in**

**several anomalies and inconsistencies. The Report would, therefore, need to be treated in a holistic manner and the recommendations considered as a package”.**

Despite the above caution, there have been selective improvements in the higher scales (S 24 to S 27 and S 30 to S 32) and consequential pensions thereof with extra financial implications at the cost of denial of even the MODIFIED PARITY in scales S 29 to S 4. This is explained in detail in Para 4.11 below.

#### 4.5 Definition of Pay:

Putting it in mathematical terms, Pension is a FUNCTION of Pay. Unlike the pay which was related to a pay scale **all along, right from Third CPC (1973) onwards till 1-1-06** (SCPC) , it is now contained in the Pay Band (PB)- a concept devised by SCPC merging existing 34 scales into 4 PBs and 2 Apex scales as per the Report.

- i) Pay in the pay band is defined in CCS (Revised pay) Rules 2008 in subpara 3(5) at page 32 “meaning pay drawn in the running pay bands specified in Column 5 of the first Schedule” (*P 42*). **It is to be noted that there is no separate definition of pay for pensioners as distinct from serving employees.**
- ii) Implementation orders of Government’s decision on the recommendations of SCPC regarding revised pension of pre-2006 pensioners issued vide DOP OM of 1/9/2008 make a mention of minimum of the pay in pay band in para 4.2 of OM. (Annexure 1).
- iii) Application of Revised pay rules for the purpose of fixation of pay in the revised pay structure as on 1-1-2006 has been given in the

Annex-1 of Ministry of Finance (DOE) O.M. F.No.1/1/2008-IC dt. 30<sup>th</sup> August, 2008 marked as **Annexure A-6**. This annexure contains Pay Fixation Tables (Termed as Fitment Tables on page 4) and it gives the revised basic pay for various pre-revised scales at every stage of increment taking into account the pay in the pay band and grade pay. Against every stage of increment in each of the pre-revised scales, the 1<sup>st</sup> col. gives pay in the pay band, 2<sup>nd</sup> is of grade pay and the Revised Basic Pay (sum of 1 & 2) is in last column.

- iv) Therefore, for the purpose of pension, the minimum of the pay in pay band as given above is to be considered. For the purpose of pension of pre-2006 pensioners, notional pay has to be arrived at by taking min. of the pay in the pay band i.e. 44700 in case of S 29 and GP of 10000 corresponding to the pre-revised pay scale. Accordingly, the pension should be  $(44700+10000)/2=27350$

#### 4.6 PENSIONARY BENEFITS:

These are dealt with in chapter 5.1 of SCPC Report and relevant

Para 5.1.47 dealing with Fitment benefits to the past pensioners is reproduced below.

“5.1.47 The Commission notes that modified parity has already been conceded between pre and post 1/1/1996 pensioners. Further, full neutralization of price rise on or after 1/1/1996 has also been extended to all the pensioners. Accordingly, no further changes in the extant rules are necessary. 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 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 revised pension as on 1/1/2006. This is consistent with the fitment benefit being allowed in case of the existing employees. A table (Annex 5.1.1) showing fixation of the pension of the existing pensioners in the revised dispensation consequent to implementation of the recommendations of this Commission has been prepared and should be used for fixing the revised pension of the existing pensioners. 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”.

#### 4.7 ACCEPTANCE OF RECOMMENDATIONS IN PARA 5.1.47 OF REPORT

“The above recommendations about the revised pension have been accepted by the Union Cabinet and notified in the Gazette of India: EXTRAORDINARY (305) vide Resolution No. 38/37/08-P&PW (A) dated 29<sup>th</sup> August, 2008.” A copy of the said resolution dated 29-8-2008 is annexed as **Annexure A-7**. Kind attention is invited to item 12 of the statement annexed to the aforesaid resolution. The relevant portion of the

recommendations in Para 5.1.47 of the Commission's Report quoted above in para 4.6 was accepted without modification. These are:

- i) Maintain Modified Parity between present and future retirees i.e. Pre-2006 and Post-2006. (*The concept of Modified parity was evolved by 5thCPC and it means that pension can, in no case, be less than 50% of the minimum of the corresponding 5th CPC revised pay scale from which the pensioner had retired*).
- ii) Same fitment benefit of 40% for pensioners as recommended for existing Govt. employees. This is also reiterated by Commission in para 11.33 of Summary of Main Recommendations which reads as “ *Fitment formula recommended for serving employees to be extended in case of existing pensioners/family pensioners*”. *It signifies that there was no intention to create any disparity between the serving employees and pensioners.*
- iii) To maintain 'Modified Parity' mentioned in (i) above, the Commission has recommended 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 retired. It is very clear from the portion underlined above that both of the two components i.e. minimum of the pay in the pay band and grade pay correspond simultaneously to the pre-revised pay scales. (*Deliberate attempt seems to have been made to isolate pay in the pay band from the corresponding revised pay scale progressively in DOP OMs of 1-9-2008 & 3-10-2008 mentioned in paras 4.8 (A) and 4.8(B) below*)

As per the stipulation in (iii) above, the revised pension of pre-2006 pensioners in terms of the recommendations of the Commission as adopted by Govt. in respect of minimum of the pre revised scales (modified parity) of S 29 along with other 5 scales included in PB 4 works out as under:-

Min of Pre revised Scale.	Pay in the Pay Band	Grade Pay	Revised Basic Pay (2 + 3) (Rs)	Pension 50% of (2 + 3) (Rs)
1	2	3	4	5
S-24 (14300)	37400	8700	46100	23050
S-25 (15100)	39690	8700	48390	24195
S-26 (16400)	39690	8900	48590	24295
S-27 (16400)	39690	8900	48590	24295
S-28 (14300)	37400	10000	47400	23700
S-29 (18400)	44700	10000	54700	27350

The first 4 columns of the above table have been extracted from the pay fixation tables annexed with MOF OM of 30<sup>th</sup> August, 2008 (referred to in para 4.5(iii) above). Revised pension of S 29 works out to Rs. 27350 which has been reduced to Rs. 23700 as per DOP OM of 3-10-2008 (para 4.8(B) below).

