CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

1. OA No.3286/2002
2. OA No.3291/2002

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New Delhi this the 19th day of January, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)
HON'BLE MR. S.A. SINGH, MEMBER (JUDICIAL)

OA No.3286/2002

1. Hookam Chand,
S/o Sh. Govind,
R/o Vill. & P.O. Salwan,
Karnal, Haryana.

2. Sher Singh,
S/o Sh. Karorimal,
R/o Vill. & P.O. Bahlla, Karnal,
Haryana.

3. Pirthi Singh,
S/o Sh. Chohal Singh,
R/o Vill Jalalpur,
P.O. Jalalpur, Karnal (Haryana) -Applicants

(Applicants are working in Security Section as Guards in NDRI Karnal, under ICAR, New Delhi)

(By Advocate Shri S.S. Tiwari)

-Versus-

1. I.C.A.R.,
through Director General,
Indian Council of Agricultural Research,
Krishi Bhawan, Dr. R.P. Road,
New Delhi-110001.

2. Director,
National Dairy Research Institute,
Karnal, Haryana. -Respondents

(By Advocate B.S. Mor)

OA No.3291/2002

1. Ranbir Singh s/o Sh. Godha
2. Raj Roop Singh s/o Sh. Sobachand
3. Esham Singh s/o Sh. Babu Ram
4. Ravi Singh s/o Sh. Bara Ram
5. Ajmer Singh s/o Sh. Rishal Singh
6. Kishan Pal s/o Sh. Bharham Singh
7. Sukh Pal Singh s/o Sh. Raghubir Singh
8. Mahi Pal Singh S/o Sh. Dhayam Singh
9. Karan Singh s/o Sh. Ram Swaroop
10. Jasbir Singh s/o Latoor Singh
11. Prem Singh s/o Sh. Sadhu Ram
12. Sat Pal s/o Sh Chaju Ram Sharma
13. Lajja Ram s/o Sh. Anant Ram
14. Mahinder Singh s/o Sh. Zila Singh
15. Gayani Ram s/o Sh. Davi Chand
16. Bharm Singh, s/o Sh. Balwant Singh
17. Nar Singh s/o Sh. Rulia Ram

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18.BrijPal s/o Sh. Amrit Singh
19.Ishwar Singh, s/o Sh. Bur Singh -Applicants

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O R D E R

By Mr. Shanker Raju, Member (J):

As identical facts and issue of law are involved, these OAs are disposed of by this common order.

2. Applicants have impugned the orders passed by the respondents on 6.5.2002 as well as 28.10.2002, whereby their request for extension of benefit of decision in OA-2015/2002 dated 1.8.2002 in **Ranbir Singh & others v. Union of India & Others**, has been rejected, depriving them of grant of increment on each year of completed service in Army.

3. Applicants are ex-servicemen who had retired before attaining the age of 55 years from Defence Service and were re-employed in Civil Service on a lower pay than the last pay drawn by them in Defence Service. A Full Bench of this Tribunal in **B. Ravindran & Ors. v. Director General of Posts & Ors.**, Full Bench Judgements of C.A.T. Vol.II 240 held as follows:

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"(a) We hold that for the purpose of granting advance increments over and above the minimum of the pay-scale of the re-employed post in accordance with the 1958 instructions (Annexures IV in OA-3/89), the whole or part of the military pension of ex-servicemen which are to be ignored for the purpose of pay fixation in accordance with the instructions issued in 1964, 1978 and 1983 (Annexures V, V-a, and VI, respectively), cannot be taken into account to reckon whether the minimum of the pay-scale of the re-employed post plus pension is more or less than the last military pay drawn by the re-employed ex-servicemen.

(b) The orders issued by the respondents in 1985 or 1987 contrary to the Administrative Instructions of 1964, 1978 and 1983, cannot be given retrospective effect to adversely affect the initial pay of ex-servicemen who were re-employed prior to the issue of these instructions."

4. The aforesaid decision was assailed by the Government before the Apex Court in **Union of India v. B. Ravindran**, 1997 (1) SCSLJ 240, where the following observations have been made:

"The Tribunal was, therefore, right in holding the said instructions in so far as it directed to take into consideration the ignorable part of the pension also while considering hardship invalid and without any authority of law."

5. A similar order following the Apex Court decision was rendered on 1.7.1992 in OA-1839/1991 by the Ernakulam Bench and was implemented as well.

6. OA No.33/94 and OA No.35/94 - **Sh. Mahavir Singh & Others v. Union of India & Others** and **Sh. M.M. Singh & Others v. Union of India & Others** respectively were disposed of by the Principal Bench on 15.10.1997, pertaining to ICAR, extending to applicants similar benefits in the light of the decision of the Full Bench in B. Ravindran's case (supra), which stood implemented.

