

**Central Administrative Tribunal  
Principal Bench, New Delhi**

R.A. No.48/2017  
M.A.No.490/2017  
O.A.No.1571/2013

This the 16<sup>th</sup> day of March 2017

**Hon'ble Mr. Justice M.S. Sullar, Member (J)**  
**Hon'ble Mr. K.N. Shrivastava, Member (A)**

Mrs. Krishna Tiwari w/o Mr. M G Tiwari  
c/o Mrs. Poonam Tomar  
B-344, Vasant Kunj Enclave  
Vasant Kunj, New Delhi 70

..Applicant

Versus

1. Chairman, Railway Board  
Rail Bhawan  
New Delhi – 1
2. General Manager  
North Eastern Frontier Railways  
Maligaon  
Guwahati (Assam)
3. State Bank of India  
Maligaon  
Guwahati, Assam

..Respondents

**O R D E R (in circulation)**

**Mr. K.N. Shrivastava:**

**M.A. No.490/2017**

For the reasons stated therein, M.A. seeking condonation of delay in filing R.A. is allowed.

**R.A. No.48/2017**

Through the medium of this R.A., which has been filed under Rule 17 of C.A.T. (Procedure) Rules, 1987, the applicant has prayed for review of the

Tribunal's order dated 15.12.2016 in O.A. No.1571/2013. The main grounds pleaded for the said prayer are as under:-

a) The Tribunal has not followed the ratio of law laid down by the Hon'ble Supreme Court in its judgments in the cases of **D.S. Nakara v. Union of India** [AIR 1983 SC 130] and **Union of India & others v. S.P.S. Vains & others** [(2008) 9 SCC 125] wherein it has been held that formation of a class within class is not allowed. Pensioners form a class. Any liberalization in calculation of pay has to be extended to all the pensioners from the date of implementation of the Pay Commission report.

b) The Tribunal has gravely erred in holding that the 5<sup>th</sup> Central Pay Commission (CPC) replacement scale of `6500-10500 for District Extension Educator (DDE) and 6<sup>th</sup> CPC replacement scale of `9300-34800 + Grade Pay `4600/- for DEE are not applicable to the late husband of the applicant, who died on 28.04.1997, in the matter of fixation of family pension of the applicant.

2. We have carefully gone through the pleadings of the applicant and with reference to the pleadings, have critically analyzed our order under review.

3. Mr. Madan Gopal Tiwari, late husband of the applicant, retired from the post of DEE from N.R. Railways on 31.03.1989. He was in the pay scale of `1600-2660 at the time of his retirement. The said pay scale was the 4<sup>th</sup> CPC scale for the DEE. Accordingly, his pension was fixed. In the order under review, it is clearly observed that the replacement scale for the said

scale under 5<sup>th</sup> CPC was `5000-8000 and under 6<sup>th</sup> CPC it was PB-2 (`9300-34800) + Grade Pay `4200/-. Accordingly the family pension of the applicant has been fixed. Hence the Tribunal did not find any infirmity in the PPO issued. The applicant has been basically seeking application of the principle of 'One Grade One Pay' in the matter of fixation of her family pension. The Tribunal in this regard in paragraph 5 of the order has observed as under:-

“5. We have, therefore, to consider the case of the applicant in terms of the extant policy and orders of the Central Government. Looking at the pleadings of the applicant, it appears that the applicant is seeking fixation of her family pension on the principle of 'One Grade One Pay'. Unfortunately, for the civilians staff the Government have not implemented such a policy.”

4. Since 'One Grade One Pay' principle has not been sanctioned by the Central Government for the civilian staff, the applicant's prayer has been disallowed. Hence, we do not find any palpable error on the face of the order.

5. As regards the second issue raised by the applicant in the R.A. as to non-application of ratio of law laid down by the Hon'ble Apex Court in **D.S. Nakara v. Union of India** (supra) and **Union of India & others v. S.P.S. Vains & others** (supra), suffice to say that the judgments have been mentioned in paragraph 4 of the order under review, and it was found that the ratio of law laid down in these judgments is not applicable in the instant case for the reason that no class within class has been created. As observed earlier, the family pension of the applicant is based on the pay scale of applicant's husband when he retired from service of N.R. Railways on 31.03.1989. Replacement scales of the said pay scale in 5<sup>th</sup> and 6<sup>th</sup> CPCs

have also been duly considered. Furthermore, 'One Grade One Pay' principle for the purpose of fixation has not been extended by the Central Government for civilian staff. Hence, on this count also, we do not find any error on the face of the order under review. Existence of an error apparent on the face of the record is *sine qua non* for review of the order.

6. On the power of the Tribunal to review its own orders, the Hon'ble Supreme Court has laid down clear guidelines in its judgment in the case of **State of West Bengal & others Vs. Kamal Sengupta and another**, [2008 (3) AISLJ 209] stating therein that "the Tribunal can exercise powers of a Civil Court in relation to matter enumerated in clauses (a) to (i) of sub-section (3) of Section (22) of Administrative Tribunal Act including the power of reviewing its decision." At paragraph (28) of the judgment, the principles culled out by the Supreme Court are as under:-

(i) The power of Tribunal to review its order/decision under Section 22(3) (f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with order 47 Rule (1) of CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specific grounds

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as a error apparent in the fact of record justifying exercise of power under Section 22(2) (f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3) (f) on the basis of subsequent decision/judgment of a coordinate or a larger bench of the Tribunal or of a superior court

(vii) A decision/order cannot be reviewed under Section 22(3)(f).

(viii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(ix) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence the same could not be produced before the Court/Tribunal earlier.”

7. For the reasons discussed in the foregoing paragraphs, we do not find any merit in the R.A. Accordingly, the R.A. is dismissed in circulation. No costs.

**( K.N. Shrivastava )**  
**Member (A)**

**( Justice M. S. Sullar )**  
**Member (J)**

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