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**(2015) 05 DEL CK 0217**

**In the Delhi High Court**

**Case No :** Writ Petition (C) 8012/2013 and W.P.(C) 8056 of 2013

S.A. Khan and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 07-05-2015

**Acts Referred:**

Constitution of India, 1950 — Article 14

**Citation :** (2015) 9 AD 1 : (2015) 150 DRJ 84

**Hon'ble Judges :** Pradeep Nandrajog, J;Pratibha Rani, J

**Bench :** Division Bench

**Advocate :** Ankur Chhibber, for the Appellant; Vikram Jetly, Advocate and Piyush Bhardwaj, Advocates for the Respondent

**Final Decision :** Allowed

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## Judgement

Pradeep Nandrajog, J.—We are disposing of the above-captioned writ petitions by a common decision for the reason the petitioners challenge the letter dated October 03, 2008 issued by the Government of India, Ministry of Personnel, P.G. and Pension, to the extent it stipulates (and as per the petitioners under the garb of a clarification) and links grant of full pension to completion of 33 years of qualifying service and draws a distinction between those who retired before and after January 01, 2006. The result is that those who superannuate after January 01, 2006 and have rendered a minimum of 20 years service would be entitled to full pension and those who superannuated before said date would be liable to have the pension pro-rata decreased for each year less service rendered, taking 33 years as full pensionable service period. The petitioners also pray for a writ of mandamus to be issued to the respondents directing them to maintain parity between those pensioners who retired pre and post-January 01, 2006 and also with regard to family pension, meaning thereby that every pensioner who has rendered 20 years service and beyond would be entitled to full pension.

2. In W.P.(C) No. 8056/2013, prayer has also been made to quash the letter dated October 01, 2012 under which the pension of the petitioner was re-fixed to

his disadvantage with a direction that his pension be re-fixed as per para 4.2 of the Office Memorandum dated September 01, 2008. Similarly, in W.P.(C) No. 8012/2013, the petitioners have prayed that letters whereby their pension was reduced be quashed and their pension be re-fixed as per para 4.2 of the Office Memorandum dated September 01, 2008. The petitioners have also prayed that the amounts recovered from their pension be directed to be refunded with interest.

3. Thus, the issue which arises for consideration is whether the decision to classify the pensioners in two classes : pre January 01, 2006 pensioners and post said date pensioners is a reasonable classification, while according full pension to post January 01, 2006 pensioners who have rendered 20 years" service but pro-rata reducing the same for the pre January 01, 2006 pensioners, which stands the scrutiny of Article 14 of the Constitution of India; since the Article while permitting classification warrants a rational nexus to be established keeping in view the object and thereby resulting in two classes forming. It is trite that equality has to be amongst the members of the same class and not amongst members of different classes. Thus, it is the reasonableness of the classification which is in issue.

4. Briefly stated, the facts germane for adjudication of the present petitions are that petitioner, Rajendra Babu Pathak of W.P.(C) No. 8056/2013 was recruited in the Central Reserved Police Force (CRPF) to the post of Deputy Superintendent of Police in the year 1967 and after serving in the force for a period of 21 years, 6 months and 6 days, sought voluntary retirement and was granted the same on August 01, 1988. He had earlier worked as a lecturer in the Education Department for a period of 8 years. At the time of retirement, he was drawing a basic pay of Rs. 4800 + 150 + D.A. For the purpose of pension, the total qualifying service of the petitioner was taken to be 29 years and 8 days. Pursuant to subsequent revisions, on account of the VIth Central Pay Commission recommendations, the pension was fixed at Rs. 0,256/-. He made a representation that his pension be enhanced which was denied on the reasoning that he had not completed 33 years qualifying service for full pension.

5. The writ petitioners of W.P.(C) No. 8012/2013, were recruited in CRPF in the year 1967 and superannuated in the year 1996 and 1995 respectively. Their pensions were fixed with reference to qualifying service of petitioner No. 1 taken to be 29 years, 5 months and 22 days and that of petitioner No. 2 as 28 years, 5 months and 23 days. The pensions were revised when the recommendations of the VIth Central Pay Commissions were implemented, but were decreased pro-rata for such period of service which fell short of 33 years. As regards these petitioners post January 01, 2006 their pensions were fixed at Rs. 23,050/-being full pension but was reduced to Rs. 20,605/- without notice to them and the reason given by the respondents was that while fixing their pension the same had to be pro-rata decreased for the period they served less than 33 years.

6. 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 Union of India (UOI) and Another Vs. SPS Vains (Retd.) and Others, (2008) 106 CLT 794 : (2009) 120 FLR 237 : (2008) 10 JT 399 : (2008) 12 SCALE 360 : (2008) 2 SCC(L&S) 838 : (2009) 1 SLJ 287 : (2009) 2 SLR 197 , 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."

7. 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. v. 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.

8. 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. v. 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's, 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 OM's dated 03.10.2008 and 14.10.2008. The effect of these two OM's 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:--

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. 27,350 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 judgement 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:

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 refix 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."

9. 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.

