CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

New Delhi, this the 19th day of March, 2001

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Shri Govindan S. Tampi, Member (A)

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OA 621/2001
MA 61/2001
RA 25/2001

Dr. Sukumar Chatterjee,
aged about 65 yrs
S/o Late Shri L.K.Chatterjee
R/o C-301, Purvasha, Anandlok
Co-Op Gr. Housing Society Ltd.
New Delhi - 91.

RA 28/2001
MA 64/2001
OA 624/2000

Dr. (Mrs.) Vinodini Soni,
aged about 66 yrs.
W/o Shri Y.R.Soni, R/o D-84, Kalkaji
New Delhi - 110019

...Applicants

V E R S U S

1. Union of India, Ministry of Communication
Department of Posts, Postal Accounts Wing,
PEA Branch, Dak Bhawan
Sansad Marg, New Delhi - 110001
through its Secretary.

2. Union of India, Ministry of Health & Family
Welfare, Deptt. of Health, Nirman Bhawan,
New Delhi - 110011
through its Secretary.

3. Union of India, Ministry of Personnel/Public
Grievances & Pensions, Deptt. of Pension
and Pensioner's Welfare, Lok Nayak Bhawan,
Khan Market, New Delhi - 110003,
through its Secretary.

4. Union of India, Ministry of Finance,
Deptt. of Expenditure, New Delhi - 110001
through its Secretary.

...Respondents.

RA 24/2001
MA 60/2001
OA 625/2000

Dr. (Mrs.) Dhruba Lahiri, aged 67 yrs
W/o Dr. A.K.Lahiri, R/o 70, Shivalik Apptts.
Alaknanda, Kalkaji, New Delhi - 110019

RA 26/2001
MA 62/2001
OA 626/2000

Dr. Ajit Kumar Datta
aged 66 yrs.
S/o Late Dr. A.C.Datta, R/o 151
Shivalik Apptts, Alaknanda, Kalkaji
New Delhi - 110019.

RA 27/2001
MA 63/2001
OA 970/2000

Dr. Amresh Das Sharma
aged about 63 yrs, S/o Late HR Das Sharma
R/o J-58/F4, Dilshad Colony
Delhi - 110095.

...Applicants

V E R S U S

1. Union of India, Ministry of Health & Family Welfare, Deptt. of Health, Nirman Bhawan, New Delhi - 110011 through its Secretary.

2. Union of India, Ministry of Personnel/Pubic Grievances & Pensions, Deptt. of Pension and Pensioner's Welfare, Lok Nayak Bhawan, Khan Market, New Delhi - 110003, through its Secretary.

3. Union of India, Ministry of Finance, Deptt. of Expenditure, New Delhi - 110001 through its Secretary.

...Respondents.

RA 44/2001
MA 153/2001
OA 914/2000

Dr. M.P.Srivastava
Director Professor and Head Medicine & Cardiology,
University College of Medical Science and GTB Hospital, Delhi (Retd.)
175, SFS Munirka Vihar, Opp. JNU
New Delhi - 110067.

...Applicant.

V E R S U S

1. Union of India, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi - 110011 through its Secretary.

2. Union of India, Ministry of Personnel/Pubic Grievances & Pensions, Deptt. of Pension and Pensioner's Welfare, Shastri Bhawan, New Delhi, through its Secretary.

3. Pay & Accounts Officer, (XV-HOSP)
Pay & Accounts Office
3rd Floor, M.R.D.Building
Lok Nayak Hospital
New Delhi - 110002

...Respondents.

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O R D E R (ORAL)

Hon'ble Shri Govindan S. Tampi, Member (A)

This order disposes of six review applications, seeking recall and review of the Tribunal's order dated 5-12-2000 disposing of OAs 621/2000 624/2000, 625/2000, 626/2000, 914/2000 & 970/2000

2. Heard Shri S.K.Ray and Shri E.X.Joseph, learned Sr. counsel for the review applicants and Shri K.C.D.Gangwani, Sr. Counsel and Shri V.S.R.Krishna and Shri Ram Kawar counsel for the respondents.

