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Court : Delhi

Decided On : Aug-03-2016

Judge : Pradeep Nandrajog & The Honourable Ms. Justice Pratibha Rani

Appeal No. : W.P.(C) No. 3035 of 2016

Appellant : Ram Phal

Respondent : Union of India and Others

Judgement :

Pradeep Nandrajog, J. (Oral)

1. The petitioner challenges the applicability of paragraph 5 of the Office Memorandum dated February 11, 2009 notified by the Department of Pension and Pensioners Welfare, concerning revision of pension of pre- 2006 pensioners, wherein it has been stated that Therefore, the benefit of upgradation of post subsequent to their retirement would not be admissible to the pre-2006 pensioners in this regard. The petitioner also seeks quashing of the order dated February 10, 2016 whereby his representation for revised pension has been rejected. Petitioner also prays for Mandamus directing the respondents to revise his pension to Rs.9375/- per month as given in the fitment table as given in Government of India, Ministry of Personnel, Public Grievance and Pension, Department of Pensioners Welfare Office Memorandum F.No. 38/40/12-Pand PW (A) dated January 28, 2013.

2. Briefly noted, the facts germane for adjudication of the present case are that the petitioner joined the ITBP on May 25, 1964 in the rank of Constable/GD and suffice it to note that he was last promoted to the rank of Subedar Major w.e.f May 24, 1995 in the pay scale of Rs.2000-60-2300-EB- 75-3200/- vide order dated June 02, 1995. The petitioner was thereafter placed in the replacement scale of Rs.6500-10500/- after the implementation of the fifth Central Pay Commission. The petitioner ultimately superannuated on July 31, 2002; and at the said point of time was drawing basic pay in sum of Rs.12175 in the pay scale of Rs.6500-10500 with special pay of Rs.200/-. Upon his superannuation, the petitioner was sanctioned PPO on September 24, 2002 in sum of Rs.3850/- p.m., the same being 50% of the minimum pay in the pay band, i.e. Rs.7700/-.

3. We would now examine the pension that was to be sanctioned corresponding to the post last held by the petitioner i.e. Subedar Major.

4. Upon accepting the recommendations of the 6th CPC, the post of Subedar Major in Central Para Military Forces was put in the pay band of Rs.9300-34800/- with grade pay of Rs.4800/-, and the same is reflected in Section II of part-C of the Revised Pay Structure for Certain Posts in Ministries, Departments and Union Territories, as notified in the Gazette of India.

5. In the interregnum, it was clarified vide Office Memorandum dated February 11, 2009, which has been impugned herein that the benefit of the upgradation of posts of persons retiring prior to 2006 would not be admissible to them subsequent to their retirement.

6. As a result of 6th CPC recommendations being accepted, the pensions were upgraded from January 01, 2006 in respect of Govt. employees or the analogy that pension has to be 50% of the sum of minimum pay band + grade pay Arrears. The same was thereafter implemented vide Office Memorandum dated September 01, 2008, wherein consolidated pension was sought to be disbursed. As per the fitment table appended along with the same, petitioner was to be paid a consolidated pension of Rs.8701/- p.m., the same being the revised consolidated pension for those drawing existing basic pension in sum of Rs.3850/- p.m.

7. It is reiterated that since the post of Subedar Major in Central Para Military Forces was put in the pay band of Rs.9300-34800/- with grade pay of Rs.4800/-, and the same is reflected in Section II of part-C of the Revised Pay Structure for Certain Posts in Ministries, Departments and Union Territories, as notified in the Gazette of India.

8. Subsequently, another Office Memorandum dated January 28, 2013 was issued by the Department of Pension and Pensioners Welfare wherein the pension of pre-2006 pensioners was revised and stepped up to 50% of the sum of the minimum of pay in the pay band and the grade pay corresponding to the pre revised pay scale from which the pensioner had retired, as arrived at from the fitment table given in OM dated August 30, 2008. As per the fitment table provided along with the said OM, the petitioner was to be given pension in sum of Rs.9375/- p.m., the same being the revised pension for the Pay Band -2 of Rs.9300-34800/- with grade pay of Rs.4800/- which was the upgraded scale of the post of Subedar Major.

9. After the issuance of the aforementioned OM, the petitioner was given a fresh revised PPO dated December 16, 2013 wherein the petitioner was given pension of Rs.8701/- per month.

10. The petitioner thereafter submitted several representations for correct fixation of his pension as given in the fitment table appended to the Office Memorandum dated January 28, 2013 and the same were rejected by way of the order dated February 10, 2016, which has also been impugned herein.

