

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 20th DAY OF MAY, 2010)

PRESENT:

HON'BLE MR. S.N. SHUKLA, MEMBER-A

ORIGINAL APPLICATION NO. 439 OF 2005
(U/s, 19 Administrative Tribunal Act, 1985)

Jokhan Lal, Son of Late Nanhkoo, R/o Late No.1 Jaiswal School
Crossing Mughalsarai, District-Chandauli.

.....Applicant

By Advocate: Shri S.K. Dey
Shri S.K. Mishra

Versus

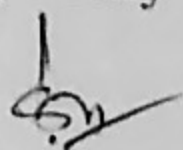
1. Union of India, through the General Manager, E.C. Rly.
Hajipur, Bihar.
2. The Divisional Rly. Manager, E.C. Rly. Mughalsarai,
District Chandauli.

..... Respondents

By Advocate: Shri Anil Dwivedi

ORDER

1. This OA has been filed seeking the following reliefs:-
 - "i) This Hon'ble Court may be pleased to direct the respondents to make payment the due amount of D.C.R.G. calculating at the rate of pay Rs. 2300/- plus D.A. 97% of pay with due interest against the due amount of D.C.R.G.
 - ii) Any other relief or reliefs to which he is entitled may also be awarded to him.
2. The facts of the case are that the applicant was appointed on 11.9.1956 and retired on 31.7.1993. On his retirement he was paid his D.C.R.G., leave encashment and pension on his basic pay Rs.2300/- only and that his D.C.R.G. was liable to



be calculated and paid the rate of pay plus D.A. Rs.97% of pay following the decision of Hon'ble Supreme Court dated 13.02.2002 in 937/1995 along with SLP No.11043/1995 in the case of Union of India V/S Pritam Singh (placed at Annexure-1 to the OA).

3. The operative part of the judgment of Hon'ble Supreme Court reads as under:-

" Sri Preetam Singh is thus entitled to receive from the Railway Ministry his full gratuity determined after merging full DA with his pay on the date of his retirement in 1990. This latest judgement of the Hon'ble Supreme Court is in accordance with its judgment in V. Kasturi Vs Managing Director, SBI Bombay & another. The Apex Court pointed out that in DS Nakara's case a distinction has been made between a new scheme and liberalised pension scheme. When a new scheme comes into force, the same may not apply to the persons who had retired prior thereto, but when there is a provision in the existing scheme by way of upward revision, the scheme should be applied to erstwhile pensioners also.

In Union of India Vs. Dr. Vijayapuram Subbavanama the Apex Court upon consideration of earlier decision laid down the conspectus of legal position in the following terms.

(c) 'Where an employee at the time of retirement is entitled to pension under the relevant rules any subsequent amendment to the relevant rules enhancing pension on conferring additional benefit (viz. Adding DR as available at the time of retirement to the basic pay for the purpose of DCRG to post 1996 pensioners would also be applicable to pre 1996 pensioners) would also be applicable to past pensioners.'

In view of the above position, it is felt that all the pensioners who retired between 01.01.1986 and 31.12.1995 should be paid additional DCRG taking into a/c the DA available on the date of retirement irrespective of the fact that they draw nil DA for some pensioners (Retired from 01.01.1986 to 15.09.93) 20% for some pensioners & Retired from 16.9.93 to 31.03.95/9/ for some pensions ors. 1.04.93 to 31.12.1995) which was not taken into a/c for payment of DCRG."

4. In para 4.6 of the OA it has been stated that Hon'ble Supreme Court has decided a policy matter and it is applicable to all employees who retired between 1.1.1986 to 31.12.1995. Applicant taking support from the decision of the Hon'ble Supreme

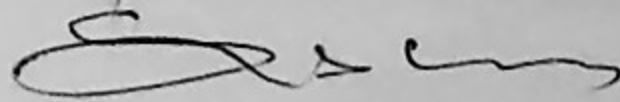
Court dated 21.02.2005 represented to the competent authority (Annexure A-2). The authorities did not act on the representation and hence this OA.

5. Learned counsel for the respondents invited the attention of this Tribunal to his counter affidavit in para 8 and 10. For the sake of better appreciation para 8 and 10 of the counter affidavit are reproduced below:-

8. That the contents of paragraph 4.4 of the original application as stated are incorrect hence not admitted and denied and further it is submitted that the Railway Board vide his letter No.PC-V/95/DCRG dated 8.8.1995 provided that the 5th Central Pay Commission in its interim report has recommended that the dearness allowance as linked to the average all India Consumer price index (AICPI) 1201.66 may be treated as dearness pay for reckoning emoluments for the purpose of retirement gratuity and death gratuity under the Railway Services (Pension) Rules 1993 and the ceiling on gratuity be enhanced to Rs.2.50 Lack. Accordingly the President is pleased to decide that dearness allowance linked to AICPI 1201.66 as indicated in the Railway Board letter referred above shall be treated as dearness pay for reckoning employments for the purpose of retirement gratuity/death gratuity under the Railway Services (Pension) Rules 1993 in the case of Railway Employees who retire or die on or after 1st April 1995. Since the case of applicant is not covered under the aforesaid order/letter of Railway Board under the circumstances the applicant is not entitled to relief claimed in the original application. The copy of said Railway Board letter dated 8.8.1995 is being filed herewith and marked as Annexure CA-1 to this counter reply.
10. That the contents of paragraph 4.6 of the original application as stated are not admitted and further it is submitted that as per Railway Board letter dated 8.8.1995 the benefit of the said circular is applicable only to those Railway employees who retire or die on or after 1st April 1995. Since the applicant had retired on 31.7.1993 as such he is not entitled to get the benefit of the said Circular moreover the gratuity of applicant was rightly calculated in accordance with the existing rule and law at the relevant time and there is no illegality or infirmity in calculating the gratuity of applicant under the law. It may also be submitted that the case law referred in para under reply does not apply in the case of applicant. The copy of relevant provision of Railway Services (Pension) Rules 1993 for the perusal of the

Hon'ble Court is being filed herewith and marked as Annexure No.II to counter reply."

6. Heard learned counsel for the parties and perused the pleadings. Significantly it is to be noted that even though the ruling of the Hon'ble Supreme Court's (Supra) judgment has been stated in para 4 (6) of the pleadings in the OA, the respondents choose to remain silent on that and hence the contention taken by the applicant remains uncontroverted. That being the position this Tribunal is not able to fathom as to how the department proposes to circumvent the law laid down by the Hon'ble Supreme Court (Supra).
7. In view of the above, the respondent no.2/Divisional Railway Manager, E.C. Rly. Mughalsarai, District Chandauli himself or through any other competent authority in this behalf is directed to rework the DCRG payable to the applicant following the decision of the Hon'ble Supreme Court (Supra) within a period of three months of receipt of certified copy of this order and disburse it to the applicant.
8. With the above observations, OA is allowed. No Costs.



Member-A

/ns/