

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2232/95 with OA 1341/97
T.A. No. OA 2241/95

105

DATE OF DECISION 25.1.2000

M.M.Mathur & Ors(OA 2232/95)Petitioner
P.C.Jain & Ors(OA 1341/97)
S.K.Jain & Ors (OA 2241/95)

Sh.S.K.Jain(OA 2232/95)Advocate for the
Sh.K.L.Bhandula(OA 1341/97)
Sh.M.M.Mathur(OA 2241/95) Petitioner(s)

VERSUS

Secretary, M/O Personnel andRespondent
ors.

Sh.N.S.Mehta Sr.counsel with Sh.Advocate for the
R.R.Bharti(OA 2232/95) Respondents.
Sh.KCD Gangwani,Sr.counsel(OA 1341/97)
Sh.K.C.D.Gangwani,Sr.counsel with
Sh.R.R.Bharti(OA 2241/95)

CORAM
The Hon'ble Shri S.R. Adige, Vice Chairman(A)
The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

20

O.A. 2232/95
with
O.A. 1341/97
and
O.A. 2241/95

New Delhi this the 25 th day of January, 2000

Hon'ble Shri S.R. Adige, Vice Chairman.
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

O.A. 2232/95

1. M.M. Mathur,
S/o late Shri K.S. Mathur,
R/o C-2/62B, Lawrence Road,
Delhi-110035.
2. Hardyal Singh,
S/o Shri Joginder Singh,
R/o G-138, Hari Nagar, G-Block,
Jail Road,
New Delhi-58.
3. Surinder Singh Rekhi,
S/o late Shri Gurdit Singh Rekhi,
R/o G-138, Hari Nagar, G-Block,
Jail Road,
New Delhi-58.

Applicants.

By Advocate Shri S.K. Jain.

Versus

Union of India through its
Secretary, Min. of Personnel,
Public Grievances & Pensions,
North Block,
New Delhi-110001. Respondents.

By Advocate Shri N.S. Mehta, Sr. Counsel with Shri R.R.
Bharti.

O.A. 1341/97

1. P.C. Jain,
Retd. Under Secretary,
Central Water Commission,
R.K. Puram,
New Delhi-110 066.
2. Prithi Pal Singh,
Retd. Civilian Staff Officer,
Ministry of Defence,
New Delhi-110 001.
3. Smt. Mohinder Kaur Narula,
Personal Assistant,
AFHQ, Ministry of Defence,
New Delhi-110001.

8

4. Shri Laxmi Datt,
Retd. Sr. Auditor,
DG A.D.S.,
I-II Block,
New Delhi-110001.
5. Shri Sant Ram Saxena,
Retd. Assistant Foreman,
Ordnance Factory, M/o Defence,
New Delhi-110001.

By Advocate Shri K.L. Bhandula.

VERSUS

1. Secretary,
Ministry of Personnel, Public
Grievances and Pensions (Department
of Pension and Pensioners Welfare),
North Block,
New Delhi-110001.
2. Secretary,
Ministry of Finance,
(Department of Expenditure),
North Block,
New Delhi-110001.
3. Member Secretary,
Fifth Central Pay Commission,
Bhikaji Cama Place,
New Delhi-110066. Respondents.

By Advocate Shri K.C.D. Gangwani, Sr. Counsel.

OA 2241/95

1. Surender Kumar Jain,
S/o Shri U.S. Jain,
R/o Venus Apartments,
F-158, Plot No. 43, Sector-9,
Rohini, Delhi-110085.
2. R.K. Kapoor,
S/o Shri Radha Krishan Kapoor,
R/o B-4/53, Paschim Vihar,
Delhi-110063.
3. Mrs. M.M. Arora,
W/o Shri P.S. Arora,
R/o 21, A/6A, Double Story,
Prem Nagar, New Delhi. Applicants.

By Advocate Shri M.M. Mathur.

Versus

8/

Union of India through its
Secretary,
Ministry of Personnel,
Public Grievances & Pensions,
North Block,
New Delhi-110001.

Respondents.

By Advocate Shri K.C.D. Gangwani, Sr. Counsel with Shri
R.R. Bharti.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (L)

The facts and issues raised in the aforesaid three O.A.s, namely, O.A. 2232/95, O.A. 1341/97, O.A. 2241/95, are similar and with the consent of the parties they are being disposed of by a common order.

