



REPORT OF THE SECOND NATIONAL JUDICIAL PAY COMMISSION

VIGYAN BHAWAN ANNEXE
NEW DELHI

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**PART I VOLUME-II
(PENSION)**

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PART-I
CHAPTER-3
PENSION AND FAMILY PENSION

I. PENSION

1. "Pension is neither a bounty nor a matter of grace." "Pension is not an *ex-gratia* payment, but it is a payment for past service rendered and it is a social welfare measure rendering socio-economic justice to those who in the heyday of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch".

2. These are the pertinent observations of Supreme Court of India in the landmark judgment in **D.S. Nakara v Union of India** (AIR 1983 SC 130 : (1983) 1 SCC 305), a decision rendered by Constitution Bench. The Supreme Court proceeded to say:

"In the fall of life the State shall ensure to the citizens a reasonably decent standard of life, medical aid, freedom from want, freedom from fear and the enjoyable leisure, relieving the boredom and the humility of dependency in old age. This is what Article 41 aims when it enjoins the State to secure public assistance in old age, sickness and disablement."

3. In a very recent judgment in **Chief General Manager, Gujarat Telecom Circle v Manilal Patel** (AIR 2019 SC 1547 : 2019 4 SCALE 500), the Supreme Court reiterated that pension is not an act of grace by the employer but it is the right of the Government servant who has put in required number of years of service. This right is of course subject to the statutory rules.

4. Presently, all over India, the public servants are entitled to get full pension on completion of 20 years of qualifying service. For Judicial officers, the reduction in qualifying years of service from 33 to 20 had taken place pursuant to the order of Supreme Court dated 26.07.2010 in AIJA Case (2010) 14 SCC 713. For Central Government servants too, the qualifying service for pension was reduced to 20 years as a result of recommendations of VI CPC and most of the State Governments also have adopted this rule. The formula for fixation of pension and the commutation thereof is almost on uniform basis. Broadly speaking, 50% of the last drawn pay is admissible as pension subject to commutation if any. In the case of family pensioners, it is 30% of the last drawn pay. For the direct recruit District Judge, weightage of 10 years of practice at the Bar is allowed provided the District Judge concerned has put in at least ten years of service. In **Government of NCT Delhi v All India Young Lawyers Association** 2009 (14) SCC 49, the Supreme Court by the order dated 29.01.2009 directed that the number of years of practice at the Bar subject to the maximum of weightage of 10 years shall be given while calculating pension and other retiral benefits to the direct recruits of Delhi Higher Judicial Service if they have worked for a minimum of 10 years in the DHJS. In view of this ruling, no direct recruit District Judge will be deprived of full pension for want of requisite qualifying service of 20 years. Though the judgment was in the context of officers of Delhi Higher Judicial Service, this principle is being followed in almost all the States, except a few.

5. It is stated in some of the representations that the States of Bihar and Madhya Pradesh are not extending this benefit to the Judicial Officers in terms of the decision in All India Young Lawyers Association 2009.

6. It may be mentioned that w.e.f. 01.01.2016 (post-VII CPC report), the minimum qualifying service is ten years. If the Central rule is followed in regard to qualifying service, the question of addition of ten years of Bar practice pales into insignificance.

7. It is needless to state that every State is bound to carry out the directives of the Supreme Court regarding the addition of ten years of Bar practice for the purposes of pension, even if, the State rules regarding the length of qualifying service for pension remain unamended in tune with Central Rules.

8. Accordingly, the Commission **reiterates** the benefit of number of years of practice at bar subject to maximum of weightage of ten years shall be given while calculating pension and other retiral benefits to the direct recruits of Higher Judicial Service who have retired prior to 01.01.2016.

9. If the length of service is less than 20 years (which may rarely be the case), pro-rata pension at the prescribed rates is admissible. So also the family pension gets correspondingly reduced. The Commission will be dealing with the subject of financial benefits to be granted to the family of

those persons whose death occur while in service before rendering the service sufficient to qualify for full pension a little later.

10. Additional pension is payable at varying percentages after the pensioner attains the age of 80 years. However, in some States (which we shall refer to later), the pensioners who have attained the age of 70 years have also been getting the benefit of additional pension at 10 percent. Every 5 years, the quantum of additional pension is increased. The rates applicable to various age groups are in the range of 10% to 100% (100% being given on the pensioner attaining the age of 100 years). For those in Central Government Service and for the Judicial officers in Delhi and UTs and in most of the States, the additional pension is payable after the pensioner attains the age of 80 years at the rate of 20%.

11. Commutation of pension is allowed to Judicial Officers at the time of retirement to the extent of 50% of pension. The full pension (50%) is restored to the retired Judicial Officer on completion of a period of 15 years from the date of commutation. It has been pointed out by the Associations that this period is too long.

12. Side by side with pension, to assure financial security during retired life of the officers, there is **General Provident Fund Scheme** according to which all temporary government servants, after continuous service of one year, re-employed pensioners and all permanent government servants from the date of their appointment are the subscribers of this Fund.

12.1 The minimum subscription amount to the fund is 6% of the basic pay plus D.A. This subscription amount can be enhanced twice or reduced once during the year by the subscriber, if he so desires. Interest is payable on the subscription at the minimum rate of 4% per annum or as determined by the Central Government. The interest determined by the Central Government so far from 1986-87 till date ranges between 12% and 8%. The accrued interest is eligible for full tax exemption under the Income Tax Act. Further, the subscription to GPF is deducted under section 80C to the extent of Rs.1,50,000/- as on date. Advance upto 3 months basic pay or half of the amount in the account whichever is less, can be drawn for certain specified purposes and the same will be recovered in maximum of 36 instalments. Withdrawal upto 90% from the fund is also permissible for certain specified purposes, after completing 15 years of service and within 12 months before retirement without linking it to any purpose. On death of the subscriber, the amount to his credit in the GPF Account is paid to the nominee and to the family members in equal shares if no nomination is there.

13. For the civil servants including the judicial officers recruited during the year 2004/2005 and thereafter, the National Pension System (NPS), otherwise known as Contributory Pension Scheme has been made applicable by the Central and State Governments. The year of introduction of this new scheme of pension varies from State to State. The features of this New Pension Scheme which is equally applicable to Judicial officers will be discussed in the next chapter on National Pension System.

13.1 In most of the States, the New Pension Scheme has been applied to those joining service between 2005 and 2006. However, in the States of West Bengal and Himachal Pradesh, it appears, the New Pension Scheme has not so far been made applicable. In Tripura, it has been brought into force only recently i.e., during the year 2018. In Maharashtra, NPS was sought to be introduced to the Judicial officers recruited after 01.11.2005 just as in the case of State Government officials; but on account of Judicial intervention in the PIL filed and the reversal of decision by the Government itself, it has been withdrawn as regards the judicial officers. Now, it is only optional. In the State of Karnataka too, the NPS has not been extended to Judicial officers by reason of stay order of High Court. It was sought to be applied to Judicial officers in the year 2011.

14. CERTAIN ISSUES RELATED TO PENSION ARISING FROM PAY REVISION

14.1 Whenever there is revision of pay and revised pay structure is put in place, the revision of pension takes place as a necessary consequence. However, certain issues have arisen in the past after the revision of pay scales of judicial officers. At what stage of the revised pay scale the existing pensioners shall be fitted into, was the issue that had cropped up after the report of JPC and eventually settled by the Supreme Court in a series of orders passed in 2012, 2016 and 2018.

14.2 It is necessary to make it clear that pension has to be worked out with reference to the pay drawn at the stage at which the concerned

pensioner retired. It is not the minimum of the revised pay scale that has to be taken into account for quantifying the increased pension of retired officer, but, it shall be with reference to the actual pay (including increments) drawn by the officer at the time of retirement. In other words, the officer with the particular last drawn pay in the pre-revised pay scale will, on the revision of pay scale, draw the pension at par with the officer who retires after the introduction of revised pay scale, if both of them reached the same stage in the pay scale by the time of retirement. Therefore, in fixing the revised pension of a Judicial officer who retired before 01.01.2016, the corresponding stage in the new pay structure has to be identified. This principle is firmly entrenched in the methodology of pension fixation of Judicial officers by virtue of the directives of Hon'ble Supreme Court, the VII CPC formulation as well as the principle of 'last pay drawn' which finds mention in First National Judicial Pay Commission Report (hereinafter referred to as FNJPC Report) at Para 22 of Part V.

14.3 For instance, the pay scale of District Judge (entry level) as per FNJPC was Rs.16750-400-19150-450-20500. Say, the officer (District Judge) retired on reaching the stage of Rs.19150/-. 50% thereof is Rs.9575/-. Then, the revised pay scale of District Judge (entry level) as per the JPC report is Rs.51550-1230-58930-1380-63070. The corresponding stage of Rs.19150/- is Rs.58930/- in the revised pay scale evolved by JPC. So, the revised pension ought to be Rs.29465/- if last drawn pay is taken as the basis. However, in many States, the revised pension was worked out as

Rs.25,775/- being 50% of Rs.51,550/- i.e., the minimum of revised pay scale, whereas the pension ought to have been fixed at Rs.29,465/- p.m. on the principle of last drawn pay. In fact, the pension of District Judge (entry level) who retired on or after 01.01.2006 was correctly fixed at Rs.29,465/- being 50% of the last drawn pay (based on revised pay structure).

14.4 Thus, a disparity had arisen in the calculation of pension of these two sets of officers i.e., those who retired between 01.07.1996 and 01.01.2006 and those who retired on or after 01.01.2006. The apparent reason for this is the norm specified by JPC for fixing the pension of past pensioners. Part V of JPC Report deals with "pension structure for past pensioners i.e., those who retired prior to 01.01.2006." At paragraph 31, the Commission extracted the recommendations of the FNJPC with respect to 'past pensioners' as given in Para 23.18[≠] of FNJPC report. The first principle laid down by FNJPC in paragraph 23.18 has been extracted. It is as follows:

"The revised pension of the retired Judicial officers should be 50% of the minimum pay of the post held at the time of retirement, as revised from time to time."

Then, at paragraph 34(b), it was stated as follows:

"With respect to quantum of pension and calculation, the recommendations of Hon'ble Justice Shetty Commission will continue subject to a modification with respect to qualifying years of service for earning full pension, in terms of the order that may be passed by this Hon'ble Court"

[≠] (there was typographical error in FNJPC report in mentioning the paragraph number as 22.18 instead of 23.18)

15. With respect, the JPC failed to take note of the fact that the said principle enunciated by FNJPC (i.e., the revised pension shall be 50% of the minimum pay of the post held at the time of retirement as revised from time to time) was only applicable to the past pensioners i.e., those who retired prior to 01.01.1996 when the FNJPC recommendations became effective. In other words, the principle of 50% of the minimum pay of the post as revised held at the time of retirement will only be applicable to the past pensioners and not to those who retired on or after 01.01.1996. As noted earlier, Chapter 23 of FNJPC report bears the heading "Pension Structure for Past Pensioners". However, by reason of inadvertent error, the principle (minimum pay of the post held) has been applied to those who retired prior to 01.01.2006 i.e., even to those who retired between the effective date of FNJPC recommendation (01.01.1996) and the effective date of JPC recommendation i.e., 01.01.2006. The principle of 50% of minimum of pay was laid down by FNJPC for the reason that there were varying pay scales in different States and in order to ensure uniformity in the pay fixation of pre-01.01.1996 officers, the said formula was laid down. But, the same situation was not there when JPC submitted its report. There were already uniform scales of pay made applicable to the judicial officers who retired on and after 01.01.1996.

15.1 For those who retired after 01.01.1996 and prior to 01.01.2006, the correct principle that should have been applied was the one that was laid down by FNJPC in the previous Chapter i.e., Chapter 22. The FNJPC having

commented that the Central Government did not adopt the principle of last pay drawn in spite of the recommendation of the V CPC and most of the State Governments have also not accepted the said principle made the following recommendations:

22.43: We may, however, state that determination of the pension with reference to the last pay drawn is more practical, simple and indeed beneficial in view of the fact that some of the Officers would have drawn their annual increments just before retirement and there is no reason why full benefit of increment drawn should be denied to them for the purpose of calculating the pension.

22.44: We, therefore, recommend to all the State Governments to follow the principle of last pay drawn, which has been adopted by the States of Karnataka, Orissa, Tamil Nadu and West Bengal.

15.2 Therefore, in regard to post-1996 retirees, the question of fixation of pension at 50% of the minimum of the pay attached to the post held by the retiree does not arise. It must be the principle of last pay drawn which would take within its fold the increments drawn in the pay scale of the post. Further, the JPC was also not correct in assuming that the FNJPC fixed 50% of the average emoluments drawn during 10 months preceding the date of superannuation as pension. The FNJPC merely referred to the practice prevailing in some States of taking 10 months average emoluments preceding the superannuation as the basis. However, that was not the norm adopted by the Commission in determining the pension. Soon after the said observation, the FNJPC commended that the last pay drawn is the right principle. However, some States have started applying the formula of 50% of minimum of the pay of the post held at the time of retirement as the basis even in respect of those who retired between 01.01.1996 and 01.01.2006. In the

above background, the Judicial officers represented by AIRJA had to move the Hon'ble Supreme Court.

16. The problem has been solved by a series of orders passed by Hon'ble Supreme Court between 2012 and 2018. The first one was the order dated 08.10.2012 [(2014) 14 SCC 444]. In that case, the Judicial Officers concerned retired after 01.01.1996, but prior to 01.01.2006 i.e., prior to the effective date of JPC's recommendations. The Supreme Court accepted the plea of the pensioners that due to oversight, JPC fixed the revised pension at 50% of the minimum of the post held at the time of retirement. The prayer (i) in the I.A. was as follows:

"The existing pensions of all past pensioners who retired after 01-01-1996 and the pensioners whose pensions were consolidated as per Karnataka model shall be raised by 3.07 times on par with the other pensioners subject to the minimum of 50% of the revised pay of their respective posts."

The I.A. was allowed in terms of the prayer in clause (i) as set out above.

17. The G.O. issued by the State of Andhra Pradesh (G.O.Ms. No.86, Law Department dated 19.07.2013) in order to give effect to this order of the Supreme Court makes it clear how in accordance with the directive of the Supreme Court, the then Andhra Pradesh Government rectified the problem and passed appropriate orders effecting an upward revision of pension of the officers who retired between 01.01.1996 and 31.12.2005. The relevant paras of G.O.Ms. No. 86 are as follows:

"The pensions of the retired Judicial Officers who retired after 1/1/96 and prior to 1/1/2006, as fixed as per G.O.Ms.No.174, LAW (LA & J SC-F) Department dated 19.12.2007 shall be

revised by raising the same by 03.07 times w. e. f. 01/01/06:
and

The pensions of the retired Judicial officers who retired and whose pensions were consolidated as per Karnataka model in terms of para 9 of the G.O.Ms.No.79, LAW (LA & JSC-F) Department dated 17/7/2004 and G.O.Ms.Nos.129, Law (LA & JSC.F) Department dated 27/9/2007 shall be revised by raising the same by 3.07 times w.e.f. 1/1/06.

Provided the above revised pension shall be subject to minimum of 50% of the revised pay scales of the respective posts."

18. Thereafter, certain interlocutory applications filed by the All India Retired Judges Association in the same main case, once again came up before the Supreme Court. The order passed by the Supreme Court is reported in **2016 (7) SCALE 437**. Hon'ble Supreme Court directed that all the State Governments should follow suit and issue appropriate orders implementing the directions contained in the Order dated 08.10.2012 (referred to earlier) in respect of retirees between 01.01.1996 and 31.12.2005. The Court further directed the arrears to be paid for the period 01.01.2006 till the date of judgment. Accordingly, I.A. was allowed.

19. The effect of the order of Hon'ble Supreme Court was that the pension as per the revised scale should be worked out with reference to the factor/multiplicand applied for arriving at the starting pay in the Master pay scale. That is why, the revised pension was directed to be fixed by applying the factor of **307%** being the extent of rise in the High Court Judges' salary which formed the basis for evolving the Master pay scale by JPC. Thereby, the parity in pension as between the Judicial officers retiring before the

revision and those retiring after revision has been ensured. The last drawn pay has thus become the norm for calculation of pension.

20. The principle which has thus come to be laid down by the orders of Hon'ble Supreme Court has obviated the doubts in this regard and the said principle is fortified by the approach of VII CPC which we shall refer to later.

21. In the case referred to above i.e., 2016 (7) SCALE 437, there was one more I.A. filed by Odisha Retired Judges Association in which the prayer was "to direct revision of pension of pre-1996 and pre-2006 pensioners/retired Judicial officers at 50% of the minimum pay of the post held at the time of their retirement as revised from time to time irrespective of the number of qualifying years of service as recommended in para 23.18 of FNJPC report."

21.1 The Hon'ble Supreme Court clarified the position and gave appropriate direction as follows at paragraph 13:

"We wish to clarify that the prescription in Para 23.18 is intended to ensure that it should be read to the effect that the minimum of the revised pension of the retired Judicial Officers should be 50% of the pay of the post held at the time of their retirement, as revised from time to time. In other words, if by virtue of the exercise of revising the pension of a retired Judicial officer prior to 01.01.2006 in the revised scale of pay, by any chance the pension gets reduced below 50% of the revised scale, the minimum revised pension should not fall below 50% of the corresponding revised scale. In the same breath, it must be stated that if such revision results in more than 50% in the revised scale, such higher pension in the revised scale corresponding to the pre-revised pension which was the last drawn pay of the retired Judicial officer, should be protected. If once, we understand the implication of Para 23.18 to such categories of Judicial officers, there is no difficulty in directing the State Government to apply the said prescription in Para 23.18 and work out the pension

payable to the Judicial officers falling under the said paragraph without reference to the number of qualifying years of service for working out the revised pension payable to them. Clarifying the said position with reference to the applicability of Para 23.18, the State of Orissa is directed to work out the revised pension payable to those who fall under paragraph 23.18 and pay the same accordingly."

21.2 One more recent order of the Hon'ble Supreme Court dated 13.03.2018 in I.A. No. 1 in I.A. No.339/2015 in W.P. (Civil) No.1022/1989 needs to be referred to.

21.3 That I.A. was filed for rectification of the order referred to earlier (reported in 2016 (7) SCALE 437) so as to add the words "**and the retirees whose pensions were consolidated as per Karnataka model**".

