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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO.2075 of 2004

New Delhi, this the 1st April, 2005

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Krishan Gopal
S/o Late Shri Shiv Lal,
Retd. Chief Electrical Foreman (TL),
Northern Railway,
Delhi Jn.

Residential Address:-

Krishan Gopal,
289/D-16, Sector-3,
Rohini,
Delhi-110088.

....Applicant.

(By Advocate : Shri G.D. Bhandari)

versus

Union of India,

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divl. Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

.....Respondents.

(By Advocate : Shri Rajinder Khatter)

ORDER (ORAL)

Heard the learned counsel for the parties.

2. Doctrine of precedent laid down under Article 141 of the Constitution of India applies only to an order, which has attained finality with ratio deci dendi laid down by the Apex Court. In the absence of any stay in an appeal before the Supreme Court against the decision of the

lower court i.e. Tribunal or High Court, There would be no bar for treating the order as a valid precedent.

3. The factual matrix, which has been reflected from the pleadings, is that the applicant, who is superannuated prior to 1.1.1996, has been denied the benefit of the decision of the Apex Court in the case of *Union of India Preetam Singh* decided on 13.2.2002, where additional DCRG was ordered to be paid on the DA available irrespective of the fact whether any DA was drawn. Same benefit from 1.4.1995 to 31.12.1995 was not reckoned for payment of additional DCRG. DOP&T vide OM dated 4.12.2001 on its decision, subject to decision in pending appeal, in Swamy's Compilation of Pension referring to Item no.2103, a meeting of Joint Commissioner of JCM made the merger of DA applicable for payment of gratuity to persons, who retired before 1.1.1996. The Railway Board has also reiterated the same.

4. After the decision in *Preetam Singh's* case (supra), the Apex Court in the case of State of Punjab and others Vs. Amar Nath Goyal & Others (129/2003) vide its order dated 27.7.2004, has taken note of the Circular of Punjab Govt. which was challenged in the High Court of Punjab. The High Court, vide its judgment and order dated 3.5.2002, made the said Circular applicable to others, who retired on or after 1.7.1993. Another matter which has been challenged before the High Court of Himachal Pradesh against the order passed by the Full Bench of the Chandigarh Bench of the Central Administrative Tribunal in which the High Court of Himachal Pradesh dismissed the Writ Petition and affirmed the decision of the Full Bench of the Central Administrative Tribunal by relying upon the decision of the Mumabi Bench of the Tribunal dated 21.9.2001 in the case of Baburao

Shanker Dhuri and others etc. etc. Vs. Union of India and Ors. Writ Petition was entertained by the Mumbai High Court against the aforesaid order passed by the Mumbai Bench of the Tribunal but no stay has been granted. This has entitled merger of 97% of DA to be added to pay for calculating gratuity to all retirees who had retired from 1.7.1993 to 31.3.1995. In this view of the matter, the challenge was made to the High Court order in SLP-12071-12072/2004 and in the light of the above, all the cases are consolidated before the Apex Court.

5. Railway Board vide letter dated 3.8.2004 taking cognizance of the order 27.7.2004 of the Apex Court, brought this to the notice of the Tribunal as well as different High Courts with a view that as the matter is subjudiced before the Apex Court, similar matter may be kept in abeyance till the outcome of the decision of the Apex Court.

6. I have carefully considered the rival contentions raised by the parties and perused the material placed on record. Learned counsel of the respondents vehemently opposed the contentions and stated that full DA was taken into account as per *Preetam Singh's case* (supra) in the case of the applicant and as per PS 11057/1995 Railway Board issued similar instructions on 8.8.1995. It has not been found feasible to extend the benefit of merger of 97% DA for calculating DCRG in respect of retirees before 1.4.1997. Learned counsel states that decision of *Preetam Singh's case* is not a judgment in rem.

7. It is trite law that the decision to be arrived at as a policy decision through interpretation of statutory rules is always a judgment in rem. Dragging the individuals for redressal of grievances would amount to wastage of exchequer and multiplicity of litigation. In such a case, *Preetam*

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Singh's case (supra) where applicability of merger of 97% DA for calculating gratuity has been made as legally applicable in the case of applicant as well.

8. I do not find from the orders passed by the Apex Court on 27.7.2004 that any stay has been granted against the decision of the Full Bench of the Chandigarh Bench of this Tribunal or the decision of the High Court of Himachal Pradesh. In that view of the matter, dicta laid down therein are binding precedents to be followed and are binding on me as well.

9. In the result, for the foregoing reasons, subject to outcome of the SLP whereof, law shall take its own course presently, the applicant cannot be deprived of recalculation of gratuity by merging of 97% of DA as the same has been done in the case of pre-retiree of 1.1.1996. Accordingly, OA is allowed. Respondents are directed to recalculate the gratuity of the applicant applying the principle by taking into account full DA as laid down in *Preetam Singh's* case (supra). Arrears drawn would be paid to the applicant within a period of two months from the date of receipt of a copy of this order. This would entail simple interest of 10% per annum. No costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)

/ravi/