2. The grievance of the applicants is that the cut off date which has been declared by the respondents as 1.4.1995 in the impugned O.M. dated 14.7.1995 has been picked up from a hat and has no nexus sought to be achieved. According to them, the valid cut off date should be 1.7.1993 on which date the average All India Consumer Price Index (AICPI) reached 1201.66 because the quantum of Dearness Allowance (DA) sanctioned at that time had been treated as Dearness Pay (DP) vide the impugned Office Memorandum. In consequence, they have prayed that a declaration may be given that the revised ceiling for gratuity from Rs.1 lacs to Rs.2.5 lacs may also be granted to the applicants from 1.7.1993 instead of 1.4.1995 as laid down in paragraph 2 of the impugned O.M. with a further declaration that in case of persons who have retired/died on or after 1.7.1993 they would be entitled to revised gratuity and retiral benefits, including arrears.

9:

23

3. We have heard S/Shri M.M. Mathur, S.K. Jain, K.L. Bhandula, learned counsel for the applicants and S/Shri N.S. Mehta and K.C.D. Gangwani, Sri. Counsel with Shri R.R. Bharti, learned counsel for the respondents.

4. Learned counsel for the applicants have very vehemently submitted that the cut off date of 1.4.1995 adopted by the respondents in the O.M. is an arbitrary date which has no nexus to the objectives sought to be achieved. They have submitted that merely because the cut off date of 1.4.1995 has been taken on the basis of the recommendations of the 5th Central Pay Commission, it would not by itself be a legal justification for the respondents to adopt the same which, according to them, is arbitrary. They have very forcefully submitted that the respondents/Govt. of India are duty bound to act in accordance with the provisions of the Constitution of India and law. They have relied on the judgement of the Supreme Court in **Union of India Vs. P.N. Menon** (1994(4) SCC 68), copy placed at Annexure A-4. Learned counsel have submitted that as laid down in this case, the cut off date has to be picked up on a reasonable and rational basis. In **P.N. Menon's case (supra)**, the Supreme Court has held as follows:

"According to us for the reasons disclosed on behalf of the appellant-Union of India for fixing 30.9.77 as the cut-off date, which date was fixed when the price index level was 272, cannot be held to be arbitrary. The decision to merge a part of the dearness allowance with pay, when the price index level was at 272, appears to have been taken on the basis of the recommendations of the Third Pay Commission. As such it cannot be held that the cut-off date has been selected in an arbitrary manner. Not only in the matters of revising the pensionary benefits but even in respect of revision of scales of pay, a cut off date on some rational or reasonable basis has to be fixed for extending the benefits..."

Learned counsel for the applicants have submitted that following the judgement in P.N.Menon's case (supra), the Government of India could have fixed the cut off date on a reasonable and rational basis only when it is linked with ^{price}₁₈ the particular index level as done in that case. In the present case, however, their grievance is that this has not been done because the AICPI reached 1201.66 on 1.7.1993 which ought to have been the cut off date and not 1.4.1995. It is for this reason they have submitted that the cut off date has been picked up in an arbitrary manner without any real nexus. They have also relied on a number of judgements, copies placed on record. Shri S.K. Jain, learned counsel, has also submitted that as a class of persons ^{who}₁₈ have retired from Government service, this ^{class}₁₈ cannot be further severed except where there is a reasonable classification. He has submitted that the cut off date of 1.4.1995 creates an artificial distinction between the persons who have retired prior to 1.7.1993 and those who retired later. The learned counsel for the applicants have repeatedly stressed on the fact that the cut off date has to be fixed only in the context of the AICPI as on 1.7.1993 and no other date can be reckoned for the purposes of the benefits under the impugned O.M. for granting ceiling on the maximum amount of retirement gratuity and other benefits.