The Hon'ble Court disposed of the said I.A. No.1 after observing thus:

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"In other words, we make it clear that the relief granted by the order dated 8th October, 2012 by this Court in I.A.No.5 in I.A.No.244 in W.P. (Civil) No.1022/1989 read with the order dated 14th July, 2016 in I.A. No.339 in W.P. (Civil) No.1022 of 1989 will be in respect of both sets of pensioners i.e. retirees between 1st January, 1996 and 31st December, 2005 and the retirees whose pensions were consolidated as per Karnataka model."

21.4 It may be noted at this stage that the Karnataka model referred to in clause (i) of the prayer portion in I.A.No.5/2009 was in respect of Judicial Officers who retired or died while in service prior to 01.07.1996, as seen from the proceedings of the Government of Karnataka (Law Department) dated 04.02.2004. The relevant para in the proceedings of the Government of Karnataka dated 04.02.2004 is as follows:

PENSION STRUCTURE FOR THE PAST PENSIONERS:

- (a) The revised pension/family pension of the Judicial Officers who have retired or died while in service prior to 01.07.1996 shall constitute the following:-
- (i) Basic pension/family pension as on 01.07.1996.
 - (ii) DA as on 01.01.1996 sanctioned in GO No. FD (Spl) 35 PET 96 dated 8.5.1996.
 - (iii) The increase in pension/family pension sanctioned vide GO No. FD (Spl) 22 PET 94 dated 29.6.1994 in respect of Judicial Officers who have retired prior to 1.1.1982 or died while in service prior to that date or after retirement.
 - (iv) Interim Relief of 40% of basic pension/family pension sanctioned in GO No. LAW 124 LAC 94 dated 22.4.1998.

The consolidated revised pension calculated above shall not be less than 50% of the minimum of the revised pay of the post held by the Judicial Officers at the time of retirement who have put in full qualifying service at the time of retirement. In respect of Judicial Officers who have put in less than the full qualifying service there shall be proportionate reduction.

- (b) The Dearness Allowance shall be at the rates as are admissible to serving Judicial Officers.
- (c) The revision in pension shall come into effect from 01-07-1996 and will be applicable to Judicial Officers who have retired or ceased to be in service due to death or retirement prior to 01.07.1996.

22. Orders were passed on almost the same lines by the Government of Punjab (Department of Home Affairs & Justice) on 22.07.2005.

23. At this juncture, it needs to be pointed out that the pension formula adopted by the Government of Karnataka in the order dated 04.02.2004 (referred to supra) has been endorsed by the Supreme Court. In **All India Judges Association v Union of India** (2004) 12 SCC 444, it was observed thus at paragraph 6 of the order:

“Learned amicus curiae has placed before us a Government order dated 4-2-2004 issued by the Government of Karnataka in regard to the payment of pension to the retired Judicial officers and suggested that the same model may be adopted by other States. We take this Government order on record and expect that all other States may adopt the said model. The States may file their response within a period of 2 months”

23.1 The above Government order of the Karnataka State as regards the Judicial pensioners who retired prior to 01.07.1996 i.e., the effective date of FNJPC report, has been described as Karnataka model.

24. This Hon'ble Court having considered it just and proper to extend to the pensioners the full benefits flowing from the revision of pay scales and to avoid disparities in pension, issued such directive which in effect meant the application of formula of 3.07 times increase.

25. We may now refer to the VII CPC report in so far as it addressed the problem of fitment of pre-revision pensioners. The VII CPC at para 10.1.67 of the report, has laid down the formula for computation of pension for those who retired prior to 01.01.2016 in recognition of the principle that those who retired prior to pay revision shall not get less pension than those who retired thereafter. Para 10.1.67 is extracted hereunder:

“10.1.67: The Commission recommends the following pension formulation for civil employees including CAPF personnel, who have retired before 01.01.2016:

- i) All the civilian personnel including CAPF who retired prior to 01.01.2016 (expected date of implementation of the Seventh CPC recommendations) shall first be fixed in the Pay Matrix being recommended by this Commission, on the basis of the Pay Band and Grade Pay at which they retired, at the minimum of the corresponding level in the matrix. This amount shall be raised, to arrive at the notional pay of the retiree, by adding the number of increments he/she had earned in that level while in service, at the rate of three percent.

Fifty percent of the total amount so arrived at shall be the revised pension.

- ii) The second calculation to be carried out is as follows. The pension, as had been fixed at the time of implementation of the VI CPC recommendations, shall be multiplied by 2.57 to arrive at an alternate value for the revised pension.”

25.1 The following illustrative examples given by the VII CPC at para 10.1.69 may also be noticed for clear understanding of the above formulation:

Case I

10.1.70 Pensioner ‘A’ retired at last pay drawn of Rs.79,000 on 30 May, 2015 under the VI CPC regime, having drawn three increments in the scale Rs.67,000 to 79,000.

		Amount in Rs.
1.	Basic Pension fixed in VI CPC	39,500
2.	Initial Pension fixed under Seventh CPC (using a multiple of 2.57)	1,01,515- Option 1
3.	Minimum of the corresponding pay level in VII CPC	1,82,200
4.	Notional Pay fixation based on 3 increments	1,99,100
5.	50 percent of the notional pay so arrived	99,550- Option 2
6.	Pension amount admissible (higher of Option 1 and 2)	1,01,515

Case II

10.1.71 Pensioner 'B' retired at last pay drawn of Rs.4,000 on 31 January, 1989 under the IV CPC regime, having drawn 9 increments in the pay scale of Rs.3000-100-3500-125-4500:

		Amount in Rs.
1.	Basic Pension fixed in IV CPC	1,940
2.	Basic Pension as revised in VI CPC	12,543
3.	Initial Pension fixed under Seventh CPC (using a multiple of 2.57)	32,236 Option 1
4.	Minimum of the corresponding pay level in VII CPC Level II	67,700
5.	Notional Pay fixation based on 9 increments	88,400
6.	50 percent of the notional pay so arrived	44,200 Option 2
7.	Pension amount admissible (higher of Option 1 and 2)	44,200

25.2 In effect the VII CPC recognizes the principle that those who retired prior to pay revision shall be able to get the pension applicable to those who retired thereafter. Based on this recommendation, the Government of India, Ministry of Personnel, PG & Pensions, issued an office Memorandum dated 12.05.2017 (a copy of which is attached to this Chapter as **Appendix A**).

26. Having referred to the above formula devised by the VII CPC (para 10.1.67), the All India Retired Judges Association, in their Memorandum have requested the Commission to adopt the pension formula on the same lines subject of course to the adoption of the factor higher than 2.57 applied by VII CPC.

27. By way of narrative, we would like to refer to certain decisions of the Supreme Court (apart from the Orders referred to earlier which have direct bearing) as regards the fixation of pension consequent on the revision of pay or the conferment of additional benefits to the pensioners retiring on or after a specified date. In the case of **Union of India v SPS Vains**, 2008 (9) SCC 125, the petitioners therein contended that a disparity had arisen in the determination of pension of pre-01.01.1996 and post-01.01.1996 retirees who retired from defence service as Major General or its equivalent post. The disparity arose because the pension of Major General who retired prior to 01.01.1996 turned out to be the same as that of a Brigadier. However, in the case of Major Generals who retired after 01.01.1996, their pay was fixed as per the Army instructions of 1998 which enabled them to draw higher pension than those who retired before 01.01.1996, thereby removing the disparity. The question before the Supreme Court was whether there could be a disparity in payment of pension to officers of the same rank who retired prior to introduction of revised pay scales from 01.01.1996 and those who retired thereafter. Following the principle laid down in **D.S. Nakara**, it was held that the failure to step up the pension of pre-01.01.1996 retirees amounted to

discriminatory treatment which offended Article 14 of the Constitution. The Supreme Court directed that the pay of all pensioners in the rank of Major-General and its equivalent rank be notionally fixed at the rate given to similar officers of the same rank after the revision of pay scales (w.e.f. 01.01.1996) and, thereafter, to compute their pensionary benefits on such basis from the date of filing the Writ Petition in High Court. This is yet another case which supports the plea of the retired judges that the pay revision benefits shall be fully extended to them and there shall not be any difference in pension between those who retired prior to the effective date of pay revision and those who retired after and during the revised pay regime.

28. It needs to be mentioned here that there was no reference in this judgment to the subsequent Constitution Bench decisions of the Supreme Court wherein the dicta in **D.S. Nakara** was considered and it was held that the ambit of that decision cannot be enlarged too far to cover all claims made by the pensioners or to support a demand for identical amount of pension to every retiree of the same rank irrespective of the date of retirement, even though the reckonable emoluments for the purpose of computation of their pension be different, vide **Indian Ex-Services League & Ors. v Union of India** (1991 (2) SCC 104); **Krishena Kumar v Union of India** (1990 (4) SCC 207). Financial burden was held to be a valid ground for classification of pensioners in a catena of decisions. All the cases have been reviewed in **State of Punjab v Amarnath Goyal** (2005 (6) SCC 754) by a two Judge Bench of Supreme Court.

29. In a very recent decision in **All Manipur Pensioners Association v State of Manipur** (AIR 2019 SC 3338) rendered by this Hon'ble Court, the ratio in **D.S. Nakara** has been applied and it was held that there was no justification for not allowing the pre-01.01.1996 retirees the benefit of increased pension and that the differential treatment accorded to the pre-1996 and post-1996 retired Judicial officers was violative of Article 14 of the Constitution. The case law subsequent to **D.S. Nakara** was also referred to *in extenso*.

30. The retired Judicial officers have represented that the same pension fixation formula as was adopted by this Hon'ble Court and the VII CPC may be maintained by this Commission so that the Judicial Officers of the same rank get the benefit of revised pension commensurate with the pay they were drawing in the corresponding pay scale at the time of retirement. Of course, it goes without saying and in fact it was fairly stated so by the concerned Associations that the multiplicand will undergo a change and it need not remain at 3.07 times. As the revision of pay has been proposed by this Commission having due regard to the proportion of increase of High Court Judge's salary i.e., 2.81 times and the pay scales have been evolved primarily on that basis, the suitable multiplier to be applied for the revision of pension shall also be the same factor i.e., 281 percent.

31. We have noticed the series of decisions of Supreme Court directly dealing with the subject of revision of pension of Judicial officers who

retired on or after 01.01.1996. It is perhaps academic to delve into this issue further. The principle that the pension of the past pensioners shall be revised by applying the multiplier/factor similar to the one applied for pay revision is now firmly implanted into the domain of pension. The need to upgrade the pension of the past pensioners to bring them almost at par with the pensioners retiring after the revision of pay scales has been firmly recognized and it is only proper that the said benefit shall be extended to the Judicial officers.

32. IN SUM AND SUBSTANCE, THE PRINCIPLE TO BE FOLLOWED IN FIXING THE REVISED PENSION IS:

32.1 The revised pension of the retired Judicial Officer should be 50% of the last drawn pay of the post held at the time of retirement. In effect, the same multiplier/factor which is applied for revised pay fixation holds good for re-fixation of pension also and in recognition of the principle that those who retired prior to pay revision shall not get pension less than those who retired thereafter. And for that purpose the following formulations, which is more beneficial for officers who retired prior to 01.01.2016 shall be applicable and the revised pension shall be fixed accordingly.

Formulation I :

The pension as had been fixed under JPC in pursuance of the orders of the Supreme Court dated 08.10.2012, 14.07.2016 and 13.03.2018 shall be multiplied by 2.81 to arrive at the value of revised pension. (The existing

pension under JPC shall be multiplied by 2.81 to arrive at the revised pension).

Formulation II :

The pension shall be first fixed on the basis of pay matrix being recommended by the Commission at the minimum of the pay of the corresponding level in the pay matrix. This amount shall be raised by the corresponding pay stage in the pre revised pay scale in the Fitment Table – II as per new pay matrix. And 50% of the total amount so arrived shall be the revised pension.

The illustrative examples make the position clear:

Example – I

A District Judge of super time scale drawing pay of Rs. 71830/- in the pay scale 7029-1540-76450, retired on 31.12.2014, i.e. during the period covered by JPC report. The retired officer will draw pension at 50% of Rs. 70290/- i.e. Rs. 35145/-. The said pay scale of Rs. 70290-1540-76450 is level J-7 in the pay matrix with pay progression from 1,99,100 to 2,24,100.

Formulation –I

Pension as fixed under JPC i.e. Rs. 35915/- shall be multiplied by 2.81 to arrive at the revised pension and that shall be Rs. $35915 \times 2.81 = 100921/15$ say Rs. 100920/-.

Formulation –II

The pay progression in J-7 is from 1,99,100 - 2,24,100 and the minimum of J-7 is Rs. 199100/-.

Since the officer was drawing pay @ Rs. 71830/-, as per the fitment table –II under the pay matrix, the revised pay corresponding to pre revised pay Rs. 71830/- is Rs. 2,05,070/-. And 50% of Rs. 2,05,070/- is Rs. 1,02,535/-.

Accordingly, the revised pension shall be Rs. 102535 being higher to formulation –I.

Example – II

A District Judge of Selection Grade drawing pay of Rs.67,210/- in the pay scale of Rs.57,700-1230-58930-1380-67210-1540-70290 retired on 31.12.2010 i.e., during the period covered by JPC report. The retired officer will draw the initial pension at 50% of 67,210/- i.e., 33,605/-. The said pay scale of Rs.57,700-1230-58930-1380-67210-1540-70290 is Level J-6 in the pay matrix with pay progression from 163030 to 219090.

Formulation –I

Pension as fixed under JPC i.e. Rs. 33605/- shall be multiplied by 2.81 to arrive at the revised pension and that shall be Rs. $33605 \times 2.81 = 94430$ /-.

Formulation –II

The pay progression in J-6 is from 163030 to 219090 and the minimum of J-6 is Rs. 163030/-.

Since the officer was drawing pay @ Rs. 67210/-, as per the fitment table –II under the pay matrix, the revised pay corresponding to pre revised pay Rs. 67210/- is Rs. 1,88,990/-. And 50% of Rs. 1,88,990/- is Rs. 94,495/-.

Accordingly, the revised pension shall be Rs. 94,495/- being higher to formulation –I.

Example – III

A District Judge of entry level drawing pay of Rs. 63070/ in the pay scale 51550-1230-58930-1380-63070, retired on 31.12.2007, i.e. during the period covered by JPC report. The retired officer will draw pension at 50% of Rs. 63070/- i.e. Rs. 31515/-. The said pay scale of Rs. 51550-1230-58930-1380-63070 is level J-5 in the pay matrix with pay progression from 1,44,840 to 1,94,660.

Formulation –I

Pension as fixed under JPC i.e. Rs. 31515/- shall be multiplied by 2.81 to arrive at the revised pension and that shall be Rs. $31515 \times 2.81 = 88557/15$ say Rs. 88560/-.

Formulation –II

The pay progression in J-5 is from 144840-199660 and the minimum of J-5 is Rs. 144840/-.

Since the officer was drawing pay @ Rs. 63070/-, as per the fitment table –II under the pay matrix, the revised pay corresponding to pre revised pay Rs. 71830/- is Rs. 178150/-. And 50% of Rs. 178150/- is Rs. 89075/-

Accordingly, the revised pension shall be Rs. 89075 being higher to formulation -I

These guiding principles shall be followed by the State Governments while fixing the revised pension.

33. In the light of the foregoing discussion, the Commission does not propose any change in the existing rate of pension i.e., 50% of pay subject to commutation if any. While determining the pension as a consequence of revision of pay scales, the well recognized principle that the last drawn pay of the retired officer shall be taken as the basis for arriving at the pension shall be given effect to. The pensioners shall be fitted at the appropriate level in the Fitment Table (Table-II para 13.3 Chapter 2 Vol.-I).

34. It is necessary to clarify that having regard to the fact that by virtue of the orders of the Supreme Court referred to earlier (in respect of retirees governed by 'Karnataka model'), those who retired prior to 01.01.1996 would have already got the benefit of re-fixation of pension on the same formula as applied to those retiring thereafter. Therefore, they would have fallen in line with the post-1996 retirees already. However, by way of abundant caution, **the Commission would like to make it clear**

that if no consequential re-fixation has been done by the Governments concerned based on the directive of the Hon'ble Supreme Court in the aforementioned decisions (rendered in 2012, 2016 and 2018), the said benefit shall also be extended to them (who are few in number) and the parity shall accordingly be maintained for all retirees irrespective of their date of retirement.

35. By way of clarification, we would like to give an illustrative example in regard to the fitment of such category of officers.

35.1 Let us take it that the District Judge retired prior to 01.01.1996 in the pay scale of 5100-150-5700-200-6300 drawing the pay of Rs.5,700/- at the time of his retirement. 50% of the last drawn pay would be his initial pension, that is to say, 50% of Rs.5,700/- works out to Rs.2,850/- p.m.

35.2 This pay scale stood revised to Rs.16,750-400-19150-450-20,500 as per the FNJPC recommendation.

35.3 On such revision with effect from 01.01.1996, his revised pension shall be 50% of the minimum of the post (District Judge) held at the time of retirement as revised. That means his revised pension would be 50% of the minimum i.e., 16,750/- of the post held and that would be Rs.8,375/-. Thus his pension gets revised from Rs.2,850/- per month to Rs.8,375/-.

35.4 Even the District Judge who retired prior to 1996 drawing the pay at Rs.6,300/- (which was the maximum of the pre-1996 scale mentioned

above) and whose initial pension was fixed at Rs.3,150/- would get the same revised pension i.e., 8,375/- being 50% of the minimum pay scale in which he has retired. In that way, the District Judge drawing pay of Rs.5,100/- or 5,700/- or 6,300/- would get the same pension on the revision of pension based on the principle set out by FNJPC. However, by reason of the orders passed by the Supreme Court (referred to earlier), the appropriate multiplier in the light of the revised pay structure has to be applied to pre-1996 retirees also. If so, the revised pension will reach almost the same level as that of post 01.01.1996 retirees by virtue of the orders of Hon'ble Supreme Court directing the Karnataka model to be followed (vide the observations in 2004 12 SCC 444 and the Order dated 13.03.2018 referred to supra).

36. However, in regard to District Judges who retired before 01.01.1996, there is one peculiar problem. The Super Time Scale was not in existence at that time. The top post in District judiciary was District Judge Grade-1 or similar to that nomenclature. It was pointed out in the conference held on 09.02.2019 at Delhi that for those who retired as District Judge Grade-1, pre-1996, they shall get the pension admissible to Super Time Scale District Judge which grade was only introduced after FNJPC recommendation and after the judgment of Supreme Court rendered in the year 2002. One difficulty in accepting this plea is that the promotion/up-gradation to Super Time Scale was not automatic. The posts were limited in number by virtue of 10% ceiling and further the prescribed number of years of service in a particular grade has to be fulfilled. Therefore, the Commission is not in a

position to make a definite recommendation in this regard. It will have to be decided on case to case basis if at all such issue crops up.

