SUPREME COURT OF INDIA

K.C. Bajaj

Vs.

Union of India

C.A.No.10640-46 of 2013

(G.S. Singhv and Kurian Joseph, JJ.)

27.11.2013

JUDGMENT

G.S. Singhvi, J.

1. Leave granted.

2. Whether final result of a case filed by a public servant with regard to his service conditions is dependent on the arbitrary choice of the State and/or its agencies/instrumentalities to prosecute the matter before the higher Courts is one of the questions which would require consideration in these appeals filed against order dated 16.10.2010 of the Division Bench of the Delhi High Court whereby the writ petitions filed by the appellants questioning the correctness of order dated September 12, 2008 passed by the Central Administrative Tribunal, Principal Bench (for short, 'the Tribunal') were dismissed. The other question which calls for determination is whether Non Practicing Allowance (NPA) payable to the doctors employed in Central Health Services, the Railways and other Departments of the Government, who retired from service prior to 1.1.1996 is to be added to their basic pay for calculation of pension payable to them.

3. The appellants are the doctors or the legal representatives of the deceased doctors, who were employed in the Central Health Services, Government of India or the Railways and were paid NPA as part of their monthly pay in lieu of private practice, availability of less promotional avenues and late entry in the service. Initially, NPA was paid at a fixed rate commensurate with the rank of the doctors and their pay scale. The same formula was adopted by successive Pay Commission. The 5th Pay Commission revised the formula of

calculating NPA and it was made 25% of the basic pay of a Government doctor. The recommendations made by the 5th Pay Commission on this issue are contained in para 52.16 of its report, which is reproduced below:

> "52.16. Non-practicing allowance Non-practicing allowance is presently granted under a slab system with amounts ranging from Rs. 600 per month at the lowest level to Rs. 1000 at the highest. It has been represented to us that prior to the Third CPC, NPA was granted as a percentage of basic pay, ranging from 25 to 40% at different levels, working out to an average of about 27%, which has, under the present arrangements dropped to as low as 12.5 to 16%. Doctors are also aggrieved that it does not count forwards Housing accommodation, though it is countable for all other purposes, including pension. There are also related demands for extension of NPA to other categories of professionals and Government servants who have opportunities to earn in the open market, as also the demand for discontinuance of NPA by permitting private practice. The Third CPC observed that NPA was granted to doctors in lieu of private practice on account of a traditionally enjoyed privilege as well as lesser effective service and promotion prospects caused by late entry into service. It did not favor private practice by doctors, and favored NPA as a separate element from pay-scales. It suggested a switch over to a slab system instead of the existing rates with monetary limits. The Fourth CPC enhanced the rates under the different slabs, besides granting it uniformly to all medical officers. The administrative Ministry has suggested that NPA should be continued and also be counted for purposes of housing accommodation eligibility. In the matter of permitting limited private practice we have been advised by expert opinion that it could be permitted in a limited form provided malpractices could be curbed. We also note that it is only doctors who are required to devote a lifetime to health care and life sustenance under oath as a part of their qualifications. We do not recommend extension of NPA to any other category. We recommended that the slab system of granting NPA to doctors may be dispensed with and NPA be granted at a uniform rate of 25% of basic pay subject to the condition that pay plus NPA does not exceed Rs.29,500, i.e. less than the maximum proposed for the Cabinet Secretary. It will continue to count forwards all service and pensioner benefits as at present. No other change is called for, as it would disturb relatives with other services. We are also not in favour of permitting private practice in any form at this stage."

4. In paragraphs 137.15, 137.19 and 137.20 of its report, the 5th Pay Commission recommended that pension of pre 01.01.1986 retirees as well as the post 01.01.1986 retirees should not be less than 50% of the minimum pay in the revised pay- scales at the time of the retirement.

5. In furtherance of the decision taken by the Government vide Resolution dated 30.9.1997 for implementation of the recommendations of 5th Central Pay Commission and in continuation of the instructions contained in O.M. No.45/86/97-P&PW(A)-Part II dated 27.10.1997, the Government issued O.M. dated 10.2.1998 for grant of revised

pension to those who were in receipt of specified types of pensions as on 1.1.1996 under Liberalized Pension Rules, 1950, Central Civil Services (Pension) Rules, 1972, as amended from time to time, and the corresponding rules applicable to railway pensioners and pensioners of All India Services. As per O.M. dated 10.2.1998, pay of the employees who had retired prior to 1.1.1996 was to be fixed on notional basis at par with the serving employees and their pension was to be fixed at par with those who retired after 1.1.1996. The Railway Board adopted the policy contained in O.M. dated 10.2.1998 and issued order dated 10.3.1998.

6. Vide O.M. dated 7.4.1998, the Ministry of Personnel (Public Grievances and Pension), Department of Pension and Pensioners' Welfare fixed the NPA ratio at 25% of the basic pay subject to the condition that pay plus NPA shall not exceed Rs.29,500/- for the doctors belonging to Central Health Services. It was also mentioned that NPA shall count as pay for all service benefits including retrial benefits. For the sake of convenient reference, O.M. dated 7.4.1998 is reproduced below:

"Office Memorandum

Dated 07.04.1998

To
All Participating Unit of
Central Health Service

Subject: Recommendation of the 5th Central Pay Commission - Grant of Non Practicing Allowance at revised rates to Central Health Service Officers.

S/Madam,

In supersession of this Ministry's letter of even number dated the 20th March, 1998 on the above subject I am directed to say that the President is pleased to decide that Central Health Ser¬vice officers may be paid Non Practicing Allowance @ 25% of their Basic Pay subject to the condition that Pay plus Non Practicing Allowance, does not exceed Rs. 29.500/-.

2. The Non Practicing Allowance shall count as 'pay' for all ser - vice benefits including retirement benefits as hitherto.

3. This issue with the approval of Ministry of Finance (Depart-ment of Expenditure) U.O. No. 7(25) E-III A-97 dated 7.4.1998.

