

(Reserved on 18.07.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD
(Circuit Bench at Nainital)**

This the **27th** day of **August** , **2018**.

HON'BLE MR. JUSTICE BHARAT BHUSHAN, MEMBER (J).
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

Original Application Number. 331/00566/2012.

Smt. Gayatri Sharma, w/o Late D.N. Sharma, R/o Flat No. 625,
Block 5, Kailash Dham, Sector 50, Noida (U.P.).

.....Applicant.

VE R S U S

1. Union of India through Secretary, Ministry of Finance,
Department of Revenue, North Block, New Delhi.
2. President, ITAT, Old CGO Building, 4th Floor, 101, Maharshi
Karve Road, Mumbai - 400020.
3. Chief Controller, Central Pay and Account Office, Govt. of
India, Bhikaji Cama Place, New Delhi.
4. Senior Account Officer, Pay and Account Office, Dept. of Legal
Affairs, Ministry of Law, 4th Floor, B Wing, Janpath Bhawan,
Janpath, New Delhi.
5. Manager, State Bank of India, Centralized Pension Processing
Centre, Chandi Chowk, Delhi – 110006 (04475).
6. Manager, State Bank of India, Main Branch, Convent Road,
Dehradun.

.....Respondents

Advocate for the applicant : Shri Ram Prasad
Shri Ashish Srivastava

Advocate for the Respondents: Shri D.S. Shukla

ORDER**(Delivered by Hon'ble Mr. Gokul Chandra Pati, A.M)**

In this Original Application (in short OA), filed by Shri D.N. Sharma (referred hereinafter as 'applicant'), who died in 2013 during pendency of this OA and was substituted by his wife as his legal heir, following reliefs are sought for: -

“(a). Quash the order No. 314389200163/813208/A2 dated 16/11/2011 issued by the respondent No. 03 to the respondent No. 05 (ANNEXURE A-1)

(b). Quash the order W031438111000017/2129-30 dated 05.10.2011 issued by the respondent No. 04 to the respondent No. 03 (Annexure A-7).

(c). Issue the directions to the respondent No. 06 to refund Rs. 3,00,000/- with 18% interest thereon, which was debited the respondent No. 06 without consent of the applicant from his S/B account No. 10901592045 on 03.12.2011.”

2. The facts of the case are undisputed. The applicant was an officer of UP Judicial service, who was selected for the post of Judicial Member in Income Tax Appellate Tribunal (in short ITAT) where he joined on 01.01.1983. He retired on 09.07.1992 on attaining the age of superannuation and PPO No. 314389200163 was issued and his pension was fixed at Rs. 2,534/-. After implementation of 5th CPC recommendations, the pension of the applicant was revised to Rs. 11,200/- per month w.e.f. 01.01.1996 vide the Ministry of Law letter dated 15.06.1999 (Annexure A-2 to the OA) and vide the Central Pension Accounting Office, Ministry of Law, New Delhi order dated 24.08.1999 (Annexure A-3 to the OA).

3. After revision of pension on recommendation of 6th CPC, as per the OM dated 01.09.2008 (Annexure A-4 to the OA), the ITAT revised the pension of the applicant to Rs. 37,750/- vide order dated 16.10.2008 (Annexure A-5 to the OA) by taking the corresponding pay scale existing prior to 6th CPC i.e. 22400-600-26000 to post 6th CPC scale of to Rs. 75000-80000. Vide order dated 29.10.2008 (Annexure A-6 to the OA), the applicant was informed by ITAT that revised pension will be done by pension

disbursing authority i.e. the public sector bank as per OM dated 14.10.2008. Thereafter, the disbursing authority i.e. State Bank of India, Main Branch Dehradun (respondent No. 6) started crediting pension at Rs. 37,750/- per month in the account of the applicant with effect from 01.01.2006 and arrear of Rs. 2,41,590/- w.e.f. 01.01.2006 was paid on 26.02.2009. Then the applicant received an order dated 05.10.2011 from the PAO of the Ministry of Law by which his pension was reduced from Rs. 37,750/- to Rs. 33,500/- taking the corresponding revised as applicable to the applicant to be Rs. 67,000-79,000/- in place of Rs. 75000-80000/- and accordingly, the Central Pension Accounting Office, New Delhi reduced the pension of the deceased employee from Rs. 37,750 to Rs. 33,500/- vide the order dated 16.11.2011 (Annexure A-1 to the OA), which is impugned in this OA.

