

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

R.A. No. 41/2006 in

O.A. No. 125/2006

Lucknow this the 22nd day of Feb., 2007.

Hon. Mr. Justice Khem Karan, Vice Chairman.

1. State of U.P. through the Secretary, Appointment Department, Government of U.P., Civil Secretariat, Lucknow.
2. Secretary, Finance, Government of U.P., Civil Secretariat, Lucknow.
3. Dy. Secretary, IRLA Pay Slip Cell, Government of U.P., Civil Secretariat, Lucknow.

Review Applicants.

By Advocate Shri Sudeep Seth.

Vs.

1. Dr. B.N. Tiwari, aged about 68 years, son of Late Sri Amba Parsad Tiwari, resident of B-51/A, Sector-B, Aliganj, Lucknow.
2. Union of India through the Secretary, Department of Pension and Pensioners Welfare, New Delhi.
3. Director Pension, Directorate of Pension, 8th Floor, Indira Bhawan, Lucknow.

Respondents.

By Advocate Shri R.C. Singh.

Order

By Hon. Mr. Justice Khem Karan, Vice Chairman.

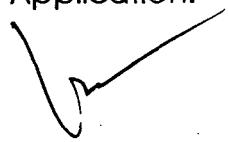
1. Original Application No. 125/06 filed by Dr. B.N. Tewari (respondent No.1 in Original Application) was finally disposed of vide order dated 28.10.06. The operative portion of that order is as under:

"So, the Govt. order dated 31.5.2000 (A-1) is quashed, with a direction to the respondents to re-fix/revise applicant's pension w.e.f. 1.2.1996 to Rs. 9085/0 a month in terms of O.M. dated 17.12.98 of the Central Govt. and Rule 18 (as amended) of the Rules of 1958 and order dated 13.6.2000 issued by Govt. of U.P. and to pay arrears together with interest @ 12% per annum w.e.f. 1.2.1996 till the date of actual payment to him. The applicant shall get Rs. 2000/- as costs from respondents No. 1 and 2."



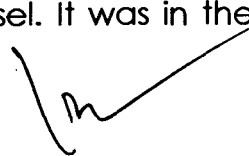
2. Respondents No. 2,3 and 4 of the said O.A. have moved this application for review under Rule 17 of Central Administrative Tribunal (Procedure) Rules, 1987 for reviewing the said order on the grounds interalia that the O.A. was time barred; that conclusion of this Bench that pay of the applicant as on 31.1.96 at the stage of Rs. 18900 was in the pay scale of Rs. 18400-22400, was factually incorrect, as the applicant was in fact in the pay scale of Rs. 15100-18300 with benefit of compensatory pay of Rs. 3000/- and that while reaching the said conclusion this Bench lost sight of Govt. order dated 5.5.2000 (A-13 to the Review application) and Rule 2 of All India (death cum Retirement Benefits) Rules, 1958. It has also said that according to pay slip issued by Deputy Secretary of IRLA vide letter dated 8.6.99 the pay scale of Dr. B.N. Tewari as on 31.1.96, (the date on which he retired), was Rs. 15100-400-18300. It is said that in case the applicant in O.A. No. 125/06 is allowed, the pension in the manner provided in para 7 of the order dated 20.10.06, State exchequer will unnecessarily be burdened.

3. Dr. B.N. Tewari has filed objections against this Review application saying that there are no sufficient grounds for reviewing order dated 20.10.06 and reiterating that he was in the pay scale of Rs. 18400-22400 on the date he retired i.e. 31.1.96, as his pay had been protected by different orders of the Government. He has also referred to PPO dated 4.6.98 so as to support his contention that his basic pay on 31.1.96 was at Rs. 18900/-. He says that when the respondents in O.A. did not file their reply in spite of several opportunities having been given to them, they cannot be permitted now to get the matter re-decided by way of this Review application. It has also been said in para 22 of this reply that this Review deserves to be dismissed on the ground that it has been filed by a counsel different to one who appeared in the Original Application.



4. I have heard Shri Sudeep Seth appearing for the applicant in Review application and Shri R.C. Singh appearing for Dr. B.N. Tewari, and have gone through the order dated 28.10.06 and other material placed on the record of this review and also through the record of the O.A.