A copy of the OM dated 30<sup>th</sup> August, 2008, issued by the Government is annexed herewith and marked as Annexure A-6. A perusal of the said OM makes it clear that the pre-revised basic pay as also the Pay in the Pay Band along with grade pay of all the 34 pre-revised scales at each stage of increment was described in the said OM. In the case of S 24 officers the corresponding pay in the Pay Band against 14300/- is shown as 37400. In addition, Grade Pay of Rs.8, 700/- was



given totaling Rs.46, 100/-. Similarly, revisions concerning all the other pay scales were accepted by the aforementioned OM dated 30<sup>th</sup> August, 2008. The illegality which has been perpetrated in the present matter is apparent from the fact that whereas an officer who was in the pre-revised scale S-24 and receiving a pay of Rs.14,300/-, would now receive Rs.37,400/- plus grade pay of Rs.8700 and his pension would accordingly be fixed at Rs 23050 (i.e. 50% of 37400 pay plus grade pay Rs 8700) pursuant to the implementation of SCPC recommendations after 1.1.2006, a person belonging to the Applicant Association, who was drawing a pay of Rs.18,400/- or even Rs.22,400/- (maximum of scale) in the pre-revised S-29 scale will now be getting pension as only 23700 (i.e 50% of pay of Rs.37,400/- plus grade pay of Rs 10000) or Rs.25312/- (consolidated pension as per para 4.1 of OM dated 1.9.2008). There is only a very small marginal difference in the Grade Pay. However, the misinterpreted revised basic pay of Rs. 37400 has caused a grave miscarriage of justice since those officers who belong to a much higher grade have now been equated with those who were working under them in a lower rank/grade. It is further relevant to note that those officers belonging to S-29 who would retire after 1.1.2006 would, however, be placed in the revised pay scale differently. For instance, a person who was in the pre-revised pay scale of 18000-22400 (S 29) at Rs.18.400/- would now get Rs.44, 700/- in addition to Grade Pay of Rs.10, 000/- i.e. the revised basic pay of Rs.54, 700/-. A person who was in the pre-revised basic pay of Rs. 22400/- would now receive Rs. 51850/- plus Grade Pay of Rs.10,000/- i.e. the revised basic pay of Rs. 61850/-. However, a person who retired only one day prior i.e. on 31<sup>st</sup> December, 2005, even if he had received pre-revised pay of Rs.- 22400/- would now be placed in the revised pay of Rs.37,400/- only in addition to Grade Pay of Rs.10,000/-. Thus, the illegality which

has been committed in the present matter also relates to equating the pre-revised pay scale of Rs.18,400–22,400/- with the pre-revised pay scale of Rs.14,300-18300/-.

#### 4.8 INCONSISTENCY BETWEEN ACCEPTANCE OF RECOMMENDATIONS BY THE CABINET AND IMPLEMENTATION ORDERS ISSUED THEREOF BY THE MINISTRY OF P, PG&P-DOP & PW.

Acceptance of a recommendation by the Cabinet is inviolable and no change even by way of a dash or a comma is permitted. It is to be noted that accepted recommendations by the Cabinet as above have not been truly translated in the implementation orders issued subsequently thereby causing wrongful fixation of pension of Pre-2006 pensioners. This will be clear from the following 3 OMs issued by DOP & PW on the Revision of pension of Pre-2006 pensioners/family pensioners etc.:

A) DOP&PW O. M. F.NO38/37/08-P&PW (A) Dated 1<sup>st</sup> September, 2008

The accepted recommendation by the Cabinet of the concluding portion of para 5.1.47 of Report has been reproduced in a distorted manner vide para 4.2 in this O.M reproduced below:

*“4.2 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 minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. In the case of HAG+ and above scales, this will be fifty percent of the minimum of the revised pay scale.”*

A comparison of the language used by the DOP in para 4.2 of the above-mentioned OM with the Commission's recommendations would show that vital changes have been made in the above-mentioned OM.

These changes cannot be taken as inadvertent but appear deliberate to create confusion and force the implementing authorities to ask for clarifications. However, if the OM dated 1.9.2008 is read to mean that the words “corresponding to the pre-revised pay Scale from which the pensioner had retired” would cover both the earlier parts of the para 4.2, then no prejudice is caused to the applicants herein. However, if the said words are interpreted to cover only the Grade Pay, then the said OM is also to be challenged in the present application. However, the said discussion is only academic since even this OM dated 1<sup>st</sup> September, 2008 was subsequently superseded on 3.10.2008 (within one month); consequently rendering para 4.2 of the said OM dated 1.9.2008 of no consequence.

B) DOP&PW O. M. F.NO38/37/08-P&PW (A) Dated 3<sup>rd</sup> October, 2008

Within a month, however, DOP vide OM mentioned above issued clarifications/modifications in regard to Para 4.2 of the OM dated 1.9.2008. Relevant extract thereof, regarding the clarification/modification issued in respect of Para 4.2 of the OM dated 1.9.2008 is reproduced below.