4. It is stated in the OA, the pension at the rate of Rs. 37,750/- was paid upto 30.11.2011 but the Bank (respondent No. 6) credited the reduced pension Rs. 34,935/- on 30.12.2011 while debiting the amount of Rs. 3,00,000/-, from the applicant on 03.12.2011 without any intimation to the applicant. Being aggrieved, a legal notice dated 08.02.2012 (Annexure A-9 to the OA) was sent to the respondents.

5. Having received no response, present OA has been filed by the applicant on the ground that the action of the respondents is illegal, arbitrary and against the rules and that as per table annexed with revised pay rule 2008 (Annexure A-10 to the OA), the corresponding pay scale of Rs. 22,400-600-26,000 to Rs. 75,500-80,000. Another ground is that the respondents cannot reduce the pension of the deceased employee after two years nine months without giving any show cause notice or opportunity of being heard and also the impugned order dated 16.11.2011 also does not disclose any reason. It is contended that the action of the respondents is also discriminatory because the similarly retired

Judicial Members from ITAT are getting pension at the rate Rs. 37,750 per month plus DA.

6. The respondents have filed Counter Affidavit, stating that the applicant retired on 09.07.1992 in pay scale of Rs. 7300-7600. It is also stated that as per the order dated 06.10.1999 (Annexure R-II), the pay scale of the Members of ITAT was upgraded from the pay scale of Rs. 7300-7600 to the pay scale of Rs. 7300-8000 (pre-revised prior to 01.01.1996) with corresponding pay scale of Rs. 22400-600-26000 corresponding to the pay scale of Rs. 7300-8000 w.e.f. 01.01.1996. It is contended that since the applicant retired on 09.07.1992 i.e. before 01.01.1996 in pay scale of Rs. 7300-7600 with basic pay of Rs. 7600/-, benefit of the revision of pay scale to Rs. 7300-8000 will not be applicable for the applicant and as per the OM dated 28.01.2013 (Annexure R-III), the pension of an employee, who retired prior to 01.01.1996 in pay scale of Rs. 7300-7600 will be Rs. 33,500/-. It is further stated that the letter dated 16.10.2008 sent by the ITAT, New Delhi to the Pay and Account Office for the applicant was incorrect. It was the fixation chart for consideration of pension by the Pay and Account Office after revision of pension fixation. Later on, his pension was fixed Rs. 33,500/- w.e.f. 01.01.2006 after 6th CPC revision vide order dated 16.11.2011. It is further stated that the State Bank of India (respondent No. 6) wrongly paid pension Rs. 37,750/- per month w.e.f. 01.01.2006 to the deceased employee and after revision of PPO vide order dated 16.11.2011, the pension of the deceased employee was fixed at Rs. 33,500/- w.e.f. 01.01.2006, due to which the excess payment of Rs. 3,00,000/- was debited on 03.12.2011 from his account by the respondent No. 6. In para 5 of the Counter Affidavit, it is stated that the pension of the deceased employee was revised as per the directions of Department of Pension and Pensioner's Welfare vide OM dated 11.02.2009, whereby it was clarified that the benefit of up-gradation of posts subsequent to their retirement would not be admissible to the pre-2006 pensions.

Hence, the deceased employee was placed in the pay scale of Rs. 67000-79000 instead of Rs. 75500-80000 and accordingly, pension admissible to him is 50% of the minimum of the above pay scale to the post is Rs. 33,500/- and not Rs. 37,750/-.

