

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**O.A.NO.2553 OF 2014**  
**New Delhi, this the 15<sup>th</sup> day of February, 2016**

**CORAM:**  
**HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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Rajendra,  
s/o late Sh.Hans Raj,  
aged 88 years,  
Resident of Flat No.6436/B-39,  
Vasant Kunj,  
New Delhi 110070

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Applicant

(By Advocate: Mr.R.Kapoor)

Vs.

1. Pay & Accounts Officer,  
Central Pension Accounting Office,  
Ministry of Finance, Govt. of India,  
Trikoot Complex,  
Bhikaji Cama Place,  
R.K.Puram,,  
New Delhi 110066
  
2. Pay & Accounts Officer,  
Ministry of Law & Justice,  
4<sup>th</sup> Floor, B.Wing, Janpath Bhawan,  
Janpath,  
New Delhi 110001
  
3. Department of Pension & Pensioners Welfare,  
Lok Nayak Bhawan,  
A Wing, 3<sup>rd</sup> Floor,  
Khan Market,  
New Delhi 110003

4. President,  
 Income Tax Appellate Tribunal,  
 Pratishtha Bhawan,  
 4<sup>th</sup> Floor, 101 M.K.Road,  
 Mumbai 400020

í í í . Respondents

(By Advocate: Mr.Rajesh Katyal)

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### ORDER

**Raj Vir Sharma, Member(J):**

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

1. Restoration of pension to Rs.37,750/- p.m. w.e.f. 01.01.2006 by quashing Pay & Accounts Officer's order reducing the pension.
2. Refund of Rs.3,52,386/- illegally collected from me along with interest @ 12% p.a.ö

2. The brief facts of the applicant's case, as projected in the O.A., are that he had retired from service as Member, Income Tax Appellate Tribunal, on 22.4.1987. He had been receiving pension as per rules. Accepting the recommendation of the Sixth Central Pay Commission (6<sup>th</sup> CPC), the Government revised the pay scale of Member, ITAT, at Rs.75000-80,000/-.

Accordingly, his pension was fixed at Rs.37750/- per month, i.e., 50% of the minimum of the pay scale, with effect from 1.1.2006. In June 2011, he received a copy of an undated letter bearing diary No.779-80 (Annexure A) from the Pay & Accounts Officer, Ministry of Law & Justice, Department of Legal Affairs, New Delhi, addressed to the Pay & Accounts Officer, Central

Pension Accounting Office, New Delhi, reducing his pension from Rs.37,750/- to Rs.33,500/-. On the basis of the said letter, the Corporation Bank, Vasant Kunj, New Delhi 110070 (hereinafter referred to as pension disbursing bank), which has been disbursing pension to him, recovered from him Rs.3,52,386/- as excess pension paid since 1.1.2006. By his letter dated 7.8.2012(Annexure B), the applicant requested the Pay & Accounts Officer, Ministry of Law & Justice, Department of Legal Affairs, New Delhi, for revision of his pension and issuance of necessary instruction to the pension disbursing bank to refund the amount recovered from him as excess pension, but to no effect. Hence, he has filed the present O.A. seeking the reliefs as aforesaid.

2.1 In support of his claim, the applicant has referred to and relied on the following decisions of the Tribunal:

- (1) **O.Anandaram Vs. Pay & Accounts Officer and others**, O.A. No.759 of 2011, decided by Madras Bench on 26.3.2012;
- (2) **B.V.Venkataramaiah Vs. Pay & Accounts Officer and others**, O.A.No.517 of 2012, decided by Bangalore Bench on 14.2.2013;
- (3) **Shri Prakash Narain Vs. Secretary, Department of Personnel and others**, O.A.No.1715 of 2013, decided by Principal Bench on 23.5.2013;

(4) **Shri Bhaiyaji Gupta Vs. Union of India through Secretary,**

**Department of Personnel and others, OA No.2374 of 2014,**

decided by Principal Bench on 18.7.2014;

(5) **Central Government SAG (S-29) Pensioners Association**

**through its Secretary Vs. Union of India and another, OA**

**No.655 of 2010, decided by Full Bench of the Tribunal on**

**1.11.2011.**

2.2 It is stated by the applicant that in compliance with the orders passed by the Tribunal, the respondents have fixed the pension of the said S/Shri O.Anandaram, B.V.Venkataramaiah, Prakash Narain, and Bhaiyaji Gupta, all retired from service as Members, ITAT, at Rs.37,750/- with effect from 1.1.2006. It is, thus, contended by the applicant that he being similarly placed as those persons, the respondents should have restored his pension to Rs.37,750/- with effect from 1.1.2006 and refunded the amount recovered from him as purported excess pension.

2.3 It is also contended by the applicant that the aforesaid orders passed by the Tribunal have attained finality, and, therefore, the respondents are liable to extend him the benefits of the said orders, since he is similarly placed as S/Shri O.Anandaram, B.V.Venkataramaiah, Prakash Narain, and Bhaiyaji Gupta.

3. In their counter reply, the respondents have stated, *inter alia*, that the applicant retired from service as Member, ITAT, on 22.4.1987. At the time of his retirement, he was in the 4<sup>th</sup> CPC pay scale of Rs.7300-7600/-. The 5<sup>th</sup>

CPC pay scale was implemented with effect from 1.1.1996. The 4<sup>th</sup> CPC pay scale of Rs.7300-7600/- was revised to 5<sup>th</sup> CPC pay scale of Rs.22400-24500/- with effect from 1.1.1996. On 6.10.1999, the pay scale of Member, ITAT, was upgraded from Rs.7300-7600/- to Rs.7300-8000/-, and the said upgraded pay scale was made effective from 1.1.1996, as stipulated in the Presidential order dated 6.10.1999. The 4<sup>th</sup> CPC pay scale of Rs.7300-8000/- was revised to 5<sup>th</sup> CPC pay scale of Rs.22400-26000/- with effect from 1.1.1996. The recommendations of the 6<sup>th</sup> CPC were accepted by the Government of India, vide its resolution dated 29.8.2008. The 5<sup>th</sup> CPC pay scale of Rs.22400-24500/- (corresponding to the 4<sup>th</sup> CPC pay scale of Rs.7300-7600/-, from which the applicant retired from service) was revised to 6<sup>th</sup> CPC HAG scale of pay of Rs.67000-79000/- with effect from 1.1.2006. The 5<sup>th</sup> CPC pay scale of Rs.22400-26000/- (corresponding to the 4<sup>th</sup> CPC pay scale of Rs.7300-8000/-) was revised to 6<sup>th</sup> CPC HAG pay scale of Rs.75500-80000/- with effect from 1.1.2006.

