IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPLA BENCH, NEW DELHI.

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Regn.No.RA 30/90 in OA 952/86 — Date of decision: 10.04.1990.

Scientific Workers Association and Others — ..Original Applicants/ Respondents in RA 30/90.

Vs.

Union of India & Others — ..Original Respondents/ Petitioners in RA 30/90.

For the Petitioners in RA 30/90 — ..Shri M.L. Verma, Counsel

For the Respondents in RA 30/90 — ..Shri R.P. Oberoi, Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. M.M. MATHUR, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? Yes

2. To be referred to the Reporters or not? Yes

(The judgment of the Bench delivered by Hon'ble Shri P.K. Kartha, Vice Chairman(J))

This review petition has been filed by the Union of India (hereinafter referred to as the petitioners) in view of the observation made by the Hon'ble Supreme Court on 19.1.1990 while hearing SLP No.14911/89 filed by them against the judgment of this Tribunal dated 10.8.1989 in OA 952/86. The petitioners have also filed an application for condonation of delay.

2. The respondents herein (original applicants) had filed OA 952/86 in this Tribunal praying, inter alia, that the award of the Board of Arbitration dated 12.8.1985 in reference Nos. 9 and 10 of 1983 regarding grant of higher pay scales to the Senior Scientific Assistants, Draftsmen,

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Store Keeping Staff and Civilian Motor Drivers in Defence establishments should be implemented immediately with effect from 22.9.1982 in respect of Senior Scientific Assistants.

3. The Board of Arbitration had stipulated in Para 4 of its Award that the award will come into operation with effect from 22.9.1982. In our judgment dated 10.8.1989, we had directed that the respondents shall implement the award with effect from 22.9.1982 and that the applicants should be paid arrears of pay and allowances with effect from 22.9.1982 together with 10% interest.

4. On 9th November, 1989, the petitioners have filed SLP No.14911/89 against the judgment of this Tribunal.

5. The learned counsel for the petitioners relied upon Clause 21 of the Scheme for Joint Consultative Machinery and Compulsory Arbitration for Central Government employees, according to which an award could be modified by Parliament alone in accordance with the procedure envisaged in that Clause. He further stated that we failed to take into consideration the information filed by the petitioners in the Tribunal vide diary No.4724 dated 16.9.1988. The information was contained in the letter of the respondents dated 14.9.88 addressed to him

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which was as under:-

> " The Arbitration Board gave a decision in 1985 that Award should be implemented by the Government. Government considered in depth whether its implementation will lead to any repercussions or legally it is in order or not. Finally, the matter was referred to the Cabinet in 1987, which referred it to the Group of Ministers and Group of Ministers referred it to the Group of Officers. Now, with certain recommendations, again, Cabinet has to take a view about it. And only then, a report will be kept before both the Houses of Parliament for a final decision as required under the JCM Scheme. However, it will again take quite some time before Cabinet/Parliament can take a decision. Now it may be required before Hon'ble Tribunal that the hearing may be postponed by the end of the year. By that time, there is likelihood of some decision in this regard".

6. According to the learned counsel for the petitioners, not considering the above information amounts to an error apparent on the face of the record.

7. The petitioners have further stated that on 17.10.1988, the Cabinet after taking into consideration the high financial implications affecting national economy, approved

the implementation of the Award with effect from 1.1.1988 instead of 22.9.1982 (the effective date prescribed by the Board of Arbitration). Simultaneously, action was initiation to table the documents regarding modification in the Award before Parliament in accordance with para 21 of the JCM Scheme. Approval of the Cabinet for moving the Resolution was obtained on 23.8.1989. Lok Sabha approved the Resolution on 13.10.1989 and Rajya Sabha on 29.12.1989. The Resolution adopted by both Houses of Parliament is to the following effect:-

> " That this House approves the proposal of the Government to modify the date of implementation from 22.9.1982 as given by the Arbitration Board to 1.1.1988 in respect of Award dated 12.8.1985 in C.A. Reference Nos. 9 and 10 of 1983 laid on the Table of Lok Sabha on 13.10.1989 regarding grant of higher pay scales to the Senior Scientific Assistants, Draftsmen, Store-keeping Staff and Civilian Motor Drivers in Defence Establishments, in terms of para 21 of the Scheme for Joint Consultative Machinery and Compulsory Arbitration, as the high financial implications involved in acceptance of the Award were considered to affect the national economy".

