REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1694 OF 2006

The State of West Bengal and others … Appellants

Versus

Kamal Sengupta and another … Respondents

J U D G M E N T

G.S. Singhvi, J.

1. Whether a Tribunal established under Section 4 of the Administrative Tribunals Act (for short 'the Act') can review its decision on the basis of subsequent order/decision/judgment rendered by a coordinate or larger bench or any superior Court or on the basis of subsequent event/development is the question which arises for determination of this appeal filed by the State of West Bengal and others against the judgment of the High Court of Calcutta, whereby the said High Court declined to

interfere with order dated 25.9.2001 passed by the West Bengal Administrative Tribunal (for short 'the Tribunal') in R.A. No.26 of 1998.

2. The facts necessary for deciding the aforementioned question are as under:-

(i) Respondents Kamal Sengupta and Narayan Chandra Ghosh appeared in the competitive examination conducted by the West Bengal Public Service Commission in 1973 for recruitment to West Bengal Civil Services (Executive) and other Allied Services. They were declared successful and were allotted to West Bengal Food and Supplies Service (hereinafter described as 'the service'). Initially, they were posted as Sub-Divisional Controller of Food and Supplies. In due course, they were promoted as Assistant Director, Deputy Director and finally as Director and their pay was fixed in the scales prescribed for those posts. They were also given the benefit of revised scales under the West Bengal (Revision of Pay and Allowance) Rules, 1981 (hereinafter referred to as 'ROPA 1981') and the West Bengal (Revision of Pay and Allowance) Rules, 1990 (hereinafter referred to as 'ROPA 1990').

(ii) After 20 years of joining the service, the respondents filed Writ Petition No.1547 of 1995 for quashing letter dated 6.1.1995 vide which the Finance Department of the State Government rejected their claim for grant of Pay Scale Nos.19 and 21 in terms of the Career Advancement Scheme (for short 'the Scheme') framed by the Government of West Bengal, which was circulated vide Memorandum dated 21.6.1990 and for issue of a mandamus to the State Government to take action in accordance with the recommendations made by Secretary, Food and Supplies Department vide his DO No.G-5250/FC dated 5.10.1992, G-5302/FC dated 16.10.1992 and Con-223/FS dated 27.4.1994. They further prayed for issue of direction to the non-petitioners (the appellants herein) to declare the posts in Scale Nos.19 and 21 under Rule 2(b) of ROPA 1990 to be in the ranks of Joint Secretary and Special Secretary respectively and sanction those posts for members of the service in the same ratio as was done in the case of West Bengal Civil Services Officers.

(iii) In the affidavit filed by him in support of the writ petition, Narayan Chandra Ghosh (respondent no.2 herein) referred to the factum of sanction of Pay Scale Nos.17, 18 and 19 to members of the service

under ROPA 1981, recommendations made by the Third Pay Commission, the Scheme and averred that they have been subjected to hostile discrimination in the matter of grant of Scale Nos.19 and 21. For the sake of reference, paragraphs 5, 9, 13, 17 and 18 of the affidavit of respondent no.2 are reproduced below :-

> "5. That the petitioners having entered in to W.B.F.& S.S., in the year of 1974/75 after successfully passing the West Bengal Civil Service (Executive) and certain allied service examination held in 1973 were first posted in the basic grade posts of Sub-Divisional Controller of Food and Supplies and thereafter in recognition to meritorious service since rendered by them were posted in different senior posts and posts with higher responsibilities like Assistant Director, Deputy Director and lastly were posted as Director in the year of 1991 and 1992 respectively.
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> 9. That the petitioners were awarded Scale No.19, (Rs.1600/- to 2250/-) according to their respective seniority cum merit w.e.f. 01.03.1982 and 01.11.1982 respectively and on 1st January, 1986 when the pay of the petitioners were to be fixed notionally in terms of the provision of West Bengal Services (ROPA) Rules, 1990, the petitioners were drawing pay Rs.1840/- and Rs.1780/- respectively.
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> 13. That the petitioners state that under ROPA, 1990 the members of W.B.F. & S.S., have been awarded three scales of pay namely scale Nos.16 (Rs.2200/- to Rs.4000/-) 17 (Rs.3000/- to Rs.4750/-) and 18 (Rs.3700/- to Rs.5700/-) inasmuch as these scales correspond to Scale No.17 (Rs.660/- to Rs.1600/-), Scale No.18 Rs.1100/- to Rs.1900/-) and No.19 (Rs.1600/- to Rs.2250/-) under ROPA, 1981.
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> 17. That the distribution of posts in revised Scale Nos.19 and 21 for the services shown in Annexure to the Memo No.6075-F dated 21.06.1990 (Annexure "C" to this Writ Petition) is given hereunder :

Name of Service	Grade Strength	Scales 19	Scales 21	Eligibility condition for Scale No.19 & 21 (Revised)
1	2	3		4
1. W.B.S.C. (Exe)	1767		64	4 20 years of total service on Revised Scales Nos.16, 17, 18 and their unrevised counter parts and 3 years in unrevised scale no.19 or revised scale no.18.
2. W.B. Commercial Tax Service	566	8	1	Same as for W.B.C.S.
3. W.B. Co-operative Service.	162	2	Nil	- do -
4. W.B. Excise Service.	190	1	Nil	- do -
5. W.B. National Emp-loyment Service.	170	1	Nil	- do -
6. W.B. Labour Service	132	1	Nil	- do -
7. W.B.F. & S.S.	280	Nil	Nil	- do -
8. W.B. Police Service (Group B Service)	279	2	Nil	- do -
9. W.B. General Service	3		Nil	- do –

not known.

> 18. It is evident from the foregoing paragraph that all the State Services constituted under Art. 309 of the Constitution of India and having same method of recruitment have been given the benefit of Scale No.19 under Career Advancement Scheme save and except the West Bengal Food and Supplies Service which is a duly constituted State Service and belongs to Group "A" State Services along with other, under West Bengal Civil Services (Exe) and Certain allied Services."

(iv) In the counter-affidavit filed on behalf of the appellants herein, it was averred that the Scheme was framed to improve the standard of administration and career prospects of the employees, who did not have adequate promotional opportunities. It was further averred that benefit of the Scheme was not extended to the writ petitioners because they had been promoted to the higher posts and were paid salary in the scales prescribed for those posts. As regards the recommendations made by Secretary, Food & Supplies Department, it was averred that the same are not binding on the State Government. Paragraphs 7, 12 and 13 of the counter affidavit which are reflective of the stand taken by the appellants read as under :-

> "7. With reference to the said paragraph, it is pertinent to point out that so far as the service of writ petitioners is concerned, they have reached their highest post in the service as admitted by them. They have also reached the highest scale of pay as are admissible to the highest post. They are no longer eligible for any scale under the Career Advancement Scheme as the said Scheme is not meant for them.