10. The learned counsel for the petitioner also drew our attention to a judgment dated December 07, 2011 passed by the Armed Forces Tribunal in OA No. 106/2009 Wing Commander (Retd.) V.S. Tomar v. Union of India and Ors. whereby the Armed Forces Tribunal had quashed the similar words introduced by the respondents vide letter dated November 11, 2008 in respect of the Armed Forces which had been issued by the Ministry of Defence. In the said judgments the Armed Forces Tribunal relying upon the judgment of D.S. Nakara and S.P.S. Vains have declared Para 5 of the Notification dated November 11, 2008 to be discriminatory and violative of Article 14 of the Constitution and has struck down the same.

11. 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 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."

12. The sum and substance of all the above judgments and the arguments raised by the petitioners is that the respondents cannot have different yardsticks for

similarly situated persons and cannot apply different formulas for fixation of their pensions by dividing into a homogeneous class of persons. The same has already been held to be arbitrary and discriminatory by the Supreme Court in D.S. Nakara's case (supra) and S.P.S. Vains's case (supra). Moreover, the judgment dated December 21, 2012 passed by the Punjab and Haryana High Court in WP(C) No. 19641/2009 R.K. Aggarwal and Ors. Versus Haryana State and Ors. has already held that OMs dated October 03, 2008, October 14, 2008 were issued by a lower authority who could not have altered the original OM being dated 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 to 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.

13. Learned counsel for the respondents relied upon the decision reported as State of Punjab and Others Vs. Amar Nath Goyal and Others, AIR 2006 SC 171 : (2005) 4 ESC 489 : (2005) 106 FLR 1062 : (2005) 7 JT 301 : (2005) 3 LLJ 759 : (2005) 6 SCC 754 : (2005) SCC(L&S) 910 : (2005) 3 SCR 549 Supp : (2005) 3 SLJ 475 : (2005) AIRSCW 5664 : (2005) 6 Supreme 469 wherein the cut-off date April 01, 1995 for pensioners was upheld as also the decision reported as (1992) 1 SCC 644 All India Reserve Bank Retired Officers' Association v. UOI and Ors. where the cut-off dated January 01, 1986 for pensioners in the banking sector was upheld. Learned counsel for the respondents criticized the decision of the Bench of the Armed Forces Tribunal rendered on December 07, 2011 in OA No. 106/2009 Wing Commander (Retd.) V.S. Tomar v. UOI and Ors. relied upon by the petitioners on the ground that the said decision showed a mechanical exercise to come to the conclusion that the date January 01, 2006 for pensioners was arbitrary in the context of post said date, pensioners not being subjected to pro-rata cut in pension and pre said date pensioners being subjected to a pro-rata cut in pension.

14. On the factual aspect, to the reader of our opinion in which up till now we have noted the arguments advanced by learned counsel for the petitioners it would emerge that the office memorandum dated September 01, 2008 on the subject of implementation of the Government's decision on the recommendations of the VIth Central Pay Commission concerning revision of pension of pre-January 01, 2006 pensioners drew no distinction between pre and post January 01, 2006 pensioners and simply require full pension to be paid to all pensioners irrespective of the concept of pro-rata reduction in the pension stipulating 33 years' service as the minimum service to earn full pension and as a result any service less than 33 years requiring pro-rata reduction in the pension. The said office memorandum was issued on behalf of the Government of India and as per the business allocation rules was signed by the Director (PP) in the Ministry of Personnel, Public Grievances and Pension. Under the garb of a

clarification, on October 03, 2008 the distinction was drawn between pre and post January 01, 2006 pensioners. As regards post January 01, 2006 their pension was not to be lowered and could not be less than 50% of the sum of the minimum of the pay in the pay band and the grade pay if they had served for 20 years, but as regards pre-January 01, 2006 their pension was to be lowered by a pro-rata reduction if service was rendered less than 33 years.

15. On said aspect of the matter, the decision dated April 29, 2013 of the Division Bench of this Court in W.P.(C) No. 1535/2012 Union of India and Anr. v. Central Govt. SAG and Ors. has already taken a view favourable to the petitioners, and indeed as noted in paragraph 7 above the learned counsel for the petitioners had heavily relied upon the decision.

16. Our task is simple. To cull out the correct ratio of law declared by the Supreme Court as also a Division Bench of this Court and that of the Armed Forces Tribunal from the decisions cited by learned counsel for both parties.

17. The first decision on the point is the decision of the Supreme Court reported as D.S. Nakara and Others Vs. Union of India (UOI), AIR 1983 SC 130 : (1983) 1 LLJ 104 : (1982) 2 SCALE 1213 : (1983) 1 SCC 305 : (1983) 2 SCR 165 : (1983) 1 SLJ 131 . A liberalized pension formula was notified by the Government of India but made applicable to only those pensioners who had retired on or after March 31, 1979. Whereas the Government argued that all pensioners do not form a homogeneous class and thus the Government was justified, keeping in view its finances, to grant the benefit to those who had retired on or after March 31, 1979, the petitioners argued to the contrary urging that unless a causal connection between the basis of the classification and the object thereof was demonstrably shown, discrimination would be writ large.