Yours faithfully,

Sd/-

(H.N. YADAV)
Under Secretary to the Government of In¬Dia."(Emphasis supplied)

7. After eight months, the Ministry of Personnel (Public Grievances and Pension) issued O.M. dated 17.12.1998 incorporating the decision taken by the President that w.e.f. 1.1.1996, pension of pensioners irrespective of the date of their retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced from 1.1.1996 of the post last held by the pensioner. The same reads as under:

> "Department of Pen. & PW OM F.No. 45/10/98-P&PW (A) dated 17.12.1998.
>
> Minimum Pension and Minimum Family Pension to be 50% and 30% of the minimum pay of the post held at the time of retirement/death.
>
> The undersigned is directed to say that in the wake of a large number of representations received by the Government from the Pensioners' Associations as well as individuals, the Government has reconsidered its decision on the recommendations of the Fifth Central Pay Commission regarding revision of pension/family pension as contained in Paras 137.14 and 134.30 of the report. The President is now pleased to decide that with effect from 1.1.1996, pension of all pensioners irre¬spective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced with effect from 1.1.1996 of the post last held by the pensioner. However, the existing provisions in the rule governing qualifying service and minimum pension shall continue to be operat¬ive. Similarly, with effect from 1.1.1996 family pension shall not be less than 30% of the minimum pay in the revised scale introduced with effect from 1.1.96 of the post last held by the pensioner/deceased Government servant. Accordingly, so far as persons governed by CCS (Pension) Rules, 1972 are concerned, orders contained in the following Office Memoranda of this Department as amended from time to time shall be treated as modified as indicated below. O.M. No. 45/86/97-P & PW (A)-Pt. I, dated October 27, 1997.
>
> 2. The first sentence of paragraph 5 of the Office Memorandum relating to "Pension" may be substituted by the following:-
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> "Pension shall continue to be calculated at 50% of the average emoluments in all cases and shall be, subject to a minimum of Rs.1,275 per month and a maximum of up to 50% of the highest pay applicable in the Central Government, which is Rs.30,000 per month since 1st January, 1996, 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 post last held by the employee at the time of his retirement However, such pension will be suitably reduced pro rata where the pensioner has less than the maximum required service for full pension as per the rule (Rule 49 of CC (Pension) Rules, 1972) applicable to the pensioner as on the date of his/her superannuation/retirement and in no case it will be less than Rs.1,275 p.m."
> (emphasis supplied)

8. However, in the garb of answering the clarification sought by some of the Departments/Ministries, whether NPA admissible as on 1.1.1986 is to be taken into consideration after fixation of pay on notional basis and whether the same is to be added to the minimum of the revised scale while stepping up consolidated pension, the Ministry of Personnel, Public Grievances and Pensions issued O.M. dated 29.10.1999, which reads as under:

"No. 45/3/99-P & PW (A)
Government of India
Ministry of Personnel Public Grievances & Pensions
Department of Pension & Pensioners Welfare

New Delhi, Dated the 29 October, 1999
Office Memorandum

Subject: Implementation of Government of India decision on the recommendations of Vth CPC - Revision of Pension of Pre- 1996 pensioners.

The undersigned is directed to refer to this Department's O.M. No. 45/10/98-P &PW(A) dated December 17, 1998 wherein decision of the Government that pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum of revised scale of pay introduced w.e.f. 1.1.96 of the post last held by the pensioner was communicated clarifications have been sought by Departments/Ministries as to whether Non-Practicing Allowance (NPA) admissible as on 1/1/86 is to be taken into consideration after reification of pay on notional basis as on 1/1/86 and whether NPA is to be added to the minimum of the revised scale while considering stepping up consolidated pension on 1/1/96. NPA granted to medical officers does not form part of the scales of pay. It is a separate element although it is taken into account for the purpose of computation of pension. This has been examined in consultation with the Department of Expenditure and it is clarified that N.P.A. is not to be taken into consideration after reification of pay on notional basis on 1/1/86. It is also not to be added to the minimum of the revised scale of pay as on 1.1.1996 in cases where consolidated pension/family pension is to be stepped up to 50% / 30% respectively, in terms of O.M. 45/10/98 -P&PW(A) dated 17.12.98.

2. This issues with the approval of Department of Expenditure, Ministry of Finance vide U.O. No. 806/EV/99 dated 29.9.1999.

3. Hindi version will follow.

Sd/-

(GANGA MURTHY) Director (PP)"

9. Dr. K.C. Garg and others, who had retired from Railways prior to 1.1.1996, challenged O.M. dated 29.10.1999 by filing applications under Section 19 of the Administrative Tribunals Act, 1985 (for short, 'the Act') and prayed that the same may be quashed and the respondents be directed to include the element of NPA for the purpose of computing the pension payable to them. Their applications were dismissed by the Tribunal vide order dated 5.10.2001. That order was set aside by the Division Bench of the Delhi High Court in CWP No.7322/2001- *Dr. K.C. Garg and others vs. Union of India and* others and connected matters. The High Court relied upon OM dated 7.4.1998 in which it was categorically mentioned that NPA shall be treated as part of service benefits including retirement benefits and concluded that there was no justification to exclude the element of NPA for the purpose of calculating the pension. Paragraphs 5.0, 5.2 to 6.0, 10.3, 10.4, 11.1, 11.2, 11.3 and 12 of order dated 18.5.2002 passed by the High Court read as under:

> "5.0 History of grant of N.P.A. clearly shows that the same was being granted in lieu of private practice. It was also granted having regard to availability of less promotional avenue and late entry in the service, N.P.A. was granted in terms of Fundamental Rule 9(21)(a)(i) read with Fundamental Rule 9(21)(a)(ii), which read thus:-
> "F.R. 9: Unless there be something repugnant in the subject of context the terms defined in this Chapter are used in the Rules in the sense here explained:-
>
> xxx xxx xxx xxx
>
> (21)(a) Pay means the amount drawn monthly by a Government servant as
>
> (i) The pay other than special pay or pay granted in view of the personal qualifications which has been sanctioned for a post held by him substantively or in an officiating capacity or to which he is entitled by reason of his position in a cadre:
>
> (ii) Overseas pay, special pay and personal pay; and
>
> (iii) Any other emoluments which may be specially classed as pay by the President."
> xxx xxx xxx xxx
>
> 5.2 It also appears that the Ministry of Health and Family Welfare in terms of the instructions, as contained in the letter dated 07.04.1998, categorically stated that N.P.A. be treated to be a pay by way of service benefits including retirement benefits. It is also beyond any cavil of doubt that 25% of the basic pay was recommended towards payment of N.P.A. by the 5th CPC, which was accepted by the Government of India in terms of its circular letter dated 07.04.1998.
>
> 5.3 By reason of the aforementioned recommendations, an attempt had been made to bring pre-01-01-1986 retirees and post-01-01-1986 at par having regard to the fact that the rates of their pension were slightly different. By reason of the said

recommendation, the slab system, which was prevailing thitherto having been given a go by and in place thereof payment of 25% of the basic pay as N.P.A. w.e.f. 01.01.1996 was recommended. In other words, a revolutionary step was taken by the 5th CPC by making recommendations so that the retrial benefit is enhanced not only for pre-01-01-1986 retirees but also post-01-01-1986 retirees at par.

