

Before Hemant Gupta and Mohinder Pal, JJ.

GURMAIL SINGH DAHDLI AND OTHERS,—Petitioners

versus

UNION OF INDIA AND OTHERS,—Respondents

C.W.P. No. 6223 of 2007

26th May, 2008

Constitution of India, 1950—Art.226—Personnel Below Officers Rank seeking removal of anomaly in pensionary benefits—Group of Ministers recommending improvement in pension of lowest ranks—Government restricting benefit of pension with effect from 1st January, 2006—Challenge thereto—Plea of financial constraint—Respondents failing to give any data—Recommendations of Group of Ministers have to be given effect from date anomaly arises and not from any other date—Action of Government fixing cut off date is wholly arbitrary—Petition allowed, respondents directed to grant revised pensionary benefits to petitioners and all other similarly situated PBOR with effect from 1st January, 1996.

Held, that para 2.2 of circular, dated 7th June, 1999 itself recites that revision of service pension is not beneficial to PBOR retirees. Para 5 of circular, dated 1st February, 2006 is a clarification to Para 2.2 (a) of circular, dated 7th June, 1999. Therefore, addition of said paragraph in circular, dated 7th June, 1999 shows that the issue regarding pension was clarified by adding the paragraph after the recommendations of the Group of Ministers. Such benefit was not being conferred for the first time. Still further, the said addition was as a consequence of anomaly arising in implementation of the recommendations of the Pay Commission and, thus, the anomaly has to be removed from the day it arises.

(Para 10)

Further held, that though financial constraint is a valid criteria for fixing cut off date for grant of benefits but neither the respondents had given any data in respect of financial constraints nor such financial constraints can be relevant when anomaly in the pensionary benefit is sought to be removed. If all other retirees of Government of India have got the benefit of revised pension then why the lowest rank of Armed Forces have been deprived the benefit of revised pension. Since anomaly is sought to be removed in pursuance of the recommendations of the Group of Ministers, PBOR would be entitled to revise pension from the date other employees of the Central Government have got the revised pensionary benefits. The plea of financial constraints has been raised in respect of lowest paid employees of the Armed Forces, when all other categories of employees including services have been given the benefit. Such discriminatory treatment is wholly arbitrary.

(Para 11)

Further held, that it is not a new scheme which is being introduced but an anomaly which was noticed in the circular granting revised pensionary benefits alone which is sought to be removed by the recommendations of the Group of Ministers. Such recommendations have to be given effect from the date anomaly arises and not from any other date.

(Para 12)

Bhim Sen Sehgal, Advocate, *for the petitioner*.

Ms. Ranjana Shahi, Central Government Standing Counsel, *for the respondent*.

HEMANT GUPTA, J.

(1) The petitioners are former Personnel Below Officers Rank (hereinafter to be referred as "PBOR") of the Indian Air Force. All the petitioners are pre 1st January, 1996 retirees. The grievance of the petitioners is that 5th Central Pay Commission was constituted to examine the pay and pension structure of the civil servants, including

armed forces. The recommendations made by the said Pay Commission were accepted by the Government of India and a circular was issued on 7th June, 1999 relating to pensionary benefits in respect of commissioned officers and PBOR. Such pensionary benefits were revised with effect from 1st January, 1996. There was an anomaly in respect of pensionary benefits payable to PBOR which led to widespread resentment and ultimately a committee of Group of Ministers was constituted by the Government of India in January, 2005 to look into the issue. The Group of Ministers agreed that there is justification for improving the pensionary benefits of the PBOR, particularly the three lowest ranks i.e., Sepoy, Naik and Havildar, who had been completely neglected. In pursuance of the recommendations of the Group of Ministers, Government of India, Ministry of Defence, issued a circular on 1st February, 2006 regarding the improvement in pension of PBOR but with effect from 1st January, 2006. The petitioners claim that pensionary benefit circulated,—*vide* circular, dated 1st February, 2006 is illegal to the extent of restricting the benefit from 1st January, 2006 as the same to that extent is arbitrary, discriminatory, without any rational basis and, thus, the petitioners are entitled to the benefit of pay fixation in terms of circular, dated 1st February, 2006 from the date all other ranks have got their pension revised i.e. with effect from 1st January, 1996.

