

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

R.P. NO.: 52/97 IN O.A. NO.: 514/96.

Dated pronounced the 16th day of October, 1997.

CORAM : HON'BLE SHRI M.R. KOLHATKAR, MEMBER (A).

Employees State Insurance
Corporation Employees Union
& Another. ... Review Petitioners
(Original Applicants)
(By Advocate Shri M.S. Ramamurthy)

VERSUS

Union Of India & Others ... Respondents
(Original Respondents)
(By Advocate Shri M.I. Sethna)

TRIBUNAL'S ORDER :

¶ PER.: SHRI M.R. KOLHATKAR, MEMBER (A) ¶

In the O.A., the relief was granted in
the following terms :-

"O.A. is therefore allowed and the
respondents are directed to refix the pay
of the employees on the footing that memoranda
dt. 15.10.1985 and 31.10.1986 are nonest.
The arrears in terms of this order be paid
to the employees who are members of the
applicant No. 1 but the same should be
restricted to the period of three years
prior to the date of filing of the O.A."

In this Review Petition, the review petitioner/original
applicant has sought limited review of the order

restricting the arrears to only three years prior to the filing of the O.A. I decided to give hearing to both the parties instead of disposing of the review petition by circulation and accordingly, the respondents were allowed to file reply to the R.P. and the parties were heard.

2. According to the Review Petitioner, refixing has been ordered w.e.f. 01.01.1986. The applicants have actually worked on the said posts and they have been continuously agitating the matter. In the order dated 05.11.1992 in O.A. No. 370/87 filed by the said applicants for the same relief, the Tribunal had directed the respondents to give show cause notice and pass a fresh order. Thus, it is evident that the issue has been continuously agitated since 1986. According to the applicant, therefore, the order restricting the arrears to only three years is inconsistent with the findings of the Tribunal in question and is an error apparent on the face of the record and deserves to be reviewed.

3. The respondents to the review petition, who were also the original respondents, have first raised the issue relating to review petition/^{not} being filed within the prescribed period. The same has been considered by me vide order dated 10.07.1997. Next, the respondents

have stated that a Single Bench of the Central Administrative Tribunal has no jurisdiction to deal with any matter relating to fixation of pay, as these matters fall within the jurisdiction of the Division Bench. In this connection, the respondents rely on the Supreme Court decision in Union Of India & Another V/s. P.V. Hariharan & Another ¶ 1997 SCC (L&S) 838 ¶ in which the Hon'ble Supreme Court observed towards the end of the order that it would be in the fitness of the things that ~~if~~ all matters relating to pay scales are heard by a Bench comprising atleast one Judicial Member and the Chairman of the C.A.T. and the Chairman of the S.A.T. i.e. State Administrative Tribunals, shall consider issuing appropriate instructions in the matter.

4. In the context of the above orders or otherwise, the Hon'ble Chairman of the C.A.T. has issued Notification No. 1/32/87-J(Vol.II) dated 14.05.1997 directing deletion of cases relating to fixation of pay from the schedule of cases which can be heard by a Single Bench. My judgement is dated 30.04.1997 and the Chairman's Notification is dated 14.05.1997. After the receipt in normal course of the Chairman's Notification, a Single Bench may not deal with any cases relating to pay fixation.

The present case is prior to the date of notification and its receipt. The contention of the respondents, therefore, that this Tribunal has no jurisdiction to deal with any matter relating to pay fixation even by way of review is, therefore rejected. Next, the respondents have contended that review jurisdiction is limited and cannot take the place of appellate jurisdiction. In this connection, reliance is placed on Thungabhadra Industries Ltd. V/s. The Government of Andhra Pradesh [AIR 1964 SC 1372] wherein at page 1377 it has been held that - "a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error." According to the respondents, the Tribunal has taken a view and given a conscious decision to restrict the payment of arrears to a period of three years prior to the filing of the O.A. and this conscious decision cannot be treated as an error apparent on the face of the record.

5. I have considered the matter and I am of the view that although I have jurisdiction but the review petition is not within the parameters of the review jurisdiction, as laid down in the rules under Order No. 47 of C.P.C. The decision to restrict the payment of arrears to a period of three years may or

may not be justified, and if it is not justified, the *party*

considering it to be unjustified, is at liberty to go to the appellate forum but cannot agitate the matter by way of review because it is not an error apparent on the face of the record.

6. I, therefore, hold that there is no merit in the Review Petition and the same is, therefore, dismissed with no order as to costs.

MR Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

OS*