12. With reference to the allegations contained in paragraphs 18 to 20 of the writ petition, it is denied that all the State services have been given the benefit of scale no.19 save and except West Bengal Food & Supplies service or that cadre strength has anything to do with the Career Advancement Scheme or that there is any arbitrary act or act which is violative of the principles of equity and the principles of natural justice as wrongfully alleged or at all. In this context, I repeat and reiterate that the Career Advancement Scheme for the Government employees is guided by the Finance Department Memo dated June 21, 1990. In order to allow the benefit of higher pay scale to the incumbents of the respective services subject to fulfillment of certain conditions, the said Scheme was introduced. The members of the State Service including the West Bengal Food & Supplies Service are entitled to promotion in the higher scale of pay being scale nos.16, 17 and 18. In addition to the above benefit, as per promotion policy of the Government, the members of some of the State services have been allowed the benefit of scale nos.19 and 21 as per Career Advancement Scheme referred to above. The said benefit of higher scale nos.19 to 21 as per Career Advancement Scheme referred to above has not been allowed to the State Services in general since the prospect of promotion to the higher scale of pay depends on a variety of consideration namely ratio of higher post to base level post in the feeder grade, hierarchical structure of the department, the level of work and nature of responsibilities, the proportion of direct recruitment, the pace of growth of normal activities of a department, the avenue of normal promotion etc. On consideration of the above factors, there is hardly any justification to bring all State Services on the same footing in respect of extension of the benefit of higher scale of pay as per promotion policy of Career Advancement Scheme. In fact, the Third Pay Commission as an expert body held that it is not possible to grant equal opportunities of promotion to the higher post to the employees in general on account of the said various factors. If necessary, I shall crave leave to refer to a copy of the recommendation of the Third Pay Commission at the hearing.

> 13. With reference to the allegations contained in paragraphs 21 to 25(b) of the writ petition, it is denied that there is any discrimination as alleged or at all. The D.O. letter dated October 5, 1992 is a mere recommendation by the departmental head as is usual practice for all the departmental heads to forward representations which were received from their employees. As already stated above, the consideration which are relevant for the purpose of extending the Career Advancement Scheme are totally different. The incumbents who are holding the post of Commercial Tax Services are not obviously at par with the post held by the petitioners. In this context, it is also pertinent to mention that the matter of extending the Career Advancement Scheme is a matter of policy decision. As already stated and admitted by the writ petitioners that they have reached the scale no.19, under ROPA Rules, 1990 and as such their getting further career advancement does not and/or cannot arise."

(v) On establishment of the Tribunal, the writ petition was transferred to it and was registered as Transferred Application No.826 of 1996. By an order dated 25.2.1997, the Tribunal dismissed the same. It held that the pay structure has been worked out by the Third Pay Commission after proper job evaluation of different services and posts; that there cannot be any equality among the members of different services; that the State Government was free to frame appropriate scheme for grant of higher pay scales to the members of some services who did not have adequate promotional opportunities and that in the absence of any evidence of parity, a mandatory direction cannot be issued for grant of higher pay scales to the applicants.

(vi) The respondents challenged the order of the Tribunal in WPST No.59 of 1997, which was dismissed by the High Court with an observation that the only remedy available to the petitioners was to file petition for special leave to appeal. Thereafter, the respondents filed SLP No…. of 1998 (CC 5925/1998), which was dismissed on 4.9.1998 as withdrawn in terms of the prayer made by their counsel.

(vii) In the meanwhile, Joydeb Biswas and others filed O.A. No.148 of 1997 for grant of Scale Nos.17, 18 and 19 to members of the service under ROPA 1981 in the ratio of 6:3:1. They relied on Finance Department Memorandum No.9425-F dated 9.8.1983, whereby posts in different services were distributed in the ratio of 6:3:1 and orders passed by the High Court of Calcutta for grant of Scale Nos.17, 18 and 19 to the members of State Audit and Accounts Service and West Bengal Judicial Service in the ratio of 6:3:1 and pleaded that they are entitled to similar treatment.

(viii) The appellants contested the application of Joydeb Biswas and others by asserting that their claim of parity with members of other State Services was untenable. In support of this plea, the appellants

relied on the order passed in Transferred Application No.826 of 1996 (**Kamal Sengupta and another vs. State of West Bengal and others**).

(ix) The Tribunal distinguished the order passed in **Kamal Sengupta's case** by observing that the question of distribution of Scale Nos.17, 18 and 19 was not considered in that case and directed the State Government to implement the recommendations made by Secretary, Food and Civil Supplies Department. The relevant portions of order dated 25.3.1998 passed by the Tribunal in O.A. No.148 of 1997 are extracted below:-

> "That takes us to the question whether the distribution of scales of pay in the ratio of 6:3:1 should be extended to the applicants. It may be true that the rationale which attracted the decisions in the case of Audit and Accounts Service and the West Bengal Judicial Service may not be fully applicable to the case of the applicants employed in Food and Civil Supply Department, but the broad fact remains that the authority competent to decide this question is the Departmental Secretary being the respondent no.2, who by his elaborate and reasoned order in Annexure 'G', has fully upheld the case of the applicants. Being the administrative head of the concerned Department he is the most competent person to decide about the cadre strength, the promotional prospect and the distribution of the promotional scales of pay, and going through his order we do not find any unreasonableness or arbitrariness in his judgment.
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> In view of the conclusion reached on the second point above, we may dispose of the third contention raised by the State respondents that due to the decision in **Kamal Sengupta's case**

the point is concluded against the applicants. We do not agree for the simple reason that in **Kamal Sengupta's case** the question was whether scale nos.20 and 21 of ROPA Rules of 1990 should be extended to the officers of the Food Department and in that judgment there was no point for consideration as to how the scale nos.17, 18 and 19 are to be distributed amongst the officers of the Food & Supply Department. So the third point taken by the State respondents also fails.

That takes us to the irresistible conclusion that there is no valid ground to refuse the applicants the benefit of scale nos.17, 18 and 19 in the ratio of 6:3:1. At the risk of repetition we may say that the decision of the respondent no.2 as indicated in Annexure 'G' is conclusive. The question whether the Secretary, Finance Department will issue necessary Government orders or whether such order will involve additional financial burden upon the State exchequer is of no consequence to us. When the administrative head of a particular department has taken a well reasoned decision on the representation of the applicant and pursuant to our direction in the earlier writ petition, the respondent no.1 cannot be allowed not to implement the same on any plea, whatsoever."