8. It has been argued that in view of the Resolutions adopted by Parliament, new and important facts have come to light, which were not considered before this Tribunal

at the time when our judgment was pronounced on 10.8.1989 and that due to the adoption of the said Resolution, review of judgment has become necessary.

9. In the application for condonation of delay for filing the review petiton, the petitioners have stated that the petition has been filed as desired and directed by the Hon'ble Supreme Court.

10. The learned counsel for the respondents(original applicants) raised a preliminary objection that the review application is barred by limitation and that it is not maintainable. He stated that a copy of the judgment of the Tribunal dated 10.8.1989 was delivered to the office of the Secretary, Ministry of Defence on 16.8.1989 and that the petition should have been filed within 30 days from the date of receipt of the copy of the judgment. Rule 17(1) of the Central Administrative Tribunal(Procedure) Rules, 1987 provides that no petition for review shall be entertained unless it is filed within 30 days from the date of the order of which the review is so sought.

11. The learned counsel for the respondents also argued that there is no error apparent on the face of the record and that the directions issued by this Tribunal in its judgment dated 10.8.1989 cannot be nullified by subsequent legislative action (Resolutions adopted by Lok Sabha and Rajya Sabha on 13.10.89 and 29.12.89 respectively, in the instant case).

12. We have gone through the records of the case carefully and have heard the learned counsel for both parties. At the outset, we may state that there is no substance in the preliminary objection raised by the respondents that the present petition is barred by limitation. A Full Bench of this Tribunal in Nand Lal Nichani Vs. Union of India, 1989(10) ATC 113 at 130 has held that the Tribunal has the power to condone the delay in the filing of a review petition where a sufficient cause is made out to the satisfaction of the Bench concerned to condone such delay. As the present petition has been filed before us pursuant to a direction given by the Supreme Court, we hold that the petition should be heard on the merits overruling the preliminary objections raised by the respondents.

13. We may first take up the contention of the petitioners that the Tribunal did not consider the fact and information which were filed by them on 16.9.1988 before the judgment dated 10.8.1989 was delivered and that it constitutes an error apparent on the face of the record. The information was filed by them in the Tribunal on 16.9.1988 vide filing No.4727 with a covering sheet under the caption,

"Reply received from Ministry of Defence in response to direction given by CAT, New Delhi on 29.8.1988", but without any accompanying affidavit.

14. The learned counsel for the respondents stated that he had received a copy of the aforesaid document and that he had filed a reply on 10.10.1988 under filing No.5173 stating that the information furnished by the petitioners was "vague and evasive".

15. Unfortunately, neither the information filed by the petitioners nor the reply filed by the respondents is available in the case records.

16. OA 952/86 was filed in the Tribunal on 31.10.1986. The application was admitted on 6.11.1986. The pleadings were complete on 12.3.1987. It was partly heard on 13.1.88 On 29.8.1988, the Tribunal had heard the learned counsel for both parties when the following order was passed:-

> " Arguments heard on the preliminary objection raised by Shri M.L. Verma that the matter of implementation of the Arbitration Board's Award is under consideration of the Government including the question of referring the Award to Parliament for modification. Shri Verma seeks 2 weeks time

to let us know how much time it will take for the decision of the Government on the further action on the Award. List for further directions on 14.9.1988. The case may be released from 'Part Heard' as one of us may not be available on that day. Other preliminary objections to be raised by Shri Verma will be considered on that date".

