IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

1. Review Petition No.45/99
in
Original Application No.37/99,

2. Review Petition No.50/99
in
Original Application No.952/98, and

3. Review Petition No.53/99
in
Original Application No.1037/98,

, this the 30th day of March, 2000.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member (A).

1. Review Petition No.45/99 in
Original Application No.37/99.

S.M.Bhagwat,
At 5, Rasta Peth,
Pune.
(By Advocate Mr.S.P.Saxena) — Review Respondent (Original Applicant)

2. Review Petition No.50/99 in
Original Application No.952/98.

1. P.P.Kunhi Raman,
At JN-3-6/12,
Sector-10, Vashi,
Navi Mumbai.

2. K.George,
At F-10/2/1.
Sector - 7, Sanpada,
Navi Mumbai.
(By Advocate Mr.S.P.Saxena) — Review Respondents (Original Applicants)

3. Review Petition No.53/99 in
Original Application No.1037/98.

S.Paul Sundararajan,
455, Laxmi Narayan Mandir Road,
Bhagur 422 502, Tal. & Dist. Nasik,
Maharashtra.
(Applicant in person) — Review Respondent (Original Applicant)

Vs.

1. Union of India,
Ministry of Defence,
Government of India,
New Delhi - 110 001.

...2.

2. The Engineer-in-Chief,
Army Head Quarters,
New Delhi - 110 011.

3. Chief Engineer,
Southern Command,
Head Quarters,
Southern Command,
Pune - 411 001. — Review Applicants (in all the three Review Petitions)

4. The Commander Works Engineer,
Mayo Road,
Pune. — Review Applicant (in R.P. No.45/99)

5. The Commander Works Engineer
(Army), 24, Assaye Building,
Colaba,
Mumbai - 400 005. — Review Applicant (in R.P. No.50/99)

6. The Chief Engineer,
Pune Zone,
Head Quarters,
Southern Command,

7. The Commander Works Engineers,
Deolali - 422 401,
Tal. & Dist. Nashik,
Maharashtra.

8. The Garrison Engineer (North),
Deolali - 422 401,
Taluka & District Nashik,
Maharashtra. — Review Applicant (R.P. 53/99)

(By Advocate Mr.R.K.Shetty)

ORDER ON REVIEW PETITION

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

These are three Review Petitions filed by the official respondents in the above three original applications. Mr.S.P.Saxena, on behalf of the applicants in the first two OAs viz. O.A. Nos.952/98 and 1037/98 and applicant in person in O.A. No.37/99 have orally opposed the Review Petitions. We have heard

Mr.R.K.Shetty, the learned counsel for the respondents in support of the Review Petitioners, Mr.S.P.Saxena, the learned counsel for the applicants in the first two OAs and Mr.Paul Sundararajan who is the applicant in person in the third OA (R.P.53/99). Since the point involved is a common point, we are disposing of all the three RPs by this common order.

2. The original applicants had filed the three applications claiming that they are entitled to pecuniary benefits from 1.1.1947. By following the decision of the Supreme Court in Civil Appeal No. 4201/1985 we allowed all the three applications and directed the administration to fix the pay of the applicants as on 1.1.1947 by re-classifying them as UDCs and then give them promotion, refixation of pay, seniority, re-classification of pension and gratuity, but restricted the arrears to only 50% of the amount.

Now, the official respondents have filed three review petitions stating that granting of 50% of arrears to the applicants is not proper, since the monetary claim is barred by limitation. They have also referred to a decision of the Principal Bench in O.A. No.580/94 and also a decision of the Apex Court where it is held that in such cases arrears should not be ordered to be paid. It is therefore, stated that an error hs crept in the order of the Tribunal in granting 50% of arrears.

3. The learned counsel for the administration, in support of the review petitions, contended that an error has crept in the order of the Tribunal by granting 50% of the arrears since according to Sec.21 of the Limitation Act arrears from 1947 could not have been granted having regard to the period of one year limitation mentioned therein. For this, reliance is placed on

...4./

one decision of the Principal Bench and one decision of the Apex Court. Since there is some delay in filing the Review Petition in two cases M.Ps. are filed for condonation of delay. The learned counsel for the review petitioners also submitted that delay may be condoned and review petitions be allowed by deleting grant of 50% of the arrears to the applicants. On the other hand, the learned counsel appearing for applicants' in two cases and Mr.Paul Sundararajan who is the party in person in one case, contended that no case is made out for reviewing our orders and there is no ground for condoning the delay.

