CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

RA 10/2015 in
OA 937/2010

New Delhi this the 24th day of September, 2015

Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)

1. All India S-30 Pensioners' Association
Through its President Shri M.P. Budhiraja
B-9/6371, Vasant Kunj,
New Delhi-110070

2. Shri J.M. Mehra
S/o Shri R.R. Mehra
Member, All India S-30 Pensioners' Associaton,
Resident of B-7/5131, Vasant Kunj,
New Dehi-110070

3. Shri S.M. Puri
S/o Late Shri B.M. Puri
Member, All India S-30 Pensioners' Associaton,
Resident of B-9/6275, Vasant Kunj,
New Dehi-110070 … Applicants

(Through Shri A.K. Behera, with Shri Amar Pandey and N.N.S. Rana, Advocates)

Versus

1. Union of India
Through Secretary to the Govt. of India
Department of Pensions and Pensioners Welfare,
Ministry of Personnel, Public Grievances and Pensions
Govt. of India, Lok Nayak Bhawan,
New Delhi-110003

2. Secretary to the Govt. of India,
Department of Expenditure,
Ministry of Finance, North Block
New Delhi-110001

3. Secretary,
Railway Board,
Rail Bhawan, Raisina Road,
New Delhi-110001

4. Cabinet Secretary,
Government of India
Rashtrapati Bhawan,
New Delhi … Respondents

(Through Sh. Rajesh Katyal with Sh. D.S. Mahendru, Advocates)

ORDER

Mr. P.K. Basu, Member (A)

This Review Application has been filed against the order passed by us in OA 937/2010 dated 20.11.2014.

2. In the OA, which was heard along with OA 2101/2010, basically three issues were before us, (i) to confer the same notional pay scales starting from Rs.75500/- to S-30 employees at par with S-31; (ii) revise the pay of pre- 1.01.2006 retirees corresponding to the pay at which the concerned pensioner had in fact retired, instead of considering the minimum of the said pay scale, and to give the same pension/ family pension to pre and post 2006 retirees depending on the years of service; and (iii) to ensure that pre-2006 S-30 retirees are not given pension/ family pension less than that given to post 2006 retirees who had worked in the lower pay scales viz. S-24 – S-29.

3. As regards the first issue, we had rejected the claim as this is a matter which should be best left to expert bodies like Pay Commissions and the Tribunal should not enter into this arena. In fact, it was also noted that seeking parity based on just the

`minimum' of the scales being same is not a convincing argument and would lead to opening up a Pandora Box.

4. As regards prayer number (ii), we had held clearly as follows:

> ñWe direct the respondents to consider the revised pay of the applicants corresponding to the pay at which the concerned pensioner had in fact retired, instead of considering the minimum of the said pay scale, thereby determining pension/ family pension to pre-2006 retirees.ò

5. The RA does not raise any issue regarding our order in respect of prayers (i) and (ii) as summarized above.

6. As regards prayer number (iii), in para 46 of our order, we had observed as follows:

> "In the present case, we are of the opinion that the classification of the pensioners into two classes, whereby one class would draw pension not only less than those who retired from the same post after the cut-off date but also lesser pension than those who retired post cut-off date from the posts which are 2-3 grades below that of the applicants is absolutely unreasonable. Moreover, as mentioned earlier, the Nakara judgment was passed in exactly a similar background of facts and the Court held that this kind of classification is illegal."

7. However, in the concluding para 47, in this connection the following has been recorded:

> "This will automatically take care of the apprehensions of the applicants that their pension could be fixed below the pension fixed of post-2006 retirees who had worked in the lower pay scales viz. S-24 – S-29 pay scales."

8. Learned counsel for the applicants states that in para 46 we have held that not only should one class drawing pension less than those who retired from the same post after the cut-off date but also that pre-2006 S-30 pensioners drawing lesser pension than those retired from their posts post 2006 which are 2-3 grades below S-30, is absolutely unreasonable. It has been pointed out in the RA that though the sentence regarding this in para 47 of our order states that this will automatically take care of the apprehensions of the applicants that their pension could be fixed below the pension fixed of post-2006 retirees, the ambiguity has arisen because of the language not being very specific and clear. To elaborate, the learned counsel for the applicants has drawn a chart, as follows, of pension that will be drawn by pre-2006 pensioners as a result of our order dated 20.11.2014:

Fitment table for revising pension in compliance of CAT order of 20.11.2014				
Pre-revised basic pay	Corresponding revised basic pay	Number of increments	Retirees between 1986-1995	Retirees between 1996 to 2006
22400	67000	NIL	33500	33500
22925	69010	ONE	34505	34505
23450	71080	TWO	35540	35540
23975	73220	THREE	36610	36610
24500	75420	FOUR	NOT APPLICABLE	37710

9. It is stated that even an S-24 (Rs.37400-67000+GP Rs.8700) officer retiring after 1.01.2006 would get a basic pension of Rs.37850. It is, therefore, apparent that all pre-2006 S-30 pensioners would be drawing less pension then even S-24 officers. Taking example of S-30 officer retiring at the minimum

of the pay of Rs.22400/- would continue to receive pension of Rs.33500/- as against Rs.37850/- of S-24 officer or Rs.38500/- of S-29 officer retiring after 2006. It is argued that after holding such a situation as absolutely unreasonable in para 46 of the order, language of the order in para 47 creates ambiguity.

10. It is, therefore, prayed in the RA that para 47 of the judgment dated 20.11.2014 in OA 937/2010 may be appropriately modified.