37. As regards the pre-1996 retired Judicial officers, the Commission would like to refer to the order of Supreme Court in IA 191/2006 in W.P.(C) No.1022/1989 (**All India Judges Association v UOI**) dated 05.02.2008, we may quote the following two paragraphs in that order:

"Petitioner retired as District Judge, Delhi Higher Judicial Service on 30.11.1995. He sought fixation of his pension with effect from 1.7.1996 as per the Shetty Commission recommendations. His representation was disposed of with the remark that the Shetty Commission recommendations were implemented from 1.7.1996 and since the petitioner had retired on 30.11.1995, he was not entitled to the pensionary benefits as per the Commission recommendations.

In our opinion, the stand taken by the Delhi government is not correct. The petitioner is seeking the pensionary benefits as per Shetty Commission recommendations not from the date of his retirement, but only from 1.7.1996. The petitioner is entitled to such benefits from 1.7.1996. Government of Delhi is directed to pass appropriate orders revising the petitioner's pension within a period of three months."

38. Finally, we **reiterate** that the pension payable on the basis of revised pay scales in respect of Judicial officers who retired prior to the effective date of these recommendations i.e., 01.01.2016 (the said date is of course subject to the order of the Hon'ble Court) shall be no different from the pension payable to the Judicial officers retiring on or after 01.01.2016 at the same level or grade. It is also **clarified** that the pension shall be worked out w.e.f. 01.01.2016 by placing all the Judicial officers who retired prior to that date notionally in the corresponding stage including increment accrued thereon, of revised pay scale. By doing so, the spirit of the orders passed by

the Supreme Court in 2012, 2016 and 2018 and the formulation of VII CPC will be satisfied.

39. SUMMARY OF RECOMMENDATIONS ON PENSION

- 1.** For the Judicial Officers retiring on or after 01.01.2016, no change is suggested in the existing percentage of pension/ family pension, that is, the pension shall be @50% / 30% of the last drawn pay at the time of retirement.
- 2.** Revised pension of the retired Judicial Offices should be 50% of the **last drawn pay** of the post held at the time of retirement.
- 3.** The formulations as given in para 32 above shall be applied for pension revision.
 - i.** Multiplier/factor (2.81) applied for pay revision shall be applied for revision of pension (illustrative example given in para 32, formulation-I).
 - ii.** The pensioners shall be fitted at the appropriate level in the fitment table (illustrative example given in para 32, formulation-II, read with Table II in para 13.3 Chapter 2, Vol.-I).

whichever is higher.
- 4.** The pension payable on the basis of revised pay scale in respect of Judicial Officers who retired prior to 01.01.2016 shall be no

different from the pension payable to the Judicial Officer retiring on or after 01.01.2016 at the same level or grade. The pension shall be worked out with effect from 01.01.2016 by placing all the Judicial Officers who retired prior to that date notionally at the **corresponding** stage including increment accrued thereon, as per the fitment table.

5. As regard the Judicial Officers who retired prior to 01.01.1996, the Commission would like to make it clear that if no consequential re-fixation has been done by the Government concerned based on the directives of the Hon'ble Court in the decisions/orders passed in 2012, 2016, 2018 referred to earlier, the said benefit shall be extended to them first without further delay and thereafter the pension shall be revised as recommended above.
6. The benefits of number of years of practice at bar subject to maximum of weightage of ten years shall be given while calculating pension and other retiral benefits to the direct recruits of Higher Judicial Service who have retired prior to 01.01.2016.

No.38/37/2016-P&PW(A)
Ministry of Personnel, PG & Pensions
Department of Pension & Pensioners' Welfare

3rd Floor, Lok Nayak Bhawan
Khan Market, New Delhi
Dated, the 12th May, 2017

Office Memorandum

Sub:- Implementation of Government's decision on the recommendations of the Seventh Central Pay Commission – Revision of pension of pre-2016 pensioners/family pensioners, etc.

The undersigned is directed to say that the 7th Central Pay Commission (7th CPC), in its Report, recommended two formulations for revision of pension of pre-2016 pensioners. A Resolution No. 38/37/2016-P&PW (A) dated 04.08.2016 was issued by this Department indicating the decisions taken by the Government on the various recommendations of the 7th CPC on pensionary matters.

2. Based on the decisions taken by the Government on the recommendations of the 7th CPC, orders for revision of pension of pre-2016 pensioners/family pensioners in accordance with second Formulation were issued vide this Department's OM No. 38/37/2016-P&PW (A) (ii) dated 04.08.2016. It was provided in this O.M. that the revised pension/family pension w.e.f. 1.1.2016 of pre-2016 pensioners/family pensioners shall be determined by multiplying the pension/family pension as had been fixed at the time of implementation of the recommendations of the 6th CPC, by 2.57.

3. In accordance with the decision mentioned in this Department's Resolution No. 38/37/2016-P&PW (A) dated 04.08.2016 and OM No. 38/37/2016-P&PW(A) (ii) dated 04.08.2016, the feasibility of the first option recommended by 7th CPC has been examined by a Committee headed by Secretary, Department of Pension & Pensioners' Welfare.

4. The aforesaid Committee has submitted its Report and the recommendations made by the Committee have been considered by the Government. Accordingly, it has been decided that the revised pension/family pension w.e.f. 01.01.2016 in respect of all Central civil pensioners/family pensioners, including CAPF's, who retired/died prior to 01.01.2016, may be revised by notionally fixing their pay in the pay matrix recommended by the 7th CPC in the level corresponding to the pay in the pay scale/pay band and grade pay at which they retired/died. This will be done by notional pay fixation under each intervening Pay Commission based on the Formula for revision of pay. While fixing pay on notional basis, the pay fixation formulae approved by the Government and other relevant instructions on the subject in force at the relevant time shall be strictly followed. 50% of the notional pay as on 01.01.2016 shall be the revised pension and 30% of this notional pay shall be the revised family pension w.e.f. 1.1.2016 as per the first Formulation. In the case of family pensioners who were entitled to family pension at enhanced rate, the revised family pension shall be 50% of the notional pay as on 01.01.2016 and shall be

payable till the period up to which family pension at enhanced rate is admissible as per rules. The amount of revised pension/family pension so arrived at shall be rounded off to next higher rupee.

5. It has also been decided that higher of the two Formulations i.e. the pension/family pension already revised in accordance with this Department's OM No. 38/37/2016-P&PW(A) (ii) dated 04.08.2016 or the revised pension/family pension as worked out in accordance with para 4 above, shall be granted to pre-2016 central civil pensioners as revised pension/family pension w.e.f. 01.01.2016. In cases where pension/family pension being paid w.e.f. 1.1.2016 in accordance with this Department's OM No. 38/37/2016-P&PW(A) (ii) dated 04.08.2016 happens to be more than pension/family pension as worked out in accordance with para 4 above, the pension/family pension already being paid shall be treated as revised pension/family pension w.e.f. 1.1.2016.

6. Instructions were issued vide this Department's OM No. 45/86/97-P&PW(A) (iii) dated 10.02.1998 for revision of pension/ family pension in respect of Government servants who retired or died before 01.01.1986, by notional fixation of their pay in the scale of pay introduced with effect from 01.01.1986. The notional pay so worked out as on 01.01.1986 was treated as average emoluments/last pay for the purpose of calculation of notional pension/family pension as on 01.01.1986. The notional pension/family pension so arrived at was further revised with effect from 01.01.1996 and was paid in accordance with the instructions issued for revision of pension/family pension of pre-1996 pensioners/family pensioners in implementation of the recommendations of the 5th Central Pay Commission.

7. Accordingly, for the purpose of calculation of notional pay w.e.f. 1.1.2016 of those Government servants who retired or died before 01.01.1986, the pay scale and the notional pay as on 1.1.1986, as arrived at in terms of the instructions issued vide this Department's OM 45/86/97-P&PW(A) dated 10.02.1998, will be treated as the pay scale and the pay of the concerned Government servant as on 1.1.1986. In the case of those Government servants who retired or died on or after 01.01.1986 but before 1.1.2016, the actual pay and the pay scale from which they retired or died would be taken into consideration for the purpose of calculation of the notional pay as on 1.1.2016 in accordance with para 4 above.

8. The minimum pension with effect from 01.01.2016 will be Rs. 9000/- per month (excluding the element of additional pension to old pensioners). The upper ceiling on pension/family pension will be 50% and 30% respectively of the highest pay in the Government (The highest pay in the Government is Rs. 2,50,000 with effect from 01.01.2016).

9. The pension/family pension as worked out in accordance with provisions of Para 4 and 5 above shall be treated as 'Basic Pension' with effect from 01.01.2016. The revised pension/family pension includes dearness relief sanctioned from 1.1.2016 and shall qualify for grant of Dearness Relief sanctioned thereafter.

10. The existing instructions regarding regulation of dearness relief to employed/re-employed pensioners/family pensioners, as contained in Department of Pension & Pensioners Welfare O.M. No. 45/73/97-P&PW(G) dated 02.07.1999, as amended from time to time, shall continue to apply.

11. These orders would not be applicable for the purpose of revision of pension of those pensioners who were drawing compulsory retirement pension under Rule 40 of the CCS (Pension) Rules or compassionate allowance under Rule 41 of the CCS (Pension) Rules. The pensioners in these categories would continue to be entitled to revised pension in accordance with the instructions contained in this Department's O.M. No. 38/37/2016-P&PW(A)(ii) dated 4.8.2016.

12. The pension of the pensioners who are drawing monthly pension from the Government on permanent absorption in public sector undertakings/autonomous bodies will also be revised in accordance with these orders. However, separate orders will be issued for revision of pension of those pensioners who had earlier drawn one time lump sum terminal benefits on absorption in public sector undertakings, etc. and are drawing one-third restored pension as per the instructions issued by this Department from time to time.

13. In cases where, on permanent absorption in public sector undertakings/autonomous bodies, the terms of absorption and/or the rules permit grant of family pension under the CCS (Pension) Rules, 1972 or the corresponding rules applicable to Railway employees/members of All India Services, the family pension being drawn by family pensioners will be updated in accordance with these orders.

14. Since the consolidated pension will be inclusive of commuted portion of pension, if any, the commuted portion will be deducted from the said amount while making monthly disbursements.

15. The quantum of age-related pension/family pension available to the old pensioners/ family pensioners shall continue to be as follows:-

<u>Age of pensioner/family pensioner</u>	<u>Additional quantum of pension</u>
From 80 years to less than 85 years	20% of revised basic pension/ family pension
From 85 years to less than 90 years	30% of revised basic pension / family pension
From 90 years to less than 95 years	40% of revised basic pension / family pension
From 95 years to less than 100 years	50% of revised basic pension / family pension
100 years or more	100% of revised basic pension / family pension

The amount of additional pension will be shown distinctly in the pension payment order. For example, in case where a pensioner is more than 80 years of age and

his/her revised pension is Rs.10,000 pm, the pension will be shown as (i).Basic pension=Rs.10,000 and (ii) Additional pension = Rs.2,000 pm. The pension on his/her attaining the age of 85 years will be shown as (i).Basic Pension = Rs.10,000 and (ii) additional pension = Rs.3,000 pm. Dearness relief will be admissible on the additional pension available to the old pensioners also.

16. A few examples of calculation of pension/family pension in the manner prescribed above are given in Annexure-I to this O.M.

17. No arrears on account of revision of Pension/Family pension on notional fixation of pay will be admissible for the period prior to 1.1.2016. The arrears on account of revision of pension/family pension in terms of these orders would be admissible with effect from 01.01.2016. For calculation of arrears becoming due on the revision of pension/ family pension on the basis of this O.M., the arrears of pension and the revised pension/family pension already paid on revision of pension/family pension in accordance with the instructions contained in this Department's OM No. 38/37/2016-P&PW(A) (ii) dated 04.08.2016 shall be adjusted.

18. It shall be the responsibility of the Head of Department and Pay and Accounts Office attached to that office from which the Government servant had retired or was working last before his death to revise the pension/ family pension of pre – 2016 pensioners/ family pensioners with effect from 01.01.2016 in accordance with these orders and to issue a revised pension payment authority. The Pension Sanctioning Authority would impress upon the concerned Head of Office for fixation of pay on notional basis at the earliest and issue revised authority at the earliest. The revised authority will be issued under the existing PPO number and would travel to the Pension Disbursing Authority through the same channel through which the original PPO had travelled.

19. These orders shall apply to all pensioners/family pensioners who were drawing pension/family pension before 1.1.2016 under the Central Civil Services (Pension) Rules, 1972, and the corresponding rules applicable to Railway pensioners and pensioners of All India Services, including officers of the Indian Civil Service retired from service on or after 1.1.1973. A pensioner/family pensioner who became entitled to pension/family pension with effect from 01.01.2016 consequent on retirement/death of Government servant on 31.12.2015, would also be covered by these orders. Separate orders will be issued by the Ministry of Defence in regard to Armed Forces pensioners/family pensioners.

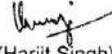
20. These orders do not apply to retired High Court and Supreme Court Judges and other Constitutional/Statutory Authorities whose pension etc. is governed by separate rules/orders.

21. These orders issue with the concurrence of Ministry of Finance (Department of Expenditure) vide their I.D. No. 30-1/33(c)/2016-IC dated 11.05.2017 and I.D. No. 30-1/33(c)/2016-IC dated 12.05.2017.

22. In their application to the persons belonging to the Indian Audit and Accounts Department, these orders issue in consultation with the Comptroller and Auditor General of India.

23. Ministry of Agriculture etc. are requested to bring the contents of these orders to the notice of Heads of Department/Controller of Accounts, Pay and Accounts Officers, and Attached and Subordinate Offices under them on top priority basis. All Ministries/Departments are requested to accord top priority to the work of revision of pension of pre-2016 pensioners/family pensioners and issue the revised Pension Payment Authority in respect of all pre-2016 pensioners.

24. Hindi version will follow.


(Harjit Singh)
Director

To

1. All Ministries/Departments of Government of India (as per standard mailing list)
2. Central Pension Accounting Office, New Delhi
3. Comptroller & Auditor General of India, New Delhi

ANNEXURE I

EXAMPLES

(Reference Para 16 of OM No.38/37/2016-P&PW(A) dated 12th May, 2017.)

S.No	Description	1 st Case	2 nd Case	3 rd Case	4 th Case
1.	Date of Retirement	31.12.1984	31.01.1989	30.06.1999	31.05.2015
2.	Scale of Pay (or Pay Band & G.P.) at the time of retirement OR Notional pay scale as on 1.1.1986 for those retired before 1.1.1986	975-1880 (4 th CPC Scale)	3000-4500 (4 th CPC Scale)	4000-6000 (5 th CPC Scale)	57000-79000 (6 th CPC Scale)
3.	Pay on retirement OR Notional pay as on 1.1.1986 for those retired before 1.1.1986	1210	4000	4800	79000
4.	Pension as on 01.01.2016 before revision	4191	12600	5424	39500
5.	Family pension as on 01.01.2016 before revision	3500	7560	3500	23700
6.	Family pension at enhanced rate as on 01.01.2016 before revision (if applicable)	NA	N.A.	NA	39500
7.	Revised pension by multiplying pre-revised pension by 2.57	10771	32382	13940	101515
8.	Revised family pension by multiplying pre-revised family pension by 2.57	9000	19430	9000	60909
9.	Revised family pension at enhanced rate by multiplying pre-revised enhanced family pension by 2.57	NA	NA	N.A.	101515
10.	Pay fixed on notional basis on 1.1.1996	3710 (3200-4900)	11300 (10000-15200)	N.A.	NA
11.	Pay fixed on notional basis on 1.1.2006	8910 (PB-I, GP 2000)	27620 (PB-3, GP 6600)	11330 (PB-I, GP-2400)	NA
12.	Pay fixed on notional basis on 1.1.2016	23100 (Level -3)	71800 (Level-11)	29600 (Level-4)	205100 (Level-15)
13.	Revised pension w.e.f. 1.1.2016 as per first formulation.	11550	35900	14800	102550
14.	Revised family pension w.e.f. 1.1.2016 as per first formulation.	9000	21540	9000	61530
15.	Revised family pension at enhanced rate w.e.f. 1.1.2016 as per first formulation.	NA	N.A.	N.A.	102550
16.	Revised pension payable (Higher of S.No. 7 and 13)	11550	35900	14800	102550
17.	Revised family pension payable (Higher of S.No. 8 and 14)	9000	21540	9000	61530
18.	Revised family pension at enhanced rate payable (Higher of S.No. 9 and 15)	NA	N.A.	N.A.	102550

II. FAMILY PENSION

1. As per the existing rules prevailing all over India, 30% of the last drawn pay of the deceased pensioner is the basis for calculating the family pension. The same principles as are applicable to fixation of pension will apply for the calculation of family pension. The family pension is made available to the spouse irrespective of her/his income or to the dependant children and other dependants and the rules framed/orders issued by various States/UTs would apply in this regard. The additional quantum of pension shall also be available to the family pensioners and the same will now be in accordance with the recommendation made by this Commission with regard to pensioners. Further, the Commission would like to clarify that family pension @30% shall be paid to the eligible family members at par with the spouse. We are further of the opinion that income limit, if any prescribed by any State in relation to dependent family members (other than the spouse), such as in the state of Tamil Nadu that limit, in respect of judicial family pensioners, can only be beyond the income of Rs.30,000/- per month (rupees thirty thousand per month). Such a measure will be beneficial to the eligible dependants such as widowed/divorced daughters and differently abled children, who need actual financial support.

2. Accordingly, we **recommend.**

3. OTHER BENEFITS TO PENSIONERS AND FAMILY PENSIONERS

3.1 As regards domestic help allowance, fixed medical allowance and medical facilities for the pensioners and the family pensioners, these issues will be part of the discussion under the relevant heads in relation to serving judicial officers.

4. SUMMARY OF RECOMMENDATIONS

- 1.** For family pensioners, no change is suggested in the existing percentage of family pension, that is, it shall be @30% of last drawn pay at the time of retirement of the Judicial officer.
- 2.** Family Pension @30% shall be paid to eligible family member(s) as given in Rule 54 CCS (Pension) Rules 1972, at par with the spouse, after the death of the spouse.
- 3.** The quantum of family pension shall be worked out in the same manner as quantum of pension is worked out.
- 4.** Income limit, if any prescribed by any State in relation to dependent family members (other than the spouse) for being eligible to get family pension shall be not less than Rs.30,000/- per month (rupees thirty thousand per month).