(2) Learned counsel for the petitioners have pointed out that Reckonable emoluments for the purposes of pensionary benefits in respect of PBOR is not the actual pay drawn but the maximum pay of the pay scale, including 50% of the highest classification allowance, if any, of the rank held and group in which paid continuously for at least 10 months at the time of discharge. That was the decision taken in respect of PBOR while accepting the recommendations of 3rd and 4th Pay Commission and while accepting the pay recommendation of 5th Pay Commission which is evident from circular, dated 3rd February, 1998. The relevant extract from circular, dated 3rd February, 1998 communicating acceptance of recommendations of 5th Central Pay Commission by the Government of India to the Chief of Army Staff,

the Chief of Naval Staff and the Chief of the Air Staff, reads as under :

3. Reckonable emoluments :—

3.1 The term 'Reckonable Emoluments' will mean:—

Emoluments Reckonable for

Category	Retiring/Service/ Invalid pension	Family pension	All types of gratuities
Officers	Pay including rank pay stagnation increment and NPA, if any, last drawn	Pay including Rank Pay, Stagnation increment and NPA, if any, last drawn	Pay including Rank Pay, stagnation increment and NPA, if any, <i>plus</i> Dearness Allowance admissible on the date of retirement/ invalidment/ death
Personnel Below Officer Rank	Maximum pay of the pay scale, including 50% of the highest classification allowance, if any, of the rank held and group in which paid	Pay including classification allowance, stagnation increment, if any, last drawn by the individual	Pay including classification allowance <i>plus</i> stagnation increment, if any, <i>plus</i> Dearness Allowance admissible on the date of retirement/ invalidment/ death

Pay, Non-Practising Allowance, Classification Allowance,
Rank Pay and Stagnation increment.

3.2 xx xx xx xx

I. The term reckonable emoluments shall mean :—

(a) **Officers.**— xx xx xx xx xx

(b) **PBORs including Ncs(E).**—Maximum of scale of pay of the rank and group in the pre-revised scales *plus* 50% of the highest classification pay appropriate to the pay group *plus* actual Dearness Allowance up to AICII 1436 and Interim Relief I and II. For calculation of gratuity and family pension, basic pay, Classification Pay actually drawn will be included in computing reckonable emoluments”.

(3) However, while issuing circular on 7th June, 1999 in respect of implementation of Government’s decision on the recommendations of 5th Pay Commission allowing pensionary benefits in respect of commissioned officers and PBOR, it was circulated as under :—

“2.1 COMMISSIONED OFFICERS

Post and Pre 1st January, 1996 cases :

(a) Pension shall continue to be calculated at 50% of the average emoluments in all cases and shall be subject to a minimum of Rs. 1275 p.m. and a maximum of upto 50% of the highest pay applicable to Armed Forces personnel but the full pension in no case shall be less than 50% of the minimum of the revised scale of pay introduced with effect from 1st January, 1996 for the rank last held by the Commissioned at the time of his/her retirement. However, such pension shall be reduced *pro rata*, where the pensioner has less

than the maximum required service for full pension.

(b) and (c) xx xx xx xx xx

2.2 P.B.O.R.

Post and Pre 1st January, 1996 cases :

- (a) The revision of service pension in terms of these modified orders in respect of PBOR retirees will not be beneficial except for the rank of JCOs granted Hony. Commission of Lt. and Captain as the service pension is calculated at the maximum of the pay scale including 50% of highest classification allowance, if any of the rank and group in which paid.

(b) and (c) xx xx xx xx xx”

(4) In terms of clause 2.2 of the above circular, the revision in the service pension was not beneficial for PBOR retirees except for the rank of JCO granted honorary commission. It is the case of the petitioners that three lowest ranks of the Air Force, such as Sepoy, Nail and Havildar, were not getting any benefit of revision of pension as circulated by the Government of India itself. The Group of Ministers examined the demand of ex-servicemen claiming same pension for the same rank etc found that there was justification in improving the pensionary benefits of PBOR, particularly three lowest ranks. While accepting the recommendations of the Group of Ministers on 1st February, 2006, it was *inter alia* circulated as under :—

- “2. Finally, GOM unanimously recommended that the pension of pre 1st January, 1996 retiree PBOR may be revised with reference to the maximum of post 1st January, 1996 pay scale. In addition, the weightage of Sepoy, Naik and Havildar ranks for past as well as future retirees be increased to 10, 8 and 6 years respectively subject to a maximum qualifying service of 30 years. The benefit would be given only in respect of service pension.