11. As per learned counsel for the petitioners the issue at hand was squarely covered by the decision of the Supreme Court reported as 1990 (4) SCC 270 D.S. Nakara v. Union of India, wherein it was held that denial of liberalized pension to those persons who had retired before the cut-off date prescribed was against the constitutional guarantee. Reliance was also placed on the decision reported as 2008 (9) SCC 125 Union of India v SPS Vains, wherein it was held as under:

28. The question regarding creation of different classes within the same cadre on the basis of the doctrine of intelligible differentia having nexus with the object to be

achieved, has fallen for consideration at various intervals for the High Courts as well as this Court, over the years. The said question was taken up by a Constitution Bench in the case of D.S. Nakara (supra) where in no uncertain terms throughout the judgment it has been repeatedly observed that the date of retirement of an employee cannot form a valid criterion for classification, for if that is the criterion those who retired by the end of the month will form a class by themselves. In the context of that case, which is similar to that of the instant case, it was held that Article 14 of the Constitution had been wholly violated, inasmuch as, the Pension Rules being statutory in character, the amended Rules, specifying a cut-off date resulted in differential and discriminatory treatment of equals in the matter of commutation of pension. It was further observed that it would have a traumatic effect on those who retired just before that date. The division which classified pensioners into two classes was held to be artificial and arbitrary and not based on any rational principle and whatever principle, if there was any, had not only no nexus to the objects sought to be achieved by amending the Pension Rules, but was counter productive and ran counter to the very object of the pension scheme. It was ultimately held that the classification did not satisfy the test of Article 14 of the Constitution.

29. The Constitution Bench has discussed in detail the objects of granting pension and we need not, therefore, dilate any further on the said subject, but the decision in the aforesaid case has been consistently referred to in various subsequent judgments of this Court, to which we need not refer. In fact, all the relevant judgments delivered on the subject prior to the decision of the Constitution Bench have been considered and dealt with in detail in the aforesaid case. The directions ultimately given by the Constitution Bench in the said case in order to resolve the dispute which had arisen, is of relevance to resolve the dispute in this case also.

30. However, before we give such directions we must also observe that the submissions advanced on behalf of the Union of India cannot be accepted in view of the decision in D.S. Nakara's case (supra). The object sought to be achieved was not to create a class within a class, but to ensure that the benefits of pension were made available to all persons of the same class equally. To hold otherwise would cause violence to the provisions of Article 14 of the Constitution. It could not

also have been the intention of the authorities to equate the pension payable to officers of two different ranks by resorting to the step up principle envisaged in the Fundamental Rules in a manner where the other officers belonging to the same cadre would be receiving a higher pension.

12. To put rest his argument the learned counsel for the petitioner has drawn our attention to a decision dated April 29, 2013 of a Division Bench of this Court in W.P.(C) No.1535/2012 Union of India and Anr. vs Central Govt. SAG and Ors., authored by one of us i.e. Pradeep Nandrajog, J., wherein the issue for consideration was the applicability of paragraph 9 of the Office Memorandum dated January 28, 2013 from September 24, 2012 onwards, thereby denying the arrears of pension to be paid to pensioners with effect from January 01, 2006.

13. While disposing of the said writ petition the Division Bench expressed its complete agreement with a decision dated December 21, 2012 passed by a Division Bench of the Punjab and Haryana High Court in WP (C) No. 19641/2009 R.K.Aggarwal and Ors. Vs State of Haryana and Ors. Learned counsel relied upon paragraphs 21 to 26 of the said judgment, wherein the Division Bench had reasoned as under:

21. On the recommendations made by VI CPC, which stood validly accepted by the Cabinet, it was argued before the Tribunal that principle for determining the pension has been completely altered under the garb of clarification. It was argued that on the basis of the aforesaid resolution/modified parity revised pension of the pre-2006 pensioners shall not be less than 50% of the minimum of the pay band + grade pay, corresponding to the pre-revised pay scale from which the pensioner had retired.

22. The Tribunal has accepted this contention and because of this reason, it is held that subsequent OMs dated 03.10.2008 and 14.10.2008 purportedly issued to clarify para 4.2 of OM dated 01.09.2008 were contrary to the plain meaning of the said para and whereby the criteria and principle for determination of the pension had been completely changed that too when these two subsequent OMs dated 03.10.2008 and 14.10.2008 were issued by the lower authorities having no power to issue such clarification.