[Emphasis added]

(x) After dismissal of the Special Leave Petition, the respondents filed R.A. No.26 of 1998 for review of order dated 25.2.1997 by asserting that they were stagnating in the same scale of pay since 1982 and the non-applicants arbitrarily denied them benefit of the higher scales which were given to the members of other services. The respondents pleaded that in view of the recommendations made by Secretary of Food and Supplies Department, which are binding on the State Government, they are entitled to Scale Nos.19

and 21. In support of this plea, the respondents relied on order dated 25.3.1998 passed in O.A. No.148 of 1997 **Joydeb Biswas and others vs. State of West Bengal and others.** The precise grounds on which review was sought by the respondents are reproduced below:-

> "I. For that this learned Tribunal was pleased to reach two opposite conclusions on the same point of law as in Annexures "C" and "D" and thereby dismissing the case of your applicants, while allowing that of the other applicants.
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> II. For that the order as in Annexure "C" therefore suffers from this grave inconsistency and irregularity on the face of the record when compared to the Order as in Annexure "D".
>
> III. For that this learned Tribunal was pleased to hold the recommendation mainly the Administrative Head of Department of your applicants as a mere recommendation and allowed the objection of the Finance Secretary to prevail. In the matter of granting the benefit, which this learned Tribunal was pleased to grant to the said other petitioners merely because their Administrative Head of Department had made such recommendation, and despite the objections of the Finance Secretary in that case.
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> IV. For that the Orders as in Annexures "C" and "D" make for judicial anarchy and scuttle the belief in the judicial system.
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> V. For that even otherwise, the said orders as in Annexure "C" and "D" cannot both stand, without violating the principles of natural justice not only enshrined in Article 14 of the Constitution of India, but also in Section 22 of the Act of 1985, being the parent Statute of this learned Tribunal read with Article 323-A of the Constitution of

> India, and it is fit and proper that this learned Tribunal be pleased to review its order as in Annexure "C" in the light of the later judgment as in Annexure "D", on the principle that the later judgment shall prevail."

(xi) By an Order dated 30.11.1999, the Tribunal dismissed the review application on the premise that power of review cannot be exercised after dismissal of the SLP.

(xii) The legality and correctness of the aforementioned order was challenged by the respondents in WPST No.37 of 2000, which was allowed by the Division Bench of the High Court on the premise that dismissal of the SLP as withdrawn did not affect the Tribunal's power of review. Accordingly, a direction was given to the Tribunal to decide the review application afresh.

(xiii) In compliance of the direction given by the High Court, the Tribunal heard the review application on merits and allowed the same vide order dated 25.9.2001. The Tribunal made detailed reference to the pleadings of the parties and arguments of their advocates, recommendations made by Secretary, Food and Supplies Department and rejection thereof by the Finance Department as also Memo dated 13.3.2001 issued by the State Government for creation of additional

posts in Scale No.19 for various State Services including the service of which the respondents were members and held :-

> "Be that as it may, it now appears from the Supplementary Affidavit filed by the applicants that the respondent authorities concerned have come forward and issued necessary Govt. orders extending the benefit of Scale No.19 to the Officers of Food & Supplies Department w.e.f. 1.1.2001 vide Memo No.3015-F dated 13.3.2001 being annexure 'C' to Supplementary Affidavit. It was argued before us by the Ld. Senior Counsel for the applicants that because of the extension of such benefit of Scale No.19 to the Officers of Food & Supplies Department, the instant case stood disposed of in their favour but in part. In our view, the extension of the benefit of Scale No. 19 pointed out only to a glaring fact that the Officers of Food & Supplies Department were also entitled to such a Scale, but they were deprived of the same for a long time for reasons best known to the authorities concerned. It was indeed a clear case of hostile discrimination."

The Tribunal then referred to order dated 25.3.1998 passed in O.A. No.148 of 1997, **Joydeb Biswas's case**, and held :-

> "Switching now over to the other aspect of the case, we find from Annexure 'D' to the application for review that the Ld. Division Bench of this Tribunal delivered a judgment in OA 148/97 on 25.3.98 in which 13 applicants of the said case being employees of the Food and Supplies Department claimed the benefits of scale nos.17, 18 and 19. It appears that in that case this Bench held inter alia that the recommendation made by the Food Secretary, being Head of the Administrative Department was binding on the Secretary, Finance Department and hence the State respondent authorities concerned could not refuse to implement the said recommendation of the Administrative Head on "any plea what-so-ever". In that view of the matter, it appears that by the said judgment and order dated 25.3.98, the Division Bench of this Tribunal directed the concerned respondent authorities to issue necessary Govt. order extending the benefit of scale nos.17, 18 and 19 to the applicants of the

> said case. The contention of the Ld. Counsel for the applicants of this case was that this judgment and order was not within their knowledge and hence documents in that regard could not be produced by the applicants before the Ld. Tribunal at the appropriate time and that upon discovery of new and important material, viz., judgment and order, dated 23.5.98, which was not within their knowledge, they were not praying for review, which was admissible under the provisions of Section 21 of the Administrative Tribunals Act, 1985 and also under Section 14 of the Limitation Act, 1963. In our view this was certainly a "sufficient cause" for belated filing of the application for review."

Though the Tribunal did not deal with the issue relating to entitlement of the respondents to Scale No.21, but directed the appellants herein to extend the benefit of the said scale to them. This is evident from the operative part of the Tribunal's order, which is extracted below:

> "In the facts and circumstances of the case, we are, therefore, inclined to allow the instant prayer for review put in by the applicants. We, thus allow the Review application and direct the respondent authorities concerned, particularly respondent No.2 (i.e. Secretary, Finance Deptt.) to take necessary steps for extending the benefits of Scale No.19, if not already extended to the applicants and also to extend the benefits of Scale No.21 to the applicants in accordance with the Rules and law and provisions contained in Notification No.6075-F dated 21.6.90 meant for W.B.C.S. (Executive) and other Allied Services officers within a period of four months from the date of communication of this order."

3. The appellants challenged the aforementioned order in WPST No.1 of 2001 by asserting that the Tribunal did not have the jurisdiction to review

order dated 25.2.1997 on the basis of subsequent order passed in **Joydeb Biswas's case.** Another plea taken by the appellants was that the recommendations made by the Secretary of the Administrative Department are not binding on the State Government. The Division Bench of the High Court held that the Tribunal could not have entertained and allowed the review application on the basis of a decision which was not in existence at the time of initial order, but declined to interfere with order dated 25.9.2001 by observing that denial of higher pay scale to members of the service had resulted in violation of their fundamental rights under Articles 14, 16 and 21 of the Constitution.