3. The above recommendations of the GOM have been accepted by the Government. Sanction of the President is hereby accorded to the modifications to the extent specified in this letter in the relevant Rules/Regulations/Instructions concerning pensionary benefits of the PBOR.
4. xx xx xx xx xx
5. The following is added after Para 2.2 (a) of this Ministry's letter No. 1(1)99/D/D(Pen/Services) dated 7th June, 1999 relating to revision of pension of post and pre 1st January, 1996 :

“With effect from 1st January, 2006, pension of pre 1st January, 1996 retirees in all ranks of PBOR in Army, Navy and Air Force for 33 years of qualifying service shall not be less than 50% of the maximum pay in the revised scales of pay introduced with effect from 1st January, 1996 including 50% of highest classification allowance, if any, of the rank and group held continuously for 10 months preceding retirement subject to a minimum pension of Rs. 1913 per month. Such pension shall be reduced pro rata where the pensioner has less than the maximum qualifying service for full pension that is 33 years.

6 to 8 xx xx xx xx

9. These orders are effective from 1st January, 2006. No arrears are to be given”.

(5) Learned counsel for the petitioners has contended that pension of pre 1st January, 1996 is to be fixed with reference to the maximum of the pay scale of the post as on 1st January, 1996. Since there was anomaly in respect of pensionary benefits payable to PBOR, grant of benefit from 1st January, 2006 is wholly unjustified and without any reasonable basis or nexus with the objective to be achieved.

(6) Learned counsel for the petitioner relies upon Division Bench judgment of this Court in **Joginder Singh Saini versus State of Punjab (1)**, **Harvinder Singh versus State of Punjab and others (2)**, judgement of this Bench in **Jai Narayan Jakhar versus Union of India and another, CWP No. 15400 of 2006 decided on 14th January, 2008** and Single Bench Judgment of this Court in **A.R. Lamba, Ex-Assistant Director versus Khadi and Village Industries Commission and others, (3) Punjab State Cooperative Agricultural Development Bank Pensioners' Association and others versus State of Punjab and others, (4)** and **Mrs. Suveena Chaudhary versus Chandigarh Industrial and Tourism Development Corporation Limited, (5)** to contend that if there is anomaly in respect of pensionary benefits, the same cannot be restricted from an artificial date fixed by the respondents.

(7) On the other hand, learned counsel for the respondents relied upon **Union of India versus P.N. Menon and others, (6)** and **P.K. Kapur versus Union of India and others, (7)** to contend that cut off date fixed cannot be said to be arbitrary as the Government has to manage its affairs out of its own resources which are limited. Thus, cut off date for grant of additional benefits has to be allowed within the financial resources available with the Government. It was also pointed out that on the basis of the recommendations of the Group of Ministers, a conscious decision was taken to improve the pensionary benefits of PBOR with effect from 1st January, 2006 and liberalisation of pensionary benefits is an ongoing process and the Government has to consider and decide from which date a particular benefit has to be given, therefore, such date cannot be said to be arbitrary.

(8) Pay Commissions are constituted by the Government of India regarding revision of pay scales and pensionary benefits to the employees of the Central Government including armed forces. While