3.1 As per paragraph 4.2 of the O.M. No.38/37/08-P&PW(A), dated 1.9.2008, issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioners Welfare, the fixation of pension would 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, and that in the case

of HAG+ and above scales, this would be fifty percent of the minimum of the revised pay scale with effect from 1.1.2006.

3.2 The Department of Pension & Pensioners Welfare, vide its O.M. No.38/37/08-P&PW(A), dated 28.1.2013, clarified, *inter alia*, that the pension of pre-2006 pensioners as revised w.e.f. 1.1.2006 in terms of paragraph 4.1 or paragraph 4.2 of the O.M. dated 1.9.2008, *ibid*, as amended from time to time, would be further stepped up to 50% of the sum of minimum of pay in the pay band and the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired, as arrived at with reference to the fitment tables annexed to the Ministry of Finance, Department of Expenditure O.M. dated 30.8.2008, *ibid*, and that in the case of HAG and above scales, the fixation of pension would be 50% of the minimum of the pay in the revised pay scale arrived at with reference to the fitment tables, annexed to the O.M. dated 30.8.2008 of the Ministry of Finance, Department of Expenditure.

3.3 The respondents have stated that the applicant's pension was rightly fixed at Rs.33500/-, i.e., 50% of the minimum of the pay in the 6<sup>th</sup> CPC HAG scale of Rs.67000-79000/-, which corresponds to 5<sup>th</sup> CPC pay scale of Rs.22,400-24,500/- and 4<sup>th</sup> CPC pay scale of Rs.7300-7600/- from which he retired from service as Member, ITAT, with effect from 22.4.1987. Therefore, the applicant is not entitled to the reliefs claimed by him in the O.A. which is liable to be dismissed.

3.4 The respondents have also stated that in compliance with the Tribunal's order passed in OA No.655 of 2010, which was upheld by the Hon'ble High Court of Delhi, and after dismissal of SLP by the Hon'ble Supreme Court, the Government of India, Ministry of Personnel & PG and Pensions, Department of Pension & Pensioners' Welfare, vide O.M. No. 38/37/08-P&PW(A), dated 30.7.2015, decided, *inter alia*, that the pension of all pre-2006 pensioners would be revised in accordance with O.M. dated 28.1.2013, *ibid*, with effect from 1.1.2006 instead of 24.9.2012, and that in case the consolidated pension calculated as per para 4.1 of O.M. dated 1.9.2008, *ibid*, became higher than the pension calculated in the manner indicated in the O.M. dated 28.1.2013, *ibid*, the same higher consolidated pension would continue to be treated as basic pension.

3.5 The respondents have also stated that in a similar case, O.A. No.183 of 2014 (**K.R.Dixit Vs. Union of India and others**), decided on 28.1.2014, the applicant, who had retired from service as Member, ITAT, in the year 1993, challenged the fixation of his pension at Rs.33,500/- and recovery of the excess pension from him. The Ahmedabad Bench of the Tribunal held that since at the time of his retirement from service as Member, ITAT, the applicant's scale of pay was Rs.7300-7600/-, and the order upgrading the pay scale of Member of ITAT came into effect only from 1-1-1996, the applicant was not entitled to the benefits of upgradation, because by that time he had already retired, about three years prior to the

issuance of the Presidential order upgrading the pay scale of Member of ITAT. Accordingly, the Tribunal dismissed the O.A.

4. In his rejoinder reply, the applicant has controverted the stand taken by the respondents. It has been pointed out by the applicant that the respondents have not commented upon the cases of S/Shri O.Anandaram, B.V.Venkataramaiah, Shri Prakash Narain. It has also been stated by the applicant that in the absence of any provision contained in the O.Ms. issued by the Department of Pension & Pensioners Welfare for fixation of pension corresponding to the pre-revised pay scale from which the pensioner retired, he is entitled to fixation of his pension on the basis of 4<sup>th</sup> CPC pay scale of Rs.7300-8000/- for the Member, ITAT. It has also been contended by the applicant that reduction of his pension and recovery of the purported excess pension with effect from 1.1.2006 without issuing any notice to him, being violative of the principles of natural justice, are unsustainable and liable to be set aside.

5. I have carefully perused the records, and have heard Mr.R.Kapoor, the learned counsel appearing for the applicant, and Mr.Rajesh Katyal, the learned counsel appearing for the respondents.

6. Before proceeding to consider the rival contentions of the parties, I would like to refer to and reproduce the orders passed by different Benches of the Tribunal, on which reliance has been placed by the applicant in support of his claim.

6.1         **In Central Government SAG (S-29) Pensioners Association through its Secretary Vs. Union of India and another** (supra), Full Bench of the Tribunal considered and decided OA No.655/2010 (Central Government SAG (S-29) Pensioners Association and another Vs. Union of India and another), with OA No.3079/2009 (Central Government Pensioners Association of Additional/Joint Secretary & Equivalent Officers and two others Vs. Union of India and another), OA No.306/2010 (D.L.Vhora and 14 others Vs. Union of India and another), and OA No.507/2010 (PPS Gumber and 5 others Vs. Union of India and two others) by a common order dated 1.11.2011.

6.1.1         The Full Bench, while considering the facts and issues involved in the four O.As., discussed the pleadings and contentions of the respective parties in OA No.655 of 2010.