4. Shri Bhaskar P. Gupta, Senior Advocate appearing for the petitioners extensively referred to the pleadings of Writ Petition No.1547 of 1995, which was later on converted into Transferred Application No.826 of 1996, R.A. No.26 of 1998, orders dated 25.2.1997, 25.3.1998 and 25.9.2001 passed by the Tribunal, orders dated 8.1.2001 and 21.8.2003 passed by the High Court in WPST No.37 of 2000 and WPST Nos.1 and 2 of 2001 respectively and order dated 4.9.1998 passed by this Court in SLP No…. of 1998 (CC 5925/1998) and argued that the Tribunal committed a jurisdictional error by entertaining the review application on the ground that in **Joydeb Biswas's case** a direction had been given to the State

Government to act on the recommendations made by the Secretary of the Administrative Department for grant of relief to the applicants of that case and while dismissing the SLP, the Supreme Court had observed that the petitioners can seek review of the order passed in the transferred application. Shri Gupta submitted that power vested in the Tribunal under Section 22(3)(f) of the Act to review its order/decision is similar to that of the Civil Court and the same can be exercised only on the grounds specified in Order 47 Rule 1 of CPC. Learned counsel emphasized that any subsequent decision on an identical or similar point by a coordinate or larger bench or even change of law cannot be made basis for recording a finding that the order sought to be reviewed suffers from an error apparent on the face of the record. Shri Gupta argued that the Tribunal could not have reviewed order dated 25.2.1997 by relying on order dated 25.3.1998 passed in **Joydeb Biswas's case,** because that order did not contain any determination on the issue of sanction of posts in Scale Nos.19 and 21 under the Scheme circulated vide Memorandum dated 21.6.1990. He further argued that even if the order passed by the Tribunal in **Joydeb Biswas's case** could be relied upon for the purpose of holding that recommendations made by the Secretary of the Administrative Department are binding on the Government, a mandatory direction could not have been given for extension of the benefit of Scale Nos.19 and 21 to the respondents ignoring the fact

that those scales had not been given to members of other services as well. Learned counsel invited our attention to the annexure appended to the Scheme to show that the State Government had not sanctioned posts in Scale No.19 for three services including the one of which the respondents were members and posts in Scale No.21 were sanctioned only for 2 out of 17 State Services and argued that the plea of discrimination raised by the respondents was rightly rejected by the Tribunal in the first instance because the respondents had already reached the highest positions in the service and were being paid salary in the revised scales introduced under ROPA 1990. Learned counsel pointed out that while dismissing the SLP as withdrawn, this Court did not give liberty to the respondents herein to apply for review of order dated 25.2.1997 and argued that letter written by the counsel could not be made basis for presuming that such liberty had, in fact, been given. Another argument of the learned senior counsel is that the plea of stagnation was not raised by the respondents till the filing of review application and, therefore, the same could not have been considered by the Tribunal in conjunction with the decision contained in Memorandum dated 13.3.2001 for recording a finding that the State had discriminated the respondents in the matter of grant of higher pay scales. Shri Gupta lastly argued that the High Court committed serious error by refusing to set aside the order impugned in the writ petition ignoring the stark fact that posts in Scale

No.19 had not been sanctioned for 3 out of 17 State Services and posts in Scale No.21 were sanctioned only for two services viz., West Bengal Civil Service (Executive) and West Bengal Commercial Service and the Tribunal had not struck down the Scheme as a whole on the ground of violation of Articles 14 and 16 of the Constitution. In support of his arguments/submissions, Shri Bhaskar Gupta relied on judgments of this Court – **State of U.P. vs. J.P. Chaurasia** [1989 (1) SCC 121], **State of Maharashtra and another vs. Prabhakar Bhikaji Ingle** [1996 (3) SCC 463], **K. Ajit Babu and others vs. Union of India and others** [1997 (6) SCC 473], **Gopabandhu Biswal vs. Krishna Chandra Mohanty and others** [1998 (4) SCC 447], **Ajit Kumar Rath vs. State of Orissa and others** [1999 (9) SCC 596], **Union of India vs. Pradip Kumar Dey** [2000 (8) SCC 580], **Sankar Deb Acharya vs. Biswanath Chakraborty** [2007 (1) SCC 309] and **Union of India vs. Arun Jyoti Kundu and others** [2007 (7) SCC 472].

5. Shri Dhruv Mehta, learned counsel for the respondents referred to the judgments of this Court in **Indian Charge Chrome Ltd. vs. Union of India** [2005 (4) SCC 67], **Board of Control for Cricket in India vs. Netaji Cricket Club** [2005 (4) SCC 741], and **K.T. Veerappa vs. State of Karnataka [**2006 (9) SCC 406] and argued that the Tribunal did not

commit any illegality by reviewing order dated 25.2.1997. Learned counsel further argued that failure of the appellants to sanction posts in Scale Nos.19 and 21 for members of the service resulted in hostile discrimination between similarly situated persons and, therefore, the Tribunal rightly directed them to extend the benefit of those scales to the respondents. Shri Mehta pointed out that order passed in **Joydeb Biswas's case** was relied upon by the Tribunal for the limited purpose of reiterating the settled legal position that the recommendations made by the Secretary of the Administrative Department are binding on the State Government and argued that this Court may not interfere with the orders under challenge on the ground that the Tribunal did not advert to the grounds of review enumerated in Order 47 Rule 1 CPC. Shri Mehta emphasized that the respondents were stagnating on the same posts and were drawing salary in the same pay scale since 1982 and argued even though this fact was clearly discernible from the averments contained in the affidavit filed in support of the writ petition, the Tribunal failed to consider the same and dismissed the transferred application on the specious ground that the State Government had the discretion to prescribe different pay scales for different posts and services. Learned counsel then referred to Memorandum dated 13.3.2001 to show that the State Government *suo moto* sanctioned posts in Scale No.19 for different services including the one to which the respondents belonged and

argued that the Tribunal did not commit any illegality by taking cognizance of the said Memorandum for the purpose of recording a positive finding on the issue of discrimination in the matter of grant of higher pay scales to similarly situated persons.

6. We have given serious thought to the entire matter and scrutinized the record. Articles 323A and 323B were inserted in the Constitution by Section 46 of the Constitution (Forty-second Amendment) Act, 1976 in the backdrop of pendency of large number of cases relating to recruitment and conditions of service of the employees of the Central and State Governments and their agencies/instrumentalities and other matters concerning the public at large before the Civil Courts throughout the country and long delays in the disposal of such cases which adversely affected administrative set up/structure at various levels of governance and recovery of revenue etc. These Articles enabled Parliament to make laws for creation of alternative adjudicatory forums comprising of experts i.e. the Tribunals with exclusive jurisdiction, power and authority to deal with and decide the disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or

other authority etc. and other matters enumerated in Clause 2 of Article 323B.

7. In exercise of the power vested in it under Article 323A, Parliament enacted the Act. Chapter II of the Act contains provision for establishment of Tribunals and Benches thereof, qualifications of Chairman and Members, term of their office etc. Chapter III comprises of five sections relating to jurisdiction, powers and authority of the Central, State and Joint Administrative Tribunals, power of such Tribunals to punish for contempt and distribution of business among the Benches. Chapter IV contains various provisions relating to procedure to be followed for institution and adjudication of applications relating to service disputes. Chapter V contains miscellaneous provisions including transfer of the cases pending before the Civil Courts and High Courts. The original format of the Act excluded jurisdiction of all the Courts including the High Courts and Supreme Court in relation to service matters. Later on, the exclusion clause contained in Section 28 was amended and jurisdiction of the Supreme Court to deal with such matters was restored. The jurisdiction of the High Courts in relation to service matters was partially restored by the judgment of the larger Bench of this Court in **L. Chandra Kumar vs. Union of India and others** (1997) 3 SCC 261.