7. The State Bank of India (Respondent No. 6) through a separate Counter Affidavit has stated that the amount debited from the Bank Account of the applicant on the basis of the undertaking given by the applicant (Annexure CA-2), whereby he had agreed to refund or make good to the Bank any amount to which he is not entitled or any excess amount which may be credited to his account in excess of his entitlement and that amount would be demanded by the Bank, would be binding on him. It is further stated that the respondent No. 5 i.e. the Manager, Centralized Pension Processing Centre of the Bank informed the respondent No. 6 that Central Pension Accounting Office, Govt. of India wrongly revised applicant's pension in February 2009 to Rs. 37,750/- in stead of Rs. 33,500/- vide order dated 16.11.2014. hence, excess amount of Rs. 3,95,532/- is to be recovered from the applicant.

8. Rejoinder Affidavit (in short RA) has been filed by the applicant stating that the OM dated 11.02.2009 referred by the respondents has already been quashed by the Full Bench of CAT, Principal Bench vide order dated 01.11.2011 passed in OA No. 655/2010. The applicant has also referred to the order dated 26.03.2012 (Annexure R-1) passed by CAT, Madras Bench in OA No. 759/2011 – Central Government SAG (S-29) Pensioners Association & others Vs. UOI & Ors to contend that case of the applicant is identical to the cited case. It is stated in para 18 of the Rejoinder Affidavit that the applicant is entitled for pay scale of Rs. 22,400-26,000 prior to 01.01.2006 corresponding the pay scale of Rs. 7300-8000 as applicable for the applicant and the corresponding pay scale after 01.01.2006 in Rs. 75000-80000.

9. We have heard Shri Ram Prasad, learned counsel for the applicant. He argued that before reducing pension, no show cause notice was issued, hence, the impugned order as well as the order for debiting the applicant's account are violative of the principles of natural justice. This was duly considered by this Tribunal and vide order dated 26.09.2012, the impugned order dated 16.11.2011 reducing the applicant's pension was stayed until further order. It was further argued that the OM dated 11.2.2009 refereed in the Counter Affidavit has been quashed by the Full Bench judgment dated 1.11.2011 of this Tribunal in OA No. 655/2010, copy of which has been furnished by him. The applicant's counsel also referred to the order dated 26.03.2012 by Madras Bench of this Tribunal, copy of which is enclosed to Rejoinder, where exactly similar case has been decided giving the relief to the applicant in that OA. He submitted for the similar decision in this case.

10. Shri D.S. Shukla, learned counsel for the respondents no. 1 to 4 submitted that the Bank was disbursing pension to the applicant wrongly at a higher rate and after revision of his pension vide order dated 16.11.2011, it was detected that the applicant was entitled for pension at a lower rate. He submitted since the applicant had furnished an undertaking to the Bank to refund if there is any excess payment, the Bank had correctly debited the excess amount paid wrongly. He referred to specific averments in para 12, 14 and 16 of the Counter Affidavit and stated that since the applicant had retired on 9.7.1992 before upgradation of the post of the Member ITAT was approved from the pay scale of Rs. 7300-7600 to Rs. 7300-8000 with effect from 1.1.1996, the applicant will not get the benefit of the higher pay scale of Rs. 7300-8000, for which the corresponding pay scale after 1.1.2006 is Rs. 75500-80000. For the applicant, who retired from the pay scale of Rs. 7300-7600, the corresponding revised pay scale is Rs. 67000-79000 and accordingly, the pension w.e.f. would be Rs. 33,500. Learned counsel also filed copy of the following judgments:-

- i. Shareef Ahmed Vs. Union of India –AISLJ 2017(1)193
- ii. Order dated 23.02.2018 passed by CAT, Allahabad Bench in OA No. 1125/2016 – R.N. Gupta & Ors. Vs. Union of India & ors.

11. We have considered the submissions of learned counsels and also gone through the pleadings and the documents on record furnished by the parties with the pleadings. It is alleged that no show cause notice was issued by the respondents before reduction of the pension and before recovery of the excess amount paid according to the respondents. The pleas of the applicant in para 4.16 and 4.20 of the OA have not been denied by the respondents. Hence, no show cause notice was issued by the respondents before reduction of pension or before the decision taken for recovery.