III. ADDITIONAL QUANTUM OF PENSION/FAMILY PENSION

1. As the age advances, the need for additional pension arises and in due recognition of this need, the pensioners all over the country are being given additional pension (over and above 50%) with varying percentages of increase. For the Central Government pensioners/family pensioners and in most of the States, the entitlement to additional pension is conferred after (s)he attains the age of 80 years. It was after the VI CPC report that this benefit has been conferred w.e.f. 01.01.2006 to the Central Government servants. Thereafter, the State Governments have also extended similar benefit to the retired pensioners and the family pensioners including those retired from Judiciary.

2. The additional pension payable to the Central Government pensioners/family pensioners is at the following rates;

From 80-85 years	:	20% (of revised basic pension/family pension)
From 85-90 years	:	30% -do-
From 90-95 years	:	40% -do-
From 95-100 years	:	50% -do-
Above 100 years	:	100% -do-

3. The same pattern is followed under the VII CPC regime.

4. The All India Retired Judges' Association and other Judicial Officers' Associations requested for enhanced pension atleast at the age

starting from 70 years with considerable increase for the age group of 80 to 85 years and thereafter.

5. In the States of Bihar, Jammu and Kashmir, Madhya Pradesh, the first phase of additional pension starts from the age group of 70-75 years.

The following percentages are applied :

From 70-75 years	: 10%
From 75-80 years	: 20%
From 80-85 years	: 30%
From 85-90 years	: 40%
From 90-100 years	: 50%
Above 100 years	: 100%

6. Orders in this regard were issued by Bihar Government on 23.07.2013. In Madhya Pradesh, the Higher Judicial Service and Lower Judicial Service Rules were amended on 26.06.2010 revising the pay and retirement benefits with retrospective effect from 01.01.2006 so as to give effect to the recommendations of JPC. The additional quantum of pension was provided at the same rates as given above i.e., starting from 10% for the age group of 70-75. This benefit is higher than what was allowed by the Supreme Court for Judicial Officers. In Jammu & Kashmir, orders were issued w.e.f. 01.10.2012 providing for additional pension on the same lines. It has been brought to the notice of the Commission that the Punjab Government issued orders on 22.12.2011 providing for additional pension to the

pensioners and family pensioners on completion of 65 years to the extent of 5% and for those above 70 years at 10%, 75 years – 15%, 80 years – 25%, 85 years – 35%, 90 years – 45%, 95 years – 55% and 100 years – 100%. In the State of Andhra Pradesh, the additional pension starts at the age of 70 years at 10% w.e.f. 12.01.2019. For those between 75-80 years, it is 15%; for age group of 80-85 years, it is 20%; for those between 85-90 years, it is 25% and for the age group of 90-95 years, it is 40%.

7. At the Consultative Conferences, the representatives of AIRJA and other participants suggested that reasonable increase may be recommended by the Commission starting from 70 years, if not 65. Another suggestion was that additional pension may be allowed from the beginning of age bracket, that is to say, the first increase shall start on completion of 64 years or 69 years, as the case may be.

8. JPC referred to the suggestion of Judicial Officers to sanction additional quantum of pension to retired Judicial Officers/family pensioners as follows :

From 70 years to less than 75 years - 10% of revised basic pension/family pension; from 75 to 80 years – 20%, from 80 to 85 years – 30%, from 85 to 90 years – 40%, from 90 to 100 years – 50% and 100 years onwards – 100% of revised basic pension/family pension.

8.1 JPC did not make any specific recommendation in this regard and left it to the Hon'ble Supreme Court "to consider the said demand and pass appropriate orders either to adopt the formula suggested by VI CPC or the above formula as suggested by representatives of the Associations."

9. As mentioned earlier, the VI CPC, for the first time, recommended the additional quantum of pension/family pension on completion of 80 years of age at the rates noted earlier.

10. Hon'ble Supreme Court, while considering the report of JPC, in the order dated 26.07.2010 in the case of **All India Judges' Association v UoI** (2010) 14 SCC 713, directed the grant of additional quantum of pension to the retired Judicial Officers including family pensioners in terms of VI CPC report. After the VI CPC Report, many States have extended the benefit of additional quantum of pension to the State Government employees at the same scale and the age group as suggested by VI CPC. However, in some States, as mentioned above, the benefit of additional quantum of pension has been conferred from the age group of 70-75 onwards at varying percentages starting from 10% to 50%.

11. This Commission finds sufficient justification for enlarging the benefits of additional pension to the retired Judicial Officers. At the same time, in making the recommendations for additional pension, we have to bear in mind certain factors. The High Court as well as the Supreme Court Judges start getting additional pension only on attaining the age of 80 years. The

improved life expectancy and health profile in general, the avenues of work available to retired Judicial Officers atleast up to 65 years, the need to avoid too much of deviation from the present scale of additional pension which is the product of VI CPC recommendation – all these factors have to be kept in view.

12. The additional pension does not stand on the same footing as pension which the retired employee is entitled as a matter of right. As noticed earlier, the Supreme Court directed in the year 2010 the grant of additional quantum of pension to Judicial Officers on the same lines as suggested by the VI CPC and the eligibility as per VI CPC report starts from 80 completed years. As seen earlier, the eligibility as per VI CPC starts from 80 years. Keeping all these aspects in view, a drastic reduction of the qualifying age for getting additional pension exclusively for Judicial Officers is not warranted. However, having regard to the distinct features of judicial service and taking note of the fact that many State Governments have sanctioned additional pension which is more beneficial than the VI CPC Scheme, this Commission, on a holistic view, **recommends** the grant of additional pension/family pension to the Judicial Officers as set out below in the Table:

Age of Pensioner/ Family pensioner	Additional Quantum of pension/family pension
75-80 years	20%
80-85 years	30%
85-90 years	40%

90-95 years	60%
95-100 years	80%
On completion of 100 years	100%

P.N: The above percentages are in relation to basic pension/ family pension, **as revised**. Further, to obviate any doubts, the expression 'years' shall mean completed years.

13. Incidentally, the recommendation as above would substantially benefit the oldest age group whose needs are greater and more pressing. The ceiling has been raised to 60% and the same applies to all those who have completed 90 years or more (upto 95th year). For those above 100 years, the cent percent rise as per the recommendation of VI CPC will remain. This recommendation shall be effective from 01.01.2016 subject to the approval of the said date by the Hon'ble Supreme Court.

14. The Commission also **recommends** that no recovery shall be made from those who have availed of the benefit of additional pension on completion of the age of 65 or 70 years as per the extant orders of some of the State Governments. Further, it is optional for the State Government concerned to continue to extend the prevailing benefit up to 75 years to the retired Judicial Officers also. Of course, thereafter, the additional pension shall be sanctioned in accordance with the Table given above in para 12.

15. The Commission has noticed a Division Bench judgment of Gauhati High Court in **Virender Dutt Gyani v Union of India** MANU/GH/0406/2018 wherein Section 17-B of the High Court and Supreme

Court Judges (Salaries & Conditions of Service) Amendment Act, 2009 was construed and it was held that the benefit of additional pension shall be given from the 1st day of 80th year. The judgment of Karnataka High Court in **Sri RG Desai v Principal Accountant General (A&E), Karnataka** (MANU/KA/7850/2019) was also referred to and relied upon. However much we feel that the Provision has not been correctly interpreted, we do not want to enter into that controversy turning on the interpretation of Section 17-B of the said Act. It is brought to the notice of the Commission that the SLP filed by Union of India was dismissed on 08.07.2019 at the admission stage.

16. The Commission having given its anxious consideration, is of the view that the principle laid down in the said judgments in the context of Section 17-B of the said Act need not necessarily be made applicable to the Judicial officers who by virtue of the order of Supreme Court dated 26.07.2010 [(2010)14 SCC 713] are governed by the VI CPC recommendation as regards the additional pension. The Commission is of the considered view that it would be appropriate and proper to take into account the completed years of service while extending the benefit of additional pension. Incidentally, it may be mentioned that there was no demand in their written representations from the Judicial Officers' Associations that the additional pension shall accrue at the beginning of the prescribed qualifying age.

17. However, we would like to point out certain relevant factors having bearing on the points. Firstly, if we refer to the discussion of the VI

CPC, it becomes fairly clear that the benefit of additional quantum of pension was intended to be conferred on the pensioners only on attaining the age of 80 years, that is to say, on the completion of 80 years. Accordingly, appropriate amendments to Rule 49 CCS (Pension) Rules, were made and various OMs were issued. That is how the Central Government and other States have construed and have extended the benefit to the retired Government servants. The Judicial Officers were also given similar benefit by the concerned State Governments and by the NCT of Delhi and the Central Government. We do not find proper justification or rationale for conferring the benefit of additional quantum of pension on the Judicial Officers by adopting the interpretation given by the said High Courts. The language employed in Section 17-B of the said Act may perhaps be susceptible of such interpretation. That is why we are making it explicitly clear by way of footnote to the Table prepared by us that the completion of prescribed age specified in the Table and not the commencement thereof shall be the criterion to be followed in granting the additional pension.

18. It deserves notice that JPC, while leaving it to the Supreme Court to consider the request of the Associations, has understood the VI CPC recommendation as granting benefit of additional quantum of pension/family pension "with respect to the pensioners/family pensioners, who complete the age of 80 years" (vide para 35, page 30 of the JPC Report). The Hon'ble Supreme Court accepted the suggestion of the Commission. The Hon'ble Court observed thus:

"Accordingly, we direct that additional quantum of pension will be paid to the Judicial Officers, who have since retired, including Family Pensioners, in terms of VI Central Pay Commission Report."

19. It is, therefore, clear that both the JPC and this Hon'ble Court understood the recommendation of VI CPC as conferring the benefit of additional pension for those who complete the age of 80 years, but not to those entering the 80th year. The VII CPC while expressing the view that the existing rates of additional pension and additional Family Pension are appropriate (vide para 10.1.30), mentioned the rates applicable for the additional pension as: 80 years to 85 years – 20% of basic pension, 85 years to 90 years - 30% of basic pension, 90 years to 95 years - 40% of basic pension, 95 years to 100 years - 50% of basic pension and 100 years and more - 100% of basic pension.

20. In this context, we would like to add that as far as the members of District & Subordinate Judiciary are concerned, the additional quantum of pension as recommended by the VI CPC is being made applicable by virtue of the order of Supreme Court passed on 26.07.2010 [(2010) 14 SCC 713]. All the Central Government servants get the additional pension only on attaining the age of 80 years, not on entering the 80th year and the retired Judges and the family members have been drawing additional pension accordingly. There is no justifiable reason to depart from the normally accepted rule that the entitlement to the additional pension starts from completion of a specified age and not at the threshold. The Commission would like to **clarify** accordingly. By way of abundant caution, a foot-note has been added to the Table at Page

36 (para 12) and the Hon'ble court may, if considered necessary give a specific direction in this regard.

21. SUMMARY OF RECOMMENDATIONS

- 1.** The additional quantum of pension shall be made available to the Judicial officers on completion of age of and at the rates specified below:

Age of Pensioner/ Family pensioner	Additional Quantum of pension/family pension
75-80 years	20%
80-85 years	30%
85-90 years	40%
90-95 years	60%
95-100 years	80%
On completion of 100 years	100%

P.N: The above percentages are in relation to basic pension/family pension, **as revised**. Further, to obviate any doubts, the expression 'years' shall mean completed years.

- 2.** This benefit of additional pension shall be available to all eligible pensioners/family pensioners w.e.f. **01.01.2016**.
- 3.** No recovery shall be effected from those who have availed the benefit of additional pension on completion of age of 65 or 70 years as per the extant orders of the some of the State Governments.
- 4.** The State Governments may also choose to continue to extend the prevailing benefits upto the age of 75 years to the retired Judicial officers as well.

IV. GRATUITY**RETIREMENT/DEATH GRATUITY**

1. JPC recommended the increase of gratuity ceiling from Rs.3.50 lakhs to Rs.10 lakhs w.e.f. 02.09.2008 in accordance with the recommendations of VI CPC. The Hon'ble Court accepted the said recommendation with modification that it shall be w.e.f. 01.01.2006 and issued the direction in this regard which is being followed now by all States.

2. However, the VII CPC recommended further enhancement of retirement gratuity from the existing Rs.10 lakhs to Rs.20 lakhs w.e.f. 01.01.2016 (vide para 10.1.37 of the Report). The Commission also recommended that the ceiling on retirement gratuity may be increased by 25% whenever D.A. rises by 50%. The Central Government has accepted the said recommendation.

3. This Commission considers it just and appropriate to **recommend** the enhancement of the ceiling of retirement gratuity to the same extent i.e., Rs.20 lakhs subject to further enhancement by 25% whenever D.A. rises by 50%.

4. To those Judicial officers who retired after 01.01.2016 and paid retirement gratuity as per pre-revised pay and the maximum limit at that time, the differential gratuity payable on account of revision of pay by this

Commission shall be worked out and paid to the retirees subject to the revised maximum limit of the amount of gratuity.

5. As regards **death gratuity**, the VII CPC recommended revision of rates as follows:

Length of service	Rate of Death Gratuity
Less than one year	2 times of monthly emoluments
One year or more but less than 5 years	6 times of monthly emoluments
5 years or more but less than 11 years	12 times of monthly emoluments
11 years or more but less than 20 years	20 times of monthly emoluments
20 years or more	Half month of emoluments for every completed six monthly period of qualifying service subject to a maximum of 33 times of emoluments.

6. The maximum amount of death gratuity admissible shall be Rs.20 lakhs.

7. This Commission **recommends** revision of death gratuity on the same lines, and the rules of the State Government ought to be amended in relation to the Judicial officers and the same will be effective from 01.01.2016.

8. SUMMARY OF RECOMMENDATIONS

1. Retirement gratuity shall be calculated as per Rule 50(1)(a) of CCS (Pension) Rules 1972.
2. The maximum limit for retirement gratuity/death gratuity shall be Rs. 20 lakhs which shall be increased by 25% whenever DA rises by 50%.
3. These recommendations shall be effective from **01.01.2016**.
4. To the officers who have retired after 01.01.2016 and paid retirement gratuity as per pre-revised pay and the maximum limit at that time, the differential gratuity payable on account of revision of pay shall be paid subject to the revised maximum limit.
5. The death gratuity shall be payable as per the following table:

Length of service	Rate of Death Gratuity
Less than one year	2 times of monthly emoluments
One year or more but less than 5 years	6 times of monthly emoluments
5 years or more but less than 11 years	12 times of monthly emoluments
11 years or more but less than 20 years	20 times of monthly emoluments
20 years or more	Half month of emoluments for every completed six monthly period of qualifying service subject to a maximum of 33 times of emoluments.

V. RETIREMENT AGE OF JUDICIAL OFFICERS

1. The normal retirement age of the members of District & Subordinate Judiciary remains at 60 years (subject to review at the age of 58). Some of the Judicial Officers' Associations have pleaded for enhancement of retirement age to 62 years. The same plea was considered and rejected by the Supreme Court in AIJA case 2002 (4) SCC 247. It was observed at Para 26 as follows:

"26.The Shetty Commission had recommended that there should be an increase in retirement age from 60 to 62 years. In our opinion, this cannot be done for the simple reason that the age of retirement of a High Court Judge is constitutionally fixed at 62 years. It will not be appropriate, seeing the constitutional framework with regard to the judiciary, to have an identical age of retirement between the members of the subordinate judicial service and a High Court. As of today, the age of retirement of a Supreme Court Judge is 65 years, of a High Court Judge it is 62 years and logically the age of retirement of a judicial officer is 60 years. This difference is appropriate and has to be maintained."

2. However, a direction has been given in regard to re-employment till the age of 62 years in the same paragraph (vide the last two lines of Para 26 extracted hereunder).

"However, as there is a backlog of vacancies which has to be filled and as the Judge strength has to be increased, as directed by us, it would be appropriate for the States in consultation with the High Court to amend the service rules and to provide for re-employment of the retiring judicial officer till the age of 62 years if there are vacancies in the cadre of the District Judge. We direct this to be done as earlier as possible".

3. This direction of the Hon'ble Court virtually remains unimplemented. It is not known whether any serious consideration was given by the State Governments to the categorical observations made by the Supreme Court and a decision was taken. The Commission will be dealing with this aspect later on.

4. Unfortunately, the retirement age of High Court Judges remains at standstill since decades. The move to enhance retirement age of High Court and Supreme Court Judges has not fructified so far, though, there is every justification to raise the retirement age, viewed from any angle. The retirement age of Central Government servants also remains at 60 years. It is only in the State of Madhya Pradesh, it appears that the age of superannuation for the Government employees including officials has been raised to 62 years. However, the State Government has rightly refrained from extending the same benefit to Judicial Officers because the Government is bound by the directives issued in the Judgments of the apex Court referred to *supra*. For the Judges of Family Courts and Industrial Tribunals who are recruited by a special process and remain outside the regular hierarchy (in the State of Maharashtra etc.), the retirement age is 62 years. For that reason or by reason of enhancement of retirement age to 62 years for Government servants in the State of Madhya Pradesh, it is not appropriate to recommend the enhancement of retirement age of Judges of Subordinate Judiciary. The observation in the Judgment of the Supreme Court (referred to *supra*) coupled with the fact that the rule introduced in a single State need not necessarily form the basis for stepping up the retirement age, we are not inclined to make a recommendation to enhance the retirement age, more so when the retirement age of the High Court Judges remains at 62 years.

5. When the Judgments in AIJA case were delivered during 1992/93, the retirement age in many States was 58 years or even less. It was

in that background, the Supreme Court considered it necessary to lay down that the retirement age of Judicial Officers shall be 60 years subject to scrutiny before they complete the age of 58 years. Thus, when compared to other civil servants, the Judicial Officers had the benefit of increase in the age of retirement (up to 60 years). However, presently, in Central Government service as well as in some State services, the age of superannuation is 60 years. Therefore, at present, the Judicial officers are not having any additional benefit which is not conferred on the Officers of the executive. Thus, the rationale and objective behind the prescription of 60 years as the normal retirement age for Judicial officers subject to review at the age of 58 years in the judgments rendered has practically lost its relevance now. The review to be undertaken at the age of 58 in order to evaluate the Judicial Officers continued utility in judicial service has also lost its relevance and rationale. True, the land-mark decisions of the Supreme Court in AIJA cases have firmly established the principle that the retirement age of Judiciary could be different. However, presently the Commission is not inclined to make a definite recommendation in this regard. The Commission would prefer to deal with it in more detail, if necessary while discussing the 3rd term namely 'd', of reference. To translate this principle into reality, as said earlier, the change shall occur at the top. As and when the retirement age of High Court Judges is enhanced, the members of District & Subordinate Judiciary can legitimately expect the rise in their retirement age.