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- (1) 1998(7) SLR 699
 - (2) 2000(3) SLR 333
 - (3) 2004(7) SLR 743
 - (4) 2006(1) S.C.T. 633
 - (5) 1998 (4) S.C.T. 620
 - (6) (1994) 4 Supreme Court Cases 68
 - (7) (2007) 9 Supreme Court Cases 425

accepting the recommendations of 5th Pay Commission, no pensionary benefit accrued to PBOR which is apparent from circular dated 7th June, 1999 which is reproduced above. It would be totally unfair and illogical that while other employees of the Central Government got the benefit of recommendations of 5th Pay Commission but the lowest ranks of the Armed Forces were deprived of any increase in pensionary benefits. Though it is the stand of the Government of India that a Group of Ministers was constituted to examine the demands of ex-servicemen for one rank one pension but the fact remains that the Group of Ministers found an anomaly in respect of pensionary benefits payable to PBOR. The recommendation of the Group of Ministers was that the pension of pre 1st January, 1996 retiree PBOR is to be revised with reference to maximum of post 1st January, 1996 pay scales meaning thereby that pension was to be revised in terms of the maximum of post 1st January, 1996 pay scales. Once in respect of pre 1st January, 1996, pension was required to be redetermined with respect of maximum scale of the post of with effect from 1st January, 1996, the cut off dated 1st January, 2006 loses its reasonableness. There is no explanation to pick up date 1st January, 2006 for the grant of revised pensionary benefits to PBOR except that date has been fixed keeping in view the financial condition of the Government but the fact that it was an anomaly in the pensionary benefits payable to PBOR could not be disputed. Once there was anomaly in respect of pensionary benefits, pensionary benefits are payable from the date of creation of anomaly and that interpretation will alone serve the purpose and the object of removing anomaly.

(9) In **P.N. Menon's case** (*supra*), the question was consideration of Dearness Allowance as part of pay for determining pensionary benefits. Such merger of Dearness Allowance with pay was contemplated in respect of government servants who retired on or after 30th September, 1977. Since the right of merger of Dearness Allowance with pay was created for the first time by the Government of India in terms of Office Memorandum dated 25th May, 1977, such benefit could be restricted to the retirees after the cut off date. In **P.K. Kapur's case** (*supra*), the petitioner was claiming weightage over and above the recommendations of 5th Pay Commission, wherein pension was to be fixed on the basis of last rank held by an officer. It was held that the

weightage granted in terms of acceptance of 5th Pay Commission has nexus with the last rank and the period of 33 years of qualifying service was the outer limit of qualifying service, therefore, there is no violation of Article 14 of the Constitution of India. Both the aforementioned judgements do not deal with anomaly which arises on account of implementation of the recommendations of the Pay Commission.

(10) Para 2.2 of circular dated 7th June, 1999 itself recites that revision of service pension is not beneficial to PBOR retirees. Para 5 of circular dated 1st February, 2006 is a clarification of Para 2.2(a) of circular dated 7th June, 1999. Therefore, addition of said paragraph in circular dated 7th June, 1999 shows that the issue regarding pension was clarified by adding the paragraph after the recommendations of the Group of Ministers. Such benefit was not being conferred for the first time. Still further, the said addition was as a consequence of anomaly arising in implementation of the recommendations of the Pay Commission and, thus, the anomaly has to be removed from the day it arises.

(11) Though financial constraint is a valid criteria for fixing cut off date for grant of benefits but in the present case, neither the respondents had given any data in respect of financial constraints nor such financial constraints can be relevant when anomaly in the pensionary benefit is sought to be removed. If all other retirees of Government of India have got the benefits of revised pension then why the lowest rank of Armed Forces have been deprived the benefit of revised pension. Since anomaly is sought to be removed in pursuance of the recommendations of the Group of Ministers, PBOR would be entitled to revise pension from the date other employees of the Central Government have got the revised pensionary benefits. The plea of financial constraints has been raised in respect of lowest paid employees of the Armed Forces, when all other categories of employees including services have been given the benefit. Such discriminatory treatment is wholly arbitrary.

(12) In **Joginder Singh Saini's case** (*supra*), the Court held that having accepted the factum of anomaly and having taken decision to remove the same, the Government cannot arbitrarily fix the date with effect from which the benefit of revised pay scale is to be given to the petitioners. In **Harwinder Singh's case** (*supra*), the service of the

petitioner was not regularised though 13 other persons were given the benefit. It was found that once an approval has been sought, the same will relate back to the date of the original decision. If it is not so, the action of the respondents would result in invidious discrimination. In **Jai Narayan Jakhar's case** (*supra*), a Division Bench of this Court held to the following effect :