6.1.2         In paragraph 29 of the order dated 1.11.2011, *ibid*, the Full Bench observed thus:

ð29. From the above extracted portion it is clear that the principle of modified parity, as recommended by the V CPC and accepted by the VI CPC and accepted by the Central Government provides that revised pension in no case shall be lower than 50% of the sum of the minimum of the pay in the pay band and grade pay corresponding to revised pay scale from which the pensioner had retired. According to us, as already stated above, in the garb of clarification, respondents interpreted minimum of pay in the pay band as minimum of the pay band. This interpretation is apparently erroneous, for the reasons:

- a) if the interpretation of the Government is accepted it would mean that pre-2006 retirees in S-29 grade retired in December, 2005 will get his pension fixed at Rs.23700/- and another officer who retired in January 2006 at the minimum of the pay will get

his pension fixed at Rs.27350/- . This hits the very principle of the modified parity, which was never intended by the Pay Commission or by the Central Government;

- b) The Central Government improved upon many pay scales recommended by the VI CPC. The pay scale in S-29 category was improved from Rs.39200-67000/- plus Grade Pay of Rs.9,000/- with minimum pay of Rs.43280/- to Rs.37,400-67000/- with grade pay of Rs.10,000/- with minimum pay of Rs.44,700/- (page 142 of the paper-book). If the interpretation of the Department of Pension is accepted, this will result in reduction of pension by Rs.4,00/- per month. The Central Government did not intend to reduce the pension of pre-2006 retirees while improving the pay scale of S-29 grade;
- c) If the erroneous interpretation of the Department of Pension is accepted, it would mean that a Director level officer retiring after putting in merely 2 years of service in their pay band (S-24) would draw more pension than a S-29 grade officer retiring before 1.1.2006 and that no S-29 grade officer, whether existing or holding post in future will be fixed at minimum of the pay band, i.e., Rs.37,400/-. Therefore, fixation of pay at Rs.37,400/- by terming it as minimum of the pay in the pay band is erroneous and ill conceived; and
- d) That even the Minister of State for Finance and Minister of State (PP) taking note of the resultant injustice done to the pre-11.2006 pensioners (pages 169-170) had sent formal proposal to the Department of Expenditure seeking rectification but the said proposal was turned down by the officer of the Department of Expenditure on the ground of financial implications. Once the Central Government has accepted the principle of modified parity, the benefit cannot be denied on the ground of financial constraints and cannot be said to be a valid reason.ö

6.1.3 Accordingly, the Full Bench concluded and issued the following directions:

ö30. In view of what has been stated above, we are of the view that the clarificatiory OM dated 3.10.2008 and further OM dated 14.10.2008 (which is also based upon clarificatiory OM dated 3.10.2008) and OM dated 11.02.2009, whereby representation was rejected by common order, are required to be quashed and set aside, which we accordingly do. Respondents are directed to re-fix the pension of all pre-2006 retirees w.e.f. 1.1.2006, based on the resolution dated 29.08.2008 and in the light of our observations made above. Let the respondents re-fix the pension and pay the arrears thereof within a period of 3 months from the date of receipt of a copy of this order. OAs are allowed in the aforesaid terms, with no order as to interest and costs.ö

## 6.2 In **O.Anandaram Vs. Pay & Accounts Officer and others**

(supra), Madras Bench of the Tribunal passed the following order:

öThis is an O.A. under Section 19 of the Administrative Tribunals Act 1985. The applicant Shri O.Anandaram has retired as Member of Income Tax Appellate Tribunal on 20.07.1993. Thereafter he has been receiving pension as per rules. After the recommendation of the 6<sup>th</sup> Pay Commission came into force the Assistant Registrar/DDO of the Income Tax Appellate Tribunal has sent a proposal to the PAO, Central Pension Accounting Office, New Delhi with a working sheet wherein, the pension eligible for the applicant has been fixed at Rs.37750/- with effect from 01.01.2006. Based on the proposal so sent the applicant has been receiving pension at the rate of Rs.37750/- from 01.01.2006. However, the 2<sup>nd</sup> respondent by its order dated 23.05.2011 marked Annexure A-13 has fixed the pension of the applicant at Rs.33,500/- with effect from 01.01.2006. The 1<sup>st</sup> respondent passed an order dated 04.05.2011 fixing the pension of Rs.33500/-, thereafter the 2<sup>nd</sup> respondent passed an order dated 23.05.2011 informing the disbursing Bank to pay him pension of Rs.33,500/- per month/aggrieved by the above orders the applicant has filed this OA seeking the following relief:

öTo set aside the order No.314389300159/ 717888/A3 dated 23.05.2011 issued by the 2<sup>nd</sup> respondent and the order No. WO31438110500016/405-06 dated 04.05.2011 issued by the 1<sup>st</sup> respondent in so far as it fixes the pension of the applicant at Rs.33,500/- instead of Rs.37,750/- with effect from 01.01.2006 and consequently direct the respondents to fix the pension of the applicant at Rs.37750/- and pass such further or orders as may be deemed fit and proper.ö

2. The learned counsel Mr.Karthikrajan appearing on behalf of the applicant states that when he has been receiving

the higher amount of pension at Rs.37,750/- with effect from 01.01.06 the respondents have passed impugned orders vide order No. 314389300159/717888/A3 dated 23.05.2011 and No. WO31438110500016/405-06 dated 04.05.2011 reducing his pension to Rs.33,500/- without any notice whatsoever. He further submits that any reduction in the pension disbursed to the applicant with effect from 01.01.2006 should have been preceded by a notice. Arguing the case at length, he has placed reliance on the order of the Full Bench of the Principal Bench in O.A. 655 of 2010 and all other O.A. connected with them and order of the Tribunal dated 01.11.2011. In the said order the Principal Bench has discussed various earlier orders of the Apex Court connected with the pension and pensionary benefits and also discussed various O.Ms. connected with the pension after 01.01.2006. For the sake of brevity we would like to quote the operative portion of the full Bench order:

“In view of what has been stated above, we are of the view that the clarificatiory OM dated 3.10.2008 and further OM dated 14.10.2008 (which is also based upon clarificatiory OM dated 3.10.2008) and OM dated 11.02.2009, whereby representation was rejected by common order, are required to be quashed and set aside, which we accordingly do. Respondents are directed to re-fix the pension of all pre-2006 retirees w.e.f. 1.1.2006, based on the resolution dated 29.08.2008 and in the light of our observations made above. Let the respondents re-fix the pension and pay the arrears thereof within a period of 3 months from the date of receipt of a copy of this order. OAs are allowed in the aforesaid terms, with no order as to interest and costs.”

3. Per contra, the learned counsel for respondents states that this order of the Tribunal has been challenged before the Hon'ble High Court of Delhi. However, it is stated that no stay has been granted by the Hon'ble High Court of Delhi.

4. We have also perused the reply statement and find that the official respondents have placed reliance on OM dated 11.2.2009.

It is also brought to our notice that the Principal Bench in OA No.1586 of 2010 vide its order dated 05.12.2011 has relied on its earlier order in O.A 655/2010 and other connected OAs and passed the following order:

“Counsel for the parties are ad idem that present Original Application is covered in favour of the applicants by the Full Bench decision of this Tribunal in the matter of Central Government SAG (S-29) Pensioners Association & Ors Vs. Union of India & Ors (OA No.655/2010 and other connected OAs decided on 01.11.2011).