7. Applicants preferred representations, claiming benefit of the aforesaid decision and direction for grant of increment for each year of service rendered by them in Defence, which stood rejected, giving rise to the present OAs.

8. Learned counsel for applicants Sh. S.S. Tiwari vehemently argued the case and stated that decision in **B. Ravindran's** case (supra) and **Mahavir Singh's** (supra) on all fours cover the issue and as applicants are similarly situated they have to be given the benefit. Non-grant of benefit according to the learned counsel is violative of Articles 14 and 16 of the Constitution of India, as discriminatory.

9. It is further stated that being the lowest rung of the service applicants' case is of hardship. As applicants have joined civil service under the respondents on a lower pay and were getting less pay than the last pay drawn in Defence Service, the increments are to be accorded.

10. Referring to another decision of the Apex Court in **Director General, ESI Corporation, New Delhi & Anr. v. Shri M.P. John & Ors.**, JT 1998 (8) SC 338, it is stated that the aforesaid being a decision of the Division Bench of the Apex Court cannot have an effect of over-ruling the earlier decision in the light of the Constitutional Bench decision of the Apex Court in **Union of**

India v. Raghubir Singh, AIR 1989 SC 1933 and also the decision of the Apex Court in Pradip Chandra Parija & Others v. Pramod Chandra Patnaik & Others, (2002) 1 SCC 1.

11. On the other hand, respondents' counsel Sh. B.S. Mor, took an objection to the jurisdiction and non-joinder of necessary parties as well as for not exhausting the remedies.

12. On merits as well, it is contended that as per OM dated 31.7.86 the Government of India decided that the last pay drawn in Army was less than the re-employed pay plus pension. No financial hardship has taken place. So, applicants are not entitled for protection of pay.

13. In so far as extension of benefit of the orders of the Apex Court and the Tribunal (supra) in the light of the decision in M.P. John's case (supra), being the latest is to be followed, where the claim of similarly situated has been rejected.

14. It is further stated that the decision in Ravindran's case (supra) is not applicable.

15. We have carefully considered the rival contentions of the parties and perused the material on record.

16. As settled by the Apex Court, a reasoned order in SLP, affirming the decision of the lower court is a law declared having a binding effect under Article 141 of the Constitution of India.

17. A Constitutional Bench of the Apex Court in **Raghubir Singh's** case (supra), while dealing with an issue as to power to over-rule its earlier decision by the Apex Court and doctrine of precedent, taking resort to various decisions of other courts in the country as well as Apex Court held as follows:

> "29. We are of the opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court. We would, however, like to think that for the purpose of imparting certainly and endowing due authority decisions of this Court in the future should be rendered by Division Benches of at least three Judges unless, for compelling reasons that is not conveniently possible."

18. In nutshell what has been held is that a Division Bench of the Apex Court cannot over-rule a decision rendered by another Division Bench.

19. Another Constitutional Bench in **Pradip Chandra Parija's** case (supra) while discussing the doctrine of precedent made the following observations:

> "6. In the present case the Bench of two learned Judges has, in terms, doubted the correctness of a decision of a Bench of three learned Judges. They have, therefore, referred the matter directly to a Bench of five Judges. In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. If, then, the Bench of three learned Judges also comes to the conclusion that

the earlier judgment of a Bench of three learned Judges is incorrect, reference to a Bench of five learned Judges is justified."

20. The doctrine of per incuriam has been interpreted by the Apex Court in **Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.**, (2001) 6 SCC 356, by quoting a decision in **M. Mamleshwar Prasad v. Kanhaiya Lal, (1975) 2 SCC 232**, held as follows:

"7. Certainty of the law, consistency of rulings and comity of codes - all flowering from the same principle - converge to the conclusion that a decision once rendered must later bind like cases. We do not intend to detract from the rule that, in exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the a reasoning and result reached, it may not had the sway of binding precedents. It should be glaring case, an obtrusive omission. No such situation presents itself here and we do not embark on the principle of judgment per incuriam.

8. Finally, it remains to be noticed that a prior decision of this Court on identical facts and law binds the Court on the same point in a later case. Here we have the decision admittedly rendered on facts and law, indistinguishably identical, and that ruling must bind."

20. This Court in A.R.Antulay v.R.S. Naik (1988) 2 SCC 602 in para 42 has quoted the observations of Lord Goddard in Moor v. Hewitt (1947) 2 All ER 270 (KBD) and Penny v. Nicholas (1950) 2 All ER 89 (KBD) to the following effects: (SCC p.652)

" 'Per incuriam' are those decisions given in ignorance or forgetfulness of some inconsistent (sic) statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong."