Provision in the OM No. 38/37/08-P&PW (A) Pt. I dated 1.9.2008	Clarification / Modification
4.2 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 there on corresponding to the pre-revised pay-scale from which the pensioner had retired.	"The pension calculated at 50% of the minimum of pay in the pay band 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.10,000/- p.m. his minimum guaranteed pension would be 50%

	of Rs.37400 + Rs.10000 (i.e. Rs.23700).A statement indicating the minimum pension corresponding to each of the pre-2006 scales of pay is enclosed at Annexure".
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- i) It is significant to note that the wording of Para 4.2 of the OM dated 1.9.2008 as reproduced in the OM dated 3.10.2008 (*Left side of Table above*) does not tally with the language used in the OM of 1-9-2008.The language used, however, is the same as that of the recommendation of the Commission and the Government decision contained in the DOP resolution dated 29.8.2008. Evidently, the OM dated 3.10.2008 itself clearly shows that Para 4.2 of the OM dated 1.9.2008 was meant to have the same meaning as that of the Government decision reproduced in it (item at S. No. 12 of Resolution dated 29-8-2008). Hence, Para 4.2 of the OM dated 1.9.2008 needed to be interpreted accordingly.
- ii) It is to be noted that the expression corresponding to the pre-revised pay-scale from which the pensioner had retired in Para 4.2 as applicable both to minimum of the pay in pay band and grade pay has been changed under the garb of Clarification. No interpretation contrary to the recommendation of the Commission as adopted by the Government should be made by the Department at their own level as was sought to be done by them. Admittedly, the instructions issued vide OM dated 3.10.2008 were by way of modification and not by way of clarification as is evident from the heading of Column 2 of the said OM itself. It is well settled that addition or deletion of words is not permitted by way of clarification.
- iii) Notwithstanding the fact that the clarification/modification in the OM dated 3.10.2008 in respect of Para 4.2 of the OM dated 1.9.2008 is at complete variance with the accepted recommendation of the Cabinet and is, therefore, unauthorised, it has de-linked the pension of Pre-2006

pensioners from the scale from which one has retired and thus even the modified parity (conceded by SCPC and approved by Govt.) has been denied resulting into significant reduction in pension in almost all pay scales- the maximum being for S29 officers, as will be clear from the table annexed as annexure 9 referred to in para 4.9(i) below. That the intention was to hurt mainly pre-2006 S 29 pensioners is also reflected in the fact that in the clarification, the example of only this grade has been given. By the said modification the 'minimum of the pay in the pay band' has been sought to be substituted uniformly by the minimum of the pay band (Rs.37400) for pensioners retiring from all the scales included in the pay band 4, by unauthorised insertion of the words "(irrespective of the pre-revised scale of pay)". This is clearly evident from the Note 1 at the foot of Annexure to the OM dated 3.10.2008 which uses the words "*Minimum of Pay Band*" instead of "Minimum of the pay in the Pay Band" used in the recommendation of the Commission, the Government decision thereon, and even in the OM dated 1.9.2008.

- iv) Even with the unauthorized change of the word "minimum of pay in the pay band" being taken as minimum of the pay band, and the words "corresponding to the pre-revised pay scale from which the pensioner had retired" being taken to refer only to Grade Pay, as per the formulation of Para 4.2 in the OM dated 1.9.2008, the revised pension works out as follows :-

Pre-revised Scale	Minimum of Pay in the Pay Band	Grade Pay	Revised Pension (50% of 2)+3
1	2.	3.	4
S-29	37400	10000	28700

- v) Thus, Para 4.2 of the OM dated 1.9.2008 has been modified by its misinterpretation in the so-called clarificatory OM dated 3.10.2008 on account of the difference in its wording vis-à-vis the recommendation of the Commission and the Government decision thereon as also its wording as

reproduced in the OM dated 3.10.2008. However, if Para 4.2 of the OM dated 1.9.2008 is interpreted in any manner other than that envisaged in the Government decision on the Commission's recommendation as contained in Annexure 7, then such an interpretation, in fact, leads to a still higher amount of revised pension as brought out in (iv) above.

- vi) It needs to be clarified that 'Minimum of Pay Band' and 'Minimum of the Pay in the Pay Band' are not one and the same. While 'Minimum of the Pay Band' is one and the same for all the pre-revised pay scales bunched in a particular pay band, 'Minimum of the Pay in the Pay Band' is different for each pre-revised pay scale as indeed has been adopted while fixing the pay of serving officers belonging to different grades merged in PB 4 who will get the benefit of higher pension on retirement after 1.1.2006. If the minimum of the pay in the pay band was to mean minimum of the pay band, the learned august body like SCPC would have used the expression "minimum of the pay band" in place of former in their recommendations made in para 5.1.47 of their Report. It is the revised basic pay as per pay fixation tables (refer para 4.5 (iii) above) corresponding to minimum of the pre-revised pay scale and this was done to protect the interests of officers/pensioners from a higher grade being fixed at a higher stage in the Pay Band than officers from a lower grade merged in the same Pay Band. In the case of petitioners, Minimum of the pay band is Rs.37, 400 while the Minimum of the Pay in the Pay Band is Rs.44,700. As per Cabinet decision, 'Minimum of the Pay in the Pay Band' is to be considered for calculation of pension and not the 'Minimum of Pay Band' so as to retain modified parity as was granted with effect from 1.1.96.
- vii) The clarification/modification of OM quoted above resulted in a substantial reduction in basic pension of Pre-2006 pensioners. This gave rise to queries through RTI. Reply received by one of the pensioners along with the noting in the file is attached as **Annexure A-8**. It will be seen that:

i) In the reply dated 18<sup>th</sup> February, 2009 it is said "That the OM dated 3-10-2008 only clarifies the provision regarding pension of Pre-2006 pensioners and is not an amendment of the OM dated 1-9-2008. Approval of the Union Cabinet was not required/taken for issue of OM dated 3-10-2008 as it was only a clarification of provisions in OM of 1-9-2008".

a) From the noting pages it would be seen that:

The noting at (ii) dated 25/9 relevant to para 4.2 is initiated by an officer below the rank of a director (Probably U/S) mentions of two alternatives- i) delinking pension with the scale from which a pensioner has retired by introducing a new concept of pay in the pay band being irrespective of the pre-revised scale of pay and the other ii) corresponding to the scale from which a pensioner retired (which was recommended by SCPC and accepted by the Cabinet).