For parity of reasons given in the Full Bench Judgment of this Tribunal in the matter of Central Government SAG (S-29) Pensioners Association & Ors Vs. Union of India & Ors (supra), present Original Application

is allowed in the same terms, and the directions would be in terms of the prayer contained in Para no.8(iii) & (iv) of present Original Application, with all consequential benefits.

5. After hearing Mr.Karthikrajan, the counsel for applicant, Mr.S.Muthusamy, counsel for official respondents and Mr.P.D.Audikesavalu, counsel for the Bank we are of the opinion that the applicant who has retired in the year 1993 will get the benefit of order of the Full Bench of the Principal Bench dated 01.11.2011 which is cited supra. The officials respondents have not brought to our notice any other issue which can distinguish the facts of the Principal Bench order cited supra and the facts of the present case. They have simply relied (*sic*) in the O.A. dated 11.2.2009 which has been quashed as mentioned earlier. In such view of the matter we are of the opinion that benefits of the OA decided by the Principal Bench in fixation of pension will apply to the applicant in this OA. Under such circumstances placing reliance on the orders of the Full Bench of the Principal Bench in O.A. 655/2010 and connected OAs and as reiterated in OA No.1586/2010, we direct the official respondents to refix the pension of the applicant with effect from 01.01.2006 based on the letter dated 29.10.2008. The impugned orders dated 04.05.2011 and 23.05.2011 are set aside and the respondents are directed not to reduce the pension of the applicant. Keeping in view the statement made by learned counsel for official respondent that the order of the Principal Bench cited supra have been challenged by Writ Petition from the High Court of Delhi we make it clear that this order of this Tribunal will be subject to the outcome of Writ Petition if any stated to be pending before the High Court of Delhi.

7. O.A. is allowed. At the time of admission this Tribunal has passed a stay by its order dated 16.06.2011. We make it obsolete.

#### CORRIGENDUM

OA 759/2011 came up for hearing under the caption "For Being Mentioned" on 10.04.2012. The Hon'ble Bench has ordered the following corrigendum to the order dated 26.03.2012 is OA 759/2011.

In Page 5, Para 7, second line the word "obsolete" should be read as "absolute".

6.3 **In B.V.Venkataramaiah Vs. Pay & Accounts Officer and others** (supra), Bangalore Bench of the Tribunal passed the following order:

öHeard. When the matter was taken up for hearing, both the counsels submit that in a similar matter, the coordinate Bench at Madras had passed an order on 26.3.2012 in OA No.759/2011.

The fulcrum of he said order is that the decision is *pari materia* to which is pending before the Hon'ble High Court of Delhi against the order of the Principal Bench in a similar matter. The OA was allowed and the same relief to the same extent is liable to be extended to the applicant as well. We declare to be so subject to the decision of the Delhi High Court in the matter. There will not be any recovery in the matter in the interregnum.

The OA is accordingly disposed of. No order as to costs.ö

**6.4 In Shri Prakash Narain v. Union of India through Secretary, Department of Personnel & others** (supra), Principal Bench of the Tribunal passed the following order:

öOn implementation of the recommendations of the 6th Central Pay Commission, pension of the applicant was fixed in terms of Governments Resolution No.38/37/08-P&PW (A) dated 29.8.2008, i.e., at 50% of the minimum of the pay band and the grade pay of the post from which he retired. Subsequently, his pension is reduced proportionately on the ground that he had not completed the qualifying service for full pension at the time of retirement, i.e., 33 years.

2. Shri S K Gupta, learned counsel for applicant submitted that if the service rendered by the applicant as Accountant Member, Income Tax Appellate Tribunal (ITAT) is taken into account, he had rendered more than 33 years of qualifying service for pension. He has also placed reliance upon the decision rendered by the Full Bench of this Tribunal in batch of Original Applications, including O.A. No.655/2010 Central Government SAG (S-29) Pensioners Association through its Secretary v. Union of India & another, decided on 1.11.2011, to contend that irrespective of the length of service rendered by the employee at the time of his retirement, in view of the recommendations of the 6th Central Pay Commission and the Resolution dated 29.8.2008, the pension of pre-1.1.2006 retiree has to be fixed at 50% of the minimum of the pay band and the grade pay admissible for the post from which he retired.

3. Heard. Issue notice to the respondents. Shri Inderjit Singh, learned proxy counsel for Shri Rajinder Nischal, learned counsel entered appearance on behalf of respondents. He fairly concedes that the claim of the applicant deserves to be considered in view of the judgment of the Full Bench of this Tribunal (supra) as upheld by the Hon'ble High Court of Delhi in W.P. (C) No.1535/2012 with connected petitions, decided on 29.4.2013, thus the respondents would reconsider the claim of the applicant in view of the said judgment and till the outcome of such reexamination, they will not reduce the pension of the applicant.

4. In view of the statement made by learned proxy counsel for respondents, O.A. stands disposed of. No costs.ö

**6.5 In Shri Bhaiyaji Gupta Vs. Union of India through Secretary, Department of Personnel and others (supra), Principal Bench of the Tribunal passed the following order:**

öShri S.K.Gupta, learned counsel for applicant submits that controversy to be determined in the present OA is in all fours of the order dated 23.05.2013 passed in OA No.1715/2013 ö Prakash Narain Vs. Union of India and he would be satisfied if the respondents are directed to examine his claim for fixation of pension in view of the order of Full Bench of this Tribunal, as upheld by the Hon'ble High Court in CWP No.1535/2012. The para 3 of the order passed in OA No.1715/2013 reads as under:

ö3. Heard. Issue notice to the respondents. Shri Inderjit Singh, learned proxy counsel for Shri Rajinder Nischal, learned counsel entered appearance on behalf of respondents. He fairly concedes that the claim of the applicant deserves to be considered in view of the judgment of the Full Bench of this Tribunal (supra) as upheld by the Hon'ble High Court of Delhi in W.P. (C) No.1535/2012 with connected petitions, decided on 29.4.2013, thus the respondents would reconsider the claim of the applicant in view of the said judgment and till the outcome of such reexamination, they will not reduce the pension of the applicant.ö

2. Issue notice to the respondents. Mr. Rajinder Nischal, learned senior standing counsel for UOI, accepts notice on behalf of the respondents.

