

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

R.A. No.06/2018 in O.A. No.1586/2010

This the 2nd day of February 2018

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

1. Amarendra Nath Misra
Aged about 74 years
s/o late Shri Uday Nath Misra
304, Harihar Palace
Sastri Nagar, Unit-IV
Bhubaneswar – 751001
2. Bhuvanendra Nigam
Aged about 70 years
s/o Shri Bhupendra Nigam
67, Siddharth Enclave
Ashram Chowk
New Delhi 110 014
3. Mrs. S K Nigam
Aged about 69 years
w/o Shri Bhuvanendra Nigam
67, Siddharth Enclave
Ashram Chowk
New Delhi – 110 014
4. Raj Narain
Aged about 66 years
s/o late Shri Thakur Das
D-8, Sector 30
NOIDA – 201301
5. Amulya Kumar Mohanty
Aged about 66 years
w/o Shri Jagabandhu Mohanty
11-A Baramunda HIG Housing Board Colony
Bhubaneswar
6. Dinesh Behari lal
Aged about 71 years
s/o late Shri J B Lal
358, Meera Bagh
New Delhi – 110 087

7. K R Gupta
 Aged about 75 years
 s/o late Shri C R Gupta
 A-68, Meera Bagh, New Delhi – 110 087

8. Sukumar Mukhopadhyay
 Aged about 72 years
 s/o late Shri B N Mukhopadhyay
 C-601, Anandlok Housing Society
 Mayur Vihar-I, Delhi – 110 091

9. Madan Mohan Bhatnagar
 Aged about 75 years
 s/o Shri J P Bhatnagar
 B-50-B, Gangotri Enclave
 Alaknanda, New Delhi – 110 019

10. Mrs. Asha Mehra
 Aged about 69 years
 w/o Mr. J M Mehra
 Flat No.5131, Sector B/7
 Vasant Kunj, New Delhi – 110 070

..Applicants

Versus

Union of India through

1. The Secretary
 Ministry of Finance
 Department of Expenditure
 North Block, New Delhi – 110 001

2. The Secretary
 Ministry of Finance
 Department of Revenue
 North Block, New Delhi – 110 001

3. The Secretary
 Department of Pension & Pensioners' Welfare
 3rd Floor, Lok Nayak Bhawan
 Khan Market, New Delhi – 110 003

4. Cabinet Secretary
 Govt. of India, Cabinet Secretariat
 Rashtrapati Bhavan
 New Delhi – 110 004

..Respondents

O R D E R (in circulation)

Mr. K.N. Shrivastava:

Through the medium of this R.A., the review applicants have sought review of this Tribunal's order dated 06.11.2017 passed in O.A. No.1586/2010. The applicants had prayed for the following reliefs in the said O.A.:-

“(ii) Quash & set aside the impugned memorandums dated 11/02/2009 & 13/16-03-2009 & 18/11/2009 with all its consequences;

(iii) Direct the respondents to fix the pension of the applicants at Rs.38,882/- per month w.e.f. 01/01/2006 till 23/12/2008 with all consequential benefits including arrears of pension on the basis of such refixation.

(iv) Direct the respondents to fix the pension of the applicants at Rs.40,000/- per months w.e.f. 24/12/2008 with a further direction to pay the arrears of pension on the basis of such re fixation.

(v) Direct the respondents to give all the consequential benefits to the applicants.”

2. The O.A. was dismissed vide order dated 06.11.2017; operative part of which reads as under:-

“13. Since the applicants had retired in the pay scale of ₹24,050-650-26000 (5th CPC), whose replacement scale in the 6th CPC is ₹75,500-80,000 (without Grade Pay), they are entitled for fixation of their pension in terms of DoPT O.M. dated 28.01.2013 read with O.M. dated 30.07.2015. Since the upgraded pay scale of ₹80,000/- (fixed) is applicable to those officers, who came to occupy the posts of Members of the CBDT & CBEC on selection, these applicants cannot be given the benefits of this pay scale for fixation of their pension. Pertinent to mention that the applicants are basically seeking benefits on the lines of ‘one rank one pension’. A decision in this regard lies exclusively within the domain of the Executive. The financial implications of such decision would be huge considering its applicability across all the Departments of the Government and their entities.”

3. From the averments made in the R.A., it seems the applicants tried to reargue the matter already decided vide order dated 06.11.2017. It is stated that certain parts of the pleadings have not been taken into consideration by the Tribunal in passing the order dated 06.11.2017. The Explanation IV of Section 11 of Code of Civil Procedure posits that “any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused”. Hence, if certain pleadings have not been considered by the Court, it would mean that the Court has rejected those pleadings.

4. It is settled law that *sine qua non* for seeking review is existence of some error apparent on the face of the record. 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 v. 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.”

5. The applicants have failed to bring out any error on the face of the record of the order dated 06.11.2017. Relying on the ratio of law by the Hon'ble Apex Court in the judgments referred to above, this R.A. is dismissed.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

February 2, 2018
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