

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

O.A.No.1586/2010

Order reserved on 22nd August 2017

Order pronounced on 6th November 2017

**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

(Mr. Arunav Patnaik and Mr. Shikhar Saha, Advocates)

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

(Mr. Ashok Kumar, Advocate)

O R D E R

Mr. K. N. Shrivastava:

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants have prayed for the following main reliefs:-

“(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 factual matrix of the case is as under:-

2.1 Applicant Nos.1 to 7 & 10 belong to Indian Revenue Service (Income Tax) (IRS (IT)). They have worked as Member, Central Board of Direct Taxes (CBDT) and had retired from service prior to 6th Central Pay Commission (CPC) recommendations coming into implementation w.e.f. 01.01.2006.

2.2 Applicant Nos. 8 & 9 belong to IRS (Customs & Central Excise) (C&CE). They have worked as Member, Central Board of Excise & Customs (CBEC) and have also retired from service prior to the recommendations of 6th CPC coming into implementation w.e.f. 01.01.2006.

2.3 Some of the applicants had retired on attaining the age of superannuation, whereas some of them had taken voluntary retirement from service under Voluntary Retirement Scheme (VRS).

2.4 Earlier, the Members of CBDT & CBEC were in the pay scale of ₹24,050-650-26000 (5th CPC), for which the replacement scale under the 6th CPC is ₹75,500-80,000 (without Grade Pay). This replacement scale was called as HAG+ scale.

2.5 The 6th CPC had recommended ₹80,000/- (fixed) pay for the Members of the CBDT & CBEC. The recommendations of the 6th CPC for CBEC Members are at paragraph 3.3.23 of its Report, whereas its recommendations for CBDT Members are at paragraph 3.3.35 of the Report. Both these paragraphs are extracted below:-

“3.3.23.... Elsewhere in the Report, the Commission has suggested placement of all the Members in Central Board of Direct Taxes (CBDT) in the scale of Rs.80000 (fixed) with their status being equated to that of Special Secretary to the Government of India. The post of Chairman is proposed to be continued in this pay band and with a similar status (Special Secretary to the Government). This dispensation may need to be replicated in CBEC once it is given in CBDT keeping in view the fact that these two Boards are similar.”

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3.3.35.....The Government should consider upgrading the post of Member, CBDT presently in the scale of Rs.24050-26000 to the revised apex pay band of Rs.80000 (fixed). The post of Chairman shall continue to exist in this pay band and the status of Chairman as well as Members, Central Board of Direct Taxes will be that of Special Secretary to the Government of India with the Chairman, CBDT occupying the position of first amongst equals.....”

2.6 The 6th CPC, in paragraph 5.1.47 of its Report, has recommended that in no case the pension of pre-2006 retirees shall be lower than 50% of the

minimum pay + the Grade Pay. Relevant portion of the recommendations is extracted below:-

“5.1.48....The fixation as per this table will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the sum of the minimum of the pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired. To this extent, a change would need to be allowed from the fitment shown in the fitment table.”

2.7 Accepting the recommendations of 6th CPC, the Union Cabinet approved pay scale of ₹80,000/- (fixed) for the Chairman & Members of CBDT & CBEC, vide two separate Notifications, both dated 24.12.2008. The Recruitment Rules of Chairman & Members of CBDT & CBEC were also accordingly amended (Annexures A-8 & A-9).

2.8 Applicant No.9 (Mr. Madan Mohan Bhatnagar), vide his Annexure A-11 letter dated 10.03.2009 (Annexure A-11) addressed to the Secretary, Pension & Pensioners' Welfare, New Delhi – respondent No.3, represented that Members of CBDT & CBEC, who are pre-2006 retirees, should also be given the commensurate pensionary benefits considering the pay scale of ₹80,000/- (fixed) granted to the Chairman & Members of CBDT & CBEC by the Government vide Notifications dated 24.12.2008.