8. With a view to achieve the object underlying the enactment of Article 323A i.e. expeditious adjudication of service disputes/complaints, the Tribunals established under the Act have been freed from the shackles of procedure enshrined in the CPC but, at the same time, they have been vested with the powers of a Civil Court in respect of some matters including review of their decisions. This is clearly evinced from the plain language of Section 22 of the Act, which is reproduced below :-

> "**22. Procedure and powers of Tribunals**.– (1) A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private.
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> (2) A Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents and written representations and after hearing such oral arguments as may be advanced.
>
> (3) A Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely,-
>
> (a) summoning and enforcing the attendance of any person and examining him on oath;
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> (b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or, documents;

(f) reviewing its decisions;

(g) dismissing a representation for default or deciding it ex parte;

(h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(i) any other matter which may be prescribed by the Central Government.

9. A reading of the above reproduced section makes it clear that even though a Tribunal is not bound by the procedure laid down in the CPC, it can exercise the powers of a Civil Court in relation to matters enumerated in clauses (a) to (i) of sub-section (3) including the power of reviewing its decision.

10. The power of a Civil Court to review its judgment/decision is traceable in Section 114 CPC. The grounds on which review can be sought are enumerated in Order 47 Rule 1 CPC, which reads as under :

Order 47 Rule 1

1. **Application for review of judgment**.- (1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

11. Since the Tribunal's power to review its order/decision is akin to that of the Civil Court, statutorily enumerated and judicially recognized limitations on Civil Court's power of review the judgment/decision would also apply to the Tribunal's power under Section 22(3)(f) of the Act. In other words, a Tribunal established under the Act is entitled to review its order/decision only if either of the grounds enumerated in Order 47 Rule 1 is available. This would necessarily mean that a Tribunal can review its order/decision on the discovery of new or important matter or evidence which the applicant could not produce at the time of initial decision despite exercise of due diligence, or the same was not within his knowledge or if it is shown that the order sought to be reviewed suffers from some mistake or

error apparent on the face of the record or there exists some other reason, which, in the opinion of the Tribunal, is sufficient for reviewing the earlier order/decision.

12. Before proceeding further, we consider it proper to mention that there was divergence of opinion among the High Courts on the question whether the subsequent contra judgment by the same or a superior Court on a point of law can be treated as an error apparent on the face of the record for the purpose of review of an earlier judgment. In **Lachhmi Narain Balu** vs. **Ghisa Bihari and another** [AIR 1960 Punjab 43], the learned Single Judge of the then Punjab High Court held that the Court cannot review its judgment merely because in a subsequent judgment different view was expressed on the same subject matter. In **P.N. Jinabhai vs. P.G. Venidas** [AIR 1972 Gujarat 229], the learned Single Judge of the Gujarat High Court considered the question whether the Court can revise its view on the question of pecuniary jurisdiction simply because the same has been rendered doubtful in the light of subsequent decision of the High Court and answered the same in negative. However, a contrary view was expressed in **Thadikulangara Pylee's son Pathrose vs. Ayyazhiveettil Lakshmi Amma's son Kuttan and others** [AIR 1969 Kerala 186]. In that case, the learned Single Judge of the Kerala High Court opined that a subsequent

decision authoritatively declaring the law can be made basis for reviewing an earlier judgment. The Law Commission took cognizance of these divergent opinions and suggested amendment of Order 47. That led to insertion of explanation below Rule 2 of Order 47 by Civil Procedure Code (Amendment) Act, 1976. The same reads as under**:**

> *Explanation*.- The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.

13. In **Nalagarh Dehati Co-operative Transport Society Ltd., Nalagarh vs. Beli Ram etc.** [AIR 1981 HP 1] a Full Bench of Himachal Pradesh High Court considered the above reproduced explanation and held that a subsequent judgment of the Supreme Court or a larger bench of the same Court taking a contrary view on the point covered by the judgment does not amount to a mistake or error apparent on the face of the record. In **Gyan Chandra Dwivedi vs. 2nd Additional District Judge, Kanpur and others** [AIR 1987 Allahabad 40], the learned Single Judge of Allahabad High Court took cognizance of the explanation, referred to the judgment of this Court in **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma** [AIR 1979 SC 1047] and held :

> "9. It will thus be seen that while power of review may be inherent in the High Court to review its own order passed in a writ petition, the same has to be exercised on well recognised

> and established grounds on which judicial orders are reviewed. For example the power may be exercised on the discovery of some new and important matter or evidence which was not within the knowledge of the parties seeking review despite due exercise of diligence when the order was made. Review can also be sought when the order discloses some error apparent on the face of record or on grounds analogous thereto. These are all grounds which find mention in various judicial pronouncements right from the earliest time as well as in the Rules of Order XLVII of the Civil P.C. as permissible grounds of review.
>
> An Explanation was added to Order XLVII Rule 1 by the amendment of the Civil P.C. by Central Act No. 104 of 1976. It reads :
>
> > "The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment."
>
> 10. This explanation was added on the recommendation of the law Commission to put an end to the controversy which had arisen as regards whether a judgment could be reviewed merely on the ground that the decision on a question of law on which the same was founded has been reversed or modified by the subsequent decision of a superior Court. Almost all the High Courts, save for the solitary exception of Kerala High Court, were unanimous in their opinion that the fact that the view of law taken in a judgment has been altered by a subsequent decision of a superior Court in another case could not afford a valid ground for the review of the judgment."

14. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere

discovery of new or important matter or evidence is not sufficient ground for review *ex debito justiciae*. Not only this, the party seeking review has also to show that such additional matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court earlier.

15. The term `mistake or error apparent' by its very connotation signifies an error which is evident *per se* from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law. In any case, while exercising the power of review, the concerned Court/Tribunal cannot sit in appeal over its judgment/decision.

16. We may now notice some of the judicial precedents in which Section 114 read with Order 47 Rule 1 CPC and/or Section 22 (3) (f) of the Act

have been interpreted and limitations on the power of the Civil Court/Tribunal to review its judgment/decision have been identified.