23 After considering the arguments of learned counsels for all the parties, we are of the opinion that it is not even necessary to go into the various nuances and nitty gritty, which are insisted by learned counsels for the petitioners based on D.S. Nakara line of cases and N. Subbarayudu and others and S.R. Dhingra and others (supra), wherein ratio of D.S. Nakara is explained. We proceed on the basis that fixation of cut off date by the government was in order and to this extent we agree with the reasoning given by the Tribunal where similar arguments, as advanced by the petitioners before us, were rejected. The issue can be resolved on the interpretation of OM dated 29.08.2008 itself. It is not in dispute that vide resolution dated 29.08.2008, recommendations of the 6th Central Pay Commission were accepted by the government and the pension was also to be fixed on the basis of formula contained therein. We have already reproduced the recommendations of the 6th Central Pay Commission, as contained in para 5.1.47, which was accepted by the government vide Item No. 12 of resolution dated 29.08.2008 with certain modifications. Based on this resolution, OM dated 01.09.2008 was issued. We have also reproduced para 4.2 thereof. This states in unequivocal terms that revised pension in no case shall be lower than 50% of the minimum of pay in the pay band plus grade pay corresponding to the pre-revised pay scale----- . The clear purport and meaning of the aforesaid provision is that those who retired before 01.01.2006 as well were ensured that their revised pension after enforcing recommendations of the 6th Central Pay Commission, shall not be less than 50% of the minimum of the pay band plus grade pay corresponding to the pre-revised pay scale from which the pensioners had retired. However, notwithstanding the same and without any provocation, the junior functionaries in the Department of Pension nurtured a doubt though there was none and note was prepared on that basis, which led to issuance of OMs dated 03.10.2008 and 14.10.2008. The effect of these two OMs was to make revision in the pension of pre-2006 retirees by giving them less than 50% of the sum of minimum of the pay in the pay band. To demonstrate this, Mr. H.L. Tikku, learned senior counsel appearing in some of these cases drew our attention to the following chart:-

Min of Prerevised scale	Pay in the Pay Band	Grade Pay	Revised Basic Pay (2+3) (in Rs.)	Pension 50% of (2+3) (in 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 annexed with MOF OM of 30th August, 2008 (referred to in para 4.5 (iii) above). Revised pension of S 29 works out to Rs.7,350 which has been reduced to Rs.23,700 as per DOP OM of 03.10.2008 (para 4.8 (B) below).

24. As per the impugned OM dated 14.10.2008 in the case of S- 24 officers the corresponding pay in the Pay Band against Rs.14,300/- is shown as Rs.37,400/-. In addition, Grade Pay of Rs.8700/- was given totaling Rs.46,100/-. Similarly, revisions concerning all the other pay scales were accepted by the aforementioned OM dated 14th October, 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 full pension would accordingly be fixed at Rs.23,050/- (i.e. 50% of 37,400/- pay plus grade pay Rs.8700/-) pursuant to the implementation of VI CPC recommendations after 01.01.2006, whereas a person retiring before 01.01.2006, 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 23,700/- (i.e. 50% of pay of Rs.37,400/- plus grade pay of Rs.10,000/-).

25. This has arisen because of resolution dated 29.08.2008 and has resulted because of deletion of certain words in para 4.2 of the OM dated 01.09.2008 or 03.10.2008. This aspect is beautifully demonstrated by the Tribunal in its Full Bench judgment in the following manner with which we are entirely agree:

25. In order to decide the matter in controversy, at this stage, it will be useful to extract the relevant portions of para 5.1.47 of the VI CPC recommendation, as accepted by the Resolution dated 29.08.2008, para 4.2 of the OM dated 1.9.2008 and subsequent changes made in the garb of clarification dated 3.10.2008, which thus read:

Resolution No.38/37/8- Pand PW(A) dated 29.8.2008 Para 5.1.47 (page 154-155)	Para 4.2 of OM DoPand PW OM No.38/37/8- Pand PW(A) dated 1.9.2008 (page 38 of OA)	OM DOPand PW OM No.38/37/8- Pand PW(A) dated 3.10.2008
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<p>The fixation as per above 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.</p>	<p>The fixation as per above 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 plus (and) the grade pay (thereon) corresponding to the prerevised pay scale from which the pensioner had retired.</p>	<p>The pension calculated at 50% of the (sum of the) minimum of the pay in the pay band [and the grade pay thereon corresponding to the pre-revised pay scale] plus grade pay would 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 prerevised scale of pay of Rs.18400-22400, the corresponding pay band being Rs.37400-67000 and the corresponding grade pay being Rs.10000 p.m., his minimum guaranteed pension would be 50% of Rs.37400+Rs.10000 (i.e. Rs.23700)</p>
	<p>Strike out are deletions and bold letter addition.</p>	<p>Strike out are deletions and bold letters addition.</p>