5.4 In para 137.13 of its Report, the 5th CPC clearly stated that it was desirable to grant complete parity in pension to all past pensioners irrespective of the date of their retirement, but having regard to the fact that the same was not found to be feasible and having regard to the considerable financial implications, a suggestion was made that the process of bridging the gap in the matter of payment of pension would be fulfilled if certain additional reliefs be granted in addition to the recommendations of the Fourth Central Pay Commission (in short, '4th CPC') in terms whereof the past pensioners were granted additional relief in addition to the consolidation of their pension.

5.5. Yet again in para 137.14 of its Report, the 5th CPC recommended that as a follow up of their basic objective of parity, the pension of all pre-01-01-1986 retirees should be updated by notional fixation of their pay as on 01.01.1986 by adopting the same formula as for the service benefits. Pursuant whereto, all the past pensioners of pre-01-01-1986 were to be brought on a common platform so as to grant them the benefit of the revision of pay scale as recommended by 4th CPC as on 01.01.1986. It was further laid down that all pre-01-01-1986 pensioners, who had been brought on to the 4th CPC by notional fixation of their pay and who had retired after 01.01.1986, the recommendation was that the consolidated pension would not be less than 50% of the minimum pay of the post as revised by the 5th CPC.

6.0 It is, therefore, evident that the 5th CPC recommendations were to bring all the pensioners whether pre- 01-01-1986 retirees or post-01-01-1986 on a common platform. The recommendations in no uncertain terms suggest that the payment of pension of pre-01-01-1986 retirees and post-01-01¬1986 retirees should be the same. The Central Government admittedly acted in terms of the aforementioned recommendations by determining the pension, which was not less than 50% of the minimum of their pay in the revised pay- scale of the post held by the pensioners at the time of retirement w.e.f. 01.01.1986. For the said purpose, the minimum of the pay revised in the 5th CPC of the post concerned was determined were with 25% of the pay as N.P.A. was added and 50% thereof had been taken as revised minimum pension as per the qualifying service.

10.3 It is difficult for us to accept the contention that despite the fact that N.P.A. shall form part of pay so far as post-01-01¬1986 retirees are concerned, the same would not form part of pay despite provisions in the Fundamental Rules so far as pre- 01-01-1986 retirees are concerned. The 5th CPC has taken into consideration, as noticed hereinbefore, the history of grant of N.P.A. and wherefrom it is evident that N.P.A. became part of pay.

10.4 It is not a case where cut-off date has been fixed. The Central Government is entitled for the purpose of determination of pension pursuant to the policy decision to fix a cut-off date. It is also true that such a cut-off date cannot be held to be arbitrary and irrational, as it was not picked out of a hat. However, in the instant case, we are not concerned with any cut-off date, but we are concerned with the question as to whether despite recommendations of the 5th CPC, discrimination can be made. The very fact that the Central Government accepts that the emoluments would mean basic pay + N.P.A. in view of its definition as existing in the Rule 9(21)(a)(i) of the Fundamental Rules, there cannot be any reason whatsoever as to why N.P.A. shall be considered to be a part of pay for post-01-01-1986 retirees and not for pre-01-01- 1986 retirees.

11.1 We may, in this connection, notice that emoluments has been defined in Rule 33 of CCS (Pension) Rules, 1972 in the following terms:-

"The expression 'emoluments' means basic pay as defined in Rule 9(21)(a)(i) of the Fundamental Rules which a Government servant is receiving immediately before his retirement or on the date of his death and will also include Non Practicing Allowance granted to the Medical Officer in lieu of private practice."

Thus, even in terms of the aforementioned definition, N.P.A. would be part of pay.

11.2 In *D.S. Nakara and Ors. vs. Union of India*., it is stated:- "42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalize the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalization was considered necessary for augmenting social security in old age to government servants then those who retired earlier cannot be worse off than those who retired later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service."

11.3 Yet again in *V. Kasturi vs. Managing Director, State Bank of India*, *Bombay and Anr*. The Apex Court pointed that in D.S. Nakara's case (supra) a distinction has been made between a new scheme and a liberalized pension scheme. When a

new scheme come into force, the same may not apply to the persons who had retired prior thereto, but when there is a revision in the existing scheme by way of upward revision, the scheme should be applied.

12. For the reasons aforementioned, the impugned order cannot be sustained, which is set aside accordingly. These writ petitions are allowed. However, in the facts and circumstances of the case, there shall be no orders as to cost."

10. The aforementioned order of the Delhi High Court was challenged by the respondents by filing special leave petitions, which were converted into Civil Appeal Nos. 1972-1974/2003. During the pendency of the appeals, other similarly situated doctors made representations for grant of benefit in terms of the High Court's order. Thereupon, the Government of India made a reference to the Attorney General and sought his opinion on the question whether judgment of the Delhi High Court was correct and should be accepted. The Attorney General considered the relevant rules, the Office Memorandums and gave detailed opinion, which reads thus:

"OPINION

Sub: Regarding the inclusion of Non Practicing Allowance (NPA) to Pensioners Doctors in the calculation of pension.

1. Doctors in the Central Government who retired prior to 01.01.1996 are aggrieved by the Office Memorandum dated 29.10.1999 issued by the Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Pensions and Pensioners Welfare [hereinafter referred to as MoPP] which inter-alia provides that Non-Practising Allowance [NPA] is not to be taken into consideration after reification of their pay and as a result NPA is not to be added to the minimum of the revised scale of pay as on 01.01.1996 in cases where pension is to be stepped up to 50% in terms of the earlier O.M. dated 17.12.1998.