2.9 As several representations of similar kind were being received in the Government, respondent No.3, vide impugned Annexure A-1 O.M. dated 11.02.2009, issued a clarification as to why such request cannot be considered. The relevant portion of this O.M. is extracted below:-

“2. A large number of representations/ references are being received in this Department raising the following issues:

(i) It has been alleged that the above instructions are discriminatory / anomalous and are not in conformity with the decision taken on the recommendations of the Sixth Central Pay Commission'

(ii) It has been suggested that certain pre-2006 scales of pay should be allowed pay band / grade pay or pay scales higher than that mentioned in Col.6 in Annexure 1 to O.M. dated 14.10.2008;

(iii) It has been suggested that in cases where certain posts have been upgraded and allowed higher pay band/grade pay or pay scale, the application of the provision in para 4.2 of the OM dated 1.9.2008 (as clarified from time to time) should be with reference to the upgraded pay band/grade pay or pay scale.

xx xx xx

5. In accordance with the instructions contained in para 4.2 of this Department's OM of even number dated 1.9.2008, the fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. Therefore, the benefit of upgradation of posts subsequent to their retirement would not be admissible to the pre-2006 pensioners in this regard."

2.10 Applicant No.1 had also addressed letters dated 16.02.2009, 23.02.2009 and 02.03.2009 on the subject to respondent No.3, which were replied by said respondent vide impugned Annexure A-2 letter dated 16.03.2009 giving reasons as to why the request made cannot be considered. This letter reads thus:-

"Kindly refer to your letter dated 16.2.09, 23.2.09 and 2.3.09 addressed to Secretary, Department of Pension on the above subject. It has been suggested in your representation that for the purpose of para 4.2 of this Department's OM dated 1.9.08, the benefit of upgradation of the pre-revised scale of Rs.25050-26000 for the post of Member, CBDT to the revised pay (fixed) of Rs.80000/- p.m. with effect from 24.12.2008 may be extended to those who retired before that date. This matter has been examined in this Department in consultation with Ministry of Finance. In this connection, your kind attention is invited to this Department's OM No.38/37/08-P&PW(A) dated 11.2.09. It has been clarified that the benefit of upgradation of post subsequent to the retirement of a Government servant would not be admissible to pre-2006 pensioners for this purpose.

2. Similar approach was adopted at the time of revision of pension of pre-2006 pensioners with effect from 1.1.1996. In the judgment dated 23.11.2006 in CA No.3173-3174/2006 and 3188-3190/2006 (K.s. Krishnaswamy Vs UOI), Hon'ble Supreme Court had upheld the orders issued in this respect and observed that those orders were validly made keeping in view the recommendations of the V Pay Commission. A copy of the judgment of Hon'ble Supreme Court is enclosed.

3. In view of the above, the benefit of para 4.2 of this Department's OM dated 1.9.08 would be available in your case with reference to the normal replacement scale of Rs.65500-80000."

2.11 A judgment was rendered by Hon'ble Supreme Court in the case of **Union of India v. S P S Vains**, (2008) 9 SCC 125 directing the Government that the pay of all pensioners in the rank of Major General and its equivalent rank in the two other Wings of the Defence Services be notionally fixed at the rate given to similar officers of the same rank after the revision of pay scales w.e.f. 01.01.1996, and thereafter to compute their pensionary benefits on such basis with prospective effect from the date of filing of the writ petition. Following this judgment, several representations were preferred by retirees. The Government, after examining such representations in consultation with the Ministries of Finance and Law, issued O.M. 18.11.2009 (page 29 of the paper book) clarifying as under:-

"3. The undersigned is directed to say that the judgement dated 9.9.2008 in CA No.5566 of 2008 (SLP (Civil) No.12357 of 2006) – UOI Vs. Maj. Gen. SPS Vains will not apply in the case of pensioners who retired from the civil departments and who, before their retirement, were governed by the CCS (Pension) Rules, 1972."

The applicants have impugned the Annexure A-1 O.M. dated 11.02.2009, Annexure A-2 letter of respondent No.3 dated 16.03.2009 and O.M. dated 18.11.2009 (page 29) in this O.A.

