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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on 21st October, 2016.
Judgment pronounced on 4th November, 2016.

+ W.P. (C) 7821/2012

UNION OF INDIA AND ORS.

..... Petitioners

Through : Mr. Ruchir Mishra with Mr. Mukesh Kumar
Tiwari, Mr. Sanjiv Kumar Saxena, Ms.
Shubhi Mishra and Mr. Ramneek Mishra,
Advocates

versus

AMARENDRA NATH MISHRA AND ORS.

..... Respondents

Through : Mr. Vikas Singh, Senior Advocate with Ms.
Deepeika Kalia and Mr. Kapish Seth,
Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J.

1. Being aggrieved by the order of the Central Administrative Tribunal (hereinafter the '*Tribunal*') in OA 1586/2010, which was disposed on 05.12.2011 based upon a concession of the counsel for the petitioners herein that the matter was covered by the order of the Tribunal in *Central Government SAG (S-29) Pensioners' Association & Ors. v. Union of India & Ors.*, OA 655/2010 decided on 01.11.2011, the present writ petition has been filed.

2. The petitioners had filed the petition contending that the concession given by its counsel was wrong as the issues for consideration in the OA 655/2010 were distinct and were not covered by a Division Bench of this Court in OA 1586/2010. On 21.10.2013, the present petition was disposed of with leave to the petitioners to file an application before the Tribunal that the concession be allowed to be withdrawn. Aggrieved by the same, the respondents herein approached the

Supreme Court in SLP (C) 34799/2013 (later converted into CA 3390/2015) alleging that the petition had been disposed by this court without according a hearing to the counsel for the respondents herein. The counsel for the respondents had alleged that a request for pass-over had been made, which was not acceded to and the matter was disposed without a detailed hearing. The Supreme Court, by its order dated 07.04.2015, has remanded the matter back for fresh disposal.

3. The primary issue which arises for our consideration that whether the issues in OA 1586/2010 were covered by the order of the Tribunal in OA 655/2010 dated 01.11.2010 or not. It may be noticed that while learned counsel for the petitioner has vehemently submitted that the issues which arise in this case are not covered by the decision rendered by the Central Administrative Tribunal in OA.655/2010, learned Senior Counsel for the respondent has argued to the contrary. The Tribunal did not get an opportunity to apply its mind on account of a concession given by counsel for the respondent (before the Tribunal). We may first notice the necessary facts leading to the present writ petition.

4. The respondents herein belong to the Indian Revenue Services (IRS) and were assigned the post of members of the Central Board of Direct Taxes (CBDT) and the Central Board of Excise and Customs (CBEC). They have retired on various dates between 1992-2005. Admittedly, all have retired prior to 01.01.2006 and are pensioners. The respondents were drawing pension in the pre-revised pay scale of the corresponding pay scale of Rs.24,050-650-26,000, being the pay scale for the members of CBDT and CBEC.

5. The 6th Central Pay Commission (hereinafter the '6th CPC') was set-up in 2006 in order to review the pay and allowances of Central Government employees as well as All India Services. The CPC submitted its report on 24.03.2008. The CPC noted an anomaly that the IRS, being an important service and having a huge cadre strength, did not have even a single 'Secretary' level post; while other Group 'A' Services having less than 1/10th the strength have more Secretary level posts.

Accordingly in Para 3.3.35, it recommended the upgradation of the posts of Chairman and members of CBDT to the status of Special Secretary to the Government of India and to the revised apex pay band of Rs. 80,000 (fixed).

6. The recommendations of the 6th CPC were placed before the Cabinet for its approval and accordingly, a Resolution dated 29.08.2008 was passed accepting the recommendations of the CPC. The CPC had recommended the assigning of the Grade Pay of Rs. 13,000 in PB-4 for the pay scale of 24050-26000, i.e. the pay scale of the respondents herein. The said recommendation was not accepted and a new separate pay scale of Rs. 75,500 (annual increment @3%)-80,000 were designated as HAG+ Scale. Further the recommendation pertaining to the upgradation of the posts of members of CBDT and CBEC to the apex scale of Rs. 80,000/- (fixed) was left to be examined separately later.