3. By the order dated 5-12-2000 impugned in this RAs six OAs filed by retired Govt. Doctors were decided, rejecting their claim for inclusion of the component of non-practising allowance -n.p.a.- while computing the pension at the time of retirement, on the ground that the component of NPA had been once included in calculated at the time of their retirement, during the period between 1986-96, keeping in mind the relevant rules directing that emoluments in respect of medical practitioners included NPA. The Tribunal had, at the time held that the NPA having once been included while calculating pension at the time of the retirement and the pension so arrived at was consolidated and stepped up after

Vth Central Pay Commission's recommendations were adopted, there was no reason for including it once again. Hence the review..

4. Heard Shri S.K.Roy, learned counsel for the applicants. He points out that the order passed by the Tribunal suffers from mistake or error on facts as also on account of the latest decision of the Hon'ble Supreme Court on the issue, not having been brought to the attention of the Tribunal. According to him, the findings recorded by the Tribunal that the acceptance of the applicants' plea for inclusion of NPA amounted to giving it twice to them was wrong on facts. While the recommendations of the Vth Central Pay Commission were accepted, stepping up of pay had been granted to retired doctors, like any other ordinary pensioner and it made no difference whether NPA was included or not. As far as doctors are concerned they were always entitled to have the element of NPA included in their pension and the Tribunal was misled to take an incorrect decision by the argument that NPA is being asked once over again. Shri Ray also points out that the decision of the Hon'ble Supreme Court in the case of Union of India & Ors. Vs. Dr. Vijayapurapu Subbayamma reported in (JT 2000 (Suppl.1) SC 41), where the apex Court held that "where an employee at the time of retirement is entitled to pension under relevant Rules, any subsequent amendment to the relevant Rules enhancing pension or conferring additional benefit would also be applicable to him." Squarely covered the case of the applicants. This decision of the Court dated 22-9-2000, could not be brought to the notice of the Tribunal when the OAs

were being heard. Thus both in law and on facts as well as on the basis of the Hon'ble Supreme Court's decision, Tribunal's order dated 5-12-2000, deserved to be recalled and reviewed, argues Shri Roy. Shri E.X.Joseph, learned Sr. counsel endorsed the pleas raised by Shri Roy and further submitted that as the Tribunal had while deciding the case proceeded on error on facts that the applicants were trying to get a benefit twice over which was not correct, the same called for review in the interest of justice. Applicants, who were retired doctors, who in their service had given their best to the health cases of the nation deserved this consideration, according to Shri Joseph.

5. On behalf of the respondents both Shri K.C.D.Gangwani, Sr. counsel and Shri V.S.R.Krishna stated that the order passed by the Tribunal on 5-12-2000 had fully and correctly appreciated the facts and interpreted the law. It would, therefore, not be open to the applicants to rehear and review the decision. No fresh circumstances have been brought out in the review applications, so as to warrant any review. Once the matter has been heard at length, analysed, discussed and decided upon, there was no justification for reagitating the matter through a review application. With reference to the plea by the applicant that a similar case is under consideration before another Bench of the Tribunal, the learned Sr. counsel observed that the applicants can raise all their pleas before the same Bench, who could decide the same or refer the matter to a Full Bench, if felt needed.

6. We have carefully examined the various pleas raised on behalf of the both the parties. This is a case where, detailed hearings were made and contentions from opposite sides were listened to and after examining the facts and the circumstances, the impugned order was issued. No circumstances have been brought on record to show whether any material fact was omitted to be taken into consideration, while passing the order. Therefore, it is doubtful whether any review would lie. The decision of the Hon'ble Supreme Court in the case of Dr. Vijayapurapu Subbayamma (supra), referred to by the applicants is the only aspect which has not been brought before the Tribunal earlier, and the same is a matter of law and its interpretation and not of facts. Therefore, even if on the basis of the Hon'ble apex Court's decision, a review becomes relevant, it will be a matter on law than a matter on facts. The point raised by the learned counsel is that the Tribunal has erred on facts and in law, while taking a view that the computation of pension at the time of the retirement of the Doctors had included the component of NPA and, therefore, it was not permissible while fixing the pension after Vth Central Pay Commission's recommendations were accepted, especially as there was no prohibition to include it. This in fact involves interpretation of law, which is strictly not within the compass of the review. Relief in this case lies elsewhere i.e. before the High Court or Supreme Court.

7. In the above view of the matter all the six Review Applications, (RA No.24 to 28/2001 and

44/2001 alongwith MAs 60 to 64/2001 and 153/2001) are dismissed, with liberty to the applicants to approach the appropriate forum.

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(Govindan S. Tampi)
Member (A)

(Ashok Agarwal)
Chairman

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