12. The dispute here is the equivalent revised pay scale for the applicant for the purpose of calculating the revised pension after implementation of the sixth Central Pay Commission report with effect from 1.1.2006. The ITAT in the latter dated 16.10.2008 (Annexure A-5) for fixation of the applicant's pension had stated as under:-

Dated :16th October, 2008

“
The Pay and Accounts Officer,
Office of the Pay and Accounts Office,
4th Floor, Janpath,
New Delhi.
Sub: Implementation of Government's decision on the
recommendations of the Sixth Central Pay Commission –
Revision of Pension of Pre-2006 Pensioners / Family
Pensioners etc – regarding.

In terms of O.M No F. 38/37/08-P & PW (A) dated 1st September, 2008 the revised calculation of Pension / Family Pension of Shri D.N. Sharma, Hon'ble Judicial Member (Retd), in the prescribed format, alongwith the Service Book is sent herewith for taking necessary action

Yours Faithfully

ASSISTANT REGISTRAR”

**“Fixation of Pension consequent to implementation of
Recommendations of Sixth Central Pay Commission**

In terms of O.M F. No. 38/37/08 –P&PW (A) dated 1st September 2008

Name	SHRI D.N. SHARMA
PPO No.	314389200163
Date of Birth	75 years 05 months and 21 days
Date of retirement	09.07.1992
Post held on retirement	Judicial Member, Income Tax Appellate Tribunal
Pay Scale of Post	Rs. 7300-100-7600/-
Revised pay as per Pay Rule	Rs. 22,400-600-26000
Equivalent Pay fixed consequent to recommendation of Fifth Pay Commission	Rs. 22,400/-
Revised Pension fixed consequent to Fifth Pay Commission	Rs. 11,200/-
Revised Family Pension	Rs. 6,720/-
Equivalent Pay Scale Sixth Pay Commission	Rs. 75000 to Rs. 80000
Pension Admissible on 01.01.2006 (Fixed in terms of para 11 & 12 of OM dated 01.09.2008)	Rs. 37,750/-”

The applicant avers that the fixation as per the letter dated 16.10.2008 is correctly done based on the revised pay scale of Rs. 75,500-80,000/- as applicable for the Members of ITAT. As stated in para 13 of the Counter Affidavit filed by the respondent no. 6 that the Central Pension Accounting Officer, Government of India (in short CPAO) had accepted the fixation of pension for the applicant in February, 2009 at Rs. 37,750/- per month with effect from 1.1.2006, but subsequently the CPAO informed that it was wrongly fixed at Rs. 37,750/- and it should be Rs. 33,500/-. Accordingly, the impugned order dated 16.11.2011 (annexure A-1) was issued at the reduced rate of pension. The impugned order dated 16.11.2011 states as under:-

Date :16/Nov/2011

“
To,
The Manager, Diary No. PR11142788
STATE BANK OF INDIA,
Centralised Pension Processing Centre,
SBI Chandini Chowk Br. Premises, Chandini Chowk,
Chandini Chowk, Delhi, PIN – 110006.

Sub: REVISION OF PENSION OF SHARMA SHRI D.N., HOLDER TO PPO NUMBER : 314389200163, AT BRANCH (OOOO630): STATE BANK OF INDIA, 4 CONVENT ROAD, DEHRADUN, UTTARANCHAL, ACCOUNT NUMBER : AC: 10901592045.

Sir/Madam

An amendment letter No. NIL DT:NIL in respect of PPO mentioned above is forwarded herewith in original. The amount mentioned in this SSA may be verified from original documents for payments and modifications may be carried out in both the halves of the ppo arranged as under:

Date of Birth (Pensioner) : 10/07/1930 Pay Band : 67000-79000

Grade Pay : NIL

Last Pay Drawn: NIL

Name of Spouse: SHARMA SMT GAYATRI Date of Birth (spouse):09/03/1937

Revised Pension (Per Month)

1. REVISED BASIC PENSION : Rs. 33500/- w.e.f. 01/JAN/2006
(Rupees Thirty Three Thousand Five Hundred Only)
2. REVISED PENSION COMMUTED: Rs. 1266/-
(Rupees One Thousand Two Hundred Sixty Six Only)
3. REVISED REDUCED PENSION: Rs. 32234/- w.e.f. 01/JAN/2006
(Rupees Thirty Two Thousand Two Hundred Thirty Four only.)