7. Another Resolution was passed on 29.08.2008 accepting the recommendations of the 6th CPC in respect of pension and gratuity. The recommendation in respect of revision of pension of existing pensioners was accepted after a slight modification. The recommendations were to come in effect on 01.01.2006. The relevant portion of the Resolution reads as under:

<u>S. No.</u>	<u>Recommendation</u>	<u>Decision of Government</u>
12.	<i>All past pensioners should be allowed fitment benefit equal to 40% of the pension excluding the effect of merger of 50% dearness allowance/ dearness relief as pension (in respect of pensioners retiring on or after 1/4/2004) and dearness pension (for other pensioners) respectively. The increase will be allowed by subsuming the effect of conversion of 50% of dearness relief/ dearness allowance as dearness pension/ dearness pay. Consequently, dearness relief at the rate of 74% of pension (excluding the effect of merger) has been taken for</i>	<i>Accepted with the modification that fixation of pension shall be based on a multiplication factor of 1.86, i.e. basic pension + Dearness pension (wherever applicable) + dearness relief of 24% as on 1.1.2006 instead of 1.74.</i>

	<i>the purposes of computing revised pension. This is consistent with the fitment benefit being allowed in case of the existing employees. 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 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 (5.1.47)</i>	
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8. Thereafter, on 01.09.2008, the Department of Pension and Pensioners Welfare ('DoP&PW') issued a Notification on implementation of the recommendations of the 6th CPC as accepted by the Government. Clause 4 of the Notification regulated the fixation of pension of existing pre-2006 pensioners in the following manner:

"4.1 The pension/ family pension of existing pre-2006 pensioners/ family pensioners will be consolidated with effect from 1.1.2006 by adding together:-

- i. The existing pension/ family pension.*
- ii. Dearness pension, where applicable.*
- iii. Dearness Relief upto AICPI)(IW) average index 536 (Base year 1982=100) i.e. @ 24% of Basic Pension/ Basic family pension plus dearness pension as admissible vide this Department's OM No. 42/2/2006-P&PW(G) dated 5.4.2006*
- iv. Fitment weightage @ 40% of the existing pension/ family pension*

Where the existing pension in (i) above includes the effect of merger of 50% of Dearness relief w.e.f. 1.4.2004, the existing pension for the purpose of fitment weightage will be re-calculated after excluding the merged Dearness relief from the pension.

The amount so arrived at will be regarded as consolidated pension/ family pension w.e.f. 1.1.2006.

4.2 The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower fifty percent of the

minimum of the pay in the pay band plus 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)

9. Numerous representations were made to the Government of India seeking clarification of the above Notification dated 01.09.2008. In order to settle the same, the DoP&PW released notifications dated 03.10.2008 and 14.10.2008 and further released a fitment table representing the revised pension based on the revised pay bands and grade pays. In respect of the pay scale of the respondents herein (S-32), the corresponding 6th CPC Pay Scale was represented as 75500-80000. It further stated that the pension of such persons shall be fixed at Rs. 37,750/- being 50% of the minimum amount of the pay scale. Accordingly, the pension of the respondents was revised to the tune of Rs. 37,750/-.

10. Later in 2008, the recommendation of the 6th CPC in respect of upgrading the pay scale of members CBDT and CBEC to a fixed pay scale of Rs. 80,000/- was considered and accepted by the President. A Notification dated 24.12.2008 was issued by the President of India amending the CBDT and CBEC recruitment rules whereby the pay scale was now fixed to Rs. 80,000/- w.e.f. 24.12.2008. The benefit of the same has not been extended to the respondents herein in respect of revision of pension.

