

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

R.A. No.88/2015 in OA 1373/2010

With

RA No.42/2015 in OA 916/2013

RA No.61/2015 in OA 921/2010

RA No.64/2015 in OA 4568/2011

Reserved on: 23.08.2016

Pronounced on: 07.10.2016

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)**

R.A. No.88/2015 in OA 1373/2010

1. Harendra Kumar
Section Officer, ITBP
R/o 20/250, DDA Flats, D. Puri
New Delhi-110062.
2. Ashok Kumar Sharma,
Section Officer, ITBP
R/o 170, Sector III, Sadiq Nagar,
New Delhi.
3. Harbans Lal
Section Officer, ITBP
B-33, Ganesh Nagar,
New Delhi-110 018.
4. Sarup Singh Drall
Section Officer, ITBP
IV/26, North West Moti Bagh,
New Delhi.
5. Ramesh Chandre
Section Officer, ITBP
27B, A Block, Shyam Vihar-1
New Delhi.
6. Rattan Singh
Section Officer, ITBP
116/5 Sector 7, M. B Road,
New Delhi.
7. M.L.Meena
Section Officer, ITBP
541, Sec-III, R.K. Puram
New Delhi -22

8. Baldev Singh
Section Officer, ITBP
W-Z.75/1, Tilak Nagar,
New Delhi-18.
 9. Durga Dass
Section Officer, ITBP,
C-173, Minto Road Complex
New Delhi-110 002.
 10. S.K. Das
Section Officer, ITBP
P-36, B-1, Dishad Garden
New Delhi-95
 11. Ashok Kumar
Section Officer, ITBP
N-560, Sector-8
R.K. Puram, New Delhi.
- .. Review Applicants

Versus

1. Union of India through
Secretary,
Ministry of Home Affairs
North Block, New Delhi.
 2. Secretary
Department of Expenditure,
Ministry of Finance,
North Block, New Delhi.
 3. Director General, ITBP
Block No.2, CGO Complex
New Delhi-110 003.
- .Respondents

RA No.42/2015 in OA 916/2013

1. Shri Mahendra Kumar,
Section Officer, 13, CGO Complex,
Lodhi Road,
New Delhi.-110 003
2. Shri Patras Lakra,
Section Officer, 13, CGO Complex,
Lodhi Road,
New Delhi.-110 003

3. Shri J.K. Bagri,
Senior Administrative Officer,
13, CGO Complex, Lodhi Road,
New Delhi.-110 003
4. Shri A.K.Malhotra,
Section Officer,
13, CGO Complex, Lodhi Road,
New Delhi.-110 003
5. Shri Shiv Charan Lal,
Private Secretary/Section Officer,
13, CGO Complex, Lodhi Road,
New Delhi.-110 003
6. Shri Jagpal Singh,
Section Officer,
13, CGO Complex, Lodhi Road,
New Delhi.-110 003
7. Shri K. Alias,
Section Officer,
13, CGO Complex, Lodhi Road,
New Delhi.-110 003
8. Smt. Ushma Bahri,
Section Officer,
13, CGO Complex, Lodhi Road,
New Delhi.-110 003
9. Shri Deepak Arora
Private Secretary,
13, CGO Complex, Lodhi Road,
New Delhi.-110 003. ...Review applicants

Versus

1. Union of India, through
Secretary, Ministry of Home Affairs
North Block, New Delhi.
2. Secretary, DoP&T
North Block, New Delhi.
3. Secretary, Department of Expenditure
Ministry of Finance, North Block,
New Delhi.

4. Director General, CISF,
13 CGO Complex, Lodhi Road,
New Delhi-110 003. .. Respondents

RA No.61/2015 in OA 921/2010

1. O.P. Malik, S/o Late Shri Ganesh Dass,
R/o 768, Dr. Mukherjee Nagar,
Delhi-110009.
2. L.S. Sharma S/o Late Shri Vidya Dhar,
R/o 22/1036, Lodhi Colony,
New Delhi. 110003.
3. Suman Babbar, D/o Late Shri U.S.Sinha
R/o E-79, 3rd Floor, Sector-1, Rohini,
New Delhi.
4. M.K. Babbar, S/o Late Shri B.D. Babbar
R/o E-79, 3rd Floor, Sector-1, Rohini,
New Delhi.
5. Smt. Surinder Kuar, though LRs
Shri Shukcharan Singh, S/o Shri Teja Singh,
R/o 4/222, Subhash Nagar,
New Delhi.
6. Rishi Pal, S/o Late Shri Shanti Swaroop
R/o Flat No. 1203, Sector -12
R.K. Puram, New Delhi.
7. Smt. Asha Katyal, D/o Shri T.D. Dua
R/o Flat No. 74, Pocket-B
Sukhdev Vihar, New Delhi.
8. Mahesh Kumar, S/o shri Kanwar Bhan,
R/o B/H-342, Shalimar Bagh (East)
Delhi-110008.
9. Dandu Ram, S/o Late Shri Bhagat Ram
R/o 564-A, Type-IV, Sector III
R.K. Puram, New Delhi. ...Review Applicants