13. From above, it is clear that there is no reason indicated in the impugned order for reducing the pension of the applicant and no show cause notice was issued to the applicant. Hence, this Tribunal vide order dated 26.9.2012 stayed the impugned order until further order and directed the respondents to continue to pay the pension to the applicant at pre-reduced rate.

14. The applicant has enclosed the order of Madras Bench of this Tribunal in a similar case of O. Anandaram vs. Union of India and Others in OA No. 759/2011 to the Rejoinder. In this case, O. Anandram was also Member of the ITAT who had retired prior to 1.1.1996 and his pension was initially sanctioned at the rate of Rs. 37,750/- and then reduced to Rs. 33,500/- under similar circumstances as the present OA. The Tribunal in OA No. 759/2011 allowed the OA as per the order dated 26.3.2012 relying on the Full Bench judgment in OA no. 655/2010 and held as under:-

“.....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 Hon’ble High Court of Delhi.....”

15. Although the above judgment dated 26.3.2012 was subject to the final outcome of the writ petition pending in Delhi High Court against the order dated 1.11.2011 of this Tribunal, the said Writ petition was dismissed, confirming the judgment dated 1.11.2011 of this Tribunal and it has been implemented by Government after issue of the OM dated 31.7.2015 by the Department of Pension and Pensioners’ Welfare.

16. We notice that in another similar case, the claim of the concerned ITAT member was not allowed by this Tribunal and he filed a Writ petition No. W.P. 8113/2016 before Delhi High Court and the Division Bench of Hon’ble Delhi High Court in the case of Rajendra vs. Union of India & Ors. vide the judgment dated 14.9.2017 has held as under:-

“The petitioner has preferred the present petition to assail the order dated 15th February, 2016 passed by in O.A 2553/2014 and the order dated 19 April, 2016 passed in Review Application No. 82/2016 in the aforesaid application by the Central Administrative Tribunal (hereinafter referred to as ‘Tribunal’). The Tribunal has dismissed the Petitioner's said Original Application as well as the Review Application by impugned orders.

2. The petitioner, who retired as a Member of the Income Tax Appellate Tribunal (ITAT) on 24 April, 1987, has been receiving pension. As per the recommendation of the Sixth Central Pay Commission (VI CPC), the Government revised the pay scale of Member, ITAT to Rs. 75,500-80,000/- with effect from 01.01.2006 Accordingly, the monthly pension of the Petitioner was fixed at Rs. 37,750/- i.e 50% of the minimum of the pay-scale w.e.f 1st January, 2006. In June, 2011, he received an undated letter from the Pay And Account Officer of Ministry of Law and Justice, Department of Legal Affairs, addressed to Pay & Account Officer, Central Pension Accounting Officer, New Delhi, reducing his monthly pension from Rs. 37,500/- to Rs. 33,500/-. Consequently, an amount of Rs. 3,52,386/- was sought to be recovered from the petitioner as excess

pension, paid to him since 1 January, 2006. The petitioner sought restoration of his pension, as earlier fixed, at Rs. 37,750/- and for refund of the amount recovered from him in the aforesaid O.A, but without success.

3. Before the Tribunal, the petitioner had placed reliance on several earlier decisions rendered by the Tribunal in other cases, namely, **O. Anandaram v. Pay & Accounts Officer**, O.A No. 759 of 2011, decided by Madras Bench on 26.3.2012; **B.V Venkataramaiah v. Pay & Accounts Officer**, O.A No. 517 of 2012, decided by Bangalore Bench on 14.2.2013; **Shri. Prakash Narain v. Secretary**, Department of Personnel, O.A No. 1715 of 2013, decided by Principal Bench on 23.5.2013; **Shri. Bhaiyaji Gupta v. Union of India through Secretary**, Department of Personnel, OA No. 2374 of 2014, decided by Principal Bench on 18.7.2014 & [Central Government SAG \(S-29\) Pensioners Association through its Secretary v. Union of India](#), OA No. 655 of 2010, decided by Full Bench of the Tribunal on 1.11.2011 In all these cases, the original applicants had been granted similar relief and the decisions of the Tribunal had been implemented by the Department without challenge.