4. Since there is some delay in filing the two review petitions, the respondents have given some administrative reasons for delay in filing the Review Petitions. We are inclined to allow both the M.Ps. We cannot appreciate the argument on behalf of the applicants that the delay in filing R.Ps. by few months should not be condoned. The applicants have themselves filed these two OAs in 1998 and one in 1999 claiming retrospective benefit of pay scale etc. from 1.1.1947, which is about 52 years back. When the applicants' are claiming retrospective benefit since about 52 years back and they want us to grant them all monetary benefits for the last 52 years ignoring the law of limitation, but they want to object few months delay in filing the R.Ps. Having regard to the facts and circumstances of the case, we are condoning the delay in filing the two review petitions and accordingly allow the M.P.s viz. 740/99 and 837/99.

5. Now, coming to the merits of the R.Ps., we are conscious of the limited powers of review. We have the same review powers as provided to Civil Courts under Order 47 Rule 1 of C.P.C. There should be some apparent error on record or discovery of new

...5/

evidence or sufficient reason for reviewing an order. We are aware that merely because an order is erroneous or wrong it by itself is not a ground for exercise of review jurisdiction. There should be some error apparent on record, on the face of it which needs to be corrected.

6. In this case, two applications were filed in 1998 and one application was filed in 1999. The reliefs asked for are from 1.1.1947 which is a money claim extending over a period of 52 years prior to the date of applications. By following the earlier Judgment of the Supreme Court in Civil Appeal No.4201/85 we granted the reliefs, but restricted the arrears to 50%. In our view, this is an apparent error on record. According to Section 21 of the Limitation Act, one has to approach the Tribunal within one year from the date of cause of action. The cause of Action for the applicants arose on 1.1.1947 when they were not treated as UDCs as per the First Pay Commission Report. But, to get that relief they have approached this Tribunal 50 years later. It may be that fixation of pay or fixation of pension is a continuous cause of action. Though the OAs may be maintainable for proper fixation of pension or pay, limitation applies for grant of arrears. Even if one approaches and files Civil Suits for arrears of salary, the period of limitation is three years. But, in the Administrative Tribunals Act Legislature has provided special Rule of Limitation. Here, a party has to approach the Tribunal within one year from the date of cause of action as provided in section 21 of the Limitation Act. Therefore, on the face of it and by a mere look to section 21 of the Act, we could not have granted either entire arrears or 50% of arrears from 1.1.1947. Therefore, in our view, there is

...6.

an error apparent on record which can be discovered with no arguments, but by a mere look at Section 21 of the Limitation Act and the relief granted by the Tribunal. This ground itself is sufficient to review our order passed in the above three cases.

7. Then, we find that Principal Bench of this Tribunal has taken a considered view in a reported Judgment viz. Shri Dhyan Singh Rawat Vs. Union of India & Ors. (1999 (2) SLJ (CAT) 517), by referring to number of decisions including the Apex Court and held that applicants like the applicants before us are entitled to notional fixation of pay for the purpose of computing pension only and arrears of pension was granted from the date of superannuation. Specific direction was given that applicant in that case is not entitled to payment of arrears of pay and allowances. That was a case where the applicant in that case had filed the OA in the Principal Bench in 1994 claiming similar benefits like the applicants in these three cases claiming the benefit of pay fixation from 1.1.1947 on the basis of the First Pay Commission Report. This Judgment was not brought to our notice and it was a binding precedent on us, unless of course, if we take a different view, we will have to refer to a Larger Bench. Ignoring of a binding precedent is also an error apparent on record.

8. Then, we come to the Judgment of the Supreme Court dt. 24.10.1997 in Civil Appeal No.7453/97 in the case of Union of India and Ors. Vs. R.D.Gupta and Ors. That was also a similar case like the present applicants claiming benefits from 1.1.1947. They had filed Original Application No.960/90 before the Principal Bench of the Tribunal. The Tribunal allowed that

...7.

application by order dt. 6.2.1992 and granted certain reliefs, but did not grant arrears of pay, but granted benefit only notionally. Then, subsequently, the applicants filed Review Petitions before the Principal Bench. The Principal Bench allowed the Review Petitions and directed the Government to pay the arrears from 1.1.1947 to the applicants in that case. The order in the R.P. came to be challenged in the Apex Court by the Government. The Supreme Court observed as follows :

> "We are of the view that the said direction of the Tribunal on the review application cannot be upheld since O.A. No.960 of 1990 was filed before the Tribunal only in 1990 when they had already retired from service. The Tribunal had rightly disallowed the arrears of pay and allowances with effect from January 1, 1947 in the Judgment dt. February 6, 1992 and was in error in directing such payment of arrears in the impugned judgment merely because two other employees had been paid such arrears on the basis of an earlier judgment of the Bombay High Court."