“Having heard the learned counsel for the parties, we are of the opinion that the stand of the respondents that the petitioner is not entitled to the benefit of removal of anomaly in the Pay Commission is wholly unjustified. It was during the implementation of 5th Pay Commission report, it was found by the respondents that there is anomaly in the pay scales. Once the anomaly in the pay scales is found and sought to be removed then it has to be removed from the implementation of the recommendation of the Pay Commission i.e. 1st January, 1996. There is no explanation as to why the said anomaly is sought to be removed from 10th October, 1997. In the absence of any explanation of removal of anomaly from 10th October, 1997, we do not find the action of the respondents fixing such date as justified. Consequently, we hold that the petitioner is entitled to the revised pay scale of Rs. 5220-140-8140/- with effect from 1st January, 1996. Thus the petitioner shall be entitled to the retiral benefits on the said pay scale”.

(13) In **Punjab State Cooperative Agricultural Development Bank Pensioner's Association's case** (*supra*), this Court held to the following effect :—

“.....It is further appropriate to mention that when anomaly is removed in the pay scale of a set of employees then it is recognition of a fact that earlier some mistake has been committed, which has been rectified later on. In other words, the concerned set of employees have suffered on account of delay in payment which rightly belong to them and in fact that has been paid to others. They cannot be made to suffer

further by imposing an embargo on the arrears of pay from a date different than the one anomaly has been removed”.

(14) In **Suveena Chaudhary’s case** (*supra*), this Court was seized of anomaly in the pay scale of the post of House Keeper. The Court held to the following effect :

“....It is true that it is always open to an employer to revise the salaries/pay scales of its employees and also specify a date from which the revision of pay scales shall take effect but where an anomaly is pointed out in the revision of pay scales of any post and that anomaly is sought to be removed then it cannot be allowed to be removed from the date when the employer decides to remove it. In the very nature of things it must relate back to the date when it existed. There would be no meaning in removing an anomaly from a date subsequent to the date when the grades were revised. In other words, if new grades had to be given by way of removing an anomaly such grades should take effect from the date when the grades were originally revised”.

(15) Mr. Hemen Aggarwal, learned Central Government Standing Counsel appearing for the respondents in some of the cases, relied upon Single Bench decision of this Court reported as **K.C. Thakur versus State of Haryana, (8)** However, the said case relates to introduction of a new scheme for pension and, thus, it was held that the scheme dated 31st May, 1999 will not be applicable to the retirees who retired prior to the applicability of the aforesaid scheme. It was held that once the employees, who are governed by Contributory Provident Fund Scheme, have retired but new Pension Scheme is introduced, they have no vested right to be covered by the new Pension Scheme and any relevant date could be fixed for applicability of the scheme. However, in the present case, it is not a new scheme which is being introduced but an anomaly which was noticed in the circular granting revised pensionary benefits alone which is sought to

be removed by the recommendations of the Group of Ministers. Such recommendations have to be given effect from the date anomaly arises and not from any other date.

(16) In view of the above, we allow the present writ petition and quash the cut off date 1st January, 2006 and clause (9) of circular dated 1st February, 2006 and direct the respondents to grant revised pensionary benefits to all the petitioners and similarly situated PBOR within a period of six months from today.

R.N.R.

Before Mehtab S. Gill and Rakesh Kumar Jain, JJ.

SUMAN AND OTHERS,—Appellants

versus

STATE OF HARYANA AND OTHERS,—Respondents

L.P.A. No. 125 of 2007 IN

C.W.P. No. 12590 of 2005

29th April, 2008

Constitution of India, 1950—Art.226—Haryana Municipal Act, 1973—Ss. 18, 26 and 27—Haryana Municipal Election Rules, 1978—Rl.70—Haryana Municipal Business Bye Laws 1981—Bye Laws 4 and 14—Election to M.C.—Oath administered to newly elected members in meeting held under Rl.70—No election of President and Vice President in that meeting—Election in a special meeting defined under section 27 of 1973 Act—U/s 27 quorum is necessary for transaction of any business at any ordinary or special meeting of Committee which shall be one half of number of members actually serving at that time—Resolution declaring elected President and Vice-President passed without required quorum as per law held to be illegal and unsustainable in law—Appeal allowed order of Single Judge set aside while directing respondents to hold fresh election.