Versus

Union of India, through

1. Secretary
Ministry of Home Affairs
North Block, New Delhi.

2. Secretary
Department of Expenditure
Ministry of Finance,
North Block, New Delhi.

....Respondents

RA No.64/2015 in OA 4568/2011

1. Shri Ramesh Chander
Assistant
Directorate General of ITBP
Block-2, CGO, Complex
New Delhi.-110 0003.
2. Smt. Shashi Karolia
Assistant (now Section Officer)
Directorate General of ITBP
Block 2, CGO Complex
New Delhi- 110 003.
3. Shri J.K. Sharma
Assistant (now Section Officer)
Directorate General of ITBP
Block 2, CGO Complex
New Delhi- 110 003.
4. Smt. Lalta Mehrotra,
Assistant (now Section Officer)
Directorate General of ITBP
Block 2, CGO Complex
New Delhi- 110 003.
5. Uma Shankar Sharma,
Assistant
Directorate General of ITBP
Block 2, CGO Complex
New Delhi- 110 003.
6. Govind Singh, Assistant
Directorate General of ITBP
Block 2, CGO Complex
New Delhi- 110 003.
7. M.K.Rao,
Assistant
Directorate General of ITBP
Block 2, CGO Complex
New Delhi- 110 003

8. Kamlesh
Assistant
Directorate General of ITBP
Block 2, CGO Complex
New Delhi- 110 003
9. C.Durairaj
Assistant
Directorate General of ITBP
Block 2, CGO Complex,
New Delhi- 110 003
10. Smt. Namita Sharma,
Assistant
Directorate General of ITBP
Block 2, CGO Complex
New Delhi- 110 003
11. Govind Lal,
Assistant
Directorate General of ITBP
Block 2, CGO Complex,
New Delhi- 110 003
12. Dinesh Kumar Rai,
Assistant
Directorate General of ITBP
Block 2, CGO Complex
New Delhi- 110 003
13. Anil Kumar Garg,
Assistant
Directorate General of ITBP
Block 2, CGO Complex
New Delhi- 110 003
14. Smt. Renu Singh,
Assistant
Directorate General of ITBP
Block 2, CGO Complex
New Delhi- 110 003
15. Smt. Chiranjiv Kaur,
Assistant (on Foreign Leave)
Directorate General of ITBP
Block 2, CGO Complex,
New Delhi- 110 003

16. DN Agria
Assistant
Directorate General of ITBP
Block 2, CGO Complex,
New Delhi- 110 003
 17. Sanjeev Kumar,
Assistant
Directorate General of ITBP
Block 2, CGO Complex
New Delhi- 110 003
 18. Mukesh Kumar Sharma,
Assistant
Directorate General of ITBP
Block 2, CGO Complex
New Delhi- 110 003
 19. Smt. Pushpa Janardhan,
Assistant
Directorate General of ITBP
Block 2, CGO Complex,
New Delhi- 110 003
 20. Smt. Anjana Suthar,
Assistant
Directorate General of ITBP
Block 2, CGO Complex,
New Delhi- 110 003
 21. Smt. Anita Malhotra,
Assistant
Directorate General of ITBP
Block 2, CGO Complex
New Delhi- 110 003
-Review Applicants.

Versus

1. Union of India, through
Ministry of Home Affairs
North Block, New Delhi-110 001.
2. Director General ITBP
Directorate General of ITBP
Block 2, CGO Complex, New Delhi-110 003.
3. Secretary,
DoP&T, North Block,
New Delhi-1

4. Secretary, Department of Expenditure
Ministry of Finance, North Block,
New Delhi.Respondents

Presence: Shri Padma Kumar S with Sh. K.K. Mishra, counsel for applicants in all the RA except RA No.61/2015.

Shri Krishan Kumar, counsel for applicants in RA No. 61/2015.

Dr. Ch. Samsuddin Khan, counsel for respondents in RA Nos. 88/2015 and 64/15

Sh. A.K. Singh, counsel for respondents in RA 42/2015.