VI. FINANCIAL ASSISTANCE

1. Financial Assistance to the family of Judicial officer in case of death while in service: In case of death of Judicial officer while in service, the family pension and death *cum* retirement gratuity as per the applicable rules is payable to the spouse/dependant, of the deceased officer.

2. Rule 54 (3) (a) of the Central Civil Service (Pension) Rules, 1972 provides for payment of family pension to the Government servant who dies while in service. By notification dated 19.09.2019 issued by the Department of Pensions and Pensioners' Welfare, the Government of India amended Rule 54 so as to enlarge the benefit of family pension. The amended Rule is effective from 1st day of October 2019. The Proviso to Sub-Rule (3) (a)(i) and (ii) of Rule 54 reads thus –

"3. (a)(i) Where a Government servant, who is not covered by the Workmen's Compensation Act, 1923 dies while in service, the rate of family pension payable to the family shall be equal to 50% of the pay last drawn and the amounts so admissible shall be payable from the date of following the date of death of the Government servant for a period of ten years.

(ii) In the event of death of a Government servant after retirement, the family pension as determined under sub-clause (i) shall be payable for a period of seven years, or for a period up to the date on which the retired deceased Government servant would have attained the age of 67 years had he survived, whichever is less:"

3. The words "after having rendered not less than seven years' of continuous service" which were there in clause (a), Sub-clause (i) of Rule 54 (3) have been omitted.

4. Further, as per clause (c), after the expiry of the period referred to in clause (a), the family in receipt of family pension under that clause or clause (b) shall be entitled to family pension at the rate admissible under sub-rule (ii). Sub-rule (ii) provides for calculation of family pension in three contingencies: (i) after completion of one year of continuous service (ii) before completion of one year of continuous service if the deceased Government servant was declared fit by the appropriate medical authority prior to his appointment and (iii) after retirement from service and was on the date of death in receipt of a pension or compassionate allowance. In these contingencies, the family of the deceased will be entitled to family pension under the family pension for Central Employees (1964), the amount of which, shall be determined at a uniform rate of 30% of basic pay, subject to a minimum of Rs.3500/- per mensem and maximum of Rs.27,000/-.

5. The press notification issued by the Government of India in respect of this beneficial amendment is extracted hereunder:

"On death of a Government servant while in service, the family is entitled to a family pension in accordance with Rule 54 of the Central Civil Services (Pension) Rules, 1972. The family pension was payable at enhanced rate of 50% of the pay last drawn for a period of 10 years, if the Government servant had rendered a continuous service of not less than seven years; thereafter the rate of family pension was 30% of the pay last drawn. In case the Government servant had rendered a service of less than seven years before his death, the rate of family pension was 30% from the beginning and family pension at enhanced rate of 50% of last pay drawn was not payable to the family.

The Government felt that the need for family pension at enhanced rate is more in the case of a Government servant who dies early in his career, as his pay at the initial phase of service is much less. The Government has, therefore, amended Rule 54 of the Central Civil Services (Pension) Rules, 1972 by a notification dated 19th September, 2019. As per the amended Rule 54, the family of a Government servant, who dies within

seven years of joining service, will also be eligible for family pension at enhanced rate of 50% of last pay drawn, for a period of 10 years.

The above amendment would be effective from 1st October, 2019. However, the families of Government servants who died before completion of service of seven years within 10 years before 1st October, 2019, will also be eligible for family pension at enhanced rates with effect from 1st October, 2019.”

6. Though in the states such rules are enforced, they are less beneficial. As the amendment referred to above is a very recent one, the states have not yet amended the rules in tune with the Central Government rules, as it now exists.

7. Haryana: The Haryana Government issued orders on 01.08.2006 granting *ex-gratia*/financial assistance on compassionate grounds. Such assistance given by Haryana Government appears to be the most liberal in the country.

7.1 The Haryana Government has issued Haryana Civil Services (Compassionate Financial Assistance or Appointment) Rules 2019 which came into force from 01.08.2019. The Rules are applicable to the family of government employees including All India Service Officers. The main features of 2019 Rules are as under:

- The eligible family member of the employee would receive financial assistance to the extent of last drawn pay and allowances drawn by the deceased employee in the normal course for a period of;
 - (a) 15 years if the employee died at the age below 35 years;
 - (b) 12 years if the employee died at the age between 35 and 48 years;

- (c) 7 years or till the date the employee would have retired from the government service, whichever is less, if the employee had attained the age of 48 years by the date of death.

The allowances to be added to pay are specified in the Rules.

- The family will be eligible to receive family pension as per the Rules in force after the period during which she/he receives ex-gratia financial assistance as above is completed.

7.2. Lumpsum ex-gratia payment of Rs.1 lakh to meet immediate needs and compassionate appointment to the eligible family member is also provided for.

7.3 There is no order extending the said Rules to Judiciary.

8. The Commission, for practical reasons, is not inclined to recommend that the orders issued by the Haryana Government shall be applied to the Judicial officers by other States and UTs. The latest amended Rule 54 of CCS (Pension) Rules, affords adequate protection to the family members of deceased judicial officer. The Commission **recommends** that the benefit *in the form of family pension* as per the amended Rule 54(3) of CCA (Pension) Rules referred to supra shall be extended to the family members/ dependants. Further, the other benefits such as one time lump sum grant, compassionate appointment and permission to stay in official quarters which are already in force in the States shall continue to apply, in addition to death gratuity.

9. SUMMARY OF RECOMMENDATIONS

1. The benefit of family pension as per Rule 54(3) of CCS (Pension) Rules, as amended vide notification dated 19.09.2019 shall be extended to the family members/dependants of deceased Judicial Officers.

2. The other benefits such as one time lumpsum grant, compassionate appointment, permission to stay in official quarters etc. already in force in the States shall continue to apply, in addition to death gratuity.

10. ASSISTANCE TO PENSIONERS/FAMILY PENSIONERS

10.1 The important requirements of pensioners/family pensioners broadly are:

- Prompt clearance of the medical bills and bills relating to allowances such as domestic help allowance and medical allowance;
- hassle-free access to medical facilities especially at times of emergency or prolonged inpatient treatment.

10.2 True, by virtue of the rules in force and the recommendations of the Judicial Pay Commissions, the pensioners are eligible to have medical facilities including access to empanelled hospitals and approved Diagnostic

centers at par with the serving officers but it is reported that practical difficulties are often experienced by them.

10.3 As per the present practice, the medical bills submitted by the pensioners/family pensioners as well as the bills relating to allowances viz. medical allowance, domestic help allowance etc. are being submitted by the pensioners/ family pensioners to the Principal District Judge of the place from where she/he retired and the officers of District Court process them. This is what FNJPC also recommended.

10.4 In few States/places such as Chandigarh and Mohali, medical bills are being submitted to the Registry of the High Court. In some States, the bills involving high claims are sent to the Registry of High Court for approval after preliminary scrutiny by the District Judge. There can be no objection for adopting such procedures. However, it is necessary that all possible steps shall be taken to avoid unnecessary delays.

10.5 The Commission would like to emphasize that the pensioners and family pensioners should have a feeling that they are being cared for by the establishment of the Judiciary and the communication gap, if any, has to be eliminated.

10.6 One of the areas in which special attention shall be bestowed is in rendering due assistance for processing the medical bills of the

pensioners/family pensioners who are too old and infirm/differently disabled and those who are undergoing in-patient treatment for serious ailments.

10.7 Further, the pensioners/family pensioners should be able to seek assistance of the Court staff in case of emergency in facilitating admission at the concerned hospital and in getting their bills cleared promptly. In other words, some sort of liaisoning work if required, it needs to be provided to the pensioners/family pensioners.

10.8 It would be proper that the District Judge nominates a Nodal officer whose contact numbers may be furnished to all the pensioners/family pensioners so that a channel of communication is established between the pensioners/family pensioners and office of the District Judge concerned.

10.9 At the High Court level, it is desirable that a special cell is entrusted with the responsibility of processing the representations of the pensioners/family pensioners and to initiate such action as may be considered appropriate to redress the grievance expeditiously. The special cell shall be under the supervision of an officer of the rank of Joint Registrar. A Judge of the High Court may be nominated by the Chief Justice to oversee the functioning of Special Cell and to issue necessary instructions for prompt action.

10.10 We also recommend that the representatives of the Retired Judges Associations may be permitted to meet the Registrar General once in

a year to discuss the problems, if any, faced by them in getting their due entitlements.

10.11 It is unfortunate that many of the High Courts do not have the data regarding the pensioners, especially the family pensioners. It is **suggested** that such data shall be compiled by the Registry of High Courts for ready reference as and when required.

11. SUMMARY OF RECOMMENDATIONS

- 1.** In order that the pensioners/family pensioners have a feeling that they are being cared for and to eliminate the communication gap, special attention shall be bestowed to them by rendering due assistance for processing the medical bills of the pensioners/family pensioners who are too old, infirm or differently abled or undergoing in-patient treatment for serious ailment.
- 2.** District Judge shall nominate a Nodal Officer for liasoning work, if required, in emergency in facilitating admission in the hospital and getting the medical bills of the pensioners/family pensioners cleared promptly.
- 3.** Special Cell entrusted with the responsibility of the processing the representations of the pensioners/family pensioners and to initiate action as may be considered appropriate to redress the

grievance expeditiously, shall be created in the High Court under the supervision of an officer of the rank of Joint Registrar, in the High Court.

4. A Judge of the High Court shall be nominated to oversee the functioning of Special Cell and issue necessary instructions.
5. The representatives of the Retired Judges Associations shall be permitted to meet the Registrar General of the High Court atleast once in a year to discuss the problems, if any.
6. The Registry of the High Courts to compile data of the pensioners and family pensioners.

PART-I
CHAPTER-4

NATIONAL PENSION SYSTEM

1. For the civil servants including the Judicial Officers appointed on or after 01.01.2004, a new pension system was evolved. Driven by fiscal constraints of supporting a Public Pension System and to lessen the financial burden for the Central and State Governments on account of pension, the National Pension System (NPS) has been put in place by the Central Government after the budget announcement in 2003-04. It is also known as New Pension Scheme or Defined Contribution Pension System. Thus, the stressed fiscal situation set the stage for introduction of the NPS as observed by VII CPC at para 10.3.4. The Commission pointed out that the pension expenditure of Central Government grew at a compound annual growth rate of 21 percent during the period 1990 to 2001 and it had impact on fiscal deficit as well.

2. The Defined Contribution Pension System replaced the existing system of Defined Benefit Pension System. The new pension scheme was made mandatory for new recruits to the Central Government i.e. those entering the service on or after 01.01.2004 except the armed forces. The Judicial Officers in Delhi and Union Territories also came within the new regime of pension system w.e.f. 01.01.2004. The State Governments have fallen in line with the Central Government by introducing this New Pension System. However, the year and month in which the NPS was brought into

effect varied from State to State. Most of the States have started applying the same for the recruits to civil services including Judicial Officers from 2004/2005 onwards. In Haryana & Sikkim, it is being implemented to those recruited in 2006. In Jammu & Kashmir, NPS is being applied to the personnel recruited on or after 01.01.2010. In the State of Tripura, NPS is being applied to those recruited on or after 01.07.2018. There are two States in which NPS has not been implemented till date; they are, West Bengal and Himachal Pradesh. In the State of Karnataka, NPS is being applied to Government servants joining service on or after 01.04.2006 by an order issued on 29.03.2010. By the same Government Order, NPS was sought to be introduced to the Judicial Officers appointed after the same date. However, the Scheme has become a non-starter by reason of Judicial orders. Further, a Committee of Hon'ble Judges of High Court of Karnataka recommended that the NPS ought not to be applied to Judicial Officers. It is reported that the proposal to withdraw NPS for Judicial Officers has been under active consideration of Karnataka Government and a Writ Petition is also pending in the High Court.

3. Under the NPS, the Government servants contribute 10% of their monthly salary (Basic + DA) towards pension and there will be matching contribution from the Government. Originally, the Government's contribution was 10%. The Government of India (Department of Financial Services, Ministry of Finance) issued a notification on 31.01.2019 increasing the Government's contribution to 14% of the basic Pay + DA, w.e.f. 01.04.2019.

The contribution and returns thereon would be deposited in a non-drawable Pension 'Tier-1 Account'. The Pension Fund Regulatory and Development Authority (PFRDA) will regulate and develop the pension funds and there will be different investment choices. The existing scheme of defined benefit pension and GPF would not be available to the new recruits governed by NPS. The subscriber can exit at or after the age of 60 years from Tier-1 of the pension system. On such exit, 60% of the accumulated pension wealth can be withdrawn by the subscriber. The remaining 40% of the pension wealth will have to be utilized for the purchase of an annuity from the Annuity Service Provider empanelled by PFRDA as per the terms and conditions of the Annuity Scheme. The annuity provides for pension for the lifetime of the employee and is calculated on the basis of actuarial valuation. If an employee exits from NPS before the normal age of superannuation, atleast 80% of the accumulated pension wealth of the subscriber needs to be utilized for purchase of annuity from IRDA regulated insurer which will provide monthly pension to the subscriber. The remaining 20% is paid in lumpsum.

4. NPS is managed by Pension Fund Regulatory and Development Authority (PFRDA) which was initially set up as an Interim Authority. The said authority has now derived statutory status by virtue of PFRDA Act, 2013 passed by the Parliament which came into effect on 01.02.2014.

5. The withdrawals from NPS Tier-1 account is permitted to the extent of 25% of the contribution made to his/her individual pension account,

that too, for certain specified purposes and the withdrawals are limited to three occasions during the entire tenure of subscription. Further, there shall be gap of atleast five years between two such withdrawals.

6. Apart from Tier-1 account, there exists a voluntary Tier-2 account. Under this account, the subscriber can at any time withdraw the accumulated wealth either in full or part and there is no limit on such withdrawals provided the account has sufficient balance of accumulated pension wealth. The Tier-2 account has since been made operational.

7. There is much resentment to the NPS. Almost all the Associations and individual officers have expressed in favour of continuation of the old pension system together with GPF. **However, the Chief Judge, Puducherry stated that the New Pension Scheme is more beneficial, though no reasons have been given.** The financial insecurity anticipated by them on account of uncertainty of returns on investment and the risk factor involved coupled with the inadequacy of annuity they may get in lieu of pension have been highlighted by the representatives of Judicial Officers' Associations. In fact, the VII CPC had enumerated the grievances of the Central Government staff against the NPS at para 10.3.11. Some of them are given below:

7.1 Under the NPS regime, the effective salary becomes less inasmuch as the employee has to mandatorily contribute 10% of pay towards the pension fund. Family pension after the death of employee is not available

in NPS. Moreover, if an employee dies at an early age, the family could suffer since annuity from contribution would be grossly inadequate. NPS subscribers have no recourse to GPF for their savings. Their personal savings (10% of salary) is considered to be part of larger corpus. In this context, it was submitted before the Central Pay Commission that the right approach would be to consider only Government's contribution and the returns earned on it as the effective amount available for the purchase of annuities. Unlike the facility under GPF, it is not possible under NPS regime to take refundable advances for specific purposes, thereby forcing the employees to borrow from outside sources. The uncertainty regarding the actual value of their future pension in the face of market related risks is another problem presented before the VII CPC. The grievances relating to tax treatment under NPS were also noted by the VII CPC. While the contributions and accumulations under NPS are exempt, lumpsum withdrawals from NPS at any time are taxable at par with any other income. In addition, there is a service tax liability on any amount utilized for the purchase of annuity. Annuities under NPS have no compensation for inflation unlike dearness relief under Old Pension Scheme (OPS). Further, in the case of Old Pension Scheme (OPS), there is a revision in basic pension itself after every Pay Commission's report and this benefit is not available in respect of the annuity of NPS subscribers. Concerns were raised that the contribution of 10% + 10% (now 14%) will not be sufficient to create a corpus which provides reasonable assurance that it would be close to 50% of the last pay drawn. It was also pointed out that the grievance

redressal facility was not effective and there was a communication gap which has generated insecurity in the minds of stakeholders.

7.2 It needs to be mentioned here that some of these grievances have been redressed by the Central Government by issuing necessary directives and they will be adverted to later.

8. The VII CPC, having taken note of these issues, has expressed its views at paras 10.3.13 to 10.3.17 on some of the aspects. As regards the future value of pension under NPS, the Commission noted that this would depend upon various factors: (i) performance of the invested fund, which in turn would depend on the asset mix of the investment and general economic situation of the country (ii) cost of financial intermediation (iii) contribution rates (iv) period of contribution (v) performance of the Fund Manager and (vi) development of the annuity market. The Commission recommended that the investment choice under NPS be calibrated on a life cycle approach and the choices be offered in a simple manner so that any lay person can understand and act. The Commission also recommended that the Government, in consultation with PFRDA, should come up with different options for investment mix and provide a range of options to the subscribers. These steps have since been taken by the Government/ PFRDA substantially. Regarding enhancement of Government's contribution from the present 10%, the Commission recommended that this aspect should be re-examined by an expert body. As noted earlier, the Government's contribution has now been

increased to 14%. It was pointed out that the Government employees who joined service between 2004 and 2011 have suffered due to delay in finalizing the structure of NPS and the issuance of detailed instructions. The Commission recommended that the Central Government and State Governments should in a time-bound manner ensure that all the due contributions together with compound interest be deposited in the accounts of beneficiaries wherever contributions have been delayed. Requisite measures in this regard have been taken by most of the Governments. The Commission recommended that PFRDA should take steps to make the tier-2 account operational with expedition to enable NPS subscriber the facility of withdrawals from their accounts in case of retirement. Tier-2 account has now been made operational. The Commission also recommended measures for disseminating the requisite information and reducing communication gap with the stakeholders. The Commission recommended that the withdrawals under the NPS should be tax-exempt so as to place NPS at par with other pension schemes. The Commission also recommended that Service Tax should be exempted. These fiscal measures have been taken by the Government.

8.1 The Commission, after adverting to the grievance that family pension is not ensured in NPS after the death of the employee, recommended notification of a scheme by the Government for provision of additional relief in such cases consequent to exit from NPS. The provision for family pension in case of death of serving employee has now been made.

8.2 The VII CPC noted that its mandate did not extend to reviewing the desirability of enforcing the NPS. Therefore, no view was expressed thereon.