17. Thereafter, the case was listed for hearings on 9.9.1988, 11.5.1989, 12.5.1989 and 7.6.1989. The learned counsel for the petitioners did not refer to the information filed by them nor did he ask for any postponement of the final hearing of the case. That apart, the prayer contained in the letter dated 14.9.1988 of the Ministry of Defence was that the Tribunal be requested to postpone the hearing "by the end of the year". The case was finally heard several months thereafter.

18. It is only now that the Ministry of Defence seeks to rely upon the letter dated 14.9.1988 in an attempt to sustain the SLP filed by them against the Tribunal's judgment dated 10.8.1989 and the present petition filed in the Tribunal. This does not, to our mind, constitute an error apparent on the face of the record.

19. On the merits, it was argued by the learned counsel for the petitioners that Parliament is supreme and that under

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JCM Scheme, Parliament is competent to modify the Award given by Board of Arbitration. To that extent, the position stated by him is unexceptionable. However, there is nothing in the Resolution adopted by the Lok Sabha and the Rajya Sabha to indicate that the directions issued to the petitioners by the judgment of this Tribunal dated 10.8.1989 in OA 952/86 have been sought to be modified by Parliament.

20. The question arises whether the directions of this Tribunal in its judgment dated 10.8.1989 that the Union of India shall implement the Award of the Board of Arbitration with effect from 22.9.1982 and not with effect from 1.1.1988 and that they should pay the arrears of pay and allowances to the Senior Scientific Assistants on the said basis, together with interest at the rate of 10% per annum from 22.9.1982 to the date of payment, can be nullified or set at naught by subsequent legislative action taken by Parliament.

21. The decisions of the Supreme Court in Madan Mohan Pathak Vs. Union of India, 1978 SCC(L&S) 103, in LIC Vs. D.J. Bahadur, 1981 SCC (L&S) 111 and A.V. Nachane Vs. Union of India, 1982 SCC(L&S) 53, are relevant in the present context. These decisions dealt with the legality of the action taken by the Central Government to nullify the effect of a writ issued by a Single Judge of the Calcutta High Court to pay bonus to Class III and Class IV employees of the Life Insurance Corporation, by subsequent legislation.

22. Payment of bonus to the Class III and Class IV employees of the LIC was governed by two Settlements reached in 1974 between the LIC and its employees, under Section 18 read with Section 2(p) of the Industrial Disputes Act, 1947. The Settlements were to be effective for a period of 4 years from April 1, 1973 to March 31, 1977.

23. In 1975 an ordinance was promulgated called the Payment of Bonus (Amendment) Ordinance which was subsequently replaced by the Payment of Bonus (Amendment) Act, 1976. Payment of bonus for the year 1975-76 to the employees of the Corporation was stopped under instructions from the Central Government. On a writ petition filed by the employees in the Calcutta High Court, a Single Judge of that Court issue a writ of mandamus directing the Corporation to act in accordance with the provisions of the Settlement. Thereafter, the Life Insurance Corporation (Modification of Settlement) Act, 1976 was passed. Some of the employees of the Corporation challenged the constitutional validity of the Act by filing writ petition in the Supreme Court in Madan Mohan Pathak's case.

24. Bhagwati, J., as he then was, speaking for himself, Krishan Iyer and Desai, JJ of the seven Member Constitution

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Bench of the Supreme Court observed as follows:-