2.12 The previous litigation history of this case is that the applicants had earlier come before this Tribunal by filing the present O.A. praying for the reliefs as indicated in paragraph (1) above. This O.A. was allowed by the Tribunal vide order dated 05.12.2011 in terms of a Full Bench judgment of the Tribunal in O.A. No.655/2010 decided on 01.11.2011 in the case of **Central Government SAG (S-29) Pensioners' Association & others v. Union of India & others.**

2.13 The respondents herein challenged the above judgment of the Tribunal in Hon'ble High Court of Delhi by filing W.P. (C) No.7821/2012, which was disposed of by the Hon'ble High Court vide order dated 21.10.2013. The order reads as under:-

“1. Impugned order records that counsel for the parties were adidem on the fact that O.A. No.1586/2010 was covered by the decision of the full Bench of the Tribunal in O.A. No.655/2010 and other connected matters decided by the Tribunal on November 01, 2011.

2. It is urged by learned counsel for the petitioners that the counsel for the petitioners gave a wrong concession for the reason issues which arose for consideration in O.A. No.1586/2010 were distinct, much less covered by the issues decided by the Tribunal in O.A. No.655/2010.

3. If this be so, it was the duty of the petitioners to have filed an application before the Tribunal praying that since the concession made by the counsel was wrong, the department should not be held by the same. Prayer ought to have been made to the Tribunal to recall the order dated December 05, 2011 disposing of O.A. No.1586/2010, recording consent of counsel for the petitioners that the matter was squarely covered by the earlier decision.

4. We dispose of the writ petition permitting the petitioners to file an application before the Tribunal praying that concession given by the counsel be permitted to be withdrawn. We would only observe that if the petitioners could *prima facie* show to the Tribunal that the issue which arose for decision in O.A. No.1586/2010 had no concern with the issue which was decided by O.A.No.655/2010 the Tribunal would permit the petitioners to withdraw the concession given by the counsel and would decide the Original Application as per law.”

2.14 Thereafter, the applicants challenged the order dated 21.10.2013 passed by the Hon'ble High Court before the Hon'ble Supreme Court in Special Leave to Appeal (C) No.34799/2013. The said SLA was disposed of vide order dated 07.04.2015 in the following terms:-

“We accordingly allow this appeal, set aside the impugned order and remit the matter back to the High Court for a fresh disposal of W.P. (C) No.7821 of 2012. The High Court may make an endeavour to expedite the disposal of the writ petition. No costs.”

On remand of the matter from Hon'ble Apex Court, the High Court re-adjudicated the said writ petition filed by the applicants and disposed it of vide judgment dated 04.11.2016 quashing the order dated 05.12.2011 passed by the Tribunal and remitting the matter back to the Tribunal for consideration with the following observations:-

“34. In view of the aforesaid, we are of the opinion that the remaining controversy between the parties herein is not covered by the decision of the Full Bench of the Tribunal in OA 655/2010 and accordingly, the concession made by the counsel for the petitioners herein before the Tribunal was incorrect.

35. At this juncture, we are faced with two alternatives, being either to remand the matter back to the Tribunal for adjudication of the pending issue between the parties or adjudicate the same ourselves. We deem it appropriate to remand the matter back as adjudicating the same would deny the parties one right of appeal. We also make it clear that we have not expressed any opinion on the merits of the remaining issue between the parties.”

2.15 The Hon'ble High Court has remanded the case to the Tribunal for adjudication of the remaining controversy between the parties. As could be seen from the records, the remaining controversy is that the issue of re-fixation of pension of the applicants as per subsequent upgradation of the post of Members, CBDT & CBEC had not been adjudicated by the Tribunal.

On this issue, the arguments of learned counsel for the parties were heard on 22.08.2017.

3. Mr. Arunav Patnaik with Mr. Shikhar Saha, learned counsel for applicants and Mr. Ashok Kumar, learned counsel for respondents argued the matter.

4. Mr. Arunav Patnaik, learned counsel for applicants submitted that the grant of apex pay scale of ₹80,000/- (fixed), as recommended by the 6th CPC for Members of the CBDT & CBEC, has been accepted by the Government and accordingly Annexure A-9 Notifications dated 24.12.2008 have been issued by the Government incorporating this pay scale in the Recruitment Rules for Chairman & Members of the CBDT & CBEC. It was further submitted that the principle of modified parity propounded by the 6th CPC has also been accepted by the Government. In this regard, the learned counsel drew our attention to paragraph 4.2 of Annexure A-6 O.M. dated 01.09.2008 issued by the Department of Personnel & Training (DoPT), which states that fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. It further states that in the case of HAG+ and above scales, this will be fifty percent of the minimum of the revised pay scale.

