

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2635/2004

MAN. 2179/2004
New Delhi, this the ^{9th} day of May, 2005

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)

1. Dr. Ashok Kumar Chakraborty
S/o Late Dr. Anil Kumar Chakraborty
R/o 1A, Dr. R.M.L. Hospital
Campus, Adjacent to Bank of Baroda
Dr. R.M.L.Hospital
New Delhi – 110 001.
2. Dr. B.B.Bisoi
S/o Late Shri Kulamani Bishoi
381/Sec. IV R.K.Puram
New Delhi – 110 022.
3. Dr. Suranjit Deb
S/o Late Shri S. Deb
B-4/6, MS Flats
Peshwa Road
Gole Market
New Delhi – 110 001. Applicants

(By Advocate: Ms. Nilofar Ara Qureshi)

Versus

Union of India through
The Secretary
Ministry of Finance
Dept. of Revenue
New Delhi. Respondent

(By Advocate: Sh. Rao Vijay Pal)

O R D E R

By Mr. Justice V.S.Aggarwal:

Applicants, by virtue of the present application, seek a direction to the respondents to implement the OM with effect from 1.3.2004 and that the Dearness Allowance equal to 50% of the



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existing basic pay should be merged with the basic pay and shown distinctly as Dearness Pay, which should be counted for purposes of payment of allowances, transfer grant, retiral benefits, contribution to GPF, etc.

2. Some of the relevant facts are that Applicant No.1 worked as Senior Chief Medical Officer in Ram Manohar Lohia Hospital, which is being run by the Central Government. Applicants No.2 and 3 worked as Chief Medical Officer and SAG respectively in Central Government Health Scheme Department and they superannuated on 31.3.2004.

3. According to the applicants, the OM of 1.3.2004 discriminates between two set of pensioners who are retiring on 1.3.2004 upto 31.3.2004 and those who are retiring on 1.4.2004 upto 31.1.2005, stating that in respect of pensioners retiring after 1.4.2004 upto 31.1.2005, the Dearness Allowance equal to 50% of the basic pay would be treated as basic pay for purposes of computation of pension in respect of the basic pay received by them prior to 1.4.2004. It is asserted that in the case of the existing pensioners retiring on 31.3.2004, the dearness relief equal to 50% of the present pension will from 1.4.2004 be merged with pension and shown distinctly as Dearness Pension.

4. The applicants had made representations and thereafter filed OA 1296/2004. The same was dismissed as withdrawn being premature.

5. It is, in this backdrop, of the facts that the above said relief is being claimed.

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6. The impugned order dated 1.3.2004 in this regard reads:

"Subject:- Merger of 50% of Dearness Allowance/Dearness Relief with basic pay/pension to Central Government employees/pensioners w.e.f. 1.4.2004.

The Fifth CPC in para 105.11 of their Report had recommended that 'DA should be converted into Dearness Pay each time the CPI increases by 50% over the base index used by the last Pay Commission.'

2. This recommendation of Fifth CPC has been considered and the President is pleased to decide that, with effect from 1.4.2004, DA equal to 50% of the existing basic pay shall be merged with the basic pay and shown distinctly as Dearness Pay (DP) which would be counted for purposes like payment of allowances, transfer grant, retirement benefits, contribution to GPF, Licence Fee, monthly contribution for CGHS, various advances, etc. The entitlements for LTC, TA/DA while on tour and transfer and government accommodation shall, however, continue to be governed on the basis of the basic pay alone without taking into account Dearness Pay. In case of existing pensioners, Dearness Relief equal to 50% of the present pension will, w.e.. 1.4.2004, be merged with pension and shown distinctly as Dearness Pension. Dearness Allowance/Dearness Relief converted into Dearness Pay/Dearness pension respectively would be deducted from the existing rate of Dearness Allowance/Dearness Relief.

3. To ensure that pensioners retiring between 1.4.2004 to 31.1.2005 do not face any loss in fixation of pension, as a special dispensation in their case, DA equal to 50% of the basic pay would be treated as basic pay for purposes of computation of pension in respect of basic pay received by them prior to 1.4.2004. Consequently, element of dearness pension will exist only for pensioners retired/retiring from Government of India upto 31.3.2004.