26. As can be seen from the relevant portion of the resolution dated 29.8.2008 based upon the recommendations made by the VI CPC in paragraph 5.1.47, it is

clear that the revised pension of the pre-2006 retirees should not be less 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 held by the pensioner at the time of retirement. However, as per the OM dated 3.10.2008 revised pension at 50% of the sum of the minimum of the pay in the pay band and the grade pay thereon, corresponding to pre-revised scale from which the pensioner had retired has been given a go-by by deleting the words 'sum of the' 'and grade pay thereon corresponding to the pre-revised pay scale' and adding 'irrespective of the pre-revised scale of pay plus' implying that the revised pension is to be fixed at 50% of the minimum of the pay, which has substantially changed the modified parity/formula adopted by the Central Government pursuant to the recommendations made by the VI CPC and has thus caused great prejudice to the applicants. According to us, such a course was not available to the functionary of the Government in the garb of clarification thereby altering the recommendations given by the VI CPC, as accepted by the Central Government. According to us, deletion of the words 'sum of the' 'and grade pay thereon corresponding to the pre-revised scale' 'and addition of the words 'irrespective of the pre-revised scale of pay plus', as introduced by the respondents in the garb of clarification vide OM dated 3.10.2008 amounts to carrying out amendment to the resolution dated 29.08.2008 based upon para 4.1.47 of the recommendations of the VI CPC as also the OM dated 1.9.2008 issued by the Central Government pursuant to the aforesaid resolution, which has been accepted by the Cabinet. Thus, such a course was not permissible for the functionary of the Government in the garb of clarification, that too, at their own level without referring the matter to the Cabinet.

26. It is for the aforesaid reasons, we remark that there is no need to go into the legal nuances. Simple solution is to give effect to the resolution dated 29.08.2008 whereby recommendations of the 6th Central Pay Commission were accepted with certain modifications. We find force in the submission of learned counsel for the petitioners that subsequent OMs dated 03.10.2008 and 14.10.2008 were not in consonance with that resolution. Once we find that this resolution ensures that the fixation of pension 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 pre-revised pay scale from

which the pensioner had retired , this would clearly mean that the pay of the retiree i.e. who retired before 01.01.2006 is to be brought corresponding to the revised pay scale as per 6th Central Pay Commission and then it has to be ensured that pension fixed is such that it is not lower than 50% of the minimum of the pay in the band and the grade pay thereon. As a result, all these petitions succeed and mandamus is issued to the respondents to re-fix the pension of the petitioners accordingly within a period of two months and pay the arrears of pension within two months. In case, the arrears are not paid within a period of two months, it will also carry interest @ 9% w.e.f. 01.03.2013. There shall, however, be no order as to cost.

14. In the above judgment while noting the judgment of the Division Bench of the Punjab and Haryana High Court in paragraph 22 of the said judgment it has been clearly held that The Tribunal has accepted this contention and because of this reason, it is held that subsequent OM dated October 03, 2008, October 14, 2008 purportedly issued to clarify para 4.2 of OM dated September 01, 2008 were contrary to the plain meaning of the said para and whereby the criteria and principle for determination of the pension had been completely changed that to when these two subsequent OMs were issued by lower authorities having no power to issue such clarification . The Division Bench of Punjab and Haryana High Court in the above judgment has already held that the OMs dated October 03, 2008 and October 14, 2008 are contrary to OM dated September 01, 2008 and were issued by a lower authority who could not have altered the original OM being September 01, 2008. Thus the normal corollary would be that the procedure laid down under para 4.2 of the OM dated September 01, 2008 shall remain in respect of pre-2006 retirees and the clarifications issued by OMs dated October 03, 2008, October 14, 2008 and January 28, 2013 whereby the words the pension of the pensioners who retired prior to 2006 will be reduced pro-rata wherein the pensioner who has less than the maximum required service for full pension as per Rule 49 of CCS (Pension) Rules 1972 needs to be quashed.