11. Learned counsel for the respondents, first of all, contended that a review can be entertained only when there is an error apparent on the face of the record and in this case, the applicants have not been able to point out any error apparent on the face of the record and, therefore, this RA is fit to be dismissed.

12. The second contention of the learned counsel for the respondents is that the respondents have filed a Writ in the Hon'ble High Court of Delhi challenging the order dated 20.11.2014 of the Tribunal and, therefore, since the matter would be heard by the Hon'ble High Court on the ratio laid down by this Tribunal in the aforesaid order, the matter may be deferred till the Writ Petition in the Hon'ble High Court is disposed of.

13. It is further stated that there is no provision in the Central Civil Services (Pension) Rules 1972 that the pension of a pensioner who retired from a higher pay scale cannot be less

than the pension of a person who retired from a lower pay scale. The pension of a retiring government servant is determined on the basis of his emoluments and the qualifying service at the time of his retirement. In case, a government servant is drawing higher emoluments at the time of retirement, he could be entitled to a higher pension as compared to a government servant in a higher post but with lower emoluments. There is no rule on the civil side that pension of a person retired from lower grade cannot be more than the pension of a person retired from a higher grade, either before 2006 or after 2006. The pension in both cases is fixed based on the emoluments/ average emoluments (under Rule 33 and 34 of CCS Pension Rules) and are to be revised in accordance with the orders issued on the recommendations of 6th Central Pay Commission. It is further argued that in view of the pay structure and the pension fixation rules on the civil side, which are distinct from those applicable in the Armed Forces, the ratio of the Supreme Court judgment in **Union of India Vs. S.P.S. Vains,** (2008) 9 SCC 125 is not applicable in the case of civilian pensioners. It was in this context only that the Office Memorandum No.38/37/08-P&PW(A) dated 18.11.2009 was issued clarifying that the judgment in S.P.S. Vains case would not apply in the case of pensioners, who before their retirement, were governed by the CCS (Pension) Rules 1972.

14. We have heard the learned counsel for the parties and gone through the pleadings available on record.

15. As regards the first objection raised by the learned counsel for the respondents, we have looked at the settled law in this regard. In **Kamlesh Verma Vs. Mayawati and others**, (2013) 8 SCC 320, the Hon'ble Supreme Court has laid down the following contours with regard to maintainability, or otherwise, of review petition:

> "20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:
>
> 20.1 When the review will be maintainable:
>
> i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
>
> ii) Mistake or error apparent on the face of the record;
>
> iii) Any other sufficient reason.
>
> The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki (AIR 1922 PC 122) and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius (AIR 1954 SC 526) to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India vs. Sandur Manganese & Iron Ores Ltd. (2013 (8) SCC 337).
>
> 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."

Further, in **State of West Bengal and others Vs. Kamal Sengupta and another**, (2008) 2 SCC (L&S) 735, the Hon'ble Supreme court scanned various earlier judgments and summarized the principles laid down therein which read thus:

"35. The principles which can be culled out from the above-noted judgments are:

(i) The power of the 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 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 CPC.

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

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(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 larger Bench of the tribunal or of a superior court.

(vii) 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.

(viii) 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."

16. We are of the view that while in para 46, we had accepted the principle that pension of pre-2006 S-30 employees being less than post-2006 employees belonging to lower posts was absolutely unreasonable, however, this has not translated clearly and without ambiguity in para 47 of our order as cited above in para 8 and 9. Therefore, this is a mistake or error apparent on the face of the record. Moreover, this would also come under the category of "any other sufficient reason" in the light of Kamlesh Verma (supra) and Kamal Sengupta (supra). Therefore, this preliminary objection of the learned counsel for the respondents is overruled.

17. As regards the second objection, we see no contradiction in deciding this RA even while the respondents have filed a Writ Petition in the Hon'ble High Court. The Tribunal can rectify a mistake apparent on the face of the record and to clarify its order if it suffers from an apparent ambiguity.

18. As regards the third issue raised by the respondents, we had gone through this issue while passing order dated 20.11.2014 and examined the judgments of the Hon'ble Supreme Court in **D.S. Nakara Vs. Union of India**, 1983 SCC (L&S) 145 and S.P.S. Vains (supra) and thereafter passed our order. So those arguments cannot be repeated again while deciding this RA.

19. Having gone through our order and issue raised by the learned counsel for the applicants, we are of the opinion that our order as contained in para 47 needs to be modified. It is, therefore, ordered that the following lines will be added in para 47 between the words "……viz. S-24 – S-29 pay scales" and "….We, however, reject the claim…….":

> "As we have held in para 46 above that a pre-2006 retiree of S-30 getting a pension less than post-2006 retirees in lower grade is absolutely unreasonable, we further direct the respondents that the basic pension of pre-2006 retirees in S-30 should be fixed such that it is not less than Rs.38,500/-."

20. During the course of hearing on this RA, learned counsel for the applicants also brought to our notice that in a recent judgment dated 18.05.2015 in Civil Writ Jurisdiction Case No.10757 of 2010, **M.M.P. Sinha Vs. Union of India and othes**, the Hon'ble High Court of Judicature at Patna has disposed of exactly the same issue holding that basic pension of S-30 pre-2006 retiree with effect from 1.01.2006 has to be stepped up to Rs.38,500/- to avoid discrimination. The Hon'ble High Court of Patna has, therefore, also concurred with our view as held in our order dated 20.11.2004 in OA 937/2010.

21. With the above observations and directions, the RA stands disposed of.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

(Syed Rafat Alam)
Chairman

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