4. Insofar as the persons serving in the Indian Audit & Accounts Department are

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concerned, these orders issue after consultation with the Comptroller & Auditor General of India."

7. The application is being contested.

8. According to the respondents, the OM of 1.3.2004 does not cause any discrimination to the applicants because the President of India was pleased to decide that with effect from 1.4.2004, the Dearness Allowance equal to 50% of the existing basic pay scale shall be merged with basic pay and shown distinctly as Dearness Pay and would be counted for the purposes of payment of allowances, transfer grant, retiral benefits, contribution to GPF, etc. In case of existing pensioners, the Dearness Relief equal to 50% of the present pension will with effect from 1.4.2004 be merged with pension and shown distinctly as Dearness Pension. To ensure that the pensioners retiring between 1.4.2004 and 31.1.2005 do not face any loss in fixation of pension, as a special dispensation, in their case Dearness Allowance equal to 50% of the basic pay would be treated as basic pay for the purposes of computation of pension in respect of the basic pay received by them prior to 1.4.2004. Consequently, element of Dearness Pension will exist only for pensioners retired/retiring from Government of India upto 31.3.2004. It is stated that the applicants cannot claim parity with those who retire from 1.4.2004 onwards because there is always a cut off date for implementation of the said Office Memorandum. The cut off date for

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implementation of any policy decision cannot be decided on the personal choice of specific class of persons.

9. During the course of submissions, the learned counsel for the applicants contended that the applicants were working on the last date of service, i.e., 31.3.2004, therefore, they be treated as actually retired from 1.4.2004. According to the learned counsel, since they retire on the mid night of 31.3.2004, they are entitled to the benefit irrespective of the OM, which is being impugned.

10. Reliance was being placed on the Division Bench decision of the **Kerala High Court** in the case of **UNION OF INDIA v. GEORGE**, reported in 2004(1) ATJ 150. The respondent who had filed the petition was in service till 31.12.1995. The same question as in the present application, had arisen. It was held that they became pensioners from 1.1.1996 and, therefore, they were entitled to the benefit of the revision. The findings of the High Court, which binds this Tribunal, read:

“16. We are unable to accept this contention. The two officials had actually continued in service till the midnight of December 31, 1995. It is only from January 1, 1996 that they had ceased to be in service and acquired the status of pensioners. Resultantly, the claim to pension had to be determined at the rate prevalent on the date. This is precisely what the Tribunal has given them. The case is in no way different from that of **Banerjee**. In both cases, the pay had been paid till December 31.

17. Mr. Nair, learned counsel for the respondents has referred to the decision of a Division Bench of the Andhra Pradesh High Court in W.P. Nos.1219 and 1409 of 1998 decided on December 13, 2001. He has also

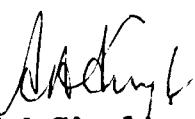
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referred to the Division Bench judgment of this Court in O.P. No.32459/2001 decided on January 4, 2002, he contends that the observations in these two cases show that the view was taken by the Tribunal in this case is correct.

18. The observations in these two cases certainly lend support to the contention of the counsel. In O.P. No.32459/2001, the Bench was dealing with an order regarding the grant of commuted value of pension. The Tribunal's order granting the benefit of revision, passed in similar circumstances, was affirmed. However, in view of the fact that we are upholding the order of the Tribunal, a detailed examination of these two decisions is not necessary."

11. Identical would be the position herein. Therefore, the applicants must be taken to have retired from 1.4.2004 and thus they are entitled to the benefit of the said OM. Keeping in view the aforesaid, it becomes unnecessary to dwell into any other controversy.

12. Resultantly, we allow the present application and direct that the respondents should implement the OM in case of the applicants in the light of the findings arrived at above. Necessary benefits, if any, should be accorded within four months of the receipt of the certified copy of the present order.


(S.A.Singh)
Member (A)


(V.S.Aggarwal)
Chairman

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