15. The learned Counsel for the petitioner also brought to our notice a judgment dated November 20, 2014 passed by a Full Bench of the Central Administrative Tribunal, Principal Bench in All India S-30 Pensioners Association Versus Union of

India and Ors. wherein it has been held that there can be no disparity in the payment of pension to officers of the same rank who had retired prior to introduction of the revised pay scales with those who retired thereafter.

16. Learned counsel for the petitioner also drew our attention to another recent judgment penned by one of us i.e. Pradeep Nandrajog, J. dated May 07, 2015 titled as S.A.Khan and Anr. Vs. Union of India and Ors., wherein also the issue at hand was the distinction that had been created between those who retired before and after January 01, 2006 as regards linkage of grant of full pension to completion of 33 years of qualifying services, and its consequent pro-rata reduction if the requisite qualifying service had not been rendered and the relevant portion of the same is extracted as under:-

25. To summarize, the petitioners must succeed on two points. Firstly that the policy decision of the Government in the Office Memorandum dated September 01, 2008 to fix pension for all category of pensioners did not classify post and pre January 01, 2006 retirees and all were entitled to pension as per a common formula. Under the garb of clarification the Office Memorandum of October 03, 2008 followed by the Office Memorandum dated October 14, 2008 and repeated in the Office Memorandum dated January 28, 2013 the cut-off date was inserted by an officer of the Government having no authority to cut down the beneficial policy decision notified on September 01, 2008. Secondly for the reason the cut-off date is arbitrary and fouts Article 14 of the Constitution of India.

26. The writ petitions are allowed. The Office Memorandums introducing the cut-off date and mandating that pre January 01, 2006 pensioners would have their pension fix by pro-rata reducing the same by such numbers of years they have rendered less service than 33 years are quashed. It is declared that the writ petitioners would be entitled to full pension post January 01, 2006 without any pro-rata cut therein. Pension deducted from the petitioners (after it was correctly fixed and paid but later on reduced and hence deductions made) shall be refunded as also the arrears paid within six weeks from today failing which the amount payable would bear simple interest @ 9% per annum reckoned six weeks hereinafter.

17. We are not noting the detailed reasoning given by us in S.A.Khan s case (supra) for the simple reason that it is essentially on the same lines of the decisions already noted by us herein above.

18. It was also pointed out that the aforesaid decision had been challenged before the Supreme Court by the Union of India by way of SLP (C) Nos. 6104-6105 of 2016 and the same was subsequently withdrawn and this stands recorded in the order dated July 04, 2016, copy whereof has also been handed over to us by the learned counsel for the petitioner.

19. Furthermore, the learned counsel for the petitioner has also handed over a copy of a recent Office Memorandum dated April 06,2016 issued by the Department of Pension and Pensioners Welfare pertaining to delinking of revised pension from qualifying service of 33 years in respect of pre-2006 pensioners and the relevant extract of the same reads as under :-

3. Orders were issued vide this Department's OM of even number dated 28.1.2013 for stepping up of pension of pre-2006 pensioners w.e.f. 24.9.2012 to 50% of the minimum of pay in the pay band and grade pay corresponding to pre-revised pay scale from which the pensioner retired. Para 5 of this OM provides that in case the consolidated pension/family pension calculated as per para 4.1 of O.M. No.38/37/08- Pand PW (A) dated 1.9.2008 is higher than the pension/family pension calculated in the manner indicated in the O.M. dated 28.1.2013, the same (higher consolidated pension/family pension) will continue to be treated as basic pension/family pension.

4. Subsequently, in compliance of the order dated 1.11.2011 of the Hon'ble CAT, Principal Bench in OA No. 655/2010, order dated 29.4.2013 of Hon'ble High Court of Delhi in WP (C) No. 1535/2012 and order dated 17.3.2015 of Hon'ble Supreme Court in SLP (C) No. 36148/2013, order were issued vide this Department's OM of even number dated 30.7.2015 that the pension/family pension of all pre - 2006 pensioners/family pensioners may be revised in accordance with this Department's O.M. No.38/37/08-Pand PW(A) dated 28.1.2013 with effect from 1.1.2006 instead of 24.9.2012.

5. In accordance with the order issued in implementation of the recommendation of the 6 th CPC, the pension of Government servants retired/retiring on or after 1.1.2006 has been delinked from qualifying service of 33 years. In OA No. 715/2012 filed by Shri. M.O. Inasu, a pre-2006 pensioner, Hon'ble CAT, Emakulam Bench, vide its order dated 16.8.2013 directed that the revised pension w.e.f. 1.1.2006 under para 4.2 of OM dated 1.9.2008 would not be reduced based on the qualifying service of less than 33 years. The appeals filed by Department of Revenue in the Hon'ble High Court of Kerala and in the Hon'ble Supreme Court have also been dismissed. Similar orders have been passed by Hon'ble CATIHigh Court in several other cases also.