9. This Commission has looked at the figures relating to ratio of pension to GDP in the recent years. The rate of increase of the ratio is as follows:

It has increased from 0.19% in 2010-11 to 0.29% in 2017-18 for pensions other than the pensions of defence personnel

As far as pensions falling within the purview of Ministry of Defence, the ratio has increased from 0.45% in 2010-11 to 0.71% in 2017-18.

The GDP taken into account here is in relation to 2011-12 price as per CSO's National Account 2011-12 series.

Further, the pension and other retirement benefits provided by the Central Government increased from Rs.2138 crores in 1990-91 to Rs.93611 crores in 2014-15 with compounded annual growth rate of 17%.

9.1 In response to the letters addressed by this Commission, the Joint Secretary, Department of Financial Services, Ministry of Finance, Government of India has sent two letters which give a broad picture of NPS. In the letter dated 13.04.2018, it was stated that due to fiscal stress on account of old defined benefit pension system, Government of India made a conscious move to shift from the old pension scheme to defined pension scheme, now re-named as the National Pension System (NPS). In a subsequent letter dated 05.04.2019 of the Deputy Secretary, it is pointed out that NPS is being

administered and regulated by Pension Fund Regulatory & Development Authority in a professional manner. The investments of the accumulated corpus are made in a balanced proportion between equities, Government securities and corporate bonds so as to reduce the risk while ensuring optimal returns. The CAGR of returns generated 'since inception' of NPS (on the average) are stated to be: SBI PF – 9.96%, LIC PF - 9.67% and UTIRSL PF - 9.65%. When asked about the comparative advantages of NPS in the long run, it has been stated that both schemes are different in nature, structure and benefits and hence, they cannot be compared. It is reiterated that NPS is a contributory pension scheme without any defined benefit and it depends on the contributions made, investment income accrued and other relevant factors. A copy of the 'architecture' of NPS was enclosed to the letter.

9.2 The official of Ministry then referred to the steps taken by the Central Government for streamlining NPS which *inter alia*, include enhancement of Government's contribution from the existing 10% to 14% of pay + DA while keeping the employee's contribution at the existing 10%, providing freedom of choice for selection of pension funds and pattern of investment to the subscribers, payment of compensation for non-deposit or delayed deposit of NPS contribution during 2004-2012, providing Income Tax deduction to the contribution made under Tier-2 of NPS up to Rs.1.50 lakhs with a lock in period of three years and also the increase in tax exemption limit from the existing 40% to 60% for lumpsum withdrawal, thereby making the entire withdrawal (from Tier-I account) exempt from Income Tax.

10. Taking note of the hardships faced by the employees governed by NPS who were discharged on invalidation/displacement and by the families of employees who have joined the service after 01.01.2004 and died while in service, certain benefits were extended on provisional basis by the Office Memorandum dated 05.05.2009 issued by the Government of India (Ministry of Personnel, Public Grievances & Pensions). Provision has been made for invalid pension, family pension, disability pension and extraordinary family pension apart from death/retirement gratuity. The employee and his family will also be paid Dearness pension/Dearness relief admissible from time to time on the said benefits extended provisionally. However, no payment of monthly annuities will be made to the employee/family of the employee during the period he/she is in receipt of such provisional benefits.

10.1 There are two other important notifications of Government of India (Department of Pensions and Pensioners' Welfare) dated 26.08.2016 and 12.09.2017. By the former O.M., it was decided that the Government employees covered by NPS shall be eligible for Retirement gratuity and Death gratuity on the same terms and conditions as are applicable to employees covered by CCS (Pension) Rules. In the OM dated 12.09.2017, it was clarified that the entitlement of the family on death of NPS employee is at par with the employee borne on a pensionable establishment both under CCS (Pension) Rules and CCS (EOP) Rules. However, the family is not paid the benefit from NPS accumulations. It was further clarified that in case of death of a NPS employee, the family would be entitled to family pension under the Extra-

ordinary Pension Rules at the rate of 60% of basic pay and not at the rate of 40% of the basic pay applicable on death of holder of a non-pensionable post.

10.2 On 31.01.2019, the Government of India (Ministry of Finance, Department of Financial Services), issued a Notification amending the NPS provisions set out in the Notification dated 22.12.2003. As noted earlier, the contribution by the Central Government has been enhanced to 14% of the basic pay + DA. Provisions have been made for choice of pension fund, choice of investment pattern and compensation for non-deposit or delayed deposit of contributions during 2004 to 2012.

10.3 These are the various Notifications issued by the Government of India conferring certain benefits for those covered by NPS which were not originally available.

11. In the State of Maharashtra, as per the Government Resolution dated 29.09.2018 issued by the Finance Department, if a Government servant who is a member of Defined Contributory Pension Scheme (National Pension Scheme) dies during service before completing ten years of service, his nominee/legal heirs would be given ex-gratia grant of Rs.10 Lakhs plus accumulated amount standing to the credit of the account of the employee.

12. The arguments in favour of retention of NPS may briefly be noted. The scheme has been in vogue for the last 15 years in NCT of

Delhi and other UTs and in most of the States for all categories of civil servants including the Judicial Officers. The scheme has been strengthened and streamlined from time to time to benefit the employees/subscribers. To discontinue the scheme that is being applied *Pan-India*, that too for a particular category of officers i.e. the members of District Judiciary, would be unfair and may also create complications in the reversal of the scheme. It would also have cascading effect as demands from other sections of Government employees would intensify and the resultant uncertainty may affect the return on investments. It is settled law that the emoluments and the conditions of service of Government servants can be altered unilaterally, vide *Roshan Lal Tandon v UoI*, 1968 SCR (1) 185. If, in order to mitigate the mounting financial burden on pension account, a new scheme is introduced for new entrants, it cannot be said that it is *per se* unconstitutional. It is not as if there is a classification among the existing employees who are governed by the defined benefit pension scheme (the old pension scheme). NPS has been made applicable to the new recruits entering service after the specified date and the prescription of such cut-off date is not discriminatory, more so when it is meant to overcome the stress on financial resources in the larger interest of the nation. Introduction of a cut-off date even among the pensioners for the purpose of conferring additional benefit has been recognized as a valid ground for classification in a series of decisions of Supreme Court subsequent to **D.S. Nakara v Union of India and others** AIR 1983 SC 130 1983 SCR (2) 165 case. The ratio of **Nakara** case has been

'watered down', as pointed out in **State of Punjab v Amarnath Goyal and others** [2005 (6) SCC 754]. It is presumptuous to think that the NPS does not ensure financial and social security in old age and the returns likely to accrue will be grossly insufficient. 60% of the accumulated corpus fund would be a big savings which can be profitably invested by the retired subscriber. The disadvantages of NPS are being exaggerated and even the slew of measures notified by the Central Government recently giving relief to the new pensioners such as enhancement of Government contribution and introduction of family pension are being ignored without justification. Professional expertise has been put in place to administer and invest the funds and the results/returns so far yielded are not discouraging.

13. Now, let us see the other side of the picture:

13.1 We have already noticed the apprehensions expressed by the Employees' Unions before the VII CPC. That apart, in the presentation made by the representatives of Judicial Officers' Associations and in the course of consultative process, the following points have been highlighted to demonstrate that NPS will be disadvantageous and lead to financial insecurity. These points have been focussed especially in the detailed representation of Maharashtra State Judges' Association and Karnataka State Judicial Officers Association. We shall refer to them briefly, may be, at the risk of repetition, in some respects.

13.2 Even if the rate of returns is assumed to be 9% p.a., the monthly annuity (in lieu of pension) provided to Government servants/Judicial Officers after retirement will be far less than the pension. On the date of retirement, say after 20 years, the difference between annuity and income from the released amount would be atleast 3 times less than the pension (s)he would have got. The quantum of pension keeps increasing by the addition of enhanced rate of dearness pay (which is a protective cover against inflation) as well as on account of pay revision based on the recommendations of Pay Commissions. However, the annuity from 40% of NPS corpus would always remain the same.

13.3 GPF investment is more secure and fixed interest rate of about 8% is assured. In NPS, the returns on investment are uncertain in view of stock market fluctuations. GPF investment is eligible for full tax exemption whereas, NPS investment has only limited tax exemption. The employees have freedom to discontinue GPF contribution as and when they want by giving one month notice. The benefit of commutation of pension and additional pension is not available under NPS. No DA or DP is payable on the annuity amount. There would be no benefit of retirement gratuity or death gratuity under NPS. In case of death of Judicial Officer covered by NPS, the spouse or dependent minor children would only get meager amount of annuity of NPS corpus. (These problems have been addressed to certain extent by the notifications issued by Government of India referred to earlier).

13.4 The take-home salary will get reduced because of deduction of 10% from DA also. Since the funds in NPS are invested in bonds, equities and securities, their earning potential have high degree of volatility. Fixed income securities are also not free from market risks. It is difficult to forecast the deficiency in the performance of Pension Fund Managers. Loan facility is not available as in the case of GPF and no premature withdrawals are allowed before 60 years of age. The tax liability of NPS will be quite high at the time of withdrawing the funds whereas, GPF has the benefit of complete tax exemption.

13.5 These are broadly the disadvantages and hardships resulting from NPS that have been pointed out. Some of the officers expressed the view that the Fund will fetch good returns with the expertise deployed by PFRDA though the annuity in any case will not match the quantum of pension.

14. Mr. Sachin S. Patil, on behalf of Maharashtra State Judges' Association has, in his Note on Financial Implications of NPS and Old Pension System, furnished the calculation sheets in order to establish that even going by conservative estimates regarding rise in pay in future and optimistic expectations of the returns from corpus fund at the rate of 9%, the pension of an Officer retiring under the old pension scheme will be far more than the annuity which an Officer governed by NPS will be able to get. Mr. Patil has taken the initial 36 stages of the 44 stages in the existing pay scale and 100% dearness allowance to calculate the corpus fund that will get accumulated at

the time of retirement. As per his calculations, an Officer (of District Judge Cadre) would get about Rs.81,500/- monthly income by investing 40% of the corpus in a 6% annuity scheme.

14.1 He then points out that if the Judicial Officer governed by old pension scheme retires after 20 years, having regard to the benefits of next two pay revisions, his pension will be between Rs. 3 Lakhs and 4 Lakhs that too, with revisable D.A. Therefore, he submits that the pension/annuity accrued from NPS would be far less and meager in comparison with the benefits under the old pension scheme.

15. Prof. Manjari Singh, Professor in the Human Resources Management Area at the Indian Institute of Management Ahmedabad (specializing in data analytics) whose assistance we have taken, has prepared a comprehensive Note comparing the old and the new pension schemes with illustrative examples. Case 1 relates to a District Judge entering service in January 2016 and retiring in December 2035 as District Judge (Super Time Scale). Case 2 relates to a District Judge entering service on April 1, 2008 and retiring on March 31, 2028. Both cases with relevant Tables and notes are furnished in the **Appendix A** to this chapter. The projected figure of pension income under the two schemes starting from the year of retirement to the retiree attaining the age of 90 are furnished in Tables 1.3 and 2.3. On the date of retirement as well as during the later years, there is a wide gap between the monthly income under the New Pension Scheme and the

monthly pension under the Old Pension Scheme. Monthly pension under the Old Pension Scheme incorporates the benefits of (a) subsequent increases in pension after retiree is 80 years old, (b) dearness relief, and (c) pay revisions. The gap widens as the retiree grows older. As the Professor has pointed out, the real difference comes after retirement because there is no provision in the New Pension Scheme to take care of inflation. For instance, as illustrated in Case 1, a District Judge retiring in December 2035 gets a pension of approximately Rs.4,30,000 per month and after 20 years would get a monthly pension of approximately Rs.10 lakhs at the age of 75 years under the Old Pension Scheme (with DR and pay revisions), whereas s(he) would get an annuity payment of around Rs.1 lakh and return from investment around Rs.1.7 lakhs, a total monthly income of approximately Rs.2.7 lakhs under the New Pension Scheme. Looking at the present value (as in the year 2016), monthly pension under the Old Pension Scheme is approximately 1 lakh whereas monthly income under the New Pension Scheme is around one-third of it.

15.1 The calculations in the Tables furnished by the expert/Professor reveals that the monthly pension under Old Pension Scheme is vastly higher than the monthly annuity receivable as per the New Pension Scheme at the fixed sum. The net result is that the Old Pension Scheme is becoming burdensome for the employer and the employee cannot sustain with the New Pension Scheme. In case inflation is quite high post-retirement, the pensioner will suffer greater hardship.

16. Further, in the case of direct recruit District Judges who get selected at the age of about 40/42 years as it often happens, the quantum of corpus that will get accumulated during their career, will not be substantial. Resultantly, the corpus and the annuity they would get could be much less when compared to the promotee District Judges.

17. DISCUSSION

17.1 On taking stock of the features of NPS (even after the additional benefits have been extended by the Central Government in the recent years) and taking an overview of comparative advantages of the old and new pension systems in the light of approximate calculations collected from various sources, it can be said with reasonable certainty that the old pension system is much more beneficial to the Judicial Officers. This conclusion of ours is based on the premise that a reasonable return say, in the range of 9% to 10%, can be derived from the investment of corpus fund consisting of the officer's contribution and the Government's contribution, leaving aside the risk factors associated with investments. The annuitized pension derived from the 40% fund retained by the Government will certainly be much less than the normal pension and it being a static amount without the benefit of DA/DP to neutralize the increased cost of living, will definitely be disadvantageous when compared to the defined pension scheme. This is so even after taking into account the amount of interest or other return which the officer will be able to get by suitable investment of 60% of the corpus fund released to him.

17.2 It is brought to the notice of this Commission that the State Governments have not yet issued orders regarding the Retirement-cum-Death gratuity, though the Central Government has issued the notification. So also, with regard to family pension.

17.3 We may at this stage advert to certain legal aspects which have bearing on the enforceability and implementation of this scheme. First and foremost, we would like to refer to the Judgment of Division Bench of High Court at Bombay dated 11.08.2017 in **Vihar Durve's** case (Vihar Durve v State of Maharashtra 2017 SCC Online Bom 7560). In that PIL, various issues regarding the Judiciary in the State of Maharashtra including additional courts and infrastructure fell for consideration. While so, an application was filed to amend the prayer in the said PIL case so as to permit the Petitioners to challenge the Government Resolution dated 31.10.2005 which introduced Defined Contribution Pension Scheme (NPS) for the Government servants recruited on or after 01.11.2005 in the State of Maharashtra. The challenge to the Government Resolution was confined to its applicability to the Judicial Officers in the State as seen from para 2 of the Judgment. The Division Bench of High Court referred to the reports of First National Judicial Pay Commission (FNJPC) and Justice Padmanabhan Committee (JPC). The recommendation made in the said reports to the effect that "the revised pension of retired Judicial Officers should be 50% of the minimum pay of the post held at the time of retirement, as revised from time to time" **and** the Order dated 04.05.2010 whereby, the Supreme Court, in **All India Judges' Association**

v Union of India [2010 (14) SCC 720] issued directions to implement JPC Report w.e.f. 01.01.2006 were referred to. Then, it was recorded that certain States including the State of Maharashtra and Goa agreed to implement the recommendations made by JPC. Consequently, the State Government of Maharashtra issued the notification dated 05.01.2011 (amended on 30.03.2011) by which, the recommendations of JPC were accepted including the recommendation regarding the pension payable to the Judicial Officers in the State. It was noted that the said Government Order specifically dealt with pension payable to Judicial Officers who retired on or after 01.01.2006. Clause 2 of the said G.O. dated 05.01.2011 laid down that the pension shall be computed in accordance with the Pension Rules of the State Government. The Division Bench of High Court then referred to the salient features of the new pension scheme introduced on 31.10.2005 and observed thus;

"14. There is a fallacy in the stand taken by the State Government. In fact, the State Government accepted the recommendations of Padmanabhan Committee appointed under the order of the Apex Court. The Apex Court by an order dated 26th July, 2010 directed the benefits recommended by the Padmanabhan Committee should be applied with effect from 1st January, 2006. As per the orders of Apex Court, service conditions of the Judicial Officers in the State including pensionary benefits shall be in terms of recommendations of Padmanabhan Committee which are accepted by the Supreme Court. As far as pensionary benefits to the Judicial Officers are concerned what operates is the Government Resolution dated 5th January, 2011 (as modified on 30th March 2011). Prior to acceptance of the report of the Padmanabhan Committee, the service conditions were governed by the Report of Justice Shetty Commission as modified by the Apex Court. The recommendations as amended by the order of the Apex Court were in operation. Therefore, when the impugned Government Resolution was issued, the order of the Apex Court directing that service conditions of the Judicial Offices shall be governed by the Shetty Commission Report was in force. Therefore, the action of applying the impugned Government Resolution to the Judicial Officers is completely contrary to the directions of the Apex Court. In fact, the impugned Government Resolution is not at all applicable to the Judicial Officers who are appointed from 1st November, 2005. The terms and conditions of service of Judicial Officers including the grant of pensionary benefits are governed by the directions of the Apex

Court. Therefore, even if the letters of appointment issued to the Judicial Officers appointed after 1st January, 2005 contain a clause that the pension will be governed by the impugned Government Resolution, the same will not be binding on the Judicial Officers.

15. As per the New Scheme introduced by the impugned Government Resolution, a Government servant is required to make contribution equivalent to 10% of his basic salary plus dearness pay and the said amount will be deducted from his salary. The salary payable to the Judicial Officers is determined firstly by recommendations of Shetty Commission and secondly by recommendations of Padmanabhan Committee as accepted by the Apex Court. The State Government cannot affect the quantum of salary of Judicial Officers in this fashion by providing for a deduction of 10% of basic salary plus dearness pay from the salary of a Judicial Officer. The orders of the Apex Court do not permit such a deduction to be made. Making of such deduction from the salary of a Judicial Officer will be a breach of the orders of the Apex Court.

16. Therefore, in our considered view, the impugned Government Resolution could not have been applied to the Judicial Officers appointed after 31st October 2005 and the action of Government of Maharashtra of applying the same to the Judicial Officers is completely in breach of the orders of the Apex Court.”

17.4 With the above reasoning, the High Court concluded that the impugned Government Resolution of the State of Maharashtra could not have been applied to the Judicial Officers appointed after 31.10.2005. The Hon'ble Court gave option to the Judicial Officers either to continue under the new scheme or to exercise its option to be governed by the Old Pension Scheme. It was then directed that the entire contribution made by the Judicial Officers by way of deduction from their salary together with the return/interest accrued thereon shall be transferred from 'Pension Tier-1 Account' **to** 'Voluntary Tier-2 Withdrawable Account'. It was also made clear that the State Government's matching contribution with interest/return accrued thereon, can be withdrawn by the State Government from Tier-1 Account.