The Supreme Court, therefore allowed the appeal and quashed the order in the Review Petition granting arrears from 1.1.1947.

Here again, we have missed the said Judgment of the Apex Court. Under Article 141 of the Constitution of India, the Law laid down by the Apex Court is the Law of the Land. If we have missed a binding judgment of the Supreme Court, then it is also an error apparent on record which calls for reviewing our order. In the face of the Judgment of the Apex Court in an identical case our order granting 50% of the arrears cannot be allowed to stand. Therefore, our order granting 50% of the arrears in the OA requires review.

9. The learned counsel for the original applicants has invited our attention to some authorities.

In Ajit Kumar Rath Vs. State of Orissa and Ors. (AIR 2000 SC 85), the Supreme Court has observed that scope of review cannot be exercised for correction of an erroneous view taken earlier. There is no dispute about this proposition of law, merely because, the earlier order is wrong or erroneous the power of review cannot be certainly exercised. The Supreme Court has observed as to what is meant by the words "error apparent on record" and they have explained it that it must be an error which stares in the face without any elaborate argument being needed for establishing it. Then what is more, That was also a case where the Orissa Tribunal had reviewed its earlier order only on the ground that it had ignored or missed a Judgment of the Orissa High Court. The Supreme Court nowhere stated that the said view of the Tribunal ~~has~~ as a ground for review was not correct. On the other hand, in para 32 of the reported Judgment, the Supreme Court observes that the Tribunal has reviewed its Judgment only on the basis of a Judgment of the High Court of Orissa, which it could not have done since the Orissa High Court Judgment was contrary to the Judgment of the Constitution Bench of the Supreme Court and therefore, the efficacy of the Judgment of Orissa High Court altogether vanished since it was not good law in view of the Judgment of the Supreme Court and hence there was no occasion for the Tribunal to review its earlier order. As far as we are concerned in this case, there is a binding decision of the Supreme Court which we had ignored since it was not brought to our notice about granting arrears from 1947.

In the case of Shri Vishnu Dutt Vs. Union of India & Ors. (1998 (2) SLJ (CAT) 133), the Review Petition was filed seeking review due to wrong finding of fact and it was held that there is no apparent error on record calling for review.

The decision of the Apex Court in (1998 (1) CLR 1148), has also no bearing on the point under consideration. That was a case where a Review Petition had been entertained after disposal of SLP before the Supreme Court against the original order of the Tribunal. In those circumstances, the Supreme Court held that Review Petition was not maintainable when the final order of the Tribunal had merged with the order of the Supreme Court dismissing the SLP and hence the Tribunal could not have entertained and granted the Review Petition. In the present case, there is no allegation that against the order passed by this Tribunal, which we are reviewing to day, any SLP was filed before the Supreme Court and it was disposed of.

10. Then, on merits, it was argued that the Madras High Court in Writ Petition No.5858/82 had allowed the Writ Petition and granted arrears from 1.1.1947. Then, it was further argued that this order of the Madras High Court was confirmed by the Supreme Court in R.Sambandam's case in Civil Appeal No.4201/85. That was a case of a writ petition filed in Madras High Court under Article 226 of the Constitution of India. There is no bar of limitation in a writ petition. The High Court allowed the writ petition granting relief from 1.1.1947, but the Supreme Court restricted the arrears to only 60% of the amount. But, those directions are given on the basis of a writ petition filed in the

...10.

High Court under Article 226 of the Constitution of India for which there is no bar of limitation. It may be, in a given case by applying the principle of delay and laches, High Court or Supreme Court may decline relief, but there is no legal bar to grant the relief even if it is hit by delay by few years.