Sh. Amit Anand, counsel for respondents in RA 61/2015

O R D E R

By Hon'ble Dr. B.K. Sinha, Member (A):

The four Original Applications bearing OA Nos.1373/2010, 916/2013, 921/2010 and 4568/2011 had been heard together and decided by a common order dated 16.01.2015 as they involved a common question of law and facts. The instant four review applications bearing RA Nos.88/2015, 42/2015, 61/2015 and 64/2015 filed by the review applicants against the Tribunal's common order dated 16.01.2015 passed in the aforesaid four OAs have also been heard together and are being disposed by means of this common order.

2. The review applicants have assailed the Tribunal's order dated 16.01.2015 on a number of grounds, including inaccuracies that had crept in while recording the aforesaid order, and points of law as well. The review applicants, in

the first instance, state that OA No.4568/2011 [*Ramesh Chander & Others vs. Union of India & Ors*] is not a case of seeking parity with Section Officers (SOs) of CSS. The applicants in that case had been aggrieved by non-grant of Grade Pay of Rs.4600/- granted to the Assistants in CSS and not the SOs in CSS with consequential benefits. Ultimately, this Tribunal dismissed the OA No.1373/2010 relying on one *Harjeet Singh's* case [OA No.4254/2012 decided on 10.11.2014] which related to Personal Assistants (PAs) who had been seeking Grade Pay of Rs.4600/- which does not deal with the SOs. The applicants in the subject OAs were SOs who had been seeking the benefit of GP Rs.4800/- in PB-2 (9300-34800) (Rs.5400/- in PB (3) – Rs.15600-39100 after four years) from 01.01.2006 with consequential benefits. Thus, the decision to seek the analogy of *Harjeet Singh's* case (supra) is quite misplaced.

3. The review applicants state in the second place that the remand order of the Hon'ble High Court of Delhi was limited to the extent that if the Tribunal is of the opinion that the decisions in *P.C. Chinkara, SO & Ors. Vs. Union of India & Ors.* and *S.R. Dheer & Ors. Vs. Union of India & Ors* would squarely apply to these cases, the reasons for the same need to be recorded. The review applicants further submit that the case of *Harjeet Singh* (supra), which has been used as

the basis for dismissing these cases, has been erroneously relied upon as they neither relate to the ITBP nor to the SOs. The applicants in *Harjeet Singh* (supra) were not SOs but PAs.

4. The review applicants in the third place submit that a certain issues raised in the OAs, as contained in Annexure RA-4 [page 52 of the paper book] had not been dealt with in the judgement under review, which necessarily ought to have been dealt with including the historical parity between SOs and PAs Central Secretariat which are in the service of CSS and CSSS having the same pay scales. Similarly, their respective feeder grades viz. Assistants (for SO) and PA (for PS) have also the same pay scales. Some of the civilian cadres of the Central Government are treated and given the same benefits of CSS/CSSS and these cadres are generally called sister organizations which have been historically treated at par with CSS/CSSS for the purpose of grant of pay scales e.g. (a) SOs/PSs and Assistants/Pas of IFS (B), (b) Railway Board Secretariat Service, (c) Armed Forces Headquarters Civil Service, (d) SOs/PSs and Assistants/PAs of Central Secretariat etc. and (e) SOs/PSs and Assistants/PAs of some department of attached/subordinate offices/field offices which are not in the above categories. The ITBP and CISF were included in category (e) above.

5. We have considered the arguments of Sh. Padma Kumar S., learned counsel for the review applicants by virtue of which it appears that the learned counsel has sought the OAs to be re-argued in entirety which is beyond the scope of review and hence the instant review applications are not maintainable under Order 47 Rule 1 of CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 as has been laid down by the Hon'ble Supreme Court in *State of West Bengal and Others versus Kamal Sengupta and Another* [2008 (8) SCC 612]. The Hon'ble Supreme Court in a landmark decision in *Kamlesh Verma versus Mayawati & Ors.*[2013 (8) SCC 320] laying down certain conditions held as to when the review will not be maintainable, relevant portion whereof is being extracted hereunder for better elucidation:-

"20.2. When the review will not be maintainable:-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”

6. The Hon’ble Supreme Court in the afore judgment has laid down parameters of reviewing all the major issues involving review and arrived at the conclusion on the basis thereof. It has been specifically provided that an erroneous order/decision cannot be corrected under the guise of exercise of power of review. It further provides that while considering an application for review, the Tribunal must confine its adjudication to the materials available at the time of initial decision. Thus, there is a difference between review and appeal, and an appeal cannot be allowed in guise of a review.

