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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.8113/2016**

Date of Decision: 14th September, 2017.

RAJENDRA

..... PETITIONER

Through Mr.Dinesh Agnani, Sr. Adv. with
Mr.Piyush Sharma, Adv.

versus

UNION OF INDIA & ORS

..... RESPONDENTS

Through Mr.Akshay Makhija, Adv. with
Mr.Aditya Goyal, Adv. & Mr.Shivi
Sanyam, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J

1. 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 19th 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 24th April, 1987, has been receiving pension. As per the recommendation of the Sixth Central Pay Commission (VIth 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 1st 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 Vs. Pay & Accounts Officer and others*, O.A. No.759 of 2011, decided by Madras Bench on 26.3.2012; *B.V.Venkataramaiah Vs. Pay & Accounts Officer and others*, O.A.No.517 of 2012, decided by Bangalore Bench on 14.2.2013; *Shri Prakash Narain Vs. Secretary, Department of Personnel and others*, O.A.No.1715 of 2013, decided by Principal Bench on 23.5.2013; *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 & *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. 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 1st September, 2008 contended that since the pay scale for

HAG had been virtually revised from Rs.75,500-80,000/- w.e.f. 1st 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 1st 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 (IVth CPC). The Fifth Central Pay Commission (Vth CPC) was implemented from 1st January, 1996 and the corresponding pay scale of Rs.7300-7600/- (in the IVth CPC), was revised to Rs.22,400-24500/- (in the Vth CPC). On 6th October, 1999, the pay-scale of Member, ITAT was upgraded from Rs.7300-7600/- to Rs.7300-8000/-,

which was made effective from 1st January, 1996 by a presidential order dated 6th October, 1999. The scale of Rs.7300-8000/- under the IVth CPC was revised to the pay scale of Rs.22,400-26000/- w.e.f. 1st January, 1996 in the Vth CPC. Under the VIth CPC, the pay scale of Rs.22,400-24500/- was further revised to Rs.67000-79000/- w.e.f. 1st January, 2006. However, the pay scale of Rs.22400-26000/- (corresponding to Vth 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. 1st January, 2006 in accordance with VIth CPC. On 1st 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. 1st 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 vs. Union of India & Ors.*** 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 & Anr. Vs. Central Govt. SAG & Ors.***, 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 Vs. 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 & Ors. Vs. Amarendra Nath Mishra & Ors.* 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 1st January, 1996 which resulted in the upgraded pay scale of Rs.75,500-80,000/- under the VIth CPC 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 1st 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. 1st 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 VIth 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. 1st 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.

(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

SEPTEMBER 14, 2017/aa