4. The petitioner by placing reliance on the same Clause 4.2 of the O.M dated 1 September, 2008 contended that since the pay scale for HAG had been virtually revised from Rs. 75,500-80,000/- w.e.f 1 January, 2006, the petitioner would be entitled to pension at 50% of Rs. 75,500/-. Learned counsels have argued on the same lines before us as well.

5. Clause 4.2 of the aforesaid Office Memorandum dated 1 September, 2008 reads as under:—

“4.2 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. In the case of HAG+ and above scales, this will be fifty percent of the minimum of the revised pay scale.”

(emphasis supplied)

6. The respondents, in their reply before the Tribunal, contended that at the time of his retirement the petitioner was in the pay scale of Rs. 7300-7600/- fixed as per the Fourth Central Pay Commission (IV CPC). The Fifth Central Pay Commission (VCPC) was implemented from 1 January, 1996 and the corresponding pay scale of Rs. 7300-7600/- (in the IV CPC), was revised to Rs. 22,400-24500/- (in the V CPC). On 6 October, 1999, the pay-scale of Member, ITAT was upgraded from Rs. 7300-7600/- to Rs. 7300-8000/, which was made effective from 1 January, 1996 by a presidential order dated 6 October, 1999. The scale of Rs. 7300-8000/- under the IV CPC was revised to the pay scale of Rs. 22,400-26000/- w.e.f 1 January, 1996 in the V CPC. Under the VI CPC, the pay scale of Rs. 22,400-24500/- was further revised to Rs. 67000-79000/- w.e.f 1 January, 2006. However, the pay scale of Rs. 22400-26000/- (corresponding to V CPC pay scale of Rs. 7300-8000/-) which was the upgraded pay of an ITAT member, was revised to the HAG pay scale of Rs. 75,500-80,000/-

w.e.f 1 January, 2006 in accordance with VI CPC. On 1 September, 2008 an Office Memorandum was issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Pension and Pensioners' Welfare, for laying down the methodology for the fixation of pension of all pre-2006 pensioners/family pensioners. Para 4.2 thereof with which we are concerned, lays down that the fixation of pension would be subject to the provision that revised pension in no case shall be lower than 50% 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, would be 50% of the minimum of the revised pay scale w.e.f 1 January, 2006.

7. The respondents claimed that the HAG pay scale of Rs. 75,500-80,000/- was the pay scale corresponding to the pre-revised upgraded scale of Rs. 7300-8000/- (revised to Rs. 22400-26000), whereas the replacement scale for the erstwhile pay scale of Rs. 7300-7600/- in which the petitioner had retired, was Rs. 67,000-79,000/-. Thus, according to the respondents, the pension admissible to the petitioner was 50% of the minimum of the pay scale i.e Rs. 67,000/-.

8. The learned counsel for the petitioner has placed reliance on the orders as aforesaid, passed by the different Benches of the Tribunals granting relief to similarly placed persons, and holding that their pension be fixed by considering the upgraded pay scale. He submits that, admittedly, all the aforesaid orders have been duly implemented by the respondents. The contention of the petitioner, therefore, is that once persons belonging to the same service, including those who had retired even prior to the petitioner, have been granted pension by considering the upgraded pay scale, there is no justification on the part of the respondents in denying the said benefit to the petitioner.

9. Learned counsel for the petitioner had also placed reliance on the decision of this Court in the case of **Ram Phal v. Union of India W.P (C) No. 3035/2016**, decided on 03.08.2016, which deals with the issue arising in the present case. We deem it appropriate to refer to the said decision.