In the proposed amendment by the under secretary, he has himself chosen (i) i.e. irrespective of the scale from which a pensioner retired. Then follows the examination of various points, as stated in the noting, but there is no specific mention of any examination or the level at which it is done leading to the decision of choosing (i). This is nothing but an arbitrary and illogical proposal mooted out by a comparatively junior official with an AWARD by the same authority making the proposal which has gone through right up to the top without considered opinions of any of the seniors through whom the proposal was routed for the sanction of MOS (P&PW).

- It is not clear as to why (i) was chosen without any reasoning at any level with comparative merits and demerits when the same is in contravention to SCPC recommendations and changes the intent thereof which were accepted by Cabinet
- This being a modification of earlier orders and not clarification, required approval of the Cabinet which has not been taken. DOP is maintaining it as a clarification.

b) From the above reply through RTI, the only inference that can be drawn is that it is a one man's show to the detriment of lakhs of pensioners in utter disregard of the recommendations and acceptance by august bodies like PAY Commission and Union Cabinet resulting in **denial of Modified Parity conceded by SCPC.**

C) DOP&PW O. M. F.NO38/37/08-P&PW (A) Dated 14th October, 2008

DOP with their OM dated 14.10.2008 have merely annexed a table of revised Pension again based on Revised Pay Bands etc. The revised concordance table at Annexure I to the OM dated 14.10.2008 is the same as Annexure to the OM dated 3.10.2008 with the addition of Column 2 (about pay scales w. e. f. 1.1.1986). Moreover, Note 1 to the OM dated 14.10.2008 also shows that "*Minimum of Pay Band*" has been used for computing the pension instead of using "Minimum of the Pay in the Pay Band" as envisaged in the recommendation of the Commission, the Government decision thereon and even the OM dated 1.9.2008.

#### 4.9 Disparities in Pension of Pre & Post- 2006 Pensioners Resulting from Clarifications of DOP&PW OM dated 3rd October, 2008

- i) It is to be noted that the clarifications/ modifications, contained in the OM of 3rd October, 2008 (*Para 4.8(B) above*) have now totally changed the intent of Para 4.2 of OM dated 1.9.2008 inasmuch as that according to the accepted SCPC Recommendation, pension was to 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 pensioner had retired, whereas now it is changed to minimum of Pay Band (irrespective of the pre-revised scale of pay) plus the Grade Pay corresponding to the pre-revised pay scale. It is further pointed out that DOP & PW has clarified in their O.M. of even no. dated 16<sup>th</sup>/18<sup>th</sup> February, 2009 that modifications of 3rd October 2008 have been issued as a clarification and therefore, there was no need to obtain the approval of Union Cabinet. Authenticity of this major departure leading to the modifications of 3rd October 2008 without the approval of competent authority



is questionable. Because of this change in the method of calculation of pension for pre-2006 Pensioners, two major disparities have arisen as clearly illustrated in **Annexure A-9** (showing all scales from S 1 to S 34).

The disparities are :-

a) Firstly, the pension worked out in column 4 for Pre - 2006 pensioners - better of the two namely Consolidated pension (Para 4.1 of OM of 1<sup>st</sup> September, 2008) and as per clarifications of 3rd October, 2008 (50% of minimum of pay in PB plus GP) - and pension of Post -2006 pensioners retiring at the minimum of scale column 5 (50% of the sum of minimum of the pay in PB and GP) has been compared. Clearly there is an appreciable financial loss to Pre-2006 pensioners compared to similarly placed Post-2006 incumbents. Six pre-revised pay scales (S 24 to S 29) are grouped in Pay Band 4 (37400-67000) with Grade Pay varying from 8700 to 10000 corresponding to the pre-revised scale. A common figure of 37400 i.e. the minimum of Pay Band has been adopted for pension of all Pre-2006 Pensioners retiring from six different scales with different duties, accountability and responsibilities. However, in the case of Post-2006 pensioners, varying pay in the Pay Band (37400 to 67000) plus the Grade Pay corresponding to every pre-revised scale (Para 4.2 of O.M. 1<sup>st</sup> September, 2008) has been considered for working out pension.

b) Secondly, a much more glaring disparity and a paradoxical situation has arisen inasmuch as that a person junior in rank and retiring after 1-1-2006 gets a higher pension than Pre-2006 pensioner who has retired from a higher post/grade as indicated below:

- Pension in case of Pre-2006 S-29 works out to Rs 23,700(Column 4) whereas the pension of Post-2006

pensioner retiring at the minimum of lower scales of S-27 and S-26, works out to Rs 24,295 and S-25 to Rs 24,195. In other words, a junior retiring from four scales below gets a higher pension. If we were to consider the scales falling in the same hierarchy alone, then Scales S 29 and S 24 are to be compared because these two fall in the ladder of promotion channel in Railways, CPWD etc. A post-2006 Dy. CE or SE of S 24 retiring after 4 increments will be drawing Revised basic pay of Rs.48390( *Refer table at page 29 of Annexure 6 in Para 4.5(iii) above*) and his pension will be 24195 - more than 23700 of a pre-2006 retired CE from S 29.