2. As per the Rule 9(21)(a)(i) of the Fundamental Rules, NPA forms a part of the pay of a government doctor and is taken into account for computing dearness allowance, entitlement of IADA for sanctioning advances under GFRs, House Building Advance and other allowances as well as for calculation of retrial benefits.

3. By an Office Memorandum dated 27.10.1997 issued by Mo PP, the Government decided to accept the modified parity formula while implementing the recommendations of the Vth Pay Commission Government servants who retired before 01.01.1986 [i.e. before the implementation of the IVth Pay Commission] and those who retire before 01.01.1996 [i.e. before implementation of the Vth Pay Commission] were sought to be brought at par by the notional fixation of pay of the first category as of 01.01.1986 and thereafter consolidation of their pension as on 01.01.1996.

4. A number of representations were received by the Government from Government servants who retired prior to 01.01.1996 and they claimed parity with government servants who retired after 01.01.1996. By Office Memorandum dated 17.12.1998, issued by Mo PP, the Government of India sought to achieve parity between pre 01.01.1996 retirees and post 01.01.1996 retirees. By the aforesaid O.M., it was provided that pension/ family pension of pre 01.01.1996 retirees would be stepped up to 50% / 30% of the minimum of the corresponding revised scale of pay in respect of that post as on 01.01.1996. Thus, all retired government officers retiring from a particular post were to be given pension which was comparable to a large extent. This decision of the Government finds some support from the judgment of the Supreme Court in *D.S. Nakara vs. Union of India*[1].

5. Like all retired government servants, government doctors of the Central Health Scheme were also given benefit of stepping up of their pension to 50% of the minimum revised scale of pay as on 01.01.1996 by including NPA being granted to the government doctors in that scale of pay and such stepped pension was in fact paid to them.

6. However, subsequently on 29.10.1999, as mentioned herein above, the MoPP issued Office Memorandum making a technical distinction between pay and scale of pay and provided that since NPA cannot be given while stepping the pension up to 50%.

7. The government doctors who retire after 01.01.1996 would get benefit of NPA as it forms a part of their pay. Hence, just on the basis only of date of retirement, there would be wide disparity between pension of government doctors, i.e. who retired prior to 01.01.1996 would get much less pension then those who retire after 01.01.1996.

8. The distinction between 'pay' and 'scale of pay' made out in the Office Memorandum dated 29.10.1999 to deny benefit of NPA for the purpose of stepping up of the pension to 50%, is purely technical and mechanical distinction and does not take into account the special position of NPA qua a Government doctor.

9. NPA is a matter of right of government doctor and is meant as a compensation for denial of private practice. The scale of pay prescribed department of the Government of India and does not account the special feature of Central Health Service. In Central Health Service, NPA de jure and de facto is a part of the scale of pay as it is inevitably linked to the basic pay. Simply because NPA is not formally included in the scale of pay of the government doctors and taken as a separate element, it cannot be said that NPA has to be ignored altogether for stepping up of pension. NPA is a separate element only because scales of pay of government servants are of general application and not meant for individual services. However, if an element is inevitably a part of the pay, as NPA is, in effect it has to be construed as a scale of pay.

10. Since, NPA for government doctors is a part of their pay, it would be discriminatory if retired government doctors are denied benefit of stepping up of their pension without reference to the NPA presently given to serving doctors and those who retire after 01.01.1996. In fact, denial of NPA to pre 01.01.1996 retired government doctors would fall foul of the guarantee of equality under Article 14 of the Constitution.

11. The fixation of pension and stepping up of the same to 50% of the revised scale of pay for pre 01.01.1996 retirees as provided by the Government of India in its Official Memorandum dated 17.12.1998 was meant to achieve parity amongst all retired government servants, including government doctors. The comparison of pension being paid to the government doctors who retired prior to 01.01.1996 has to be made with the pension to be paid to government doctors who retired after 01.01.1996. If the latter category is given benefit of NPA for calculation of their pension, the former category cannot be denied the same by reference to a general scale of pay governing all government servants without considering the special feature of government doctors.

12. The Delhi High Court in its order dated 18.05.2002 in CWP Nos. 7322, 7826 and 7878 of 2001 has quashed the Office Memorandum dated 29.10.1999. In the said order, the High Court has quite rightly observed that the benefit sought to be given by the earlier OM dated 17.12.1998 was wrongly taken away by the OM dated 29.10.1999. The High Court has observed that in view of the stated objectives of the Government to provide parity in pension amongst government doctors, NPA would have to be necessarily taken into account for stepping up of pension to 50% of the revised scale of pay has been held to be ultra virus the Constitution.

13. The Government of India has filed an SLP against the order of the Delhi High Court dated 18.05.2002. The reason for grant of leave in this case is the conflicting decisions of the Delhi High Court and the Chennai Bench of the Central Administrative Tribunal on one hand and the Principal Bench of the Central Administrative Tribunal, New Delhi on the other. I have no hesitation in opining that the judgment of Justice S.B.Sinha, now a judge of the Supreme Court is correct and should be accepted in preference to the view of the Principal Bench of the Central Administrative Tribunal, Delhi. Consequently steps will have to be taken with regard to the pending Special Leave Petition."

11. After considering the opinion of the Attorney General, the Prime Minister accorded his approval for acceptance of the order of the Delhi High Court in K. C. Garg's case. As a sequel to this, I.A. Nos.16-18 were filed for withdrawal of Civil Appeal Nos. 1972-1974/2003. The same were allowed by this Court vide order dated 13.5.2005 and the appeals were dismissed as withdrawn.