" It is significant to note that there was no reference to the judgment of the Calcutta High Court in the Statement of Objects and Reasons, nor any non-obstante clause referring to a judgment of a Court in Section 3 of the impugned Act. The attention of Parliament does not appear to have been drawn to the fact that the Calcutta High Court has already issued a writ of mandamus commanding the Life Insurance Corporation to pay the amount of bonus for the year April 1, 1975 to March 31, 1976. It appears that unfortunately the judgment of the Calcutta High Court remained almost unnoticed and the impugned Act was passed in ignorance of that judgment. Section 3 of the impugned Act, provided that provisions of the Settlement in so far as they relate to payment of annual cash bonus to Class III and Class IV employees shall not have any force or effect and shall not be deemed to have had any force or effect from April 1, 1975. But the writ of mandamus issued by the Calcutta High Court directing the Life Insurance Corporation to pay the amount of bonus for the year April 1, 1975 to March 31, 1976 remained untouched by the impugned Act. So far as the right of Class III and Class IV employees to annual cash bonus for the year April 1, 1975 to March 31, 1976 was concerned, it became crystallised in the judgment and thereafter they became entitled to enforce the writ of mandamus granted by the judgment and not any right to annual cash bonus under the Settlement. This right under the judgment was not sought to be taken away by the impugned Act. The judgment continued to subsist and the Life Insurance Corporation was bound to pay annual cash bonus to Class III and Class IV employees for the year April 1, 1975 to March 31, 1976, in obedience to the writ of mandamus".(vide para 8 of the judgment) (emphasis supplied).

25. He further observed as follows:-

" Here, the judgment given by the Calcutta High Court, which is relied upon by the petitioners, is not a mere declaratory judgment holding an impost or tax to be invalid, so that a validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax. But it is a judgment giving effect to the right of the petitioners to annual cash bonus under the Settlement by issuing a writ of mandamus directing the Life Insurance Corporation to pay the amount of such bonus. If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy may be by way of appeal or review, but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Life Insurance Corporation. We are, therefore, of the view that, in any event, irrespective of whether the impugned Act is constitutionally valid

or not, the Life Insurance Corporation is bound to obey the writ of mandamus issued by the Calcutta High Court and to pay annual cash bonus for the year April 1, 1975 to March 31, 1976 to Class III and Class IV employees".(vide para 9 of the judgment)
(Emphasis supplied)

26. Beg, C.J. observed as follows:-

" I may, however, observe that even though the real object of the Act may be to set aside the result of the mandamus by the Calcutta High Court, yet, the section does not mention this object at all. Probably, this was so because the jurisdiction of a High Court and the effectiveness of its orders derived their force from Article 226 of the Constituion itself. These could not be touched by an ordinary act of Parliament. Even if Section 3 of the Act, seeks to take away the basis of the judgment of the Calcutta High Court, without mentioning it, by enacting what may appear to be a law, yet, I think that, where the rights of the citizen against the state are concerned, we should adopt an interpretation which upholds those rights. Therefore, according to the interpretation I prefer to adopt the rights which had passed into those embodied in a judgment and became the basis of a mandamus from the High Court could not/taken away in this indirect fashion".(vide para 32 of the judgment)
(Emphasis supplied)

27. Chandrachud, J., as he then was and Fazal Ali and Shinghal, JJ. agreed with the conclusion of Bhagwati,J. but preferred to rest their decision on the ground that the impugned Act violated the provisions of Article 31(2) and was, therefore, void.(vide para 42 of the judgment)

28. On March 31, 1978, the LIC issued a notice under Section 19(2) of the Industrial Disputes Act declaring its intentions to terminate the settlements. On the same date, another notice was issued by the Corporation under Section 9(A) of the Industrial Disputes Act stating that it propose to effect a change in the conditions of service

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applicable to the workmen to the effect that no employee of the Corporation shall be entitled to profit sharing bonus and that subject to the approval of the Central Government, the Corporation may grant non-profit sharing bonus to them at such a rate as the Corporation may think fit and on such terms and conditions as it may specify as regards the eligibility of such bonus. The relevant staff regulations were also amended accordingly. This was challenged by the workmen in the Allahabad High Court. The High Court allowed the writ petition against which the Corporation preferred an appeal to the Supreme Court. Another writ petition which had been filed in the Calcutta High Court on the same issue was transferred to the Supreme Court (D.J. Bahadur's case). The majority of the Judges of the Supreme Court dismissed the appeal and allowed the writ petition and issued a writ to the LIC directing it to give effect to the terms of the Settlement of 1974 relating to bonus until superseded by a fresh settlement, an industrial award or relevant legislation.