7. We also take note of the fact that the power of the Tribunal in exercise of its review jurisdiction is confined to such cases only where an error is plain and apparent on the face of the order and the Tribunal cannot re-examine the issue as held by the Hon’ble Apex Court in *Subhash versus State of Maharashtra & Another* [2002 (4) SCT 608 (SC)].

8. From the above it clearly emerges that the review applicants cannot be allowed to reargue the case or to use

the tool of review application as an appeal. Hence, this order is confined only to the mere essence of the arguments.

9. Insofar as factual inaccuracies are concerned, it is seen that while drawing from the decision of *Harjeet Singh's* case (supra), a factual inaccuracy has occurred as the applicants therein have been termed as SOs while in reality they were PAs, hence, the same is ordered to be corrected. However, this factual inaccuracy does nothing to alter the basic logic of the case. Historical parity is not sufficient to warrant the same pay scales as each service and each cadre has its own requirements of structures, promotional avenues, skill level and demands. Therefore, pay structure and allowances are fixed accordingly. The task of the Government is an unenviable one as there are numerous services and even more numerous cadres and all of them need to be delicately balanced. This exercise is normally done by Pay Commissions set up/appointed by the Central Government or State Governments, after considering all these afore factors Courts are normally ill-equipped to deal with such matters as they neither have that much of information nor the tools necessary for assistance to undertake an intricate or complex exercise as this.

10. The Hon'ble Supreme Court in *Rameshwar Dayal Vs. Indian Railway Const. Co.Ltd. & Ors. AND Ranjit Singh*

(deceased through LRs Mrs. Anjana Sinha vs. Indian Railway Const. Co. Ltd. [2010 (11) SCC 733], has gone into these issues and felt that different services are governed by their different cadre rules, emoluments, allowances etc. Courts cannot take upon themselves the task of pay fixation or allow parity on basis of similarity in scale of pay when they belong to different categories. Similarly, in *Union of India & Ors. Vs. Indu Lal & Ors.* [Appeal (Civil) No.2668 of 1998 decided on 29.04.2002] [MANU/SC/0386/2002], the Hon'ble Supreme Court has observed as under:-

4. In **Union of India v. P.V. Hariharan**, [1997] 2 SCR1050, this Court observed that the courts or tribunals ought not to interfere with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. Change of pay scale of a category has a cascading effect when several other categories similarly situated, would put forward their claims on the basis of such change, which will lead to serious problems. Unless it can be clearly brought out that they were carrying on identical work and there is a clear case of hostile discrimination, there would be no justification for interference with the fixation of pay scales.

5. In **Union of India v. Makhan Chandra Roy**, (1997) ILLJ 801 SC, it was reiterated that the equation of post or pay must be left to the executive Government and must be determined by expert bodies like pay Commission. The court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration.

6. In **State of Maharashtra v. Chandrakant Anant Kulkarni** (1981) ILLJ 433 SC, it was observed that the matter of equation of posts is purely an administrative function and such matter should be left to the concerned Government. Any revision of pay would be an exercise which is totally unauthorised and would amount to taking a policy decision which is within the domain of the authorities themselves who are the authors of the pay scales or revision thereof.

7. In **State of U.P. v. J.P. Chaurasia**, (1989) ILLJ 309a SC, this Court observed that the matter of pay scale does not just depend upon either the nature of work or volume of work done as primarily what is needed to be noticed is evaluation of duties and responsibilities of the respective posts. More often than not, functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance, like the responsibility attached to a particular office. In such cases it would not be open to the court to consider whether the equation of posts made by the Government or the pay scales accorded to them is right or wrong, as such matters are exclusively within the province of the Government. Perhaps the only question the court can enquire into is whether appropriate policy has been adopted by the Government which does not result in hostile discrimination which is a very narrow and limited area of enquiry. When equation of posts had been done on some basis, the same should not be altered so as to equate with some other post and enhance their pay scales.”

11. In view of the above decisions of the Hon’ble Supreme Court, we do not find any merit in the instant Review Applications. However, the factual error qua the applicants in *Harjeet Singh’s case* (supra) terming them as ‘SOs’ in the second last line of para no.8 of the decision under review is ordered to be corrected by the word ‘PAs’. But the tenor and the contents of the said decision remain intact in their place. Hence, the instant four review applications are partly allowed in the above terms. No costs.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)