10. In the case of Ram Phal (supra), he had superannuated from ITBP on July 31, 2002. The question which arose for consideration was as to whether he would be entitled to receive the benefits of upgradation of his post after 1.1.2006, for determining his pensionary dues. In the said case there was also a challenge to the office memorandum which had declined the aforesaid benefits to employees who had retired before 1.1.2006 This Court, relying on its judgment in [Union of India v. Central Govt. SAG](#), held that since the memorandum in question had been quashed vide that judgment, the question of granting benefit of upgradation had to be considered de hors the contents of the memorandum. In such a situation, this Court was of the view that there was no doubt that the petitioner would be entitled to the consequential benefit of upgradation. The relevant paragraph of the judgment is reproduced below:—

“We would also note that reliance placed on the Office Memorandum dated February 11, 2009 itself is misguided for the reason that Central Government SAG case was an appeal against the order of Central

Administrative Tribunal dated November 01, 2011 wherein the Tribunal had set aside the Memorandum dated February 11, 2009. The decision rendered by the Division Bench of this Court was also challenged before the Supreme Court but the same attained finality and quietus when the curative petition was dismissed on April 30, 2014. Needless to state the order dated February 10, 2016 having been passed subsequently, the respondents were duty bound to consider the case of the petitioner de hors the Memorandum dated February 11, 2009 and had the same been done, undoubtedly the petitioner would stand entitled to pension in sum of Rs. 9,375/- per month as has been claimed by him.”

11. On the other hand, learned counsel for the respondent in support of his plea that the pensionary benefits have to be calculated on the basis of pay scale as was applicable, at the time when the employee was in service, has relied on judgment of the Gujarat High Court in **Bank of India through Officer v. Kunjvihari Rameschandra Dixit since deceased through Legal Heirs Special Civil Appeal** No. 1746/2015 decided on 13.07.2015 and a judgment of this Court in [Union of India v. Amarendra Nath Mishra W.P \(C\)](#) No. 7821/2012 decided on 04.11.2016

12. The only issue that arises for our consideration is whether the upgradation of the pay scale effective from 1 January, 1996 which resulted in the upgraded pay scale of Rs. 75,500-80,000/- under the VICPC for ITAT members, can be taken as the revised pay scale for the purpose of implementation of para 4.2 of the Office Memorandum dated 1 September, 2008.

13. In effect, the respondents are claiming that for purposes of fixation of pension of employees who retired prior to the upgradation, the relevant pay scale (w.e.f 1 January, 2006) would be Rs. 67,000-79,000/-, whereas in respect of serving employees-serving at the time of the upgradation, the same would be Rs. 75,500-80,000/- from the same date.

14. We are not dwelling on the issue whether there could be two different pay scales fixed by the Government - one for the purpose of fixation of pension of the retired employees, and the other for the serving employees. The Government may well be justified if it were to adopt such a practice, considering the fact that with the passage of time, it may be necessary to justify grant of higher pay scales to the serving employees considering their workloads, higher skill, and knowledge requirements, and demand and supply in the market.

15. However, in the present case, the respondents have not taken any such plea for adoption of different revised pay scales in respect of the serving employees, and the pensioners. There is no conscious decision taken by the Government in this regard.

16. We have carefully considered the aforesaid judgments and we find that as far as the judgment of the Gujarat High Court is concerned, the same does not specifically decide the question raised before us. It was, indeed, a case where the Tribunal had directed that the recoveries be made from the bank for having made over-payment to the employee and it is in these circumstances that the High Court had dismissed the petition filed by the

bank by holding that no error had been committed by the Tribunal in directing that the excess payment made by the bank should be recovered from the bank.

17. So far as the judgment of this Court in case of Amarendra Nath Mishra (supra) is concerned, we find that though the said issue as to whether pension would be payable on the basis of pay scale upgraded after the retirement of the employee concerned, was raised, but the same was not decided by the Division Bench and the matter had been remanded back to the Tribunal for considering the said issue and therefore, we find that the reliance placed by the respondent on the said judgment is also misplaced.

18. That being the position, considering the fact that others similarly situated like the petitioner have also been restored the pension initially fixed under the VI CPC at Rs. 37,750/-, and the respondents not having even assailed the orders passed in respect of other employees - particulars whereof have been noted hereinabove, we see no justification for denying equal treatment to the petitioner in the present case accordingly. The respondent cannot discriminate against the petitioner in the matter of fixation of his pension.