6. The matter has been examined in consultation with the Ministry of Finance (Department of Expenditure). It has now been decided that the revised consolidated pension of pre-2006 pensioners shall not be lower than 50% of the minimum of the pay in the Pay Band and the grade pay (wherever applicable) corresponding to the prerevised pay scale as per fitment table without pro-rata reduction of pension even if they had qualifying service of less than 33 years at the time of retirement. Accordingly, Para 5 of this Department's OM of even number dated 28.1.2013 would stand deleted. The arrears of revised pension would be payable with effect from 1.1.2006.

20. Per contra, the learned counsel for the respondents has adopted a rather strange stand in as much as it has simply been submitted that the petitioner's pension being fixed at Rs.8701/- per month was in order and had been revised correctly as per the Office Memorandum dated January 28, 2013. It was also submitted that the recommendations as given by the Sixth Central Pay Commission were implemented from January 01, 2006 and that the revised/upgraded pay scales were not applicable for those pensioners who had retired on or before December 31, 2005 as per the Office Memorandum dated February 11, 2009.

21. We need not delve too deep into the water for the reason that the issue at hand is quite shallow. We also have the benefit of previous decisions rendered by this court in Central Govt. SAG. and S.A. Khan's (supra) case.

22. We are not inclined to accept the stand taken by the learned counsel for the respondents for the simple reason that a bare perusal of the fitment table appended along with the Office Memorandum dated January 28, 2013 itself would reveal that the pay of the petitioner had to be fixed at Rs.9375/- per month.

23. Furthermore, we are also inclined to accept the submissions made by the learned counsel for the petitioner on parity of reasoning given in Central Government SAG and S.A.Khan s case (supra), which have already been elaborated herein above.

24. It apparent that the respondents have not applied their mind while fixing the pension of the petitioner at Rs.8701/- per month and it seems that the respondents have placed reliance upon the Office Memorandum dated February 11, 2009 and have placed the petitioner in the pay band S-12 but has not taken into consideration the subsequent upgradation of the post of Subedar Major which would place the petitioner in pay band S-14, and needless to state the pension would also have to be revised accordingly.

25. We would also note that reliance placed on the Office Memorandum dated February 11, 2009 itself is misguided for the reason that Central Government SAG case was an appeal against the order of Central Administrative Tribunal dated November 01, 2011 wherein the Tribunal had set aside the Memorandum dated February 11, 2009. The decision rendered by the Division Bench of this court was also challenged before the Supreme Court but the same attained finality and quietus when the curative petition was dismissed on April 30, 2014. Needless to state the order dated February 10, 2016 having been passed subsequently, the respondents were duty bound to consider the case of the petitioner de hors the Memorandum dated February 11, 2009 and had the same been done, undoubtedly the petitioner would stand entitled to pension in sum of Rs. 9375/- per month as has been claimed by him.

26. We would also note that the present petition would also need to be allowed in the teeth of the recent Office Memorandum dated April 06,2016 wherein it has been unambiguously stated that It has now- been decided that the revised consolidated pension of pre-2006 pensioners shall not be lower than 50% of the

minimum of the pay in the Pay Band and the grade pay (wherever applicable) corresponding to the pre revised pay scale as per fitment table without pro-rata reduction of pension even if they had qualifying service of less than 33 years at the time of retirement. On the same reasoning, the petitioner cannot be denied the benefit of revised pension when the respondents themselves have adopted the aforementioned position.

27. Resultantly, the present petition is allowed. The order dated February 10, 2016 is quashed and OM dated February 11, 2009 to the extent it states that the benefit of upgradation of post subsequent to the retirement would not be admissible to the pre-2006 pensioners is quashed and a mandamus is issued to the respondents directing them to fix the pension of the petitioner in sum of Rs.9375/- per month as given in the fitment table appended to the Government of India, Ministry of Personnel, Public Grievance and Pension, Department of Pensioners Welfare Office Memorandum F.No. 38/40/12- Pand PW (A) dated 28.01.2013 with effect from January 01, 2006. The petitioner would also be entitled to arrears of the pension as would be re-fixed by the respondents. The needful be done within a period of two months, failing which the petitioner would also be entitled to simple interest @ 9% per annum. There shall, however, be no order as to cost.

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