5. Let us take the preliminary objection of Shri R.C. Singh as to the maintainability of this Review application. Relying on Shiv Ganesh and others vs. State of U.P. (2006(1) JCLR 379 All) and Tamilnadu Electricity Board and another vs. N. Raju Reddiar and another (1997) 9 SCC, page 73, Sri R.C. Singh has argued that this Review application deserves to be rejected on the ground that it is being filed through a counsel, different to one who appeared for these applicants in O.A. In Supreme Court case, Special Leave petition was filed by Mr. Mariaputham, Advocate on record and after the petition was dismissed, Mr. V. Balachandran filed Review application and that was also dismissed on 24.4.96. Thereafter, another Advocate Shri S.U.K. Sagar filed clarification application on the plea that the order was not clear. When this application came up before their lordships they deprecated the practice of moving such application by change of counsel. It was also said that once the review was dismissed, application for clarification much less with the change of Advocate on record was not desirable. Here, in the instant case Shri Sudeep Seth has brought to our notice that he had filed his memo of appearance on 19.9.2006 in the Original application itself. He has also said that the applicants in review are the State of U.P. and its officers and it is well known that it has a number of Advocates on its panel and if some other Advocate of the panel files Review petition it is difficult to say that the same is liable to be rejected on that ground alone. I think the apex court has not laid down the law in the said case of Tamilnadu Electricity (supra) that review cannot be filed by a different counsel. It was in the special

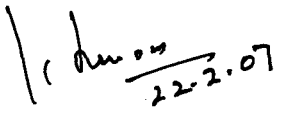


facts and circumstances of the case before their lordships that they observed that clarification application with change of counsel was not desirable. So, I think the ^{Review}~~Original~~ Application moved by State of U.P. and two others cannot be rejected on this technical ground.

6. Relying on Board of Control for Cricket in India vs. Netaji Cricket Club and others (2005(4) SCC, 741, Shri Sudeep Seth has argued that mistake on the part of Tribunal or the court or on the part of counsel appearing for one or the other party, will constitute a "sufficient reason" for purposes of reviewing the order. He says that words "sufficient reason" covers even a misconception of fact or law by the court or an Advocate. He goes on to argue that none should suffer for the mistake of the court or the Counsel. The learned counsel has taken me through the different Annexures including the Govt. order dated 5.5.2000 and amended rule 2 of Rules of 1958 so as to say that the applicant was in the selection grade of Rs. 4800-7000(revised scale Rs. 15000-18300) on 1.1.96 and he was getting compensatory pay of Rs. 1200/- a month. He says that he was never in the revised pay scale of Rs. 18400-22400 and his pay at the stage of Rs. 18900/- was in the scale of Rs. 15100-18300 with compensatory pay of Rs. 3000. The learned counsel contends that this Tribunal fell in error by treating the applicant in the pay scale of Rs. 18400-22400 on 31.1.96, the date he retired from service. On the other hand, Shri R.C. Singh has tried to meet this argument by referring to certain orders on the record of the O.A. According to him, this Tribunal cannot sit in appeal over its own orders in the garb of this Review so as to decide as to whether the applicant was in this pay scale or in that pay scale. Shri Singh has also said that when the applicants did not file their reply in the O.A., they cannot get the matter re-decided, in the garb of this Review application.



7. I have carefully considered the respective submission and I am of the view that there are no sufficient grounds for reviewing the order dated 20.10.2006. The Tribunal will not decide the matter again. The Review is permissible only if some error apparent on the face of record are shown or if some other sufficient grounds are shown. Whether the applicant was in ^{this} ~~its~~ pay scale or in this that pay scale on the relevant date i.e. 31.1.96, is a question of fact and once the Tribunal has recorded a definite finding that the applicant was in a particular scale of pay on that date, it will not be possible to correct the same in this review application. The review applicants did not file their reply and now they want that the matter should be re-heard and re-decided in the garb of this review, which perhaps is not permissible in law. The Review application deserves to be dismissed. It is accordingly dismissed but with no order as to costs.


Vice Chairman

s.a.