5. The respondents in their reply have controverted the above averments excepting to the extent that the DA at average AICPI as sanctioned w.e.f. 1.7.1993 has now been treated as Dearness Pay (DP) for the purposes of reckoning emoluments for calculating retirement gratuity/death gratuity w.e.f. 1.4.1995. They have denied that the cut

18

20

off date has been arbitrarily fixed. According to them, the 5th Central Pay Commission had itself recommended that the DA as on 1.7.93 which is based on the average AICPI 1291.66 be treated as DP for reckoning emoluments for the purpose of retirement gratuity and death gratuity under the Central Civil Service (Pension) Rules, 1972. The Commission had also recommended that these benefits be given effect to w.e.f. 1.4.1995 which were considered by the Government. Thereafter, the Government has issued the impugned O.M. dated 14.7.1995. They have also explained that the staff side of National Council (JCM) has also been consulted in the matter. They have also submitted that on several occasions in the past a portion of DA as linked to the average price index prevailing on some particular date was treated as DP but the benefit was extended from a specific date and not necessarily from the date on which that particular price index was reached. ~~It~~ They have, therefore, submitted that the choosing of the cut off date of 1.4.1995 has been done on a rational basis taking into account also the recommendations of the 5th Central Pay Commission and other relevant factors. Learned counsel for the respondents have relied on a number of judgments of the Hon'ble Supreme Court and the Tribunal in **A.P. Chopra & Ors. Vs. Union of India & Ors.** (OA 1339/98 -Principal Bench), decided on 22.9.1999 and **Narinder Singh Kohli & Ors. Vs. Union of India & Ors.** (OA 962/CH/95 - Chandigarh Bench with connected cases), decided on 25.7.1997. They have submitted that the same arguments that are being put forward by the learned counsel for the applicants based on the price index had also been submitted before these Benches which also considered them and dismissed the claims. They have, therefore, prayed that the applications may be dismissed.

21

6. As mentioned above, learned counsel for the applicants have placed much reliance on the judgement of the Supreme Court in **P.N. Menon's case** (supra). It is noticed that this case has also been cited before the Tribunal in O.A.962/CH/95 with connected cases before the Chandigarh Bench which has also dealt with this judgement in some detail. ^{of 13} The submissions ^{of 13} the applicants' counsel that the issues raised in the present O.A. have not been considered earlier, cannot be accepted. The Chandigarh Bench in the aforesaid case has held that the Government frames schemes for persons who superannuate from service and due to many constraints, it is not always possible to extend the same benefits to one and all irrespective of the dates of superannuation. It is also an accepted fact that whenever a revision of pay scales takes place, a cut off date becomes imperative because the benefits have to be allowed within financial resources available with the Government. In the present case, the cut off date of 1.4.1995 has been considered and recommended not only by the Government but has also been included in paragraph 52 of the recommendations of the 5th Central Pay Commission. The High Powered Committee of the 5th Central Pay Commission which was headed by a retired Hon'ble Judge of the Supreme Court, had not agreed to the suggestions made by the staff side and others that the recommendations should be given effect to retrospectively, but had gone on the principle that ^{the} monetary benefits should normally accrue prospectively. The Committee has stated that after careful consideration of the suggestions, they have recommended that the same may be implemented w.e.f. 1.4.1995 which have been subsequently reconsidered and accepted by the Government.

(P)

7. In the facts and circumstances of the case, we are, therefore, unable to agree with the contentions of the applicants that the cut off date of 1.4.1995 given in the impugned O.M. dated 14.7.1995 is a date which has no nexus with the objectives sought to be achieved or it has been picked up from the hat. Their contention that the only valid cut off date should be 1.7.1993 when the average AICPI reached 1201.66 cannot, therefore, be accepted. It cannot also be stated that the cut off date of 1.4.1995 is arbitrary to justify any interference at this stage. In this context, the observations of the Hon'ble Supreme Court in **Union of India & Anr. Vs. P.V. Hariharan & Anr.** (1997 SCC (L&S) 838), **State of UP Vs. J.P. Chaurasia** (AIR 1989 SC 19) and **Supreme Court Employees Welfare Association Vs. Union of India** (AIR 1990 SC 334), though made in the context of "equal pay for equal work", are equally applicable to the present case that it is for the administration to decide the question in such matters and the Courts should normally accept the recommendations of the Pay Commission. We also respectfully agree with the observations of the Tribunal in OA 1339/98 and OA 962/CH/95 (supra).

8. In the result for the reasons given above, we find no merit in these applications. The O.As (O.A. 2232/95, O.A.1341/97 and O.A.2241/95) are accordingly dismissed. No order as to costs.

9. Let a copy of this order be also kept in O.A. 1341/97 and O.A.2241/95).

(Smt. Lakshmi Swaminathan)
Member (J)

(S.R. Adige)
Vice Chairman (A)

1 SRD

Bmly
Court Officer
Central Administrative Tribunal
Principal Bench, New Delhi
Fasikot House,
Copernicus Marg,
New Delhi-110001