12. On 22.6.2005, the Department of Pension and Pensioners' Welfare, Ministry of

Personnel (Public Grievances and Pension) issued instructions for implementation of the order passed by the High Court in K.C. Garg's case. It was also proposed that O.M. dated 29.10.1999 may be withdrawn. However, the Ministry of Finance did not agree with the latter part of the proposal. Thereafter, permission of the Prime Minster being the Minster-in-charge of the Department of Pension and Pensioners' Welfare, Ministry of Personnel (Public Grievances and Pension) was sought under Rule 12 of the Government of India (Transaction of Business) Rules, 1961. On 29.7.2000, the Prime Minister sanctioned the proposal for withdrawal of O.M. dated 29.10.1999. However, before the decision taken by the Prime Minister could be translated into an order, this Court delivered judgment titled *Col. B. J. Akkara (Retd.) vs. Government of India and others*[2] , in the appeals and writ petitions filed by the doctors of defence services and in the light of that decision, the Prime Minister approved the proposal of the Department that O. M. dated 29.10.1999 may not be withdrawn.

13. Dr. G. D. Hoonka, who retired as Chief Medical Superintendent, Central Railway, Jabalpur w.e.f. 30.4.1996 challenged the decision taken by the Railways in the light of O.M. dated 12.11.1999 whereby NPA was not treated as part of basic pay for the purpose of calculation of pension. The Tribunal allowed the application filed by Dr. Hoonka. Writ Petition No.2539/2003 filed by the Union of India and others was dismissed by the Division Bench of the Madhya Pradesh High Court vide order dated 7.12.2004, paragraph 8 of which reads as under:

> "The Circular dated 13.04.1998 makes it clear that NPA will be counted as 'pay' for all service benefits including retirement benefits. The Circular dated 15.01.1999 does not contain anything to the contrary. What is stated in the circulars dated 13.04.1999 (which states that NPA granted to Railway Medical Officers is not to be added to the minimum of the revised scales of pay, while giving effect to the circular dated 15.01.1999) is merely a departmental clarification and not a policy of the Government. The circular dated 12.11.1999 rightly states that "It (NPA) is a separate element although it is taken into account for the purpose of computation of pension". This refers to the policy of the Government contained in the Circular dated 13.04.1998 which states that NPA will count as 'Pay' for all service benefits and retirement benefits, which include pension. Having said so, the circular dated 12.11.1999 proceeds to say that NPA is not to be added to the minimum of the revised scale of pay as on 1.01.1996 in cases where consolidated pension is to be stepped up to 1999. The policy of the government (Decision of the President) as stated in the Circular dated 13.04.1998 that NPA will count as pay for all service benefits including pension, is not altered or superseded by any subsequent policy of the Government. In fact it is reiterated in the Circular dated 12.11.1999. If that is so, the Circular dated 12.11.1999 cannot under the guise of clarification, delete the benefit of the policy decision contained in the circular dated 13.04.1998, when the said policy continues to be in force. Once it is decided, as a policy, that NPA will count as 'Pay' for all service benefits including retirement benefits, the same cannot be excluded by way of clarification. The position of course could have been different if the circular dated 15.01.1999 containing the policy relating to illegible of illegible earlier policy stated in the

circular dated 13.04.1998.

> "The policy of the Government formulated by a decision of the President cannot obviously be negated by a departmental clarification running contrary to such policy. The effect of the clarification dated 12.11.1999 is that in giving effect to the policy contained in the Government circular dated 15.01.1999, the policy dated 13.04.1998 is to be ignored. But so long as the policy contained in the President's decision, given effect by the circular dated 13.04.1998 continues to hold the field, its effect cannot arbitrarily be directed to be ignored by a purported clarification, which admittedly is not a decision of the President."(emphasis supplied) (reproduced from the appeal paper book)

14. SLP (C) No.14834/2006 filed against the order of the Madhya Pradesh High Court was dismissed by this Court on 28.8.2006. Review Petition (C) D.No.17280/2007 was also dismissed on 17.1.2008 as barred by limitation and also on merits.

15. Dr. Naw Nath Prasad, who retired as Medical Director, LNM, Railway Hospital, Gorakhpur, successfully invoked the jurisdiction of the Central Administrative Tribunal, Patna Bench for adding NPA for the purpose of calculating pension. O.A. No.215/2005 filed by him was allowed by the Tribunal vide order dated 17.1.2006. The Union of India challenged the order of the Tribunal in Civil Writ Jurisdiction Case No.11114/2006. The Division Bench of the High Court referred to order dated 18.5.2002 passed by the Delhi High Court in Civil Writ Petition No.7826/2001 - Retired Railway Medical Officers Association v. Union of India and others, the order passed by the Madhya Pradesh High Court in Dr. G. D. Hoonka's case, the circulars issued by the Government of India for implementing the order passed in the two cases and observed:

> "It is thus evident from a plain reading of the decisions of the Courts deciding identical issues, and duly executed by the Ministry of Railways (Railway Board) by issuing the aforesaid letter dated 25.8.2005, that non-practicing allowance availed of by a serving doctor of Indian Railway Service is entitled to the same to be taken into account for the purpose of computation of post retirement benefits.
>
> The decision of the authorities declining the same to the present respondent, the contest put up before the Tribunal and the present writ petition at the instance of the authorities, is beyond our comprehension, speaks of not only unreasonable approach, seems to be arbitrary and verging on administrative tyranny, and burdening the Tribunal and this Court with utmost unwanted matters, and harassing the retired employee in the evening of his life."

16. SLP (C) No.15134/2010 filed against the order of the Patna High Court was dismissed by this Court on 4.10.2010 in the following terms:

> "We are not inclined to entertain the special leave petition, since the subject matter

thereof has been considered earlier. However, the cost imposed by the High Court in the writ petition is quashed. The special leave petition is dismissed except to the above extent."