3. In view of the stand taken by the learned counsel for the applicant, the OA is disposed of with a direction to the respondents to examine the claim of the applicant for refixation of pension in terms of the order of Hon'ble High Court in CWP No.1535/2012 and to take a final view in the matter. Till such

re-examination, the respondents would not reduce the pension of the applicant. No costs.ö

7. It is the admitted position between the parties that the applicant had retired from service as Member, ITAT, on 22.4.1987. At the time of his retirement, he was drawing pay in the 4<sup>th</sup> CPC pay scale of Rs.7300-7600/-. On retirement, his pension was fixed on the basis of the pay drawn by him in the 4<sup>th</sup> CPC pay scale of Rs.7300-7600/-. The pay scale of Member, ITAT, was upgraded from the 4<sup>th</sup> CPC pay scale of Rs.7300-7600/- to the 4<sup>th</sup> CPC pay scale of Rs.7600-8000/- with effect from 1.1.1996, vide order dated 6.10.1999. The applicant having already retired from service on 22.4.1987, the upgraded pay scale of Rs.7600-8000/- effective from 1.1.1996, vide Presidential order dated 6.10.1999, could by no stretch of imagination be said to be admissible to the applicant.

7.1 The 4<sup>th</sup> CPC pay scale of Rs.7300-7600/- was revised to 5<sup>th</sup> CPC pay scale of Rs.22400-24500/- with effect from 1.1.1996. The 5<sup>th</sup> CPC pay scale of Rs.22400-24500/- was revised to 6<sup>th</sup> CPC HAG pay scale of Rs.67000-79000/- with effect from 1.1.2006. Therefore, the applicant was entitled to have his pension revised with reference to the 6<sup>th</sup> CPC HAG pay scale of Rs.67000-79000/- corresponding to 5<sup>th</sup> CPC pay scale of Rs.22400-24500/-, and 4<sup>th</sup> CPC pay scale of Rs.7300-7600/-, from which he had retired from service as Member, ITAT, on 22.4.1987.

8. It is the claim of the applicant that his pension was revised to Rs.37,750/- with effect from 1.1.2006 on introduction of the 6<sup>th</sup> CPC pay scale. As already noted, the 6<sup>th</sup> CPC HAG pay scale of Rs.67000-79000/-

corresponds to 5<sup>th</sup> CPC pay scale of Rs.22400-24500/- and 4<sup>th</sup> CPC pay scale of Rs.7300-7600/-, from which the applicant had retired as Member, ITAT, on 22.4.1987. The 5<sup>th</sup> CPC pay scale of Rs.22,400-24,500/- is known as 5<sup>th</sup> CPC ó Scale 30.

8.1 As per the Department of Pension & Pensionersø Welfare O.M. dated 1.9.2008, O.M. dated 28.1.2013, and O.M. dated 30.7.2015, cited supra, in the case of HAG scale, the fixation of pension would be fifty percent of the minimum of the revised pay scale. When the applicant had retired from service on 22.4.1987 as Member, ITAT, in the 4<sup>th</sup> CPC pay scale of Rs.7300-7600/-, which corresponds to 5<sup>th</sup> CPC pay scale of Rs.22400-24500/- and 6<sup>th</sup> CPC HAG scale of pay of Rs.67000-79000/-, his pension would be fifty percent of the minimum of the 6<sup>th</sup> CPC HAG scale of pay of Rs.67000-79000/-, which worked out to Rs.33,500/-, with effect from 1.1.2006.

8.2 In support of his claim that his pension was fixed at Rs.37,500/- with effect from 1.1.2006, the applicant has produced a copy of the letter dated 15.1.2009 issued by Shri J.S.Chhilar, Registrar, Income Tax Appellate Tribunal, Khan Market, New Delhi 110003, to the Pay & Accounts Officer, Department of Legal Affairs, 4<sup>th</sup> Floor, Janpath Bhawan, Janpath, New Delhi 110001, which states thus:

óAs pay of Members, Income Tax Appellate Tribunal has been fixed at Rs.75,000/- P.M. w.e.f. 01/01/2006 on the recommendations of the 6<sup>th</sup> Pay Commission, the pension of retired Members I.T.A.T. and their families is required to be revised accordingly as per para 4.2 (Section II) of Govt. instructions (AICCPA Special Circular/1/9/2008) to 50% of the pay of the Members.

2. Necessary instructions may therefore be issued to disbursing Banks, if necessary, and revised PPO (Pension Payment Order) to retired Members also be issued.

This issues with the approval of the Competent Authority.ö

Copy of the said letter was sent to the Pay & Accounts Officers, Central Pension Accounting Office, Government of India, Trikoot-2, Bhikaji Cama Place, New Delhi 110066, as well as to the applicant, though admittedly the applicant had retired from service on 22.4.1987 while working as Member, ITAT, Bombay.

8.2.1 The applicant has not filed copy of any letter either issued by the Pay & Accounts Officer, Department of Legal Affairs, 4<sup>th</sup> Floor, Janpath Bhawan, Janpath, New Delhi 110001, or by the Pay & Accounts Office, Central Pension Accounting Office, Ministry of Finance, Government of India, Trikoot-2, Bhikaji Cama Place, New Delhi 110066, with reference to the letter dated 15.1.2009 issued by Shri J.S.Chhilar, Registrar, Income Tax Appellate Tribunal, Loknayak Bhawan, Khan Market, New Delhi-110003. The applicant has also not made any averment in his pleadings as to what action was taken by the said Pay & Accounts Officer, Department of Legal Affairs, 4<sup>th</sup> Floor, Janpath Bhawan, Janpath, New Delhi 110001, or by the Pay & Accounts Office, Central Pension Accounting Office, Ministry of Finance, Government of India, Trikoot-2, Bhikaji Cama Place, New Delhi 110066, on the letter dated 15.1.2009 issued by Shri J.S.Chhilar, Registrar, Income Tax Appellate Tribunal, Loknayak Bhawan, Khan Market, New Delhi-110003.

8.2.2 The applicant has also not produced before this Tribunal any letter issued by the said Pay Accounts Officer of the Department of Legal Affairs and the Central Pension Accounting Office of the Ministry of Finance intimating any modification in his PPO with regard to fixation of his pension with effect from 1.1.2006 to the pension disbursing bank or to the applicant.