17.5 The Government of Maharashtra filed SLP against the said order of the High Court dated 11.08.2017 in PIL No. 188 of 2015. By the order dated 01.12.2017, the Hon'ble Supreme Court directed transfer of PIL No.188/2015 to its file. The SLP as well as the transferred case were heard together with the pending matter namely AIJA 2017 SCC Online 702 under which this Commission was constituted. While approving the recommendations of this Commission regarding the grant of interim relief to the Judicial Officers, the Supreme Court also passed orders on the same day in respect of the SLP filed by the State of Maharashtra and the transferred case adverted to above. Hon'ble Supreme Court did not consider it necessary to deal with transferred PIL No.188/2015 and on the other hand, the Supreme Court directed the Registry to return the said PIL to the High Court for disposal while making it clear that the High Court will only deal with the matters such as infrastructural facilities and other allied issues which were not the subject-matter of reference to this Commission.

18. Resultantly, this Commission has to take a fresh look at the issues relating to pension including the NPS and submit its recommendations. As far as **Vihar Durve's** case is concerned, the Judgment of the Bombay High Court reported in 2017 SCC Online Bom 7560 holds good in respect of the period prior to the effective date of the recommendations of this Commission, that is to say, from 01.01.2006 onwards upto 01.01.2016 (if that becomes the effective date as per the order of the Supreme Court for the implementation of the recommendations of this Commission). The ratio in **Vihar Durve** has

not foreclosed the option for this Commission to examine the NPS on a clean slate and to make appropriate recommendations. On the other hand, the judgment of Supreme Court left it open to this Commission to consider all the issues falling within its purview which obviously includes Pension.

18.1 At this juncture, it is relevant to point out that JPC did not advert to the new Pension Scheme, probably for the reason that the issue relating to the same was not raised before the Commission by the stakeholders, because the scheme was at a nascent stage. As said earlier, this Commission has the mandate to take a fresh look at the issues related to pay, pension and allowances and to make suitable recommendations in view of the terms of reference set out by the Hon'ble Supreme Court in the order dated 09.05.2017 passed in AIJA 2017 SCC Online 702 coupled with the order dated 27.03.2018 leaving it open to the Commission to deal with the matters falling within its purview. Therefore, whether NPS can be applied to and continued in respect of the Judicial Officers appointed during and after 2004 and whether they shall be governed by the old pension scheme are the matters falling within the realm of consideration of this Commission notwithstanding the Judgment of Bombay High court in Vihar Durve's case which has to be confined to the period covered by JPC's Report. It needs to be mentioned here that Bombay High Court did not go into the larger question regarding constitutionality. The limited question as to the legality of application of NPS to the Judicial Officers during the currency of JPC's recommendations (accepted by the Supreme Court) was only decided.

19. With these clarificatory remarks, we proceed to discuss the new contributory pension scheme which is now in force *Pan India* (except in few States) for the civil servants appointed on or after 01.01.2004.

19.1 As we shall have a holistic picture of this topic of seminal importance to a large section of Judicial Officers and in view of the challenge made by the Government servants including the Judicial Officers in High Courts, it would be appropriate to examine *prima facie*, whether NPS suffers from any constitutional infirmity, if tested on the touchstone of Article 14. We would like to make it clear that our approach in this regard shall necessarily be limited. The Commission will only consider whether *ex facie* or demonstrably, NPS can be said to be violative of Article 14. Is it a case of patent discrimination operating against the Judicial Officers entering service during 2004 or thereafter triggered by arbitrary or irrational classification is the question. Whether the ratio of Constitution Bench decision in *DS Nakara v Union of India* is squarely attracted is the allied question that needs to be adverted to. These aspects deserve consideration atleast briefly.

19.2 The landmark decision of Supreme Court in **D.S. Nakara v Union of India**, delivered by a Constitution Bench may be referred to first. In May 1979, Government of India liberalized the formula for computation of pension in respect of the employees governed by the Central Civil Services (Pension) Rules and made it applicable to employees retiring on or after 31.03.1979. Those who had retired in the year 1972 questioned the validity of

the memorandum issued by the Government of India dated 25.05.1979 insofar as the liberalization in the computation of pension had been made applicable only to those retiring on or after the specified date and denying the benefit of liberalization to those who had retired earlier.

19.3 Having noted that the pensioners who retired prior to the specified date would suffer triple jeopardy viz, lower average emoluments, absence of slab system and lower ceiling, the Court came to the conclusion that the provision insofar as it confined the benefit only to those retiring after 31.03.1979 fell foul of Art. 14 of the Constitution. The Court noticed that the pre-liberalization scheme did not provide adequate protection in old age and therefore, a further liberalization was considered necessary as a measure of economic security. The Government, therefore, favourably responded to the employees' demands and evolved a liberalized formula for computation of pension. The denial thereof to the Government servants who retired before 31.03.1979 was held to be discriminatory and the Supreme Court declared that all pensioners governed by 1972 Rules shall be entitled to pension as computed under liberalized pension scheme from the specified date. The arrears of pension prior to the specified date was however not allowed. The impugned memorandum was read down by severing the objectionable portion, thereby making the benefit available to the pensioners who retired before 31.03.1979, which date, the Hon'ble Court held, was arbitrarily fixed.

19.4 However, post Nakara, there was a definite change in the approach adopted by the Supreme Court and it must be said that the ratio in DS Nakara has been considerably whittled down. In sum and substance, it was held in the subsequent decisions that the ambit of that decision cannot be enlarged too far to support the demand for identical amount of pension to every retiree of the same rank, irrespective of the date of retirement even though the reckonable emoluments for the purpose of computation of their pension is different, vide **Indian Ex-services League & ors. v Union of India** 1991 (2) SCC 104; **Krishena Kumar & another v Union of India & Others** 1990 (4) SCC 207. Financial burden was held to be a valid ground for classification of pensioners. All these cases have been reviewed in **State of Punjab v Amarnath Goyal** by a two Judge Bench of Supreme Court.

19.5 After referring to various decisions including Constitution Bench decisions adverted to above, the Supreme Court observed that the prescription of cut-off date for extension of additional benefits to the retired employees was not violative of Article 14 of the Constitution. The Supreme Court observed that-

“the importance of considering financial implications, while providing benefits for employees has been noted by this Court in numerous judgments..... More recently, in **T.N. Electricity Board v Veeraswamy** (1999 (3) SCC 414) this Court observed that financial constraints could be a valid ground for introducing a cut-off date while implementing the pension scheme on revised basis.”

After referring to **D.S. Nakara**, it was observed:

“it must be noted that even in the case of pension, subsequent judgments of this Court have considerably watered down the rigid view taken in **D.S. Nakara**”.

Earlier, it was observed:

“we are afraid that the refrain of D.S. Nakara has been played too often to retain its initial charm, which has been worn thin by subsequent dicta”.

It was then pointed out that in the instant case

“the cut off date has been fixed as 1/4/1995 on a very valid ground, namely that of financial constraints.

The dicta in **Union of India v P.N. Menon** (1994) 4 SCC 68) that

“not only in matters of revising the pensionary benefits, but even in respect of revision of scales of pay, a cut-off date on some rational or reasonable basis, has to be fixed for extending the benefits”

has been quoted with approval.

D.S. Nakara case was also distinguished by observing

“In any event this is not a case of continuing benefit like pension; it is one time benefit like gratuity”.

19.6 In **Union of India v SPS Vains**, (2008 (9) SCC 125), these decisions have not been considered and the principle in **D.S. Nakara** was merely reiterated. A direction was issued therein that the pay of all pensioners in the rank of Major-General and its equivalent rank shall be notionally fixed at the scale given to similar officers of the same rank after the revision of the pay scales with effect from 01.01.1996 and to compute their pensionary benefits accordingly. However, in this judgment rendered by a two-Judge

Bench, there was no reference to the Constitution Bench decisions and **Amarnath Goyal's** case (2006) referred to above.

19.7 We would like to refer in this context to a very recent Judgment of the Hon'ble Supreme Court in the case of **All Manipur Pensioners' Association v State of Manipur** 2019 SCC Online SC 845. That was a case in which the Government of Manipur issued Office Memo dated 21.04.1999 revising the quantum of pension. The State Government while enhancing/ revising the pension of the employees w.e.f. 01.01.1996 as in the case of Central Government employees, prescribed the revised pension in such a way that differential treatment was accorded to the employees who retired prior to 01.01.1996 and those who retired after 01.01.1996. The State Government provided a lower percentage of increase to those who retired pre-1996 and higher percentage to those who retired post-1996. The State justified this classification solely on the ground of financial constraints. The Supreme Court observed that both these pensioners form one homogenous class. The Hon'ble Court took the view that the controversy in the case on hand was squarely covered by the decision in **DS Nakara** case and it was declared that all beneficiaries irrespective of their date of retirement viz., Pre-1996 retirees shall be entitled to revision in pension at par with those pensioners who retired post-1996 and arrears shall be paid to the concerned pensioners accordingly. The learned Judges of the Supreme Court also held that the decision in **PN Menon** (a Constitution Bench Judgment) referred to by us earlier which was relied upon by the Division Bench of High Court was

distinguishable because it rested on different facts. The Supreme Court made the following observations in this regard:

“The factual position that needs to be highlighted insofar as P.N. Menon (supra) is concerned, is that the retired employees had never been in receipt of ‘dearness pay’ when they retired from service and therefore the O.M. in question could not have been applied to them. This is how this Court examined the matter. This Court also noticed that prior to the O.M. in question, the pension scheme was contributory and only with effect from 22.9.1977, the pension scheme was made non-contributory. Since the respondent employees in the first cited case were not in service at the time of introducing the same they were held not eligible for the said benefit. Therefore, the said decision shall not be applicable to the facts of the case on hand...”

19.8 It was then observed that the ratio in **DS Nakara’s** case has to be applied in the instant case. Referring to another Constitution Bench Judgment in **Indian Ex-services League**, it was pointed out that PF retirees and Pension retirees constitute different classes and therefore, that decision has no application to the facts of the case on hand. The following observations made by the Supreme Court in **Manipur** case are also important:

“...Therefore, whenever a cut-off date (as in the present controversy) is fixed to categorize one set of pensioners for favourable consideration over others, the twin test for valid classification or valid discrimination therefore must necessarily be satisfied. In the present case, the classification in question has no reasonable nexus to the objective sought to be achieved while revising the pension. As observed hereinabove, the object and purpose for revising the pension is due to the increase in the cost of living. All the pensioners form a single class and therefore such a classification for the purpose of grant of revised pension is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India...”

The following observations at para 8 are also very relevant:

“8...At this stage, it is required to be observed that whenever a new benefit is granted and /or new scheme is introduced, it might be possible for the

State to provide a cut-off date taking into consideration its financial resources. But the same shall not be applicable with respect to one and single class of persons, the benefit to be given to the one class of persons, who are already otherwise getting the benefits and the question is with respect to revision.”

20. It appears atleast *prima facie* that the ratio in post-Nakara decisions seems to apply here with greater force. NPS is a new scheme introduced from 2004 onwards to all the civil servants in the country in substitution of the old pension scheme. A social security measure in a different form has been put in place keeping in view the ever increasing financial burden on the public exchequer on account of pension bills. Mere alteration of conditions of service which may turn out to be disadvantageous to those entering the service on or after a particular date does not *prima facie* fall foul of Art. 14. Financial constraints cannot be said to be an irrelevant ground for classification. The new scheme is sought to be made applicable to all those entering the service after a particular date (i.e. post 2004). It has no application to those already in service and those already drawing pension. It can be contended with much force that the scheme as such cannot be characterized as discriminative merely because under the new pension regime, the post-retirement benefits will be much less.

21. Assuming that the application of NPS to all those entering into service after a particular date is not violative of the mandate of Article 14 of the Constitution, still, it does not follow that Judicial Officers should necessarily be governed by the new scheme irrespective of its adverse effects on them while in service and after retirement. Should NPS be applied to

Judicial Officers? Should the Judicial Officers fall in line with other Government servants in relation to their pensionary benefits? In addressing these questions, the paramount consideration to be kept in view is the distinct nature of judicial service. If in respect of pay, allowances and perks, the Judicial Officers can be treated as a distinctive class not necessarily comparable with other civil service officers, there is no reason why in the matter of pension, the Judicial Officers should not have the benefit of the old defined pension scheme with the attendant benefits accruing therefrom as against the new Contributory Pension Scheme which has the potential to cause severe financial handicaps to the Judicial Officers while in service and post-retirement. The spirit and underlying ratio of the Judgments of Supreme Court in the series of **All India Judges' Association** cases (of 1992, 1993, 2002) will be undermined if the Judicial Officers are subjected to various disadvantages resulting from the application of new pension scheme.

22. In the representation made by Karnataka State Judicial Officers' Association, a case decided by Employment Tribunal of United Kingdom in 2016 has been cited. The amendment made by the National Judicial Pension Regulations varying certain beneficial provisions to the disadvantage of Judicial Officers was questioned before the said Tribunal which is a high powered Tribunal empowered to decide the service matters in U.K.. That was in the case of **Mr. V. McCloud & others v The Lord Chancellor & Secretary of State for Justice and another**. By the Judgment dated

22.11.2016, the petition filed by the Judges was allowed. The relevant facts and the issues are set out at paras 2 and 3 of the Judgment.

The following observations made by the Tribunal at paragraph 29 deserve notice:

"Prior to the introduction of National Judicial Pension Scheme, there was no public notification of any intended change to the tax status of the judicial pension scheme with the result that applicants continued to seek appointment on the understanding that their terms and conditions, including those relating to the taxation of pensions would remain as they had been."

At paragraph 36, it was then observed:

"36. Apart from the uniquely adverse effect on judges of the combination of changes set out above, there are further features which uniquely distinguish appointment as a judge from other public servants. Whilst it is accepted that all public servants accept office or employment on the basis of the terms and conditions offered at the time, and that those terms and conditions may be varied from time to time, in the case of the judiciary there had been explicit and strongly worded assurances from the then Lord Chancellor in 2004 to the effect that it was the government's settled view that there should be no change to serving judges' pensions..."

22.1 The passages quoted above are quite apposite in the present context while dealing with the NPS.

22.2 We would have been reluctant to recommend the scrapping of NPS vis-a-vis Judicial Officers if the perceived disadvantages could only be characterized as minimal or negligible, but by any standards, these disadvantages are palpable and pronounced. The notable disadvantages which have telling effect on the standard of living and necessities of life after retirement are: the annuity received is much less, many times less than the Pension which the Judicial Officers would have received in the normal course.

Another marked disadvantage is that there is no provision for payment of Dearness Pay as in the case of pension in order to neutralize the effect of inflation. The GPF scheme with an assured return (about 8% p.a. at present) and the loan facility will not be applicable to the judicial officers governed by NPS. No family pension is admissible to the spouse or dependant after the death of retired Judicial Officer. Subsequent pay revisions cannot augment the quantum of annuity fixed once and for all. It must be noted realistically that the judicial officers enter their career at a late stage, particularly so in case of direct recruit District Judges. All these render the NPS scheme disadvantageous and inequitable for judicial officers.

22.3 One of the important incentives for judicial officers in judicial service is pension and post-retirement benefits. NPS, viewed from any angle, will be disadvantageous to the new entrants to Judicial service and will emerge as disincentive to those bright youngsters desirous of joining Judicial service; thereby, the cherished value of judicial independence will be in jeopardy. If decent remuneration, higher retirement age and perks conducive to efficient functioning of Judicial Officers are integral to judicial independence and efficiency, as emphasized by the Supreme Court, the pension scheme riddled with disadvantages will be antithesis to it. The pensionary benefits are as much important as the emoluments drawn by the Judges while in service. Apprehensions regarding financial insecurity post-retirement act as a disincentive to the candidates intending to join judicial service. The Judicial Officers who have already joined the service with options

thrust on them, may especially during the later years of service, nurture feelings of insecurity of their future and all this is not congenial to the work environment of Judiciary. Moreover, if judges were taken as a homogenous distinctive group and not belonging to a service as ordinarily understood, there is a great need and justification for assuring to subordinate judiciary a pension scheme affording financial security like the judges of the Constitutional judiciary. It may be noted in this context that the system has laid great emphasis on assuring to the judges of the higher judiciary, pension and retiral benefits by a separate piece of legislation – The High Court Judges (Salaries and Conditions of Service) Act, 1954.

23. There is one more point which deserves notice. In some States, the NPS has been or sought to be made applicable to judicial officers from an anterior date and they were not told when they entered the judicial service that they will be governed by NPS which, as noted by us, is far disadvantageous when compared to old pension scheme. The Karnataka Judicial Officers' Association points out that their legitimate expectation when they entered the service was that they will be governed by the Old Pension Scheme. It is submitted that the conditions of service of members of Judiciary have been altered to their disadvantage after they entered the service without consulting the High Courts.

24. The Karnataka Judicial Officers' Association has also made a reference to the Judgment of Delhi High Court in **All India Young Lawyers'**

Association v Govt. of NCT Delhi (128), 2006 DLT 29 wherein, a Division Bench of Delhi High court after adverting to the provisions of Articles 227 and 235 of the Constitution, laid down that the rules governing service conditions of Subordinate Judiciary including the pensionary benefits have to be in consultation with the High Court and such consultation is mandatory. It is pointed out that the Supreme Court confirmed the above decision with modification regarding the number of years in the Order passed on 29.01.2009 in **Government of NCT of Delhi and Others v All India Young Lawyers Association** (2009) 14 SCC 49. There is considerable force in the contention advanced by the Associations that there should have been consultation with the High Courts before taking the important step of varying service conditions of members of District & Subordinate Judiciary to their detriment.

25. We may recall, in this context the observations of the Supreme Court in AIJA 1993 at para 10:

“...the mere fact that Article 309 gives power to the executive and the legislature to prescribe the service conditions of the judiciary, does not mean that the judiciary should have no say in the matter. It would be against the spirit of the Constitution to deny any role to the judiciary in that behalf, for theoretically it would not be impossible for the executive or the legislature to turn and twist the tail of the judiciary by using the said power.”