17. Dr. S.N. Srivastava, who retired from the post of Chief Medical Superintendent (nomenclature of the particular railway has not been given in the copy of order filed by the counsel for the appellants) w.e.f. 31.1.1996 filed Writ Petition No.1774 (SB)/2004 before the Allahabad High Court for issue of a mandamus to the respondents to re-fix his pension by adding the element of NPA. He relied upon the order passed by the Madhya Pradesh High Court in the case of Dr. G. D. Hoonka and pleaded that with the dismissal of the special leave petition filed by the respondents, the order passed in that case has become final and the same is binding on the respondents. On behalf of the respondents, reliance was placed on the judgment of this Court in *Col. B. J. Akkara (Retd.) vs. Government of India and others* (supra) and it was pleased that the writ petitioner is not entitled to any relief. The Division Bench of the Allahabad High Court relied upon paragraphs 12 and 13 of the order passed by the Tribunal in Dr. G. D. Hoonka's case, referred to the judgment in Col. B. J. Akkara's case and allowed the writ petition by recording the following observations:

"It is pertinent to point out at this juncture that against the judgment and order dated 9.5.2003 passed by the Central Administrative Tribunal, Jabalpur in the matter of Dr. G.D. Hoonka, the Department questioned the validity of the aforesaid judgment by filing writ petition no. 2539 of 2003 and the Jabalpur High Court by a detailed judgment refused to interfere with the order of the Tribunal and dismissed the writ petition vide its judgment and order dated 7.12.2004. While dismissing the writ petition, the Jabalpur High Court observed in paragraph 9 as under:-

"9. In fact, we find that when the question as to whether NPA is to be taken as part of pay in regard to those who had retired prior to 1.1.1996, came up for consideration before the Delhi High Court in *Dr. K.C. Garg vs. Union of India* (CwP 7322/2001) and connected cases decided on 18.5.2002, the Railway Administration through their counsel conceded in a reply to a query that NPA shall be taken to be a part of pay for post 1.1.1996. Be that as it may."

Under these circumstances, it is very difficult for us to accept the contentions of the Department and find force in the submis¬sions advanced by the Counsel for the petitioner that the petitioner is also entitled for the benefit of the judgment rendered in Dr. G .D. Hoonka's case, referred to above."

18. Dr. K.C. Bajaj (one of the appellants in the appeals arising out of SLP (C) Nos.3358-64/2011) filed O.A. No.1275/2006 for issue of a direction to the re¬spondents to add NPA for the purpose of calculating the pension. The same was disposed of by the Tribunal with a direction to the respondents to consider his case for grant of pension in terms of the judgment in Dr. K. C. Garg's case and pass a speaking and reasoned order. However, by taking shelter of the judgment in B.J. Akkara's case, the Railway Board

rejected his representation. O.A. No.1369/2007 filed by Dr. K. C. Bajaj was dismissed by the Tribunal along with other similar applications vide order dated 12.9.2008 by relying upon the judgment of this Court in Col. B. J. Akkara's case. The writ petitions filed by the appellants questioning the order of the Tribunal were also dismissed by the High Court.

19. These appeals were heard by different Benches on various dates. On 11.4.2013, the learned Additional Solicitor General produced the file containing different opinions recorded by the learned Attorney General. After perusing the file, the Court passed the following order:

> "Further arguments heard which remained inconclusive.
>
> The file produced by the learned Additional Solicitor General contains different opinions recorded by the learned Attorney General. In the last opinion recorded in 2007, the learned Attorney General noted that the files produced before him do not contain formal notification for withdrawal of O.M. dated 29.10.1999.
>
> However, from the judgment of this Court in *Col. B.J. Akkara (Retired) vs. Government of India and others*, which was decided on 10.10.2006, it is borne out that an affidavit was filed on behalf of the respondents on 1.8.2006 stating therein that Circular dated 29.10.1999 had been withdrawn in regard to the Civilian Medical Officers who were petitioners in the writ petition filed by *Dr. K.C. Garg and others*. It is also borne out from paragraph 23 of the judgment that the Court deciding the matter had been informed that the order passed by the Delhi High Court in C.W.P. Nos. 7322,7826 and 7378 of 2001 Dr. K.C. Garg and others v Union of India and others had not been challenged by the Union of India and the directions contained in the High Court's order had been implemented.
>
> All this, prima facie, shows that the parties appearing before the Court had not placed the facts in a correct perspective and apparently misleading statement was made in the affidavit filed on behalf of the respondents that O.M. dated 29.10.1999 had been withdrawn in respect of the petitioners in K.C. Garg's case.
>
> The learned Additional Solicitor General should instruct his assisting counsel to ensure that an affidavit of a senior officer of the rank of Joint Secretary to the Government is filed clarifying the stand of the Government. In the affidavit it should also be indicated as to what steps were taken for compliance of the direction given by the Prime Minister under Rule 12 of the Government of India (Transaction of Business) Rules, 1961. The required affidavit be filed within two weeks.
>
> For further hearing, the cases be listed on 01.05.2013."

20. In compliance of the direction given by this Court, Ms. Vandana Sharma, Joint Secretary, Ministry of Personnel, Pension and Public Grievances filed affidavit dated

24.5.2013. Thereafter, the counsel for the parties made further arguments and judgment was reserved on 7.5.2013 with liberty to the parties to file written submissions.

21. While dictating the judgment, the Court found that the written arguments filed on behalf of the parties contain additional facts which were not brought to the notice of the Court during the course of hearing. Therefore, by an order dated 2.7.2013, the case was ordered to be listed for further arguments, which were heard on 24.9.2013 and judgment was again reserved.

22. Shri Prashant Bhushan, learned counsel appearing for the appellants in the appeals arising out of SLP (C) Nos.3358-64/2011 argued that the judgments of the Delhi, Madhya Pradesh, Patna and Allahabad High Courts are binding on the respondents because O.M. dated 29.10.1999 which was challenged by Dr. K.C. Garg and others was quashed by the Division Bench of the Delhi High Court vide order dated 18.5.2002 and though the respondents had challenged that order by filing special leave petitions, a conscious decision was taken by the Government to withdraw Civil Appeal Nos.1972-1974/2003 and to implement the order of the Delhi High Court. Shri Bhushan pointed out that the special leave petitions filed against the orders passed by the Madhya Pradesh High Court and the Patna High Court in the cases of Dr. G. D. Hoonka and Dr. Naw Nath Prasad were also dismissed by this Court and argued that having implemented the orders of the High Court in the cases of civilian doctors as well as doctors employed in the Railways and Post and Telegraph Department, it is not open to the respondents to rely upon the judgment in Col. B.J. Akkara's case for denying relief to the appellants. In support of this argument, Shri Bhushan relied upon the judgments in *Amrit Lal Berry vs. Collector of Central Excise, New Delhi and others*[4], and *K. I. Shephard and others vs. Union of India and others*[4]. He submitted that the judgment in *State of Maharashtra vs. Digambar*[5], to which reference has been made in paragraph 25 of the judgment in Col.B.J. Akkara's case, has no bearing on these appeals because a conscious and considered decision was taken by the Government of India to withdraw the ap¬peals filed against the order passed in the case of Dr. K.C. Garg and others and the orders passed by the Madhya Pradesh and Patna High Courts were implemented after dismissal of the special leave petitions. Shri Bhushan also pointed out that question No.3 in Col. B.J. Akkara's case was decided by the two Judge Bench under a wholly erroneous impression that the order passed by the Division Bench of the High Court in K.C. Garg's case was not challenged by the Union of India. Shri Bhushan also distinguished the judgment in Col. B.J. Akkara's case by pointing out that this Court had not considered the impact of O.M. dated 7.4.2008 issued by the Government in terms of the decision taken by the President that NPA shall count as pay for all service benefits including retirement benefits.