- Similar paradoxical situation is also arising in many other cases as will be seen from column 7.

c) According to the interpretation adopted in OM dated 3.10.2008, basic pay has been fixed at minimum of the Pay Band-4 uniformly for pre-2006 pensioners retiring from all the pay scales now included in PB-4 ignoring the fact that they retired from Posts of different rank and Pay Scales. Because of this , the difference in pension of S 29 (highest in PB 4) and S 24 (lowest in PB 4) is  $23700 - 23050 = 650$  only whereas they have retired from two widely different scales namely 18400-22400 and 14300-18400- a difference of 4100 in their starting salary.

d) The resultant effect on the pension /family pension of Pre-2006 pensioners in 6 scales included in PB 4 caused due to unauthorized change in the language of the Government decision and consequent misinterpretation of the different wording of Para 4.2 of the OM dated 1.9.2008 with substantial lower pension causing huge financial loss is given below with a comparative table showing the pension as 50% of the revised basic pay (minimum of the pay in the pay band + grade pay thereon) corresponding to the

pre-revised scale payable in terms of the Commission's recommendation accepted by the government and as per annexure to the OMs dated 3.10.2008 and 14.10.2008 due to the modification and misinterpretation of Para 4.2 of OM dated 1-9-2008.

5th PC Scale s	As per correct interpretation of Para 4.2 of the OM dated 1.9.2008		As per misinterpretation in the OM dated 3.10.2008		Monthly Loss in Basic Pension	
	Pension (50% of revised Basic Pay)	Family Pension (30% of Revised Basic Pay)	Pension	Family Pension	Pension	Family Pension
1	2	3	4	5	6	7
S-24	23050	13830	23050	13830	0	0
S-25	24195	14517	23050	13830	1145	687
S-26	24295	14577	23150	13890	1145	687
S-27	24295	14577	23150	13890	1145	687
S-28	23700	14220	23700	14220	0	0
S-29	27350	16410	23700	14220	3650	2190

The maximum reduction in pension of Rs.3650 is in S 29.

- e) By applying different yard sticks for calculating the pension of two identical cases, namely minimum of the Pay Band in case of Pre 2006 pensioners and minimum pay in the Pay Band for Post 2006 pensioners, an anomalous situation has arisen as explained above.
- f) Furthermore, it needs to be pointed out here that the above mentioned disparity in pension amongst pensioners of equal rank does not exist in the top 5 scales from S 30 to S 34 because their pre-revised scales have been replaced by revised pay scales and pension fixed at 50% of the minimum of new scale ensuring MODIFIED PARITY to them. Such a disparity was also avoidable in the case of scales S 24 to S 29 if the original accepted recommendation of the SCPC at item 12 and notified in the Gazette of India: EXTRAORDINARY vide Resolution No.

38/37/08-P&PW(A) dated 29<sup>th</sup> August, 2008 (Annexure 7) ensuring MODIFIED PARITY were implemented while fixing the pension of Pre-2006 pensioners.

#### 4.10 Representations and Govt.'s Reply

- i) Aggrieved by the discriminatory policy adopted towards the pre-2006 pensioners in fixing their pension as per DOP OM of 3<sup>RD</sup> October, 2008, in contravention to the accepted recommendations of the Commission by CABINET, pensioners from all over the country individually and through Pensioners Associations appealed to the Prime Minister, Ministry of Personnel, Department of Pension, and Pensioners Welfare and other Ministries. A large number of appeals were received by the Govt. but all were summarily rejected vide Ministry of Personnel, Department of Pension, Pensioners Welfare OM No. 38/37/08-P&PW(A) dated 11.02.2009 on the ground that "These representations/references have been examined in consultation with Ministry of Finance. The instructions /clarifications issued in this regard are in consonance with the Govt. policy on the recommendations of 6th Central Pay Commission and no change is required to be made in this respect."
- ii) None of the representations made by individuals or the associations have been replied to directly or any speaking orders conveyed. In the absence of a speaking order on the various representations, a mere bald assertion in Para 3 of the said OM dated 11.2.2009 that "the instructions / clarifications issued in this regard are in consonance with the decision of the Government on the recommendation of the 6th Central Pay Commission" is clearly untenable. Moreover, the contention in Para 4 of the aforesaid OM that "The table in Annexure I of this Department's OM dated 14.10.2008 is based on the CCS (Revised Rules) 2008 which are applicable to the

employees in the service as on 1.1.2006 and no dispensation in this regard can be made in respect of Para 4.2 of this Department's OM dated 1.9.2008" is clearly falsified by the subject of the OM dated 14.10.2008 which is "implementation of Government's Decision on the recommendations of the Sixth Central Pay Commission – *Revision of pension of Pre-2006 Pensioners / Family Pensioners*".

- iii) The petitioners (CG SAG S 29 PA) have also sent representations vide letter dated 20.10.09 to Secretary DOP &PW and MOS(Pension) dated 14.10. 2009/10.11.09 and FM on 10.11.09 and lastly to PM ON 17.12.09 but no reply is received so far. PMO has since forwarded our representation to Secy D/O Pensions and pensioners welfare under M/O Pers, PG and pensions under PMO ID no.1/3/2010-PMP1/111730 dt 13.01.10. We had represented to Secy Anomaly committee on 21.09.2009 but no reply received from them.