But, as far as we are concerned, our jurisdiction flows from the provisions of the Administrative Tribunals Act, 1985. Section 21 of the Act prescribes a special rule of limitation viz. that an application has to be filed in this Tribunal within one year from the date of cause of action. Since this Tribunal works under a special Act and the special Act prescribes certain procedure and certain period of limitation, we cannot apply the general principle that applies to High Court or Supreme Court exercising vide powers of writ jurisdiction under Article 226 or under Article 32 of the Constitution of India. It may be a case where a party may file Civil Suit and then he will be governed by the Limitation Act, 1963 and merely because High Court had granted arrears from 1947 a Civil Court cannot grant arrears from 1947, but will have to restrict it to three years prior to the date of suit as per the provisions of the Limitation Act. Since we are governed by Section 21 of the Administrative Tribunals Act we cannot grant arrears beyond one year prior to the date of filing of the OA. It may be in a given case, this Tribunal may condone the delay and grant relief even beyond one year. In this case, there is no application for condonation of delay in all the three cases and the Tribunal has not exercised any power of condoning the delay in the three Original Applications. Further, no reasons are given for approaching this Tribunal after 50 years from 1947.

We must also bear in mind that there are many employees like the applicants who are still coming to Tribunals and Courts even after 50 years. There will be a drain on the State exchequer if the arrears are ordered to be paid from 1947, which should be 53 years from today. The invisible tax payer is not before us. We are dealing with public funds. Any order passed by us is going to be a burden on the State funds. We have to be careful and circumspect in passing orders particularly in granting arrears for decades, that is why in the facts and circumstances of these cases we have reached the conclusion that arrears should be restricted only for a period of three years prior to the date of filing of the applications.

11. Now, coming to the facts of the three cases, we find that the respondents that the Respondent in R.P.45/99 is the applicant in OA 37/99. The OA was filed by Smt. Malati M.Bhagwat wife of Mr.Madhusudan Bhagwat. He retired from service on 31.10.1969 and he died on 25.11.1983. His wife filed the present application in the year 1999, which is about 30 years after the date of retirement and 16 years after the date of death of her husband. In fact, she also died during the pendency of the OA and her son has come on record as legal heir.

In R.P. 50/1999, the Respondents are the original applicants in OA 952/98. The first applicant in that case P.P. Kunhi Raman retired from service on 29.2.1980 and the second applicant K.George retired on 29.4.1984, that means both the applicants have approached this Tribunal in the year 1998 about 18 years and 14 years after their retirement respectively.

In R.P. 53/99, the Respondent is the original applicant

12

in OA 1037/98. He retired from service on 31.10.1982 and he has approached this Tribunal 17 years later by filing this application in 1998.

Having regard to the undue delay in approaching this Tribunal and also claiming retrospective benefit from 1.1.1947 and particularly in view of the Judgment of the Principal Bench and the Supreme Court mentioned above, we feel that our order granting 50% of arrears from 1.1.1947 requires to be reviewed and accordingly we review the same.

Having regard to the facts and circumstances of the case, we are directing the petitioners in the Review Petitions, who are the respondents in the Original Applications, to give notional benefit to the applicants in the three cases from 1.1.1947 as directed in our original order, but actually monetary benefit is granted for a period of three years prior to the date of filing of the OA and of course, future monetary benefit in the form of higher pension or higher family pension as the case may be from the date of filing the OAs till the life-time of the applicants or life-time of the family who are entitled to claim such amounts as per rules.

We may also note that OA 37/99 was filed on 4.1.1999, OA 952/98 was filed on 12.10.1998 and OA 1037/98 was filed on 23.11.1998.

12. In the result, all the three Review Petitions viz. 45/99, 50/99 and 53/99 are allowed as follows:

(1) Our direction in the original orders dt. 3.5.1999 in OA 37/99, dt. 26.2.1999 in OA 952/98 and dt. 11.6.1999 in OA 1037/98 about restricting arrears to 50% of the amount is hereby reviewed and recalled and that condition is hereby deleted. However, we direct the official respondents to

...13.

notionally fix the pay scales of the employees pertaining to these three OAs from 1.1.1947 and onwards as mentioned in our original order, but actual arrears of monetary benefit be paid for a period of 3 years prior to the date of filing these OAs and actual monetary benefit in the form of higher pension/family pension as per rules from the date of OAs till their life-time according to law.

(2) In the circumstances of the case, there will be no order as to costs in all the three Review Petitions.

MEMBER(A)

VICE-CHAIRMAN

B.