23. Shri A. S. Chandhiok, learned Additional Solicitor General argued that the issue raised in these appeals is no longer re Integra and should be deemed to have been decided against the appellants by virtue of the judgment in Col. B. J. Akkara's case. He emphasized that clarification dated 11.9.2001 was issued by the Ministry of Defence in the light of O.M. dated 29.10.1999 and in view of decision of question No.2 in Col. B. J.

Akkara's case, the appellants cannot fall back upon O. M. dated 7.4.1998 and claim that NPA should be added to the basic pay for the purpose of calculating the pension. The learned Additional Solicitor General argued that dismissal of the special leave petitions filed in the cases of Dr. K. C. Garg and others, Dr. G. D. Hoonka and Dr. Naw Nath does not have the effect of conclusively deciding the issue relating to entitlement of the appellants to get the benefits of the orders of the three High Courts because this Court had not interpreted the relevant circulars and Office Memorandums.

24. We have considered the respective arguments/submissions and carefully scrutinized the record including the additional affidavits filed on behalf of the respondents. We have also gone through the orders passed by the Delhi, Madhya Pradesh, Patna and Allahabad High Courts.

25. The first question which merits consideration is whether the judgment in *State of Maharashtra vs. Digambar (*supra) can be relied upon for ignoring the orders passed by the four High Courts, which have since been implemented by the concerned departments/establishments. A reading of that judgment shows that this Court had entertained subsequent special leave petitions filed by the State questioning the order of the High Court against the grant of compensation for illegal utilization of their land despite the fact that the special appeals filed against similar orders passed by the High Court had already been dismissed. This Court took cognizance of the fact that in some of the matters, the State Government had not challenged the orders of the High Court and the special leave petition filed in some other matters had been summarily dismissed and proceeded to observe:

> "Sometimes, as it was stated on behalf of the State, the State Government may not choose to file appeals against certain judgments of the High Court rendered in writ petitions when they are considered as stray cases and not worthwhile invoking the discretionary jurisdiction of this Court under Article 136 of the Constitution, for seeking redressal there for. At other times, it is also possible for the State, not to file appeals before this Court in some matters on account of improper advice or negligence or improper conduct of officers concerned. It is further possible, that even where SLPs are filed by the State against judgments of the High Court, such SLPs may not be entertained by this Court in exercise of its discretionary jurisdiction under Article 136 of the Constitution either because they are considered as individual cases or because they are considered as cases not involving stakes which may adversely affect the interest of the State. Therefore, the circumstance of the non-filing of the appeals by the State in some similar matters or the rejection of some SLPs in limine by this Court in some other similar matters by itself, in our view, cannot be held as a bar against the State in filing an SLP or SLPs in other similar matter/s where it is considered on behalf of the State that non-filing of such SLP or SLPs and pursuing them is likely to seriously jeopardize the interest of the State or public interest."

26. This Court further observed that the special leave petition filed by the State deserves to be decided on merits because the High Court was wholly wrong in granting relief of compensation to all the writ petitioners without considering their entitlement for such relief under Article 226 of the Constitution. The Court noted that the award of compensation in such matters would cast a burden of Rs.400 crores on the State and proceeded to observe:

> "Therefore, the fact that the State has failed to file appeals in similar matters or this Court has rejected SLPs in similar matters, cannot be held to be a total bar or a fetter for this Court to entertain appeals under Article 136 of the Constitution against similar judgments of the High Court where need to entertain such appeals is found necessary to meet the ends of justice, in that, the ambit of power invested in this Court under Article 136 allows its exercise, wherever and whenever, justice of the matter demands it for redressal of manifest injustice. When by an order, already adverted to by us, a two-Judge Bench of this Court, has got referred the SLP out of which the present appeal has arisen for being entertained and decided on merits by a three-Judge Bench of this Court, notwithstanding the rejection of SLPs by another two-Judge Bench of this Court in similar matters, it has desired the exercise of this Court's wide power under Article 136 of the Constitution to meet the ends of justice and remedy the manifest injustice caused to the State by the judgment of the High Court under appeal, cannot be overlooked."

27. In Col. B. J. Akkara's case (paragraph 23), a two Judge Bench noted that order dated 18.5.2002 passed by the Division Bench of the High Court in Dr. K.C. Garg's case and other connected matters had not been challenged by the Union of India and was implemented by adding NPA to basic pay for stepping up the pension in the case of Civilian Medical Officers who had retired prior to 1.1.1996 and the submission made on behalf of the respondents (paragraph 24) that circular dated 29.10.1999 had been withdrawn only qua the Civilian Medical Officers who were petitioners in the writ petitions filed before the High Court and not with regard to all Civilian Medical Officers, referred to the proposition laid down in Digambar's case (paragraph 25), which has been extracted herein above and held:

> "The said observations apply to this case. A particular judgment of the High Court may not be challenged by the State where the financial repercussions are negligible or where the appeal is barred by limitation.
>
> It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the non-comprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realized, the State is not prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgment in a case involving similar issue was allowed to reach finality in the case of others. Of course, the position would be viewed differently, if petitioners plead and prove that the State

had adopted a "pick-and-choose" method only to exclude petitioners on account of mala fides or ulterior motives. Be that as it may. On the facts and circumstances, neither the principle of res judicata nor the principle of estoppels is attracted. The administrative law principles of legitimate expectation or fairness in action are also not attracted. Therefore, the fact that in some cases the validity of the circular dated 29-10-1999 (corresponding to the Defence Ministry circular dated 11-9-2001) has been upheld and that decision has attained finality will not come in the way of the State defending or enforcing its circular dated 11-9-2001."