#### 4.11 CONSEQUENCES OF DISREGARDING THE RECOMMENDATIONS OF COMMISSION AS A PACKAGE

SCPC had categorically stated that "All the recommendations are inter-connected need to be treated as an organic whole. Partial implementation of these recommendations will destroy the underlying spirit, break the common thread and bring in several anomalies and inconsistencies. The Report would therefore, need to be treated in a holistic manner and the recommendations considered as a package." However, disregarding this specific assertion by the CPC, the Government has tinkered with the recommendations with the following major changes:

- Up gradation of scales S 24 to S 27 (essentially JAG Posts) from PB 3 to PB 4.

- Taking out scales S 31 & S 32 from PB 4 to a new carved out scale of 77500-80000 designated as HAG+
- Taking out scale S 30 from PB 4 to a new scale HAG (67000-79000)

This has created serious distortions as brought out in the following paragraphs.

- NFSG scale has been upgraded from PB3 (15600-39100 plus GP 7600) to PB4, the same scale in which SAG officers have been placed with only a minor difference of Rs.1300 in GP. This is without any structural change in the hierarchy or level of responsibility or reporting channel.

- In the process, the minimum of the PB4 has been brought down from Rs.39200 to Rs.37400 (i.e. by Rs.1800 for SAG officers).

- While the GP of NFSG scale has been also increased by Rs.1100, the GP of SAG level officers has been increased by only Rs.1000, as a result of which even the difference in GP between NFSG and SAG level has been brought down from Rs.1400 recommended by VI CPC to Rs.1300.

- The net effect is SAG officers, whose minimum of the grade under V CPC was all along more than the maximum of the NFSG scale during III, IV and V CPCs, have been brought on par with the latter with only a minor difference of Rs.1300 in the grade Pay.

- On the other hand, HAG grade officers who were placed by SCPC in the same Pay Band as SAG level officers have been taken out from PB4 and placed in a separate scale of Rs.67000-79000, an increase of Rs.16800 as compared to SAG level officers as compared to CPC recommendations.

4.12. While serving officers in SAG level have been protected to a certain extent by being given the fitment benefit in PB4 at Rs.44700 at the minimum corresponding to Rs.18400 in V CPC scale, the interests of the Pre 1-1-2006 Pensioners have been completely ignored by changing the recommendation of the VI CPC in para 5.1.47. The VICPC had categorically recommended 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 pre-revised 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.” This recommendation was accepted by the Cabinet as no change was contemplated while granting approval vide Resolution dated 29-8-2008. However, subsequently DOP/MOF using clever language in the name of clarification without Cabinet approval completely changed the concept by substituting “minimum pay in the pay band plus grade pay” instead 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.”

4.13 The net impact of this is that:

- A much senior pre1-1-2006 retiree from pre-revised S 29 scale will get a basic pension of Rs.23700 (50% of Rs.37400 plus 10000) as compared to a much junior officer retiring after 1-1-2006 whose minimum pension shall be fixed at Rs.27350 (50% of the sum of minimum of Rs.44700 corresponding to the pre revised scale plus grade pay of Rs.10000).

- Even a much junior NFSG officer from S 24 scale having earned a few (four) increments in that scale and being fixed in PB 4 at the corresponding level but retiring after 1-1-2006 will get a much higher pension than a senior officer having retired from S29 scale before 1-1-2006.
- On the other hand, pre 1-1-2006 retirees from HAG (S 30) scale will be eligible to a much higher pension of a minimum of Rs.33500 as compared to pre 1-1-2006 retiree from S29 scale getting only Rs.23700, widening the gap to a staggering Rs.9800 as compared to only Rs.2000 as per earlier V CPC.

4.14. The above analysis clearly brings out that:

- Relativities between S 24, S 29 and S 30 grades were maintained, consistent with the hierarchy, until V CPC. This was because a uniform approach was adopted while revising all scales;
- Distortions started with VI CPC recommending only 4 Pay Bands, merging different scales in each Pay Band and then recommending marginal differential in Grade Pay to different levels in the hierarchy. The problem was seriously compounded by the Government tinkering with CPC recommended scales, while upgrading S 24 to S 27 from PB3 to PB4 in which, amongst others, S29 was also placed and, in the process, reducing the minimum pay thereof and taking out HAG officers and placing them in significantly higher pay scales widening the gap between S 29 officers on the one hand and S 30, 31 and S32 officers to unprecedented levels on the other.



#### 4.15 Realisation of Pension Disparity and Removal thereof for Only S 30

- i) A Committee comprising 6 Secretaries headed by Cabinet Secretary was appointed by the Govt. of India to look into the issue 'One Rank One Pension (OROP). Report of the Committee along with SUMMARY OF RECOMMENDATIONS is attached as **Annexure A-10**.

Based on the their recommendations made in para (v) of the SUMMARY OF RECOMMENDATIONS pointing out the need to address the issue of disparity in the pension of pre and post-1-1-2006 pensioners at the level of Lt. General/equivalent/additional Secretary and equivalent civilian categories, a separate pay scale starting from Rs. 67000 and going up to Rs. 79000 was proposed. Govt. has issued a Gazette Notification on 16-7-2009 amending GSR 527 (E) and providing against S 30 pre-revised pay scale of 22400-24500 an equivalent revised pay band/pay scale of 67000-79000. Pre-revised pay scale of S 30 (22400-24500) was earlier included in Pay Band 4 along with S 29 (18400-22400) and S 28 to S 24. This has been implemented vide Ministry of Finance, DOE(IC) F.No. 1/1/2008-IC dated 21 07 09 and Ministry of Personnel, DOP&PW OM No. 38/37/08-P&PW (A) Pt. 1 dated 20 08 09 raising the pension of pre- 2006 retiree of S 30 pre-revised pay scale of 22400-24500 from 24700 to 33500.