19. Consequently, the writ petition is allowed. The impugned orders are set aside. The pension of the petitioner is restored to Rs. 37,750/- per month w.e.f 1 January, 2006. The respondents are directed to refund the amount recovered from the petitioner along with interest at the rate of 12% per annum. This order shall be complied with within the next four weeks.”

17. It is seen that in the judgment of Hon’ble Delhi High Court referred above, the facts of that case were similar to the case before us and all relevant issues have been examined in above judgment. As observed in para 15 of the judgment, the respondents have not produced any such decision as referred therein in this case and have not mentioned any reason for reduction of pension in the impugned order dated 16.11.2011.

18. Learned counsel for the respondents has cited a judgment of Allahabad Bench of this Tribunal in OA No. 1125/2016, where the issue was whether the respondents can recover the excess payments made to the employees by virtue of a wrong order, which was subsequently struck down by Hon’ble Apex Court. The facts in that OA are clearly distinguishable. Similarly, the judgment dated 11.8.2016 of Mumbai Bench of this Tribunal in OA No. 2065/2013,

which will arise in this case if it is found that the applicant was wrongly allowed higher pension, which is not the case.

19. We notice that the rule 70 of the CCS (Pension) Rules, 1972 specifying the procedure for revising the pension, states as under:-

“70. Revision of pension after authorization

(1) Subject to the provisions of [Rules 8](#) and [9](#) pension once authorized after final assessment shall not be revised to the disadvantage of the Government servant, unless such revision becomes necessary on account of detection of a clerical error subsequently :

Provided that no revision of pension to the disadvantage of the pensioner shall be ordered by the Head of Office without the concurrence of the Department of Personnel and Administrative Reforms if the clerical error is detected after a period of two years from the date of authorization of pension.

^[(1-A) The question whether the revision has become necessary on account of a clerical error or not shall be decided by the administrative Ministry or Department.]

(2) For the purpose of sub-rule (1), the retired Government servant concerned shall be served with a notice by the Head of Office requiring him to refund the excess payment of pension within a period of two months from the date of receipt of notice by him.

(3) In case the Government servant fails to comply with the notice, the Head of Office shall, by order in writing, direct that such excess payment, shall be adjusted in instalments by short payments of pension in future, in one or more instalments, as the Head of Office may direct.

^ Inserted vide GSR 628(E), dated 1st September, 2014, Government of India, Department of Pension & Pensioners' Welfare Notification No.1/19/2013-P&PW(E), dated 29th August, 2014”

In the instant case before us the pension to the applicant was authorized at the rate of Rs. 37,750 since 2009 as stated in the Counter filed by the respondent no. 6 and was reduced to Rs. 33,500 after more than two years. There is no pleading before us as to whether the mistake can be treated as a clerical error and whether the procedure laid down under the rule 70 was followed by the respondent before issuing the impugned order dated 16.11.2011. Since no show cause notice was issued to the applicant before issue of the impugned order, it is clear that the

impugned order violates the rule 70 of the CCS (Pension) Rules, 1972.

20. In view of the facts and circumstances of the case as discussed above and following the judgments of coordinate Benches of this Tribunal and the judgment of Hon'ble Delhi High Court as discussed in para 16 of this order, we are of the considered opinion that the impugned order dated 16.11.2011 is not sustainable and is liable to be quashed. Accordingly, we set aside and quash the order dated 16.11.2011 (Annexure A-1 to the OA) and make the interim order dated 26.9.2012 absolute. We also direct the respondents to refund the amount that has been recovered from the applicant and credit the same to his account, if not done already, alongwith the interest on the same as applicable for the Savings Bank account, within one month from the date of receipt of a certified copy of this order.

21. The OA is allowed in terms of the above directions. No costs .

(GOKUL CHANDRA PATI)
MEMBER-A

(JUSTICE BHARAT BHUSHAN)
MEMBER-J

Anand...