28. However, the fact of the matter is that the Union of India did challenge the order passed by the Delhi High Court in Dr. K. C. Garg's case and other connected matters by filing special leave petitions, which were converted into Civil Appeal Nos.1972-1974/2003 and during the pendency of the appeals, a conscious decision was taken by the Government of India not to pursue the appeals and implement the order of the High Court. It is neither the pleaded case of the respondents nor it has been argued before us that the Government of India had taken decision to withdraw the appeals field in the cases of Dr. K. C. Garg and others because the financial implications were negligible or that the concerned officers were misled in doing so on account of wrong legal advice. At the cost of repetition, we consider it necessary to observe that during the pendency of the appeals, the matter was referred to the Attorney General for his opinion whether the judgment of the High Court is correct and the same should be implemented. The Attorney General examined the matter keeping in view the relevant rules and the policy decisions taken by the Government of India and opined that the judgment of the High Court was correct and should be accepted in preference to the view taken by the Tribunal. The issue was then considered at the highest level of the Government and the Prime Minister ordered implementation of the High Court's order. Thereafter, the appeals were withdrawn. It is a different thing that the proposal for withdrawal of O.M. dated 29.10.1999 was shelved in view of the judgment in Col. B. J. Akkara's case. In other words, the Government of India had taken a well considered decision not to pursue the appeals filed against the order of the Delhi High Court and implement the same on the premise that the proposition laid down therein was correct.

29. In view of the above discussion, we hold that the ratio of the Digambar's case cannot be invoked to justify the pick and choose methodology adopted by the Union of India in resisting the claim of similarly situated doctors that NPA payable to them shall be taken into consideration for calculating the pension. Such an approach by the Union of India is ex-facie arbitrary, unjust and has resulted in violation of Article 14 of the Constitution.

30. The judgment in Col. B.J. Akkara's case cannot be applied to the appellants' case because the circulars, which fell for interpretation in that case and those under consideration in these appeals are different in material aspect. By circular dated 7.6.1999, the Ministry of Defence conveyed the decision of the President that "with effect from 1-1-1996, pension of all armed forces pensioners irrespective of their date of retirement shall not be less than 50% of the minimum pay in the revised scale of pay introduced with

effect from 1-1-1996 of the rank, held by the pensioner". The circular provided that the revision of pension should be undertaken as follows in case of commissioned officers (both post-and pre-1-1- 1996 retirees):

> "(i) 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 up to 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 w.e.f. 1-1-1996 for the rank last held by the commissioned officer 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. [Vide clause 2.1 (a).]
>
> (ii) Where the revised and consolidated pension of pre-1-1-1996 pensioners are not beneficial to him/her under these orders and is either equal to or less than existing consolidated pension under this Ministry's letters dated 24-11-1997, 27-5-1998 and 14-7-1998, as the case may be, his/her pension will not be revised to the disadvantage of the pensioner (vide clause 4)."

31. When the implementing departments sought clarification on the issue whether NPA admissible as on 1.1.1986 is to be taken into consideration after reification of pay on notional basis as on 1.1.1986 and the same is to be added to the minimum of the revised scale while stepping up the consolidated pension on 1.1.1996, the Ministry issued clarification vide circular dated 11.9.2001 in the following terms:

> "The undersigned is directed to refer to Ministry of Defence Letter No. 1(1)/99/D(Pension/Services) dated 7-6-1999, wherein decision of the Government that pension of all pensioners irrespective of their date of retirement shall not be less than 50% of the minimum of the revised scale of pay introduced with effect from 1-1-1996 of the post last held by the pensioner was communicated....
>
> NPA granted to medical officers does not form part of the scales of pay. It is a separate element, although it is taken into account for the purpose of computation of pension.
>
> This has been examined in consultation with the Department of Pen¬sion and Pensioners' Welfare and the Department of Expenditure and it is clarified that NPA is not to be taken into consideration after reification of pay on notional basis on 1-1-1986. It is also not to be added to the minimum of the revised scale of pay as on 1-1-1996 in cases where consolidated pension is to be stepped up to 50%, in terms of Ministry of Defence Letter No. 1(1)/99/D (Pension/Services) dated 7¬6-1999."

32. This Court treated circular dated 11.9.2001 as clarificatory in nature and held that it

neither amends nor modifies circular dated 7.6.1999. The most striking difference between O.M. dated 7.4.1998 issued by Department of Pension and Pensioners' Welfare, Ministry of Personnel (Public Grievances and Pension) and circular dated 7.6.1999 issued by the Defence Ministry is that the decision of the President conveyed vide O.M. dated 7.4.1998 was that NPA shall count as pay for all service benefits including retirement benefits but no such decision was contained in circular dated 7.6.1999. Therefore, the clarification issued by the Ministry of Defence vide circular dated 11.9.2001 cannot be equated with O.M. dated 29.10.1999 which had the effect of modifying the decision of the President but was issued without his approval. Unfortunately, the Tribunal and the Division Bench of the High Court overlooked this vital distinction between O.M. dated 7.4.1998 issued by the Ministry of Personnel (Public Grievances and Pension), Department of Pension and Pensions' Welfare and Circular dated 7.6.1999 issued by the Ministry of Defence and mechanically applied the ratio of Col. B. J. Akkara's case for deciding the cases of the doctors, who served in Central Health Services, the Railways and other departments of the Government. Therefore, the impugned order is legally unsustainable.

33. In the result, the appeals are allowed, the impugned order of the High Court as also the one passed by the Tribunal are set aside and the applications filed by the appellants before the Tribunal are allowed in terms of the prayer made. The respondents shall re-calculate the pension payable to the appellants by adding the element of NPA. This exercise shall be undertaken and completed by the concerned authorities within a period of three months from today.

Judgment referred

[1]*AIR (1983) SC 0130*

[2]*(2006) 11 SCC 0709*

[3]*(1975) 4 SCC 0714*

[4]*(1987) 4 SCC 0431*

[5]*(1995) 4 SCC 0683*