5. Mr. Patnaik thus argued that the revised pay scale of Members of the CBDT & CBEC, being ₹80,000/- (fixed) as per the 6th CPC, the applicants are entitled for fixation of their pension at fifty per cent of this pay scale,

i.e., ₹40,000/-. Mr. Patnaik further argued that the case of the applicants is duly supported by the following judgments:-

- 1) **Bhaiyaji Gupta v. Devendra Chaudhary, Secretary, Deptt. of Pension & Pensioners Welfare & others** (CONT. CAS (C) 661/2015) decided on 24.11.2015 by the Hon'ble High Court of Delhi.
- ii) **Swaran Singh Chahal v. Union of India & others** (CWP No.978/2000) decided on 26.03.2008 by Hon'ble High Court of Himachal Pradesh, Shimla.
- iii) **Pay & Accounts Officer (Revenue) & others v. N R Purushothaman Pillai** (O.P. (CAT) No.169/2015) decided on 18.01.2016 by the Hon'ble High Court of Kerala at Ernakulam.
- iv) **Ram Phal v. Union of India & others** (W.P. (C) No.3035/2016) decided on 03.08.2016 by the Hon'ble High Court of Delhi.
- v) **R.D. Sharma v. Union of India** (W.P. No.14940/2013) decided on 28.04.2017 by the Hon'ble High Court of Madhya Pradesh.
6. *Per contra*, Mr. Ashok Kumar, learned counsel for respondents submitted that the posts of Member of the CBDT & CBEC have now been made selection posts and they are no more promotional posts. It was also submitted that the applicants had become Members of the CBDT & CBEC

by way of promotion and not by selection, and that the judgments relied upon by the learned counsel for applicants pertain to selection posts.

7. Mr. Ashok Kumar further stated that taking cognizance of various judgments of the superior courts, the DoPT has issued O.M. dated 30.07.2015 on the issue of 'revision of pension of pre-2006 pensioners', wherein it has been stated that the Government had decided pension/family pension of all pre-2006 pensioners/ family pensioners may be revised in accordance with DoPT O.M. dated 28.01.2013 w.e.f. 01.01.2006 instead of 24.09.2012. Accordingly, the applicants have been accorded the benefits of O.M. dated 28.01.2013.

8. We have considered the arguments of learned counsel for the parties and have also perused the pleadings.

9. As noticed hereinabove, the Hon'ble High Court of Delhi has remanded this matter to the Tribunal for adjudicating the pending issue between the parties. It is also noticed in the judgment that the controversy before the Full Bench of the Tribunal was in respect of revision of pension as per the corresponding pay scales and not refixation as per the subsequent upgradation of posts. So far the revision of pension as per the corresponding pay scales is concerned, it stands adjudicated and settled in terms of the judgment of Full Bench. The only left over controversy for adjudication is relating to refixation of pension as per the subsequent upgradation of the posts. Admittedly, the applicants retired prior 01.01.2006 as Members of the CBDT & CBEC in the then prevailing pay scale of ₹24,050-650-26000 (5th CPC), for which the replacement scale

under the 6th CPC is ₹75,500-80,000 (without Grade Pay). Accordingly, the pension of applicants has been refixed in terms of DoPT O.M. dated 28.01.2013, as clarified by it in subsequent O.M. dated 30.07.2015. The applicants are entitled for revised pension fixation w.e.f. 01.01.2006.

10. As regards the core controversy of refixation of pension of the applicants, vis-à-vis, the upgradation of the posts of Members of the CBDT & CBEC to apex scale of ₹80,000/- (fixed), it is to be noted that these posts have been made selection posts after the Government decided to upgrade them. Accordingly, the relevant Recruitment Rules for these posts have been amended by the Government vide two separate Notifications dated 24.12.2008 (Annexures A-8 & A-9). Hence, it is quite clear that these posts are no more promotional posts and they have become selection posts. The Selection Committee has also been prescribed under the amended Recruitment Rules comprising Cabinet Secretary as a Chairman, Principal Secretary to Prime Minister, Home Secretary and Secretary, DoPT as its Members. It is further stipulated that the Selection Committee may devise ways to assess the candidates. The applicants herein had arisen to the posts of Member of the CBDT & CBEC by way of promotion and not by selection. Under these circumstances, it is natural to assume that the benefit of upgradation of the pay scale of the posts can be conferred on only such officers, who came to occupy these posts by way of selection.