8.2.3 Thus, it is clear that the said Pay Accounts Officer of the Department of Legal Affairs and the Central Pension Accounting Office of the Ministry of Finance, who are competent to effect modification in the applicant's PPO fixing his pension at Rs.37,750/- with effect from 1.1.2006, never issued any order/letter either to the applicant, or to the pension disbursing bank which has been disbursing pension to the applicant.

8.2.4 It is also clear that the pension disbursing bank, i.e., the Corporation Bank, Vasant Kunj, New Delhi, without any valid sanction from the competent authority, disbursed to applicant the pension at Rs.37,750/- with effect from 1.1.2006, to which the applicant, under the law, was not entitled. Therefore, on the basis of such disbursement of pension by the pension disbursing bank, the applicant cannot be allowed to claim that his pension was fixed at Rs.37,750/-, which could not have been reduced to Rs.33,500/- without any notice to him, and that the recovery of excess payment made by the said Bank was illegal.

8.3 With a view to know the circumstances under which the pension disbursing bank made payment of higher amount of pension than the

amount to which the applicant was entitled, I would like to refer to and reproduce paragraphs 8 and 11 of the Department of Pension & Pensioners& Welfare O.M. dated 1.9.2008, *ibid*, as under:

8. All Pension Disbursing Authorities including Public Sector Banks handling disbursement of pension to the Central Government pensioners are hereby authorized to pay pension/family pension to existing pensioners/family pensioners at the consolidated rates in terms of para 4.1 above without any further authorization from the concerned Accounts Officers/Head of Office etc. A table indicating the existing basic pension/family pension without Dearness Pension, the basic pension/family pension is enclosed for ready reference. (Annexure I). This table may be used where the pensioner is in receipt of a single pension only. Where a pensioner is in receipt of more than one pension, consolidation may be done separately in terms of paragraph 4.1 and as indicated in paragraph 5 floor ceiling of Rs.3500/- may be applied to total pension from all sources taken together. Wherever the age of pensioner/family pensioner is available on the pension payment order, the additional pension/family pension in terms of para 4.5 above may also be paid by the pension disbursing authorities immediately without any further authorization from the concerned Account Officer/Head of Office, etc. A suitable entry regarding the revised consolidated pension shall be recorded by the pension Disbursing Authorities in both halves of the Pension Payment Order. An intimation regarding disbursement of revised pension may be sent by the pension disbursing authorities to the Office of CPAO and Accounts Officer which had issued the PPO in the form given at **Annexure II** so that the latter can update the Pension Payment Order Register maintained by him. An acknowledgement shall be obtained by the Pension Disbursing Authorities from Office of CPAO and the respective Accounts Officer in this behalf.

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12. It is considered desirable that the benefit of these orders should reach the pensioners as expeditiously as possible. To achieve this objective it is desired that all Pension Disbursing Authorities should ensure that the revised pension and the first instalment of arrears due to the petitioners in terms of para 4.1 and para 4.5 above is paid to the pensioners or credited to their account by 30<sup>th</sup> September, 2008 or before positively. Instructions regarding release of second instalment of arrears will be issued later. Concerted efforts should be made

by all the authorities concerned to ensure that the revised PPOs are issued, wherever necessary, with the utmost expedition in terms of para 4.1, 4.2 and 4.5 above and arrears are paid in terms of para 10 above within two months from the date of issue of this O.M.ö

8.4 Annexure-II, referred to in paragraph 8 of Department of Pension & Pensionersö Welfare O.M. dated 1.9.2008, *ibid*, is reproduced below:

## ðANNEXURE-II

Form of intimation by the Pension Disbursing Authority to the Central Pension Accounting Office/Pay and Accounts Office regarding consolidation of pension in terms of Department of Pension and Pensioners Welfare Office Memorandum No.38/37/08-P&PW(A)-Part II datedí

1. Name of the Pensioner/Family Pensioner
2. PPO No.
3. Date of Birth/age
4. Date of retirement/Death (in case of family pension)
5. Savings Bank A/C No.
6. Name of the Bank/Paying Branch
7. Bank Code No.
8. Computation of consolidated pension/family pension/Pension/\*Family Pension/\* Family Pension (At enhanced rate)

Pension	Family Pension/Enhanced Family Pension
(A) Existing basic pension (inclusive of commuted portion) (excluding the effect of merger of 50% of dearness relief)	(A) Existing basic Family Pension/Enhanced family pension (excluding the effect of merger of 50% of dearness relief)
(B) Dearness Pension	(B) Dearness Pension
(C) Dearness Relief upto CPI 550 (Base year 1982=100) i.e. 24% of Family Pension as drawn.	(C) Dearness Relief upto CPI 550 (Base year 1982=100) i.e. 24% of Family Pension as drawn.
(D) 40% of the Basic Pension as at (A) above.	(D) 40% of the Basic Family Pension as at (A) above.
(E) Consolidated Pension (A+B+C+D)	(E) Consolidated Family Pension (A+B+C+D)

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**Note:**

- 1. The final revision of pension in respect of pensioners will be done by the Pay & Accounts Office concerned.**
2. The final revision of Family Pension will also be done by the Pay & Accounts Office concerned.  
(\* If not applicable draw a line across)
9. Whether consolidated pension/family pension is final or allowed as immediate relief.
10. Remarks, if any.

**SIGNATURE OF PENSION DISBURSING AUTHORITY**

To

1. Central Pension Accounting Office,  
Ministry of Finance,  
Department of Expenditure,  
Trikoot-II, Bhikaji Cama Place,  
New Delhi 110066  
3. Concerned Pay & Accounts Office.ö

8.4 In view of the instructions contained in paragraphs 8 and 12 of the O.M. dated 1.9.2008, *ibid*, the pension disbursing bank calculated the applicant's revised pension at Rs.37,750/- with effect from 1.1.2006 and the arrears of pension disbursable to him. Accordingly, the pension and arrears of pension with effect from 1.1.2006 were paid by the pension disbursing bank to the applicant on 1.2.2009, as it appears from the copy of the Pension Payment Order filed by the applicant, before the letters were issued by the Pay & Accounts Officer, Department of Legal Affairs, and the Central Pension Accounting Office, Ministry of Finance, revising the applicant's pension to Rs.33,500/- with effect from 1.1.2006. The calculation of the applicant's revised pension and disbursement thereof by the pension disbursing bank were not final inasmuch as the Pay & Accounts Officer,

Department of Legal Affairs, and the Central Pension Accounting Office, Ministry of Finance, were only competent to revise the applicant's pension and to effect the modification in his PPO. Had the pension disbursing bank referred to Annexure I to the O.M. dated 1.9.2008, while calculating the revised pension and arrears, it would not have calculated the revised pension of the applicant at Rs.37,750/- and gone on disbursing the pension to the applicant at the said rate. This apart, it was the responsibility of the pension disbursing bank to give intimation to the Central Pension Accounting Office, Ministry of Finance, in the prescribed format (Annexure II to the O.M. dated 1.9.2008). The applicant has not impleaded the pension disbursing bank, i.e., Corporation Bank, Vasant Kunj, New Delhi, as a party-respondent in the present O.A., though he has prayed for a direction to the respondents to refund him an amount of Rs.3,52,386/- recovered by the pension disbursing bank from him towards the excess pension paid from 1.1.2006.