18. The Government having failed to show a causal connection between the basis of the classification and the object, the Supreme Court held that the cut-off date was arbitrary and extended the benefit of the liberalized scheme to all pensioners.

19. In the decision reported as (1992) 1 SCC 644 All India Reserved Bank Retired Association v. UOI, the relevant facts were that the Government of India took a uniform decision that all those who joined Government service post January 01, 1986 would have to become a member of the pension scheme without any option to be a member of the Contributory Provident Fund Scheme. The reason being the recommendations of the IVth Central Pay Commission to said effect. Whereas option was given to the existing employees to chose to opt for the pension scheme and opt out of the Contributory Provident Fund Scheme, pre and post January 01, 1986 retirees became two classes. Those who had retired after January 01, 1986 and members of the Contributory Provident Fund Scheme could return the amount received by them and receive pension instead but those who had retired pre-January 01, 1986 could not exercise said option. By the time the Ministry of Finance gave concurrence to the bank employees the year 1990 had come into being and as a result when the recommendations of the

pay commission were notified for the employees of bank, the relevant office memorandums gave the benefit to those who had retired on or after January 01, 1986 and denied the same to the ones who had retired on or before December 31, 1985.

20. Finding a rational nexus, being the decision of the IVth Central Pay Commission and the date of its applicability i.e. January 01, 1986, keeping in view the finances of the Government, the Supreme Court upheld the date as the basis of a rational classification.

21. In the decision reported as State of Punjab and Others Vs. Amar Nath Goyal and Others, AIR 2006 SC 171 : (2005) 4 ESC 489 : (2005) 106 FLR 1062 : (2005) 7 JT 301 : (2005) 3 LLJ 759 : (2005) 6 SCC 754 : (2005) SCC(L&S) 910 : (2005) 3 SCR 549 Supp : (2005) 3 SLJ 475 : (2005) AIRSCW 5664 : (2005) 6 Supreme 469 , the cut-off date was April 01, 1995 and the Supreme Court upheld the cut-off date keeping in view that the financial year commences on April 01 each year and the benefit conferred was an increment in the quantum of retirement gratuity and/or death gratuity consequent upon the merger of a portion of Dearness Allowance into the basic pay. It is apparent that the existence of a rational nexus between the criteria and the object of the policy being determinable resulted in the cut-off date being upheld.

22. In the decision reported as Union of India (UOI) and Another Vs. SPS Vains (Retd.) and Others, (2008) 106 CLT 794 : (2009) 120 FLR 237 : (2008) 10 JT 399 : (2008) 12 SCALE 360 : (2008) 2 SCC(L&S) 838 : (2009) 1 SLJ 287 : (2009) 2 SLR 197 the disparity was the result of the cut-off date being prescribed as January 01, 1996 for retirees in the Army resulting in officers holding the rank of Brigadier receiving higher pension being drawn in comparison with officers holding the higher rank of Major General. Those holding rank of Major General but having retired on or before December 31, 1995 started receiving lesser pension than Brigadiers who retired on or after January 01, 1996. No nexus being shown between the criteria i.e. the cut-off date with the object of the policy sought to be achieved, relying upon the law declared in D.S. Nakara's case (supra) the cut-off date was held to be arbitrary and as a consequence the classification of the pensioners in the two categories was held to be discriminatory.

23. As regards the decision of the Armed Forces Tribunal dated December 07, 2011 in OA No. 106/2009 Wing Commander (Retd.) V.S. Tomar v. UOI and Ors. the reasoning of the Tribunal, as urged by learned counsel for the respondents is mechanical. The Tribunal held that from the decisions of the Supreme Court in D.S. Nakara's case (supra), S.P.S. Vains's case (supra), Amar Nath Goyal's case (supra) and All India Reserve Bank Retired Officers Association's case (supra) it appeared to the Tribunal that in the year 1983 (D.S. Nakara's case) the view taken by the Supreme Court was that in matters of pension a cut-off date as the basis of classification was not valid, but as of the years 1992 (All India Reserve Bank Retired Officers Association's case) and the year 2005 (Amar Nath Goyal's

case) cut-off dates were valid but the latest view in the year 2008 (S.P.S. Vains case) showed that the view was that a cut-off date was invalid. But that should not trouble us for the reason we have independently analyze the ratio of law flowing in the various decisions of the Supreme Court and suffice it to state that wherever the Supreme Court found a rational nexus between the criteria with the object of the policy sought to be achieved the classification with reference to a date was upheld and wherever such rational nexus was not shown the same was held to be arbitrary.

24. Reverting to the facts of the instant case we find that the respondents have failed to show any nexus between the criteria with the object of the policy. To give benefit of full pension to those who have rendered 20 years service but have retired on or after January 01, 2006 but subject the pensioners who have retired on or before December 31, 2005 to a pro-rata cut in pension unless backed by a reasonableness of the criteria with the object sought to be achieved would render the cut-off date as an arbitrary criteria and thus liable to be quashed.

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 founs 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.