17. In **Rajah Kotagiri Venkata Subamma Rao vs. Rajah Vellanki Venkatrama Rao** [1990 (27) Indian Appeals 197], the Privy Council interpreted Sections 206 and 623 of the Civil Procedure Code and observed:

> "Section 623 enables any of the parties to apply for a review of any decree on the discovery of new and important matter and evidence, which was not within his knowledge, or could not be produced by him at the time the decree was passed, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. It is not necessary to decide in this case whether the latter words should be confined to reasons strictly ejusdem generic with those enumerated, as was held in **Roy Meghraj v. Beejoy Gobind Burral** [(1875) Ind. L.R. 1 Calc. 197]. In the opinion of their Lordships, the ground of amendment must at any rate be something which existed at the date of the decree, and the section does not authorize the review of a decree which was right when it was made on the ground of the happening of some subsequent event."
>
> [Emphasis added]

18. In **Sir Hari Shankar Pal and another vs. Anath Nath Mitter and others [**1949 FCR 36], a Five Judges Bench of the Federal Court while considering the question whether the Calcutta High Court was justified in not granting relief to non-appealing party, whose position was similar to that of the successful appellant, held :

> "That a decision is erroneous in law is certainly no ground for ordering review. If the Court has decided a point and decided

> it erroneously, the error could not be one apparent on the face of the record or even analogous to it. When, however, the court disposes of a case without adverting to or applying its mind to a provision of law which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of the record sufficient to bring the case within the purview of Order XLVII, Rule 1, Civil Procedure Code. "

19. In **Moran Mar Basselios Catholicos and another vs. The Most Rev. Mar Poulose Athanasius and others** [1995 (1) SCR 520], this Court interpreted the provisions contained in Travancore Code of Civil Procedure which are analogous to Order 47 Rule 1 and observed :

> "Under the provisions in the Travancore Code of Civil Procedure which is similar in terms to Order XLVII, Rule 1 of our Code of Civil Procedure, 1908, the Court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used therein. It may allow a review on three specified grounds, namely, (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of the record and (iii) for any other sufficient reason. It has been held by the Judicial Committee that the words "any other sufficient reason" must mean "a reason sufficient on grounds, or least analogous to those specified in the rule"."

20. In **Thungabhadra Industries Ltd. vs. Govt. of A.P.** [AIR 1964 SC 1372] it was held that a review is by no means an appeal in disguise whereof an erroneous decision can be corrected.

21. In **Parsion Devi and Others vs. Sumitri Devi and Others** [1997 (8) SCC 715], it was held as under:-

> "Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47, Rule 1 CPC. In exercise of the jurisdiction under Order 47, Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise"."
>
> [Emphasis added]

22. In **Haridas Das vs. Usha Rani Banik and others** [2006 (4) SCC 78], this Court made a reference to explanation added to Order 47 by the Code of Civil Procedure (Amendment) Act, 1976 and held **:**

> **"**In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely states that it "may make such order thereon as it thinks fit". The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding

> precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection."

23. In **Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma (supra)**, this Court considered the scope of the High Courts' power to review an order passed under Article 226 of the Constitution, referred to an earlier decision in **Shivdeo Singh vs. State of Punjab** [AIR 1963 SC 1909] and observed **:**

> "It is true as observed by this Court in Shivdeo Singh v. State of Punjab, AIR 1963 SC 1909, there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which is inherent in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which

> may enable an Appellate Court to correct all matters or errors committed by the Subordinate Court."

24. In **K. Ajit Babu and others vs. Union of India and others** [1997 (6) SCC 473], it was held that even though Order 47 Rule 1 is strictly not applicable to the Tribunals, the principles contained therein have to be extended to them, else there would be no limitation on the power of review and there would be no certainty or finality of a decision. A slightly different view was expressed in **Gopabandhu Biswal vs. Krishna Chandra Mohanty and others** [1998 (4) SCC 447]. In that case it was held that the power of review granted to the Tribunals is similar to the power of a Civil Court under Order 47 Rule 1.

25. In **Ajit Kumar Rath vs. State of Orissa and Others** [1999 (9) SCC 596], this Court reiterated that power of review vested in the Tribunal is similar to the one conferred upon a Civil Court and held:-

> "The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that

> is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule.
>
> Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."
>
> [Emphasis added]

26. In **State of Haryana and Others vs. M.P. Mohla** [2007 (1) SCC 457], this Court held as under :-

> "A review petition filed by the appellants herein was not maintainable. There was no error apparent on the face of the record. The effect of a judgment may have to be considered afresh in a separate proceeding having regard to the subsequent cause of action which might have arisen but the same by itself may not be a ground for filing an application for review."

27. In **Gopal Singh vs. State Cadre Forest Officers' Assn. and Others** [2007 (9) SCC 369], this Court held that after rejecting the original application filed by the appellant, there was no justification for the Tribunal to review its order and allow the revision of the appellant. Some of the observations made in that judgment are extracted below:

> "The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Justice Sinha) that the Tribunal has traveled out of its

> jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect."

28. The principles which can be culled out from the above noted judgments are :

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 of CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger bench of the Tribunal or of a superior Court.

(vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier.

29. In the light of the above, we shall now consider whether order dated 25.2.1997 passed by the Tribunal in Transferred Application No.826 of 1996 suffered from any patent mistake or an error apparent so as to warrant its review under Section 22(3)(f) of the Act. A recapitulation of the facts would show that the respondents' claim for grant of the benefit of higher scales in terms of the Scheme was entirely founded on the plea of discrimination. In the affidavit filed by him, respondent no.2 - Narayan Chandra Ghosh, briefly referred to his own service profile along with that of respondent no.1 – Kamal Sengupta and pleaded that in view of the recommendations made by the Secretary of the Administrative Department,

the State Government was bound to extend the benefit of Scale Nos.19 and 21 to them, but the Finance Department arbitrarily rejected their claim. According to Shri Ghosh, members of all the State Services had been recruited by the same method and, therefore, there was no justification to deny the benefit of Scale Nos.19 and 21 to members of the service. He produced a chart of the State Services whose members were given the benefit of Scale Nos.19 and 21 and pleaded that denial thereof to members of the service was ex-facie arbitrary, discriminatory and unjustified. However, he did not plead stagnation as a ground for claiming benefit in terms of the Scheme. Even after transfer of the case to the Tribunal, the respondents did not raise the plea of stagnation. A careful reading of the averments contained in the affidavit of respondent no.2 shows that the same did not contain even a trace of the plea of stagnation so as to enable the Tribunal to read the same as an implicit ground in support of the respondents' claim for Scale Nos.19 and 21. The reason for this omission is not far to seek. Within a short span of 15 to 16 years of service, both the respondents got three promotions i.e. as Assistant Director, Deputy Director and Director. In their counter, the appellants categorically averred that the Scheme was meant only for those employees who did not have adequate promotional opportunities and that the writ petitioners were not entitled to Scale Nos.19 and 21 because they had already received promotions and

were holding the highest post. According to the appellants, the Scheme was framed by an Expert Committee and in the absence of any patent arbitrariness, the High Court did not have the jurisdiction to issue a mandamus to extend the benefit of higher scales to the petitioners. It was also pleaded that recommendations made by the Secretary of Administrative Department were not binding on the Government. The Tribunal elaborately referred to the pleadings of the parties, considered the arguments of their counsel and held that the petitioners (applicants) are not entitled to the benefit of the Scheme because they were holding highest post in the service and were being paid salary in the scale prescribed for that post. The Tribunal further held that the Scheme was not discriminatory because benefit of higher scales was given to different services keeping in view the ratio of higher posts to base level posts in the feeder grade, hierarchical structure of the department, the level of work and nature of responsibilities, the proportion of direct recruitment, the pace of growth of normal activities of a department and the avenues of promotion. The Tribunal then observed that recommendations are usually made by all departmental heads but the same are not binding on the Government. It is thus evident that the Tribunal had considered all the points raised by the respondents and negatived their claim by assigning cogent reasons. The Tribunal did not consider the issue

of stagnation because neither any such plea was taken in the affidavit of respondent no.2 nor any argument was advanced on that score.