9. As discussed in paragraphs 6.1, 6.1.1, 6.1.2 and 6.1.3 of this order, the Full Bench of the Tribunal, in **Central Government SAG (S-29) Pensioners Association through its Secretary Vs. Union of India and another** (supra), dealt with the question of revision of pension of pensioners who had retired from service in the 5<sup>th</sup> CPC pay scale (Scale 29) of Rs.18,400-500-22400/- which was revised to Pay Band of Rs.37,400-67,000/- with Grade Pay of Rs.10,000/-. The question of revision of pension of pensioners, who had retired from service in the 4<sup>th</sup> CPC pay scale of Rs.7300-7600/- corresponding to 5<sup>th</sup> CPC pay scale of Rs.22,400-24,500/-

and 6<sup>th</sup> CPC HAG pay scale of Rs.67000-79000/-, was neither raised nor decided by the Full Bench of the Tribunal. The question of admissibility of the benefit of upgradation of posts subsequent to their retirement was also neither raised nor decided by the Full Bench of the Tribunal. Allowing the O.As., the Full Bench of the Tribunal, in paragraph 30 of the order, quashed the O.Ms. dated 3.10.2008 and 14.10.2008 (which was also based on O.M. dated 3.10.2008) and -O.M. dated 11.02.2009, whereby representation was rejected by common order. The Tribunal further directed the respondents to re-fix the pension of all pre-2006 retirees w.e.f. 1.1.2006, based on the resolution dated 29.08.2008, *ibid*.

9.1 It is pertinent to mention here that by the O.M. dated 11.2.2009, which was quashed by the Full Bench of the Tribunal, the Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Pension & Pensioners Welfare, disposed of several representations regarding revision of pension of pre-2006 pensioners. By the O.M. dated 11.2.2009, *ibid*, the Department of Pension & Pensioners Welfare reiterated its decision for fixation of pension 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, and clarified that -the benefit of upgradation of posts subsequent to their retirement would not be admissible to the pre-2006 pensioners in this regard.

9.1.1 Though the Full Bench of the Tribunal quashed the O.M. dated 11.2.2009, *ibid*, the decision of the Full Bench was qua the applicants before it, and was not with regard to quashing of the decision of the Government regarding the admissibility of the benefit of upgradation of posts, subsequent to their retirement, to the pre-2006 pensioners. In the concluding paragraph 30 of the order, the Full Bench did not direct the respondents to grant the benefit of upgradation of posts (subsequent to their retirement) to the pre-2006 pensioners, while revising their pension with effect from 1.1.2006. Therefore, the decision of the Full Bench in **Central Government SAG (S-29) Pensioners Association through its Secretary Vs. Union of India and another** (supra) is not at all relevant in the case of the applicant and other similarly placed pensioners.

9.2 In **O.A.Anandaram Vs. Pay & Accounts Officer and others** (supra), the applicant retired from service as Member, ITAT, in 1993. His grievance was similar to the one raised by the applicant in the present case. Referring to the Full Bench's decision in **Central Government SAG (S-29) Pensioners Association through its Secretary Vs. Union of India and another** (supra) and to an order dated 4.5.2011 passed by the Tribunal in OA No.1586 of 2010 (**Amarendra Nath Mishra and others Vs. Union of India and others**), the Madras Bench of the Tribunal directed the respondents to re-fix the pension of the applicant with effect from 1.1.2006 based on the letter dated 29.10.2008. The Tribunal also quashed the order reducing the pension of the applicant therein.

9.2.1        **In B.V.Venkataramaiah Vs. Pay & Accounts Officer and others** (supra), the Bangalore Bench of the Tribunal, after referring to **O.A.Anandaram Vs. Pay & Accounts Officer and others** (supra), allowed the O.A. and directed the respondents to grant the same relief as granted by the Tribunal to **O.A.Anandaram**.

9.2.2        **In Shri Prakash Narain Vs. Union of India through Secretary, Department of Personnel & others** (supra), the Principal Bench, after recording the concession of the learned counsel, who entered appearance on behalf of the respondents, to the effect that the claim of the applicant deserved to be considered in view of the decision of the Full Bench in **Central Government SAG (S-29) Pensioners Association through its Secretary Vs. Union of India and another** (supra), as upheld by the Hon'ble High Court of Delhi, observed that the respondents would reconsider the claim of the applicant, and directed that the respondents would not reduce the pension of the applicant till re-examination of his case.

9.2.3        **In Shri Bhaiyaji Gupta Vs. Union of India through Secretary, Department of Personnel & others** (supra), the Principal Bench of the Tribunal, after recording the submission of the learned counsel appearing for the applicant that the controversy to be determined was in all fours of the decision in **Shri Prakash Narain Vs. Union of India through Secretary, Department of Personnel & others** (supra), and that he would be satisfied if the respondents were directed to examine his claim for fixation of pension in view of the order of the Full Bench in **Central**

**Government SAG (S-29) Pensioners Association through its Secretary Vs. Union of India and another** (supra), as upheld by the Hon'ble High Court of Delhi, directed the respondents to examine the claim of the applicant for re-fixation of pension.

9.3 It is, thus, clear that the point at issue raised by the parties in the present case was neither raised by the parties, nor was the same considered and decided by the Tribunal in the cases referred to by the applicant in the present case in support of his claim for fixation of his pension at Rs.37,750/- Therefore, the reliance placed by the applicant on those cases is of no avail.