- ii) From the above, it would be seen that;
- a) There is an admission by the Govt. that disparity exists between pre & post 2006 pensioners retiring from scale S30.
  - b) Disparity in S 30 has been removed by a corrective action of introducing a separate scale of 67000-79000 and restoring modified parity to pre-2006 pensioners by fixing pension at 50% of 67000 (minimum of revised scale).
  - c) There is quantum rise in pension from 24700 to 33500.

iii) It is a matter of great concern that need for removing disparity in pension has been accepted by the Govt. only for S 30. No action is taken to remove this disparity in scale S-29 (the maximum of Rs. 3650 being in S 29) pointed out in col. 6 of Annexure 8. Such a partial treatment without alleviating the just grievance of pensioners from scale S-29 is unethical and smacks of discrimination and devoid of justice.

#### 5. GROUND FOR RELIEF FOR LEGAL PROVISION

A perusal of the facts as set out above clearly shows that the respondents have by the impugned orders caused grave and irreparable loss to the applicants herein. The action on the part of the respondents is arbitrary, discriminatory, illegal, unjust, unreasonable and unconstitutional and is violative of the principle of equality set out in Article 14 of the Constitution of India. The said action on the part of the Respondents is challenged, inter alia, on the following grounds which are urged without prejudice to one another:-

A. That the grounds set out herein below are in addition to the grounds which have already been described in detail in the preceding paragraphs.

B. That the Respondents have acted in an illegal and arbitrary manner and have violated Article 14 of the Constitution of India in discriminating between those who retired before and after 2006 from the S-29 grade. In this regard, reference may be made to the judgment of Hon'ble Supreme Court in D.S. Nakara vs. Union of India [ (1983) 1 SCC 305] and also the recent judgment of the Hon'ble Supreme Court of India in Union of India Vs. SPS Vains [(2008) 9 SCC 125]. Reference shall also be made to a

series of other decisions of the Hon'ble Supreme Court concerning this aspect of the matter during the course of hearing.

C. It is further settled law that the pension of a person on a higher post is to be higher than the pension of a person on the lower post. Reference in this regard to the judgments of the Hon'ble Supreme Court shall be made during the course of hearing. However, a perusal of the facts as set out in the preceding paragraphs shows that those persons belonging to the S-24 to S-28 grades who will retire after 1.1.2006 will receive higher pension than those persons belonging to the applicant category i.e. having retired from a higher post i.e. S-29 post but having retired prior to 1.1.2006.

D. The respondents have perpetrated various illegalities by disregarding the vital aspect namely the "corresponding to the pre-revised pay scale from which the pensioner had retired" in fixing pension contrary to the recommendations of SCPC and initially accepted by the Government in the Resolution of 29-8-2008 mentioned above. As a result, the members belonging to S 29 along with others from S 24 to S 28 grouped in Pay Band 4 have been equated and given a notional pay of 37400 (minimum of the Pay Band) as applicable to the lowest category of scale S 24. Detailed reference as made in the preceding paragraphs is reiterated herein.

E. That the respondents have also violated Article 14 in the manner described above by treating unequals as equals viz. by treating those belonging to S-29 category as equal even though they are far too senior than S-24 to S-28 category. The case of the applicants was considered by the then Minister of State for Finance and the said Minister wrote to the Prime Minister a letter dated 10<sup>th</sup> November, 2008, a copy of which is

annexed herewith and marked as **Annexure A-11**. In the said letter, the above stated position and illegality was clearly accepted and admitted by the Minister by stating that pre-2006 pensioners who retired from a higher post or pay scale would be getting less pension than the post 2006 pensioners retiring from a junior post or pay scale. It was further stated that the said disparity was causing wide spread concern amongst pre-2006 pensioners. It was further requested that their request should be considered sympathetically.

Thereafter, the concerned Minister of State in the Prime Minister's office and the Ministry of Personnel, Public Grievances and Pensions accepted the above-mentioned position in the letter dated 19<sup>th</sup> January, 2009, a copy of which is annexed herewith and marked as **Annexure A-12**. However, in spite of the aforementioned letters accepting the position, the fact remains that because of bureaucracy and red-tapism, no action has been taken thereon and the case of the applicants has not been accepted.

F. That the impugned action on the part of the respondents is also contrary to the specific recommendations of the expert body viz. the Sixth Central Pay Commission. Detailed reference made to the Sixth Pay Commission Recommendations in the preceding paragraphs may be read herein as the same is not being repeated herein for the sake of brevity. Special reference may be made to paragraph 1.2.25 wherein it has been clearly stated that the said report is to be treated in a holistic manner and the recommendations therein had to be considered as a package. However, a perusal of the subsequent events as mentioned in the above mentioned paragraphs clearly shows that the report has been completely distorted and various parts of the report have been picked up

and manoeuvred. Therefore, the report which was to be read in a holistic manner has been read piecemeal and distorted and varied depending on the influence exerted by various pressure groups. The impugned action is, therefore, arbitrary, unreasonable, irrational, unjust and liable to be quashed and set aside by this Hon'ble Tribunal.

G. As stated earlier, paragraph 4.2 of the OM dated 1.9.2008 uses the expression "corresponding" to the pre-revised pay scale from which the pensioner had retired. It is stated that the said expression is to cover both the preceding parts viz. "minimum of pay in the Pay Band plus the Grade Pay" and cannot be applied selectively only to "Grade Pay". However, the said OM dated 1.9.2008 has been impugned in the present Original Application, since the said OM dated 1.9.2008 has been misread in the subsequent OMs to the detriment of the applicants herein. However, should the said OM be read in the correct manner as suggested by the applicants herein, the applicants herein would have no grievance with the said OM dated 1.9.2008.