21. This Court in state of U.P. v. Synthetics & Chemicals Ltd. (1991) 4 SCC 139 in para 40 has observed thus: (SCC p.162)

"40. 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decises. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (Young v.Bristol Aeroplane Co. Ltd.(1944) 2 All ER 293".

22. The two judgments (1) Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court Chandigarh (1990) 3 SCC 682 and (2) State of U.P. v. Synthetic and Chemicals Ltd.(1991) 4 SCC 139 were cited in support of the argument. Attention was drawn to paras 40, 41 and 43 in the first judgment and paras 39 and 40 in the second judgment. In these two judgments no view contrary to the views expressed in the aforesaid judgments touching the principle of judgment per incuriam is taken.

23. A prior decision of this Court on identical facts and law binds the Court on the same points of law in a latter case. This is not an exceptional case by inadvertence or oversight of any judgement or statutory provisions running counter to the reason and result reached. Unless it is a glaring case of obtrusive omission, it is not desirable to depend on the principle of judgment "per incuriam". It is also not shown that some part of the decision was based on a reasoning which was demonstrably wrong, hence the principle of per incuriam cannot be applied. It cannot also be said that while deciding Thyssen (1999) 9 SCC 334 the promulgation of the first Ordinance, which was effective from 25.1.1996, or subsequent Ordinances were not kept in mind moreso when the judgment of the Gujarat High Court in Western Shipbreaking Corpn. (1988) 1 Raj. 367, 404) did clearly state in para 8 of the said judgment thus:..."

21. A Division Bench of the Apex Court in **Lily Thomas v. Union of India**, (2000) 6 SCC 224 held as follows:

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be

> entertained. The rule of law following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgements have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgement."

22. In so far as binding nature of a decision under Article 141 of the Constitution of India, the following observations have been made by the Apex Court in **Arnit Das v. State of Bihar**, (2000) 5 SCC 488:

> "20. A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point of law was not conclusively determined. (See State of U.P. v. Synthetics & Chemicals Ltd., (1991) 4 SCC 139, para 41.)"

23. In the conspectus of the above, the ratio decidendi derived establishes that the doctrine of precedent under Article 141 is even binding on the Supreme Court. A decision of a Bench of two Judges rendered earlier on the same issue is binding on another Bench, unless disagreed to and the matter is referred to a larger Bench. The judicial discipline and propriety warrant to have consistency in orders. A decision rendered in ignorance of earlier decisions on the same issue cannot be treated as a valid precedent.

24. In view of the above settled position of law, we find that the issue regarding grant of increment on yearly basis for the service rendered in Defence is to be reckoned for the purposes of pay fixation for an ex-serviceman re-employed in civil service. The Full Bench having regard to hardship and taking cognizance of the fact that subsequent clarification of DoPT cannot have retrospective effect being an administrative instruction, the issue regarding grant of advance increment was allowed to applicants therein. The Apex Court while disposing of the SLP of the Government through a reasoned order held the Tribunal right in the conclusions arrived at. If it is so, on affirmation by the Apex Court by a speaking order dealing with the contentions and taking into consideration the statutory provisions and the observations made by the Full Bench the same is a binding precedent and is not a decision sub silentio.

25. The decision of the Full Bench (supra) as affirmed by the Apex Court was relied upon by the Ernakulam Bench in OA-1839/91 and was implemented as well by the respondents. In this conspectus employees in ICAR, i.e., ex-servicemen sought extension of the benefit, which has been implemented as well.

26. In the light of the decision of the Apex Court in **K.C. Sharma v. Union of India**, 1998 (1) SLJ 54 (SC), being similarly circumstanced and identically situated applicants cannot be denied the benefit of the judgement. The Apex Court in SLP No.14005/92 in **Girdhari Lal v. Union of India & Others**, decided on 3.1.1996 held that benefit of a judgment cannot be denied on the ground

that applicants were not parties to the earlier judgment. As per the Constitutional Bench decision in **K.C. Sharma's** case (supra) in such a case even limitation would not apply.

27. We are satisfied that applicants are identically situated and similarly circumstance with that of applicants in OAs No.33 and 35 of 1994 (supra).

28. In so far as following the decision of a coordinate Bench is concerned, the Apex Court in **S.I. Rooplal v. Lt. Governor**, 2000 (1) SCC 64 made the following observations:

> "The manner in which a Coordinate Bench of the Tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same Tribunal is most dissatisfying. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that difference of opinion between two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgement of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents which enunciate rules of law from the foundation of administration of justice under the Indian system. This is a fundamental principle which every Presiding Officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confident in the judicial system in India. The Supreme Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a court cannot pronounce judgement contrary to the declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement.