29. Thereafter, on January 31, 1981, the Life Insurance Corporation (Amendment) Ordinance 1981 was promulgated. By this ordinance, it was again sought to supersede the terms of the 1974 Settlements relating to bonus. This was challenged in A.V. Nachane's case. Gupta, J. speaking

for himself and Pathak, J., as he then was, observed as follows:-

> " Clearly Rule 3 seeks to supersede the terms of the 1974 Settlements relating to bonus. By virtue of Rule 1(2), Rules shall be deemed to have come into force on the first day of July, 1979. The question is, can Rule 3 read with Rule 1(2) nullify the effect of the writ issued by this Court on November 10, 1980 in D.J. Bahadur's case? It seems to us Rule 3 cannot make the writ issued by this Court nugatory in view of the decision of majority in Madan Mohan Pathak Vs. U.O.I. to which reference has been made earlier."
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> (vide para 12 of the judgment)
> (Emphasis supplied)

30. It was held that Rule 3 opearing retrospectively cannot nullify the effect of the writ issued in D.J. Bahadur's case which directed the Life Insurance Corporation to give effect to the terms of the 1974 Settlements relating to bonus until superseded by a fresh Settlement, an industrial award or releyant legislation. The Life Insurance Corporation (Amendment) Act, 1981 and the Life Insurance Corporation of India Class III and Class IV Employees (Bonus of Dearness Allowance) Rules, 1981 are relevant legislation. However, in view of the decision in Madan Mohan Pathak's case, these rules, in so far as they seek to abrogate the terms of the 1974 Settlements relating to bonus, can operate only prospectively, that is, from February 2, 1981, the date of publication of the rules.

31. The ratio of the decisions of the Supreme Court in Pathak's case, Bahadur's case and Nachane's case is that a writ issued by the High Court cannot be overridden or

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nullified restrospectively even by legislation. In our opinion, having regard to the ratio in the aforesaid decisions, the modification of the Award given by the Board of Arbitration in the instant case which is sought to be made by the Resolutions adopted by the Lok Sabha on 13th October, 1989 and by the Rajya Sabha on 29th December, 1989 cannot ~~xx~~ nullify or render nugatory the directions issued by this Tribunal in its judgment dated 10.8.1989. The directions issued by the Tribunal cannot be set at naught retrospectively by such legislation.

32. The learned counsel for the respondents referred to the provisions of Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure, 1908, according to which, a review petition would lie only on discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the petitioner or could not be produced by him at the time when the judgment was passed or on account of some mistake or error apparent on the face of the record or for any other sufficient reason. According to the explanation under Order 47, Rule 2, the fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.

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33. We have already pointed out that there is no error apparent on the face of the record in the instant case. The Resolutions adopted by both Houses of Parliament on subsequent dates will not amount to the discovery of any new and important matter of evidence, within the meaning of Order 47 Rule 1 of the Code of Civil Procedure, mentioned above (See also Collector of 24 Parganas Vs. Lalith Mohan Mullick, AIR 1988 SC 2121).

34. In our opinion, the Resolutions adopted by both Houses of Parliament do not have the effect of modifying the judgment of this Tribunal dated 10.8.1989. Therefore, the respondents are bound to comply with the directions contained in the said judgment. In the conspectus of the facts and circumstances of the case, we find no merit in the present review petition and the same is rejected.

35. We further direct the respondents to pay token cost of Rs.2,000/- to the petitioners in addition to the token cost of Rs.1,000/- already directed to be paid to them in our judgment dated 10.8.1989.

36. Let a copy of this order be given to both parties immediately.

(M.M. MATHUR)
MEMBER (A)

(P.K. KARTHA)
VICE CHAIRMAN(J)