H. Because, the action on the part of the respondents in treating the substantive part of the main orders by way of so-called clarifications is illegal and tends to subvert and defeat the very intent of the substantive orders which have been passed. The said action is also illegal and liable to be set aside by this Hon'ble Tribunal.

I. Because the impugned OMs dated 3-10-2008, 14-10-2008 and 11-2-2009 issued by DOP& PW for implementation of SCPC recommendations accepted by Cabinet are ultra vires of the decision of the Government of India contained in DOP& PW Resolution dated 29.8.2008.

J. Because DOP& PW has no authority to modify at their own level the decision of the Cabinet accepting the recommendation of the Sixth Central Pay Commission in this regard.

K. Because, “pay in the pay band” (a crucial entity for fixation of pension) as defined in the Central Civil Services (Revised Pay) Rules, 2008 and amplified for the purpose of fixation of pay in the revised pay structure vide MOF OM dated 30th August, 2008 has been modified through administrative instructions of DOP vide OM dated 3<sup>rd</sup> October, 2008.

L. Because, the action on the part of the respondents results in the applicants herein being treated in a discriminatory manner not only vis-à-vis their colleagues but also their juniors and subordinates, as demonstrated in detail in the preceding paragraphs.

M. That the cut off date of 1.1.2006 which has been imposed is illegal, arbitrary and has no nexus with the object sought to be attained. It has no rationale basis and is completely contrary to the law which has been laid down by the Hon’ble Supreme Court of India in D.S. Nakara’s case and as recently expounded further in SPS Vains’s case.

#### 6. DETAILS OF REMEDIES EXHAUSTED

The applicants have exhausted all departmental remedies as described in detail in paragraph 4 hereinabove. The respondents have failed to redress their grievances. The applicants have no other remedy except to approach this Hon’ble Tribunal to prevent grave miscarriage of justice.

#### 7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT.

The applicants herein have not filed any previous writ petition, application or proceeding on the present cause of action in any Court, Tribunal, High Court, Supreme Court or any other Bench of this Hon'ble Tribunal. No suit or proceeding is pending before any other Court or any other Bench or Authority on the application of the applicants herein.

8. RELIEFS SOUGHT

In view of the facts and circumstances mentioned in the preceding paragraphs and the grounds raised in para 5, the Applicants most respectfully pray that this Hon'ble Tribunal may be pleased to:-

- (a) declare the impugned OM's dated 1.9.2008, 3.10.2008, 14.10.2008 and 11.2.2009 as illegal, arbitrary, discriminatory, unreasonable, unjust, inequitable and quash and set aside the same and direct the respondents to treat the applicants herein at par with similarly placed post-1.1.2006 retiree officers who were equivalent to the S-29 category and falling in the same Pay Band 4 and consequently higher pension than all (i.e. pre and post 1.1.2006 retirees) S-24, S-25, S-26, S-27, S-28 retirees;
- (b) direct that their notional pay fixation and consequently pension fixation should not be lower than 50% of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding the scale of pay from which they had retired as enunciated in the Sixth Central Pay Commission Report and as accepted by the Government in Resolution dated 29<sup>th</sup> August, 2008, and as has been done for other similarly placed officers who have retired after 1.1.2006 without stipulation of any cut off date;

- (c) direct that the arrears which are due to the applicants from 1.1.2006 onwards be immediately paid to the applicants herein along with interest at the rate of 15% per annum; and
- (d) pass such other and further orders as this Hon'ble Tribunal may deem fit and appropriate in the facts and circumstances of the case.

#### INTERIM ORDER

In the facts and circumstances of the present case, no interim direction is being prayed for.

10. The application is being filed at the counter of the Tribunal and as such, these instructions do not apply.

11. Particulars of the postal order filed in respect of the application fee :

- (i) No. of Postal Order :
- (ii) Name of Issuing Office :
- (iii) Date of issuing of Postal Order :
- (iv) Post Office at which payable : NEW DELHI.

12. List of Enclosures

- 1. Annexure A-1 – Copy of OM dated 1.9.2008.
- 2. Annexure A-2 – Copy of OM dated 3.10.2008.
- 3. Annexure A-3 – Copy of OM dated 14.10.2008.
- 4. Annexure A-4 – Copy of OM dated 11.2.2009
- 5. Annexure A-5 – Copy of resolution/authorization dated 6.2.2010.
- 6. Annexure A-6 – Copy of Ministry of Finance (DOE) O.M. F.No.1/1/2008-IC dt. 30<sup>th</sup> August, 2008.



7. Annexure A-7 – Copy of resolution dated 29-8-2008.
8. Annexure A-8 – Copy of reply received by one of the pensioners along with the noting in the file.
9. Annexure A-9 – Copy of chart showing disparities In pension arising with clarifications of DOP & PWs. OM of 3.10.2008.
10. Annexure A-10- Copy of Report of the Committee along with Summary of Recommendations.
11. Annexure A-11 – Copy of letter dated 10.11.2008 written by the Minister of State for Finance to the Prime Minister.
12. Annexure A-12 – Copy of letter dated 19.1.2009.

APPLICANT

**VERIFICATION**

I, Sant Bhushan Lal, Secretary, Central Government SAG (S-29) Pensioners' Association, C-5/21, Grand Vasant, Vasant Kunj, New Delhi – 110 070, do hereby verify that the contents of paras 1 to 7 & 10 to 12 are true to my personal knowledge and paras 8 to 9 are believed to be true on legal advice and that I have not suppressed any material fact.

APPLICANT

THROUGH

NEW DELHI  
DATED :

TARUN GUPTA  
ADVOCATE  
D-4/1, VASANT VIHAR  
NEW DELHI – 110 057