> The Tribunal in this case, after noting the earlier judgment of a Coordinate Bench and after noticing judgment of the Supreme Court, still thought it fit to proceed to take a view totally contrary to the view taken in the earlier judgment, thereby creating a judicial uncertainty in regard to declaration of law involved in this case. It is on account of this approach of the latter Bench of the Tribunal in this case, a lot of valuable time of the Supreme Court is wasted and the parties to this case have been put to considerable hardship."

29. If one has regard to the above, we are bound by the decision rendered by the coordinate Bench unless we disagree with it. That is not a case here.

30. In so far as decision of the Apex Court in **M.P. John** (supra) is concerned, the issue regarding fixation of pay on re-employment was dealt with and disposed of with the following observations:

> "6. Office Memorandum of 25.11.58 is for a very different purpose. G.O. of 25.11.58 enables the employer to give certain increments in the prescribed pay scale to a re-employed ex-serviceman at the time of his joining in a case of hardship. This hardship is defined as arising if his pay on re-employment togetherwith his pension fall short of his last drawn pay while in military service. Office Memorandum quite clearly refers to pension "whether ignorable or not". Therefore, pension which is ignored for the purpose of determining the pay, may be considered under G.O. of 25.11.58 for the purpose of deciding if there is any financial hardship to the ex-serviceman. This cannot be considered as in any way in conflict with the G.O. 8.2.83 prescribing the grant of pay at the minimum of the scale on re-employment. The latter governs the pay which an ex-serviceman will draw in the ordinary course on re-employment. It also prescribes that in addition, he will get pension which has to be ignored for pay fixation. A departure from this norm of granting minimum in the pay scale is permissible only in the case of hardship and that too, to the extent permitted. There is no hardship as contemplated under G.O. of 25.11.58, in the case of the respondent. Hence his pay fixation under the G.O. of 8.2.83 is proper.

> 7. The Tribunal was, therefore, not right in coming to the conclusion that the respondent's initial pay should be fixed by giving him one increment for each completed year of military service, ignoring his pension. The impugned order of the Tribunal is, therefore, set aside and the appeal is allowed...."

31. The only issue which falls for our consideration is whether to follow the decision in SLP in **Ravindran's** case (supra) or to follow the decision in **M.P. John's** case (supra). There cannot be a denial to the fact that in case of two decisions on a particular subject or question of law, the latest is to be followed. But this doctrine has no application in case a Division Bench of the same coram over-rules an earlier decision or when the later judgement has been per incuriam of the earlier decision. In view of the decision of the Constitutional Bench in **Raghubir Singh's** case (supra) decision of a coordinate bench is binding on the Apex Court as well. The only way out is in case of disagreement to refer the matter to a larger Bench. In our considered view, having regard to another Constitutional Bench decision in **Parija's** case (supra) the judicial discipline and propriety require that a two Judges Bench follows the decision of the same coram unless the same is so incorrect that it cannot be followed. The appropriate remedy is constitution of a larger Bench.

32. A decision rendered over-sighting a judgement may not have sway of binding precedent. It is per incuriam. The reasons assigned by the Full Bench have been affirmed by the Apex Court in **Ravindran's** case (supra) by a detailed and speaking order. The latter decision of the Apex Court on **M.P. John's** case (supra) though at one point of time binding, keeping in view the facts and

circumstances of the case the concept of hardship, and the decision being in ignorance of the earlier decision of the Full Bench of the Tribunal in **Ravindran** (supra) is hit by the doctrine of per incuriam and cannot be treated as a binding precedent. In such an event, we have no option but to rely as a binding precedent the decision in **Ravindran's** case (supra).

33. In the result, for the foregoing reasons, taking the decision of the Full Bench in **Ravindran's** case (supra) as a binding precedent and also having satisfied that applicants are similarly circumstance with those of applicants in OAs 33 and 35 of 1994 the objection regarding territorial jurisdiction is over-ruled, as part of cause of action has arisen within the jurisdiction of the Principal Bench. The OAs are allowed. The impugned orders are quashed and set aside. Respondents are directed to extend to applicants the benefits accorded in OA-33/94 and OA-35/94 and in that event to re-fix their pay by grant of one increment for each year of service rendered by them in Defence with all consequential benefits. The aforesaid directions shall be complied with within a period of three months from the date of receipt of a copy of this order. No costs.

Let a copy of this order be placed in the case file of OA-3291/2002.

(S.A. Singh)
Member (A)

S. Raju
(Shanker Raju)
Member (J)

'San.'