11. The respondents have submitted that they had made numerous representations to the petitioners seeking upward revision of their pension. They contended that they were entitled to fixation of pension of Rs. 38,883 per month w.e.f 01.01.2006 till the implementation of the Notifications dated 24.12.2008; and after its implementation to pension of Rs. 40,000/- per month being 50% of minimum of the pay band in the revised pay scales applicable to them. All the representations have been rejected by the orders of the petitioners dated 11.02.2009; 13/16.03.2009 and 18.11.2009.

12. Aggrieved the respondents herein had filed an OA, being No. 1586/2010, before the Tribunal. We deem it appropriate to reproduce the relief sought for before the Tribunal:

- “(i) Call for records of this case;*
- (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;*
- ...”*

(Emphasis Supplied)

13. On 05.12.2011, the Tribunal had allowed the OA relying upon the concession of the counsel for the petitioners herein that the matter was covered by the order of the Tribunal in OA 665/2010. Thereafter, the matter was disposed of by this court and has been remanded back by the Supreme Court as mentioned in the opening paras foregoing.

14. During the pendency of the case, the Government seems to have realized its mistake of incorrectly calculating the pension of the respondents herein and issued an OM dated 28.01.2013 whereby revising the pension of the respondents herein to Rs. 38,883/- per month prospectively w.e.f. 24.09.2012. The same was done only prospectively and had no bearing upon the pension paid during the period from 1.1.2006 to 23.09.2012.

15. Betraying chronology, we deem it appropriate to mention the subsequent developments prior to reverting to the order dated 01.11.2011 in OA 665/2010. Meanwhile, the petitioners herein had preferred appeals, being ***Union of India &***

Anr. v. Central Govt. SAG & Ors., W.P. (C) 1535/2012 [connected with W.P. (C) 2348/2012; W.P. (C) 2349/2012; and W.P. (C) 2350/2012] against the order dated 01.11.2011 in OA 655/2010 and were pending before this Court. This Court had dismissed the petitions agreeing with the findings of the Punjab and Haryana High Court in **R.K. Aggarwal & Ors. v. State of Haryana & Ors., W.P.(C) 19641/2009** and held that there was no rationale for making the OM dated 28.01.2013 prospective. Accordingly, the DoP&PW issued a OM dated 30.07.2015 making the previous OM dated 28.01.2013 applicable from 01.01.2006. The relevant portion reads as under:

“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 as 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 pronouncement, 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 the dismissal of SLP (C) No.23055/2013 by the Hon’ble Supreme Court.”

(Emphasis Supplied)

16. After the OM dated 30.07.2015 aforegoing, the relief sought by the respondents herein in (iii), as reproduced in para 12 aforegoing, in the original OA has been met. The only issue which remains in respect of the relief sought in (iv), i.e. upgradation of pension to Rs. 40,000/- per month as being entitled to the fixed pay scale of Rs. 80,000/- fixed by the Notification dated 24.12.2008.

17. Coming to the OA No. 655/2010, the applicants therein were pre-2006 retirees who had approached the Tribunal seeking parity with post-2006 retirees in terms of pension. They were primarily aggrieved by the clarificatory OMs dated 3.10.2008 and 14.10.2008 whereby, according to the applicants, the criteria and principles for determining the pension had been given a go-bye. The said OMs were challenged on three grounds; first, that they created two-different classes without any intelligible differentia and thus violated Article 14 of the Constitution; second, relying upon the judgment of the Supreme Court in ***Union of India v. S.P.S. Vains, (2008) 9 SCC 125***; and third, that the principles of enunciated by the Government in Resolution dated 29.08.2008 and OM dated 01.09.2008 were destroyed by the subsequent OMs under the garb of clarifications. The Tribunal had rejected the first two contentions of the applicants and had held that a government functionary cannot, under the garb of clarification, obliterate the recommendations made by the 6th CPC. The relevant portion of the order dated 01.11.2011 reads as under:

“26. As can be seen from the relevant portion of the resolution dated 29.8.2008 based upon the recommendations made by the VI CPC in paragraph 5.1.47, it is clear that the revised pension of the pre-2006 retirees should not be less than 50% 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 held by the pensioner at the time of retirement. However, as per the OM dated 3.10.2008 revised pension at 50% of the sum of the minimum of the pay in the pay band and the grade pay thereon, corresponding to pre-revised scale from which the pensioner had retired has been given a go-by by deleting

the words “sum of the” “and grade pay thereon corresponding to the pre-revised pay scale” and adding “irrespective of the pre-revised scale of pay plus” implying that the revised pension is to be fixed at 50% of the minimum of the pay, which has substantially changed the modified parity/formula adopted by the Central Government pursuant to the recommendations made by the VI CPC and has thus caused great prejudice to the applicants. According to us, such a course was not available to the functionary of the Government in the garb of clarification thereby altering the recommendations given by the VI CPC, as accepted by the Central Government. According to us, deletion of the words “sum of the” “and grade pay thereon corresponding to the pre-revised scale” and addition of the words “irrespective of the pre-revised scale of pay plus”, as introduced by the respondents in the garb of clarification vide OM dated 3.10.2008 amounts to carrying out amendment to the resolution dated 29.08.2008 based upon para 4.1.47 of the recommendations of the VI CPC as also the OM dated 1.9.2008 issued by the Central Government pursuant to the aforesaid resolution, which has been accepted by the Cabinet. Thus, such a course was not permissible for the functionary of the Government in the garb of clarification, that too, at their own level without referring the matter to the Cabinet.

27. We also wish to add that the Pay Commissions are concerned with the revision of the pre-revised ‘pay scales’ and also that in terms of Rule 34 of the CCS (Pension) Rules, 1972 the pension of retirees has to be fixed on the basis of the average emoluments drawn by them at the time of retirement. Thus, the pre-revised scale from which a person has retired and the emoluments which he was drawing at the time immediately preceding his retirement are a relevant consideration for the purpose of computing revised pension and cannot be ignored. As such, it was not permissible for the respondents to ignore the pre-revised scale of pay for the purpose of computing revised pension as per the modified parity in the garb of issuing the clarifications, thereby altering the modified parity/formula, which was accepted by the Central Government vide its resolution dated 29.08.2008.”

(Emphasis Supplied)

18. It is clear from a cursory reading of the foregoing paragraphs that the aspect which had persuaded the Tribunal was that the subsequent OMs had under the garb

of clarification destroyed the very basic principles of the Resolution dated 29.08.2008 and OM dated 01.09.2008 which had the approval of the Cabinet. The order of the Tribunal has attained finality as the resultant writ petition and SLP have been dismissed.

19. In the present case, the only issue which remains pertains to the applicability of the upgraded fixed pay scale for the members of the CBDT and CBEC of Rs. 80,000/- would be applicable to the respondents or not for the purpose of fixation of pension. The respondents are currently withdrawing pension of Rs. 38,883/- w.e.f. 01.01.2006 and are claiming pension of Rs. 40,000/- w.e.f. 24.12.2008 relying upon the Notification dated 24.12.2008. Therefore, what remains for our consideration is whether the said relief sought for the respondents herein before the Tribunal is covered by the decision of the Tribunal in OA 655/2010.

20. Mr. Mishra, learned counsel for the petitioners, contends that the present controversy is not covered by the order of the Tribunal in OA 655/2010 and requires fresh consideration. He submits that the concession made by the counsel for the petitioners/ respondents therein before the Tribunal on 05.12.2011 was wrong as the issues in both the OAs was distinct.