26. There are some more aspects which have weighed with us in recommending discontinuance of NPS for Judicial Officers. The Armed Forces and para-military forces are not governed by NPS. The High Court and Supreme Court Judges continue to be governed by the old Pension Scheme

and the NPS has not been applied to them. The NPS has not been introduced to the Government servants in the States of West Bengal and Himachal Pradesh. As noticed earlier, in Tripura, it has been very recently introduced. In Karnataka, though it was sought to be applied to the Judicial Officers in the year 2011, it could not be taken forward in view of the Judges' Committee Report and the stay granted by the High Court and Supreme Court prohibiting recovery of contributions from monthly salary. After all these events, the Government of Karnataka is set to take a final decision. The stand taken by that Government has been wavering. The Government of Maharashtra, in the aftermath of decision in **Vihar Durve's** case, has taken a decision to withdraw its earlier order seeking to apply NPS to Judicial Officers in the State of Maharashtra (vide the Government's Order dated 17.05.2018). Thus, for variety of reasons, there has been no uniformity in enforcement of NPS as far as Judicial Officers are concerned. This is yet another reason which weighs with the Commission in recommending that Judicial service shall be excluded from the purview of NPS.

26.1 Further, as clarified earlier, the Judgment in **Vihar Durve** case holds good in respect of the period prior to the effective date of recommendations of this Commission, that is to say, from 01.01.2006 up to 01.01.2016 which is likely to be the effective date, if accepted by the Hon'ble Supreme Court. The ratio of the said Judgment is that as far as the Judicial Officers are concerned, the recommendations of JPC relating to pension which have been accepted by the Supreme Court in the Order passed in the year

2010 will govern. The very fact that JPC's recommendations were given effect to without any reservations as to pension in spite of the introduction of NPS by that time, is proof positive that the old pension scheme was not intended to be disbanded as regards the Judicial Officers atleast during the period of operation of JPC recommendations. Therefore, legally speaking, NPS, if at all, can only be enforced with effect from 01.01.2016 or later. In ultimate analysis, by dispensing with NPS now, it is not as if the NPS which has been legally in operation is being reversed now. In view of the pronouncement of Hon'ble Supreme Court approving the recommendations of JPC including the recommendation regarding pension, the NPS has no legal existence till now although, in actual practice, it has been applied to Judicial Officers for some years. Now that this Commission is submitting its recommendations, the Commission has to take a fresh look at the whole scheme and submit the recommendation on the propriety and desirability of applying NPS to Judicial Officers with effect from the date on which this Commission's Report becomes effective. Hence, the question of reversal of a process which has taken effect in accordance with law does not arise. The Judgment of the Supreme Court approving JPC's Report operates the field and is binding on all the authorities concerned. On this point, the ratio in **Vihar Durve** case applies in all fours. Thus, NPS has no legal sanctity during the period covered by JPC's Report as it runs counter to the Supreme Court order accepting the report as regards pensionary benefits. It deserves to be mentioned that no State has taken the stand before the Supreme Court when the All India Judges' Association case

was heard in 2010 that the recommendations as to pension shall be viewed in the light of NPS which was brought into force in the interregnum. As pointed out earlier, these developments leave the Commission with freedom to examine on a clean slate the propriety of enforcing NPS to the Judiciary at this juncture and that is what the Commission has done.

27. For the aforesaid reasons and in the light of above discussion, the Commission **recommends that National Pension Scheme/National Pension System (otherwise known as New Pension Scheme or Contributory Pension Scheme) shall not be applied to the Judicial Officers in the country. The Old Defined Contributory Scheme shall be applied to all judicial officers irrespective of date of their joining the judicial service.**

28. All the Judicial Officers who have been making monthly contributions as per NPS may claim refund of the amount contributed. However, those who choose to exercise their option to continue to be governed by the New Pension Scheme (NPS), can send their options within two months from the date of the Order of the Hon'ble Supreme Court.

28.1 Those who do not opt for the scheme will be entitled in the normal course to the refund of the said amount together with the return earned thereon after deducting the matching contribution made every month by the Government. However, in the larger interest of the Judicial Officers themselves such as the tax implications and keeping in view the unforeseen

situation in which the Governments are placed, the Commission considers it just and appropriate to recommend that the refundable amount shall be deposited/transferred to the GPF accounts of the Judicial Officers. Necessary consequential steps shall be taken for enabling the GPF accounts to be put in place with expedition. It is further made clear that the **new entrants** to service will be governed by old pension scheme only.

29. Accordingly, it is **recommended.**

30. We would like to mention that in making the above recommendation, we have also kept in view the order of the Division Bench of Bombay High Court passed on 05.02.2019 in C.A. No. 9/19 in Vihar Durve v State of Maharashtra 2017 SCC Online Bom 7560 and the submissions made therein by the third respondent i.e. The Maharashtra Judges Association.

31. SUMMARY OF RECOMMENDATIONS

- 1.** The National Pension System (NPS)/Defined Contributory Pension Scheme shall not be applicable to the judicial officers of all cadres.
- 2.** The Defined Benefit Pension Scheme/Old Pension Scheme shall be applicable to all Judicial officers irrespective of the date of their joining the judicial service.
- 3.** The contributions together with the returns earned thereon, on account of applicability of NPS to the judicial officers who have

joined the judicial service after 01.01.2004 shall be either refunded to them **or** may be transferred to their GPF Account.

- 4.** The Government shall facilitate opening of the GPF Account of the new entrants to the judicial service after 01.01.2004 and transfer their contribution with the returns earned thereon to the said GPF Account within three months of acceptance of this report by the Hon'ble Supreme Court.

RECENT JUDGMENT OF KARNATAKA HIGH COURT

The Commission has noticed a very recent judgment dated 28.11.2019 of the Division Bench of Karnataka High Court (Hon'ble Abhay S. Oka, CJ and Mohammad Nawaz J.) in **Vijaya Kumar Rai & Others v State of Karnataka & Others** 2019 SCC Online Kar 2186. The Division Bench following the reasoning adopted in Vihar Durve by the Bombay High Court referred to earlier by us, after elaborate discussion at para 14 to 16 concluded as follows:

"17. Therefore, in view of the dictum of the Apex Court and the decision of Bombay High Court referred supra and for the reasons recorded above, we are inclined to hold that the Government Order bearing No. FD (SPL) 04 PET 2005, dated 31st March 2006 (Annexure – A in Writ Petition No. 44240 of 2013) is not applicable to the Judicial Officers of the Karnataka cadre. Accordingly, the subsequent Government Order bearing No FP (SPL) 28 PEN 2009, dated 29th March 2010 (Annexure 0B in Writ Petition No.44240 of 2013), laying down guidelines for operation/implementation of the new pension scheme shall not apply to the Judicial Officers. Therefore, any deductions made from the salary of the Judicial Officers appointed after 1st April 2010 towards their contribution to the new pension scheme will have to be refunded."

The consequential directions were issued by the Court accordingly.

The judgment of the Karnataka High Court does not in any way affect or alter the recommendations of this Commission.

Appendix– A

Comparison of the old and the new pension scheme for the District Judges. This comparison is based on many assumptions as sated for each case.

Case 1

Date of employment is January 1, 2016.

Month of birth is December, 1975.

Starting pay is District Judges Entry Level step 1.

Date of retirement is December 31, 2035.

Date of increment is assumed to be January 1 across all years;

Promoted to District Judges Selection grade and thereafter District Judges Super Time Scale.

Basic pay taken here is assuming pay revision with effect from January 1, 2016. Revised pay is MPS with the multiplier 2.81.

Table 1.1: Employee pay from starting to retirement (20 years of service)

Year	Age	Basic Pay	Multiplier for Pay Revision	DA rate (Jan-June)	DA rate (July-Dec)	Annual Pay [= Basic Pay x Multiplier x (DA Jan + DA July) x 6]	Present Value of Annual Pay as in 2016 [= Basic Pay x 12]
2016	40	144840	1	0	2	1755461	1738080
2017	41	148300	1	4	5	1859682	1779600
2018	42	157160	1	7	9	1966810	1821120
2019	43	155220	1	12	15	2114096	1862640
2020	44	158680	1	18	21	2275471	1904160
2021	45	165600	1	24	27	2493936	1987200
2022	46	169480	1	31	35	2704901	2033760
2023	47	173360	1	39	43	2933251	2080320
2024	48	177240	1	47	51	3169051	2126880
2025	49	181120	1	55	60	3423168	2173440
2026	50	185000	2	0	2	4484400	2220000
2027	51	188880	2	4	5	4737110	2266560
2028	52	193210	2	7	9	5008003	2318520
2029	53	197540	2	12	15	5380990	2370480
2030	54	201870	2	18	21	5789632	2422440
2031	55	206200	2	24	27	6210744	2474400
2032	56	210530	2	31	35	6720118	2526360
2033	57	214860	2	39	43	7270862	2578320
2034	58	214860	2	47	51	7683394	2578320
2035	59	214860	2	55	60	8121708	2578320

DA rates are taken from
http://www.referencer.in/TA_DA_Rules/DA_Rates.aspx.

Subsequent pay revisions and DA rates are all assumed based on current trend. Salary has been assumed to be revised every 10 years with basic pay doubling at every revision. Same pattern of DA has been repeated after every 10 years.

Under the old pension scheme, starting pension is the half of last drawn basic pay + DA.

Subsequent revisions in DA apply and subsequent pay revisions also apply.

Pensioners get 20% additional pension after 80 years of age, 30% after 85 years, 40% after 90 years, 50% after 95 years and 100% after 100 years of age.

For NPS, 10% employer's contribution is taken from 2016-18. From 2019 onwards, calculations are on 14% contribution by employer.

Corpus is assumed to be equally distributed across the three pension fund managers (PFMs) under scheme CG, namely LIC Pension Fund Ltd., SBI Pension Fund Pvt. Ltd. And UTI Retirement Solution Ltd. Inception date is April 1 2008 for all PFMs.

Annuity is purchased for 6% returns. Annuity has various options. No specific option has been considered here.

Table 1.2: NPS calculations

Annual rate of returns on the contributed fund (assumed)	8%	10%
Approximately NPS corpus at the time of retirement	4.05 Crores	5 Crores
Monthly annuity purchased for 40% of corpus at 6% fixed returns	81000	100000
Monthly interest income from 50% invested for 8% returns	135000	166667
Post retirement monthly pension income	216000	266667

10% of the corpus released on retirement has been set aside for personal expenses, and therefore not taken into account for calculating the returns.

Table 1.3: Pension income under two schemes

Year	Age	Monthly pension under OPS as on January	Present value of pension under OPS (as on 2016)	Monthly income under NPS	Present value of income under NPS (as in 2016)
2036	60	429720	107430	266667	83148
2046	70	859440	107430	266667	46429
2051	75	1065706	107430	266667	34695
2056	80	2062656	128916	266667	25926
2061	85	2770835	139659	266667	19373
2066	90	4812864	150402	266667	14477

OPS calculations here incorporate additional pension with age, DA and pay revisions.

For present value (PV) of monthly income under NPS an annual inflation of 6% is assumed throughout since DA rate for each decade is assumed to be 60%.

Present value of income under NPS (as in 2016) for monthly income in the year 2036 = $266667 \div (1.06)^{(2036-2016)}$

As Table 3 shows the real difference comes after retirement. It seems that NPS has serious disadvantage of the pensioner not being protected against inflation. It may work in countries where inflation is very low and stable. Here DA is taken at conservative level. In case inflation is very high post retirement, there seems to be no protection for employee pension.

To get better idea about annuity, the calculator given in <https://www.sbilife.co.in/en/individual-life-insurance/pension/annuity-plus> is used on May 14, 2019 to calculate annuity for a man born in December 1978. Annuity for self + one life is 100% annuity for women of same age. Premium amount is 22000000 and purchase price is 21611001.

Annuity option	Monthly Annuity
Lifetime Income: Annuity is payable at a constant rate throughout the life of the annuitant. On death of the annuitant, all future annuity payments cease immediately and contract terminates.	121958
Lifetime Income with Capital Refund: Annuity is payable at a constant rate throughout the life of the annuitant. On death	112665

of the annuitant, 100% of the premium will be refunded to the nominee and the contract will terminate.	
Last and Last Survivor – 100% Income: Annuity is payable at a constant rate till the first annuitant is alive. On death of the first annuitant, the same annuity will continue throughout the life of the surviving second annuitant. On death of second annuitant, annuity payments will cease immediately and the contract will terminate. If the second annuitant pre – deceases the first annuitant, annuity payments will cease on death of the first annuitant.	117636
Life and Last Survivor with Capital Refund – 100% Income: Annuity is payable at a constant rate till first annuitant is alive. On death of the first annuitant, the same annuity will continue throughout the life of the surviving second annuitant. On death of the second annuitant, premium will be refunded to the nominee, annuity payments will cease and contract will terminate. If the second annuitant pre-deceases the first annuitant, annuity payments will cease on death of the first annuitant.	109208

The above schemes are general schemes, not specific to NPS. There are schemes where annuity is adjusted to increase over time.

Table 1.4: Employer’s Contribution

Employer’s total contribution per employee	OPS	PV – OPS (as in 2016)	NPS	PV – NPS (as in 2016)
Employee longevity 70 years	7.5 crores	1.4 crores	1.2 crores	0.6 crores
Employee longevity 80 years	22 crores	2.7 crores	1.2 crores	0.6 crores
Employee longevity 90 years	58 crores	4.4 crores	1.2 crores	0.6 crores

The OPS is becoming unsustainable for employer and employee cannot sustain with the NPS.

Other retirement benefits (for example, gratuity, family pension scheme etc.) are not incorporated here.

Tax exemptions on NPS contributions are not considered.

CASE 2

Date of employment is April 1, 2008.

Month of birth is March, 1968.

Starting pay is District Judge Entry Level step 1.

Date of retirement is March 31, 2028.

Date of increment is assumed to be April 1 across all years;

Promoted to District Judges Selection Grade and thereafter District Judges Super Time Scale.

Basic pay here is taken from existing scales till 2015 and then assuming pay revision with effect from January 1, 2016. Revised pay is MPS with the multiplier 2.81.

Table 2.1: Employee pay from starting to retirement (20 years of service)

Year	Age	Basic Pay	Multiplier for Pay Revision	Annual Pay (with pay revision multiplier and DA)	Annual Pay – PV (as in 2016)	Year	DA rate (Jan-June)	DA rate (July-Dec)
FY 2008-09	40	51550	1	720669	1738080	2008	12	16
FY 2009-10	41	52780	1	809117	1779600	2009	22	27
FY 2010-11	42	54010	1	933293	1821120	2010	35	45
FY 2011-12	43	55240	1	1047350	1862640	2011	51	58
FY 2012-13	44	56470	1	1167235	1904160	2012	65	72
FY 2013-14	45	58930	1	1343604	1987200	2013	80	90
FY2014-15		60310	1	1496291	2033760	2014	100	107
FY 2015-16	46	61690	1	1724886	2080320	2015	113	119
	47	173360						
FY 2016-17	48	177240	1	2169418	2126880	2016	0	2
FY 2017-18	49	181120	1	2287546	2173440	2017	4	5
FY 2018-19	50	185000	1	2425350	2220000	2018	7	9
FY 2019-20	51	188880	1	2606544	2266560	2019	12	15
FY 2020-21	52	193210	1	2805409	2318520	2020	18	21
FY 2021-22	53	197540	1	3016436	2370480	2021	24	27
FY 2022-23	54	201870	1	3270294	2422440	2022	31	35
FY 2023-24	55	206200	1	3538392	2474400	2023	39	43
FY 2024-25		210530	1	3814804	2526360	2024	47	51
FY 2025-26	56	214860	1	4350915	2578320	2025	55	60
	57							
			2					

FY 2026-27	58	214860	2	5259773	2578320	2026	0	5
FY 2027-28	59	214860	2	5427364	2578320	2027	4	5
						2028	7	9

Corpus is assumed to be equally distributed across the three pension fund managers (PFMs) under scheme CG and annual rate of returns till FY 2017-18 is taken as average of the returns given for the three funds in Annexure 1. For the remaining years, the pattern is assumed to follow the trend for FY 2016-17 and FY 2017-18.

Other rules and assumptions are same as Case 1

Table 2.2: NPS calculations

Annual rate of returns on the contributed fund	Annexure 1	10%
Approximate NPS corpus at the time of retirement	2.5 Crores	2.55 Crores
Monthly annuity purchased for 40% of corpus at 6% fixed returns	50000	51000
Monthly interest income from 50% invested for 8% returns	83333	85000
Post retirement monthly pension income	133333	136000

Table 2.3: Pension income under two schemes

Year	Age	Monthly pension under ops as on April	Present value of pension under OPS (as in 2016)	Monthly income under NPS	Present value of income under NPS (as in 2016)
2028	60	229900	107430	133333	66263
2036	68	429720	107430	133333	41574
2038	70	459800	107430	133333	37001
2043	75	597311	107430	133333	27649
2046	78	859440	107430	133333	23215
2048	80	1103521	128916	133333	20661
2053	85	1553008	139659	133333	15439
2056	88	2234544	139659	133333	12963
2058	90	2574880	150402	133333	11537

Table 1.4: Employer's Contribution

Employer's total contribution per employee	OPS	PV – OPS (as in 2016)	NPS	PV – NPS (as in 2016)
Employee longevity 70 years	4.4 crores	1.4 crores	0.64 crores	0.53 crores
Employee longevity 80 years	12.8 crores	2.7 crores	0.64 crores	0.53 crores
Employee longevity 90 years	33.9 crores	4.4 crores	0.64 crores	0.53 crores

Annexure 1: Performance: Scheme CG (as on March 31, 2018)

PFM	Financial Year Return (%)										Training Return (%)			
	FY 2008-2009	FY 2009-10	FY 2010-11	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	1 Yr	2-Yr	3-Yr	Since Inception
LIC	10.02	12.27	8.30	5.80	12.06	5.93	18.96	5.99	13.22	5.85	5.85	9.88	8.30	9.76
SBI	17.36	8.88	8.05	5.81	12.75	3.92	19.38	6.47	13.13	6.08	6.08	9.55	8.51	10.07
UTI	12.90	9.27	8.45	5.52	12.26	5.04	18.58	6.24	13.64	6.25	6.25	9.88	8.65	9.73

Source:

<http://www.npstrust.org.in/sites/default/files/Annual%20Report%FY%202017-18.pdf>

<http://www.npstrust.org.in/sites/default/files/NPS%20Trust%20Annual%20Report%202011%20-%202012.pdf>

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CHAIRMAN

SHRI R. BASANT
Former Judge High Court of Kerala
MEMBER

SHRI VINAY KUMAR GUPTA
District Judge, Delhi
MEMBER-SECRETARY