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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.700/2004

New Delhi this the ^{23rd} day of April, 2009

Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J)
Hon'ble Mr. Shailendra Pandey, Member (A)

1. Federation of Central Government Pensioners Organisations, Calcutta, Represented by its General Secretary and having its office at 356, B.L. Saha Road, P.O. Kalabagan, Kolkata-700 053.
2. Sri Asit Kumar Sreemany,
Son of Late Bankim Chandra Sreemany,
Retired Assistant Foreman from the office of the Rifle Factory, Ichhapore, West Bengal, Residing at 2, Chunilal Banerjee Road, Kolkata-700 057.
3. Sri Bistu Dhan Chatterjee
Son of Late Pasupati Chatterjee,
Retired A- Grade Guard from Eastern Railway, Asansol Division, West Bengal, Residing at House No. C-56, Sector-22 Noida, U.P. Pin-201301. ... Applicants.

(By Advocate Shri R. K. Gupta)

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pensions and Pensioners' Welfare, Lok Nayak Bhavan, Khan Market, New Delhi- 110003
2. Ministry of Defence, Govt. of India, Through its Secretary, South Block, New Delhi.
3. Ministry of Railway, Govt. of India, Through its Secretary, Rail Bhawan, New Delhi.
4. Ministry of Telecommunication, Govt. of India, Through its Secretary, Sanchar Bhawan, New Delhi.

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5. Ministry of Post & Telegraph, Govt. of India,
Through its Secretary,
Dak Bhawan, New Delhi.
6. Ministry of Health, Govt. of India,
Through its Secretary, Shastri Bhawan,
New Delhi. ... Respondents.

(By Advocate Shri H.K. Gangwani along with Sh. R.L. Dhawan)

O R D E R

Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (j).

The Original Application filed by the applicants had been rejected on 01.10.2004, the learned Member holding that the applicants have not made out a claim. It is pointed out that reliance made on a decision of the Chandigarh Bench of the Tribunal could not have been accepted, as the judgment suffers from an error, namely, that the contention of the Central Government had not been noticed that the Payment of Gratuity Act was not applicable to the Government servants.

2. But, however, on a writ petition filed, the matter has been remanded to the Tribunal, by the Hon'ble Delhi High Court, on 07.03.2007, Court holding that the matter is to be heard and disposed of by a Bench consisting of at least one Judicial Member. It is in this circumstance that the matter had come before us.

3. Learned counsel for the applicant submits that the issue has to be dispassionately considered and a large group of persons who have retired before 01.01.1996, that is, before the date of implementation of the 5th Central Pay Commission,



stand: discriminated in matters of calculation of DCRG. The element of full DA is not taken notice of. Counsel points out that as a matter of fact, there could not have been any dispute about the eligibility, since an application filed by one Pritam Singh, claiming gratuity under the Payment of Gratuity Act, has been allowed, and although the respondent administration had filed OA 1686/1991, Chandigarh Bench of the Tribunal had rejected the OA. Thereafter, a Special Leave Petition had been filed by the administration and the same had been dismissed thereby confirming the order (SLP (C) No. 11043 OF 1996).

4. The Government of India had issued orders whereby from 01.01.1996 DCRG would be computed on the basis of 100% DA added to the basic pay. But insofar as the applicants were concerned, the above benefit had not been extended in spite of the finality given by the Supreme Court in Pritam Singh's case.

5. However, the claims as above are disputed by the respondents and they point out that as a matter of fact, the issue is covered as against the applicants by the decision of the Supreme court in Civil Appeal No. 3166 of 2006 by a judgment dated 26.07.2006. It is also submitted that similar claims that have been agitated had been rejected by the Calcutta Bench of the Tribunal, and the claim of the applicants could not have been, therefore, entertainable. In the aforesaid circumstances, we had gone to the observations made by the Supreme Court in the case cited.

6. After tracing the manner in which the claim has been agitated by Mr. Pritam Singh and duly taking notice of the circumstance that SLP filed had been rejected, the Supreme Court had observed that the decision in Pritam Singh did not at all create any binding precedent. The judgment in Pritam Singh, according to the Supreme Court, had been rendered per incuriam as the statutory provisions relevant for determining the issue have not been taken into consideration. The court had observed that if a decision has been rendered without taking into account the statutory provisions, the same cannot be considered to be a binding precedent. When 1993 Rules were in force, governing payment of gratuity, it was inconceivable that any of them could have resorted to proceedings under Payment of Gratuity Act.

7. It had been observed that in terms of the 1993 rules, the benefits were payable to the Railway servants on the recommendations of the 4th Pay Commission. Of course, the 5th Pay Commission had recommended that Dearness Pay also should have been a component for calculation but the entitlements were to be given prospectively and effective from 01.04.1995. Central Government had accepted the recommendation only prospectively and effective from 01.04.1995, as the individual concerned had retired earlier, the recommendations were not applicable to him.

8. The reasoning of the Supreme Court as above, cannot be overreached by any known method of interpretation. As far as





the applicants were concerned, they could have drawn benefits as are admissible by the recommendation of the 4th Pay Commission alone.

9. Learned counsel for the applicants, however, had drawn our attention to **Sunderjas Kanyalal Bhatija and Ors. Vs. Collector, Thane, Maharashtra and Ors.** (1989) 3 SCC 396) as also **D.S. Nakara and Ors. Vs. UOI** (1983) 1 SCC 305) to highlight about the requirement of judicial discipline to be maintained by the courts and possibly for highlighting a contention that the Supreme Court could not have overlooked the earlier decisions on the subject although the details of such decision have not been given. Arbitrariness of fixing a date has also been pressed into service but such a proposition, according to us, has hardly any relevance. The legal positions were settled that the applicants will not be entitled to claim benefits of Gratuity Act for computing the DCRG. It is not disputed that the admissible benefits as per the recommendations of the 4th Pay Commission have been extended to them. In the circumstance, there is no merit in the application. It is dismissed. As pointed out by the counsel for the respondents, the High Court would not have remanded the matter back had the attention of the Court been invited to the decision of the Supreme Court in CA 3166/2006. No costs.


(Shailendra Pandey)
Member (A)


(M Ramachandran)
Vice Chairman (J)