21. Learned counsel for the petitioner submits that in OA 655/2010, the Tribunal was faced by the former part of para 4.2 of the OM dated 01.09.2008, while the controversy in the present case pertains to the latter part. He has drawn our attention to para 4.2 wherein two different methods of calculating the minimum permitted pension are given, one pertaining to the new HAG+ pay scales while the other pertains to normal pay scales. He concludes that the present controversy is in respect of the HAG+ pay scales and the not the lower scales.

22. Learned counsel has also drawn our attention to a recent order of the Tribunal in ***Rajendra v. Pay & Accounts Officer & Ors., OA 2553/2014*** wherein the Tribunal was approached by a former member of the Income Tax Appellate Tribunal (ITAT) seeking benefit of subsequent upgradation of post. The applicant

therein had sought to rely upon the order of the Tribunal in OA 655/2010, but the Tribunal had rejected the contention and observed as under:

*“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 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.”*

(Emphasis Supplied)

23. Mr. Mishra has relied upon the foregoing order to affirm his contention that the order of the Full Bench of the Tribunal was not on grant of upgradation consequent to the retirement of the officers. He has further informed us that the review application filed from the foregoing order has also been dismissed by the Tribunal.

24. Mr. Mishra, learned counsel for the petitioner, further contends that the upgradation of the pay scale of HAG+ scale to Rs. 80,000/- was only prospective in nature and applicable to officers serving in the capacity of members of CBDT and CBEC and cannot be applied to pensioners who had retired prior to 24.12.2008. He submits that as per para 4.2, the respondents herein are only entitled to corresponding pay and not upgraded pay.

25. On the other hand, Mr. Vikas Singh, learned senior counsel appearing on behalf of the respondents, has strongly urged that the OA 1586/2010 was squarely covered by the decision of the Full Bench of the Tribunal in OA 655/2010. Further, since the resultant writ petition as well as the SLP have been dismissed, the order of the Tribunal dated 01.11.2011 has attained finality and consequently,

the issues have been decided.

26. Mr. Singh has also drawn our attention to an anomaly created between the posts. To this end, he has drawn our attention to an OM dated 31.05.2013 of the Department of Revenue, Government of India wherein 26 new posts of 'Principal Chief Commissioners of Income Tax' have been approved to be created, having a fixed pay of Rs. 80,000/-. He also drew our attention to a similar Notification dated 18.12.2013 wherein 14 posts of 'Principal Chief Commissioners of Central Excise and Customs' have been created. Mr. Singh urges that these new posts shall be under the supervision and control of the Members, CBDT and members CBEC and therefore, the respondents have been reduced to a position wherein they being superior officers shall draw pension on the basis of a pay scale lower than the pay scale of an officer subordinate to them whose work they supervised. He has relied upon the judgment of the Supreme Court in *S.P.S. Vains (Supra)* to encompass his contention in this regard.

27. Learned senior counsel has also submitted that the Government had accepted the principle of parity between existing retirees and new retirees in terms of pension by the Resolution dated 29.08.2008 and OM dated 01.09.2008 and the question before the Tribunal was also in relation to the parity between the retirees and therefore, the present controversy is completely covered by the order of the Full Bench of the Tribunal which has attained finality.

28. We have heard the counsel for the parties and perused the material placed on record including the order dated 01.11.2011 of the Tribunal in OA 655/2010. Admittedly, only one controversy remains to be decided in OA 1586/2010, i.e. relief sought in (iv) of the original OA pertaining to the refixation of pension of the respondents at Rs. 40,000. The other relief sought by the respondents has already been met by means of the OM's dated 30.07.2015 and 28.01.2013, in as much as, they have been declared to be entitled for and are drawing minimum pension of Rs. 38,883 w.e.f. 01.01.2006. Therefore, we limit ourselves to the remaining

controversy.

29. It is not in dispute that pursuant to the Resolution dated 29.08.2008 and OM dated 01.09.2008 the respondents were entitled to pension not less than fifty percent of the minimum amount of the corresponding revised pay scales. This rule was distorted by the clarificatory OMs dated 3.10.2008 and 14.10.2008 under the garb of clarification. It was this anomaly which had lead to the Tribunal quashing the clarificatory OMs and directing the respondents therein to refix pension as per the Resolution dated 29.08.2008.