30. In the review application, the respondents did assert that they were stagnating on the same post and in the same pay scale since 1982, but no material was placed before the Tribunal to substantiate the said assertion or to show that members of other State Services had been given benefit of Scale Nos.19 and 21 despite the fact that they received promotions during the course of service. The respondents reiterated the plea of discrimination by alleging that benefit of Scale Nos.19 and 21 had been extended to members of other State Services but the same was denied to them without any rhyme or reason, but no evidence was produced by them to prime facie prove this allegation. The respondents also relied on order dated 25.3.1998 passed in **Joydeb Biswas's case** in support of their plea that recommendations made by the Secretary of the Administrative Department are binding on the Government and pleaded that in view of the latter decision, the earlier order is liable to be reviewed.

31. The Tribunal made a detailed note of the arguments of the senior counsel appearing for the respondents and held that they have been discriminated in the matter of grant of Scale Nos.19 and 21. For this

purpose, the Tribunal relied on Memorandum dated 13.3.2001 issued by the State Government for sanction of posts in Scale Nos.19 and 21 for different State Services. The Tribunal also relied on the ratio of **Joydeb Biswas's case** and held that the contra view expressed by it on the issue of binding character of the recommendations made by Head of the Administrative Department was not correct.

32. In our opinion, neither of the grounds set out in the Review Petition warranted exercise of power by the Tribunal under Section 22(3)(f) of the Act. At the cost of repetition, we consider it necessary to mention that the plea of stagnation was not raised in the affidavit filed in support of the writ petition. In the Memo of Review, the respondents made a bald assertion that they were stagnating on the same post and in the same pay scale in 1982 but the said assertion was ex-facie farcical because as per their own showing (para 5 of the affidavit of respondent no.2 – Narayan Chandra Ghosh), the respondents had joined service in the basic grade post i.e. Sub-Divisional Controllers of Food and Supplies and within a short span of 15 to 16 years they got three promotions and were also granted benefit under ROPA 1981 and ROPA 1990. Therefore, the plea of stagnation could not have been made basis for reviewing the finding recorded in the earlier order that the respondents had not been discriminated. Unfortunately, the

Tribunal did not advert to the well recognized limitation on the exercise of power of review under Section 22(3)(f) of the Act read with Order 47 Rule 1 CPC and straightaway recorded a finding of discrimination by placing reliance on Memorandum dated 13.3.2001, which, in our considered view, did not advance the cause of the respondents. For better appreciation of this aspect of the case, the relevant portions of Memorandum dated 13.3.2001 are extracted below :

"Government of West Bengal
Finance Deptt. Audit Br.

No.3015-F Kolkata
13th March, 2001

MEMORANDUM

"The question of improving the existing Career Advancement Scheme for the State Government employees as introduced in Finance Deptt. No.6075-F dated 21.6.90 has been under consideration of the Government for sometime past. The recommendations of the Fourth Pay Commission on this aspect have also been under examination of the State Government. After careful consideration, the Governor is now pleased to modify the existing Career Advancement Scheme of the State Government employees in the manner indicated below.

1 to 3. xx xx xx xx

4. Over and above the existing posts in Scale Nos.19 and 21 in various State Services as mentioned in F.D. No.6075-F dated 21.6.90 the following additional posts shall be available to different State Services :

i) Forty three additional posts in Scale No.19 in West Bengal Civil Service (Executive) are created and the eligibility

condition for Scale No.19 will be the same as stated in F.D. No.6075-F dated 21.6.90.

Six additional posts of Special Secretary/Secretary in the revised Scale No.21 are sanctioned for W.B.C.S. (Ex) and such posts are to be filled up by selection from amongst W.B.C.S. (Ex) Officers who have completed twenty five years of total service in the cadre including three years as Joint Secretary.

Govt. has also decided to fill up some of the posts of the District Magistrates by W.B.C.S. (Ex) Officers. Detailed Govt. order in this respect will be issued later on.

ii) One additional post of Special Commissioner, Commercial Taxes in the Scale No.21 is created and such post is to be filled up by selection from amongst the Additional Commissioners who have put in a total service of thirty years since entry into West Bengal Commercial Tax Service including six years in Scale No.19 are also created for West Bengal Commercial Tax Service and the eligibility condition for Scale No.19 will be the same as stated in Govt. order No.6075-F dated 21.6.90.

iii) Fifty-five additional posts in Scale No.19 in West Bengal Health Service are created and the eligibility condition for Scale No.19 will be the same as stated in Govt. order No.6075-F dated 21.6.90.

iv) Ten posts in Scale No.19 in West Bengal E.S.I. Medical Service are created and the eligibility condition for Scale No.19 will be total service of 20 years on revised Scales No.16, 17 & 18 and their unrevised counterparts and three years in Scale No.18.

v) The additional posts in Scale No.19 are created for West Bengal Secretariat Service and the eligibility conditions for these two posts will remain the same as at present.

vi) <u>As regards other constituted State Services as mentioned in Finance Department Memo No.6075-F dated 21.6.90 which have not been mentioned in this Memo, two additional posts in Scale No.19 are created for each of those constituted State</u>

> Services and the eligibility condition for Scale No.19 will be same as stated in F.D. No.6075-F dated 21.6.90.
>
> vii) The number of posts in the basic grade in various State Services as mentioned above will stand reduced by the equivalent number of posts created in Scale Nos.19 and 21.
>
> 5. Other provisions of the existing Career Advancement Scheme as contained in this Department No.6075-F, dated 21.6.90 which are not inconsistent with the provisions of this memorandum shall continue to remain in force.
>
> 6. This will come into effect from 1.1.2001."
>
> [Emphasis added]

The plain language of the above reproduced Memorandum shows that the State Government had, after considering the representations made by employees of different services, sanctioned additional number of posts in Scale Nos.19 and 21. For the Officers of Food and Supplies Department, two posts were sanctioned in Scale No.19. This development had taken place after more than four years of dismissal of Transferred Application No.826 of 1996. A holistic reading of the Memorandum dated 13.3.2001 makes it clear that the same cannot, by any stretch of imagination, be read as *suo moto* acceptance by the State Government of the respondents' claim for Scale Nos.19 and 21. Therefore, the Tribunal could not have considered the same for granting relief to the respondents and that too by ignoring para 6 of the Memorandum in terms of which the additional posts were to become operative from 1.1.2001. In any case, the Tribunal could not have, without

recording a reason based finding that order dated 25.2.1997 was vitiated by a mistake or error apparent on the face of the record or there existed some other reason analogous to an error apparent, reviewed that order simply on the basis of the decision taken by the State Government to sanction posts in Scale No.19 for members of the service apart from other State Services.