10. Furthermore, in the present case, the applicant has not produced before this Tribunal any materials to show that in compliance with the orders passed by the Tribunal, the respondents, after considering the cases of S/Shri O.Anandaram, B.V.Venkataramaiah, Prakash Narain, and Bhaiyaji Gupta, have fixed their pension at Rs.37,750/- with effect from 1.1.2006. The applicant has also not produced before this Tribunal copies of the letters issued by the Central Pension Accounting Office authorizing their respective pension drawing banks to disburse them the pension at Rs.37,750/- and to refund the amount recovered from them as excess pension.

11. Even if it is assumed for a moment that the respondents have fixed the pension of S/Shri O.Anandaram, B.V.Venkataramaiah, Prakash Narain, and Bhaiyaji Gupta at Rs.37,750/- with effect from 1.1.2006 and have instructed the respective pension disbursing banks to refund the amount recovered from them as excess pension, the applicant cannot be said to have

a right to claim fixation of his pension at Rs.37,750/- with effect from 1.1.2006 and refund on the basis of such decisions of the respondents inasmuch as calculation and disbursement of pension at Rs.37,750/- with effect from 1.1.2006 were made by the pension disbursing bank in the case of the applicant and similarly placed persons were not final, being subject to the authorization/sanction by the Central Pension Accounting Office in their cases, and further subject to the rules and decisions taken by the Government of India in the matter.

12. It is a settled legal proposition that Article 14 of the Constitution of India is not meant to perpetuate illegality, and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the applicant to get the same relief. (Vide **Chandigarh Administration & Anr v. Jagjit Singh & Anr.**, AIR 1995 SC 705; **Yogesh Kumar & Ors. v. Government of NCT Delhi & Ors.**, AIR 2003 SC 1241; **M/s Anand Buttons Ltd. etc. v. State of Haryana & Ors.**, AIR 2005 SC 565; **K.K. Bhalla v. State of M.P. & Ors.**, AIR 2006 SC 898; **Maharaj Krishan Bhatt & Anr. v. State of Jammu & Kashmir & Ors.**, (2008) 9 SCC 24; **Upendra Narayan Singh (supra); and Union of India & Anr. v. Kartick Chandra Mondal & Anr.**, AIR 2010 SC 3455). This principle also applies to judicial pronouncements. Once the court comes to the conclusion that a wrong order has been passed, it becomes the solemn duty of the court to rectify the mistake rather than

perpetuate the same. While dealing with a similar issue, the Hon'ble Supreme Court in **Hotel Balaji & Ors. v. State of A.P. & Ors.**, AIR 1993 SC 1048, observed as under:

"...To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in *Pierce v. Delameter* (A.M.Y. at page 18): `a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors'".

(See also re: **Sanjiv Datta, Dy. Secy., Ministry of Information & Broadcasting**, (1995) 3 SCC 619; **Nirmal Jeet Kaur v. State of M.P. & Anr.**, (2004) 7 SCC 558; and **Mayuram Subramanian Srinivasan v. CBI**, AIR 2006 SC 2449).

13. As regards his challenge to the recovery of Rs.3,52,386/- effected by the pension disbursing bank, the applicant has placed reliance on the decision of the Hon'ble Supreme Court in **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.**, Civil Appeal No.11527 of 2014, decided on 18.12.2014.

13.1 In **State of Punjab & others, etc. Vs. Rafiq Masih (White Washer), etc.** (supra), the respondent-employees were given monetary benefits, which were in excess of their entitlement. These benefits flowed to them, consequent upon a mistake committed by the concerned competent authorities in determining the emoluments payable to them. The mistake could have occurred on account of a variety of reasons; including the grant

of status, which the concerned employee was not entitled to; or payment of salary in higher scale than in consonance with the right of the concerned employee; or because of a wrongful fixation of salary of the employee, consequent upon the upward revision of pay scales; or for having been granted allowances, for which the concerned employee was not authorized. The respondent-employees were beneficiaries of a mistake committed by the employer, and on account of the said unintentional mistake, employees were in receipt of monetary benefits, beyond their due. The respondent-employees were not guilty of furnishing any incorrect information, which had led the concerned competent authority, to commit the mistake of making the higher payment to the employees. The payment of higher dues to the respondent employees was not on account of any misrepresentation made by them, nor was it on account of any fraud committed by them. Thus, the question, which arose for adjudication, was, whether the respondent-employees, against whom orders of recovery (of the excess amount) were made, should be exempted in law, from the reimbursement of the same to the employer. After referring to its various earlier decisions on the point, the Hon'ble Supreme Court held thus:

512. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarize the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.ö

13.2 As noted earlier, the pension disbursing bank, i.e., Corporation Bank, Vasant Kunj, New Delhi, has not been impleaded as a party-respondent in the present case. The fixation of the applicant's pension at Rs.37,750/- with effect from 1.1.2006 and disbursement thereof by the pension disbursing bank to the applicant were subject to the final revision of his pension by the Central Pension Accounting Office, Ministry of Finance. In the preceding paragraphs of this order, the Tribunal has explained the circumstances under which the pension disbursing bank fixed the applicant's pension at Rs.37,750/- with effect from 1.1.2006 and disbursed excess amount of pension to the applicant. It appears from the extract of the Pension Payment Order, copy of which is available on record, the pension disbursing bank revised the applicant's pension at Rs.37,750/- with effect from 1.1.2006 and disbursed the arrears to the applicant only on 1.2.2009, pending receipt of order/letter of authority from the Central Pension Accounting Office, Ministry of Finance. The pension disbursing bank, soon after detecting its mistake, recovered the excess amount of pension from the

applicant in 2011. Both the applicant and the respondents have failed to produce before this Tribunal the Pension Payment Order in which modification was carried out by the Central Pension Accounting Officer for payment of revised pension at Rs.33,500/- with effect from 1.1.2006. In the instant case, higher amount of pension was unlawfully paid to the applicant by the pension disbursing bank, which is not a party-respondent in the present O.A., and the respondents were in no way responsible for payment of excess pension to the applicant, and, therefore, no direction can be issued by the Tribunal to the respondents to refund the recovered amount to the applicant. On the facts and in the circumstances of the case, this Tribunal is of the considered view that the applicant's case is not covered by any of the five situations outlined by the Hon'ble Apex Court in **State of Punjab & others etc. Vs. Rafiq Masih (White Washer) etc.** (supra), under which the impugned recovery of excess pension could be held impermissible in law.

14. In the light of above discussions, I have no hesitation in holding that the O.A. is devoid of merit and liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.

**(RAJ VIR SHARMA)  
JUDICIAL MEMBER**

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