30. The respondents are claiming benefit of subsequent upgradation of the posts w.e.f. 24.12.2008 relying upon the Notification of the same date. By means of the Notifications dated 24.12.2008 issued under Article 309 of the Constitution relevant amendments were carried out to the Central Board of Direct Taxes (Chairman and Members) Recruitment Rules, 2006 and Central Board of Excise and Customs (Chairman and Members) Recruitment Rules, 2006 in order to upgrade the pay scale of the Chairman and Members to a fixed scale of Rs. 80,000. Both the Notifications are similar in all aspects; we deem it appropriate to reproduce the Notification in respect of CBDT below:

“

NOTIFICATION

New Delhi, the 24th December, 2008

G.S.R. 875(E) –In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules to amend the Central Board of Direct Taxes (Chairman and Members) Recruitment Rules, 2006, namely:--

- 1. These rules may be called the Central Board of Direct Taxes (Chairman and Members) Recruitment (Amendment) Rules, 2006.*
- 2. In the Schedule to the Central Board of Direct Taxes (Chairman and Members) Recruitment Rules, 2006, -*
 - (i) against serial number (1) relating to the post of Chairman, for the existing entries in columns (4) and (12) the following entries shall be substituted, namely:-*

(4)	(12)
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<u>Rs. 80,000/- (fixed)</u>	...
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(ii) against serial number (2), relating to the post of Member, for the existing entries in columns (4) and (12) the following entries shall be substituted, namely:-

(4)	(12)
<u>Rs. 80,000/- (fixed)</u>	...

[F. No. 50/37/2008-Ad.I]
V. SREEKUMAR Under Secy.

Note: The principal rules were published in the Gazette of India vide Notification number G.S.R. 45(E), dated 2nd February 2006.”

(Emphasis Supplied)

31. By the foregoing Notification the pay scale of the Chairman and Members of the CBDT were upgraded from Rs. 26,000/- (fixed) and Rs. 24,050-650-26,000 respectively to a fixed pay scale of Rs. 80,000.
32. Mr. Singh, learned senior counsel for the respondents, has labored hard to convince us that the remaining controversy is covered by the order in OA 655/2010, but we are unable to accept the same. This is as 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 subsequent upgradation of posts. The order of the Tribunal dated 01.11.2011 cannot be read as to encompass a direction for refixation of pay as per the subsequent upgradation. Further the same was limited to parity between the pre-2006 retirees and post 2006 retirees and did not envisage or adjudicate upon a subsequent upgradation of posts in the year 2008.
33. We are unable to accept the contention of the learned senior counsel of the respondents in respect of **S.P.S. Vains (Supra)** as any comment on the matter would involve us going into the merits of the claim of the respondents. At the same time, the judgment cannot be relied upon to show nexus between the issue

remaining between the parties herein and the controversy before the Tribunal in OA 655/2010, as the Tribunal had categorically rejected the applicability of the *ratio* in **S.P.S. Vains (Supra)** in paragraph 10 of the order dated 01.11.2011. Since we do not wish to reproduce the entire para 10, which is quite verbose, we only reproduce the concluding line of the para below:

“10. ...Thus, according to us applicants cannot take any assistance from this judgment which was rendered in the different facts and circumstances of the case and relates to the Army personnel and based on the premise of ‘one rank one pension’.

34. In view of the foregoing, 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.

36. Accordingly, the order dated 05.12.2011 passed by the Tribunal is quashed and the matter is remanded back to the Tribunal for considering the remaining issue between the parties. We also direct the Tribunal to make an endeavour to dispose of the matter expeditiously.

37. The present writ petition stands disposed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

NOVEMBER 4th, 2016 //