33. The Tribunal's reliance on the order passed in **Joydeb Biswas's case** was clearly misplaced because the only point decided in that case was whether members of the service are entitled to the benefit of Scale Nos.16, 17 and 18 under ROPA 1981 in the ratio of 6:3:1. The Scheme notified on 21.6.1990 was not the subject matter of consideration in that case. **I**n the counter filed in **Joydeb Biswas's case,** the appellants herein did rely on order dated 25.2.1997 passed in the case of the respondents to show that the decision taken by the State Government not to distribute Scale Nos.16, 17 and 18 in the ratio 6:3:1 was not discriminatory, but the Tribunal refused to consider the same by observing that the question relating to distribution of posts in Scale Nos.16, 17 and 18 under ROPA 1981 had not been considered in that case. This being the position, the Tribunal could not have, by relying on the order passed in **Joydeb Biswas's case,** declared that the recommendations made by Secretary of Food and Supplies Department are binding on the State Government. In any case, in view of the

explanation added to Order 47 by the 1976 amendment, the Tribunal could not have relied on the subsequent order for holding that the contra view expressed in the earlier order was erroneous.

34. There is another reason for our conclusion that the Tribunal was not entitled to rely on the order passed in **Joydeb Biswas's case** for the purpose of reviewing order dated 25.2.1997. Undisputedly, that order is under challenge in the writ petitions filed before the High Court of Calcutta. Therefore, even though prima facie we are inclined to agree with learned senior counsel for the appellants that mere recommendations of the Secretary of the Administrative Department or for that reason any other authority, are not binding on the Government – **Union of India vs. Arun Jyoti Kundu and others** (supra), we do not consider it necessary to finally pronounce on this issue, because it will prejudice adjudication of the matter pending before the High Court.

35. The most astonishing feature of order dated 25.9.2001 is that without making any discussion on the entitlement of the respondents to get the benefit of Scale No.21, the Tribunal directed the State Government to sanction that pay scales to them. While doing so, the Tribunal conveniently overlooked the fact that benefit of the Scheme (Scale No.19) had not been

given to members of three State Services i.e. West Bengal Agricultural Income Tax Service, West Bengal Fisheries Service and West Bengal Food & Civil Supplies Service and benefit of Scale No.21 had been extended to the members of only 2 out of 17 State Services i.e. West Bengal Civil Services (Executive) and West Bengal Commercial Tax Services and that any direction in favour of the respondents would result in huge discrimination qua members of other State Services.

36. For the reasons mentioned above, we hold that the Tribunal committed a jurisdictional error by entertaining and allowing the review application filed by the respondents and the direction given by it for extending the benefit of Scale Nos.19 and 21 to them is legally unsustainable.

37. The three judgments cited by Shri Dhruv Mehta, learned counsel for the respondents are clearly distinguishable. In **Indian Charge Chrome Ltd. vs. Union of India** (supra), the Three Judges Bench made detailed discussion on this Court's power of review but the same was meant only for the purpose of admission of the review application. This is evident from the last line of the order, which is extracted below :

> "We make it clear that the observations made in this order are only for the purpose of deciding the limited aspect of admission of the review petitions."

38. That apart, a careful reading of the judgment shows that in paragraph 13 thereof, this Court categorically observed that an important argument regarding the alleged illegality of the approval granted by the Central Government to the proposal of the State Government had not been considered and copy of order dated 14.1.1999 passed by the Chief Minister on which reliance was placed by the Court had not been supplied to the party and the same was not even available on record and all this prima facie constituted an error apparent on the face of the record.

39. In **Board of Control for Cricket in India vs. Netaji Cricket Club** (supra), this Court considered whether the Division Bench of Madras High Court was justified in admitting the review petition. After making an elaborate reference to the factual matrix of the case and some judgments, the Two Judges Bench concluded that the High Court did not commit any error by entertaining the review petition. In para 91 of the judgment, reference has been made to an earlier judgment in **Moran Mar Basselios Catholicos and another vs. The Most Rev. Mar Poulose Athanasius and others** (supra) in which expression 'any other sufficient reason' was interprted and it has been observed that the said rule is not universal. However, the judgment of the Two Judges Bench is conspicuously silent as to why the ratio of the earlier judgment warrants a deviation. The one line observation contained in para 93 that while exercising review jurisdiction the Court can

take into consideration subsequent event has to be treated as confined to the facts of the case involving the controversy between rival Cricket Associations.

40. The third judgment in **K.T. Veerappa vs. State of Karnataka** (supra) deals with the issue of discrimination in the matter of grant of pay scales but does not contain any discussion on the issue of Tribunal's power to review its decision.

41. We may now advert to the High Court's order. A perusal thereof shows that even while accepting the contention of the appellants that the Tribunal did not have the jurisdiction to review order dated 25.2.1997, the High Court approved the direction given for extending the benefit of Scale Nos.19 and 21 to the respondents, albeit without taking cognizance of the stark fact that they had received promotions on the posts of Assistant Director, Deputy Director and Director; that they were holding highest posts in the service; that they were given the benefit of higher pay scales under ROPA 1981 and ROPA 1990 and no material had been placed before the Court to show that members of other State Services to whom the benefit of Scale Nos.19 and 21 had been given under the Scheme had also received three promotions after joining the service. The High Court also overlooked

the fact that members of three out 17 State Services had not been given benefit of Scale No.19 and posts in Scale No.21 had been sanctioned only for 2 out of 17 State Services. It is our considered view that in the absence of factual foundation, the High Court was not justified in recording a conclusion that denial of Scale Nos.19 and 21 had resulted in violation of the respondents' fundamental rights guaranteed under Articles 14, 16 and 21 of the Constitution and that too by ignoring the fact that the respondents had not produced any tangible evidence to prima facie prove that they had been subjected to hostile discrimination or that the decision of the State Government not to extend the benefit of Scale Nos.19 and 21 to members of the service was irrational and arbitrary. It is trite to say that in such matters the onus is always on the employee to prima facie substantiate the plea of discrimination or arbitrary exercise of power and only then the State or its instrumentality/agency or the public body (the employer) can be called upon to show that its decision is non-discriminatory, non-arbitrary, fair and in public interest.

42. In the result, the appeal is allowed. The order of the High Court as also the one passed by the Tribunal in R.A. No.26 of 1998 are set aside. The parties are left to bear their own costs.

……. J.
(B.N. Agrawal)

…….J.
(G.S. Singhvi)

New Delhi
June 16, 2008