11. Judgments relied upon by the learned counsel for applicants and noted in paragraph (5) of this order pertain to the selection posts. The petitioners therein had been denied pensionary benefits commensurate

with the upgraded posts, which they had occupied through selection prior to such upgradation.

12. The DoPT, after taking into consideration all the latest judgments on the issue of pension fixation, vide its O.M. dated 30.07.2015, has correctly stated that the pension of pre-2006 retirees are to be fixed in accordance with its earlier O.M. dated 28.01.2013. The only change made therein is that such pension fixation has been made effective from 01.01.2016 instead of 24.09.2012. The relevant portion of this O.M. is extracted below:-

“The undersigned is directed to say that as per Para 4.2 of this Department’s OM of even number dated 1.9.2008 relating to revision of pension of pre-2006 pensioners w.e.f. 1.1.2006, the revised pension w.e.f. 1.1.2006, in no case, shall be lower than 50% of the sum of the minimum of pay in the pay band and the grade pay thereon corresponding to the pre-revised pay scale from which the pensioner had retired. A clarification was issued vide DoP&PW OM of even number dated 3.10.2008 that the pension calculated at 50% of the minimum of pay in the pay band plus grade pay would be calculated at the minimum of the pay in the pay band (irrespective of the pre-revised scale of pay) plus the grade pay corresponding to the pre-revised pay scale.

2. Several petitions were filed in Central Administrative Tribunal, Principal Bench, New Delhi inter alia claiming that the revised pension of the pre-2006 pensioners should not be less than 50% of the minimum of the pay band + grade pay, corresponding to the pre-revised pay scale from which pensioner had retired, as arrived at with reference to the fitment tables annexed to Ministry of Finance, Department of Expenditure OM No.1/1/2008-IC dated 30th August, 2008. Hon’ble CAT, Principal Bench, New Delhi vide its common order dated 1.11.2011 in OA No.655/2010 and three other connected OAs directed to re-fix the pension of all pre-2006 retirees w.e.f. 1.1.2006 based on the Resolution dated 29.8.2008 of the Department of Pension & Pensioners’ Welfare and in the light of the observations of Hon’ble CAT in that order.

3. The above order was challenged by the Government by filing Writ Petition No.1535/2012 in respect of OA No.655/2010 and WP No.2348-50/12 in respect of the three other connected OAs in the High Court of Delhi. The Hon’ble High court in its common Order dated 29.4.2013 noted that the DoP&PW had, in the meanwhile, issued an OM No.38/37/08-P&PW (A) dated 28.1.2013 which

provided for stepping up of pension of pre-2006 pensioners w.e.f. 24.9.2012 to 50% of the minimum of pay in the pay band and grade pay corresponding to pre-revised pay scale from which the pensioner had retired. Hon'ble High Court observed that the only issue which survived was, with reference to Paragraph 9 of OM dated 28.1.2013 which makes it applicable w.e.f. 24.9.2012 instead of 1.1.2006. Hon'ble High Court of Delhi dismissed the Writ Petition No.1535/2012 along with three other Writ Petitions vide its order dated 29.4.2013. Special Leave Petitions (No.23055/2013) and No.36148-50/2013) filed against the said order dated 29/4/2013 of the Hon'ble Delhi High Court have also been dismissed by the Hon'ble Supreme Court.

4. Accordingly, in compliance with the above judicial pronouncements, it has been decided that the pension/family pension of all pre-2006 pensioners/family pensioners may be revised in accordance with this Department's OM No.38/37/08-P&PW(A) dated 28.1.2013 with effect from 1.1.2006 instead of 24.9.2012. Further, this benefit has already been granted to the Applicants in OA No.655/2010 vide OM of even No. dated 26/08/2014 read with OM dated 19/09/2014 following dismissal of SLP (C) No.23055/2013 by the Hon'ble Supreme Court.”

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.

14. In the conspectus of discussions in the pre-paragraphs, the O.A. is dismissed being found devoid of any merit. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

/sunil/