

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

**REVIEW APPLICATION NO.77 OF 2006
IN
ORIGINAL APPLICATION NO.322 OF 2003**

ALLAHABAD, THIS THE 8th DAY OF FEBRUARY, 2007

CORAM :

HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER

1. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway,
Lucknow Division, Lucknow.
.....Applicants/Respondents

By Advocate : Shri P. Mathur

Versus

1. Ram Naresh, S/O Late Kali Deen.
2. Ram Shankar Mishra,
S/o Late Binda Deen Mishra.
3. Badri Prasad,
S/O Late Gaya Deen Jaiswal.
4. Ram Lakan Mishra,
S/O Late Mata Badal Mishra
5. Rama Kant Pandey,
S/O Late Mathura Prasad.
6. Ram Adhar Vishwakarma,
S/O Late Jag Ram.

All C/O Sri Ram Naresh Sharma, Permanent R/O L-37-B, Purani Railway
Colony, Pratapgarh, Presently residing at 255, Triveni nagar, Naini,
Allahabad.

.....Respondents/Applicants

By Advocate : Nil

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

This review application has been filed calling for review of the order dated 23-05-2006 in OA 322/2003, whereby, on the basis of the decision of a Full Bench judgment of the Mumbai Bench in the case of Baburi & Others vs Union of India and others, OA No. 542/97 decided on 21-09-1997, the OA was allowed and the pre 01-04-1995 retirees were also held to be entitled to the higher rate of DCR Gratuity in accordance with the provisions of the Ministry of Personnel OM dated 14-07-1995.

2. The review applicants (the Railways) have pointed out the error apparent on the face of records that the said OM dated 14-07-1995 came up for interpretation by the Apex Court in the case of ***State of Punjab v. Amar Nath Goyal,(2005) 6 SCC 754***, wherein the Apex Court has held as under:-

Civil appeals @ Special Leave Petitions (Civil) Nos. 12071-72 of 2004

6. The respondent employee in this case retired on 28-2-1994 from Postal Department Service, H.P. Circle i.e. prior to the prescribed cut-off date of 1-4-1995. He sought the higher amount of death-cum-retirement gratuity subject to the increased maximum limit under the office memorandum (OM) dated 14-7-1995 issued by the Government of India. This OM directed that a certain percentage of dearness allowance was to be treated as part of basic pay for the purpose of calculating the death gratuity and retirement gratuity in respect of the Central Government employees who retired after 1-4-1995. However, the Central Government rejected his claim on the ground that

he had retired prior to 1-4-1995. The employee then moved the Central Administrative Tribunal (CAT) (Chandigarh Bench) by his original applications. CAT directed that the benefit of OM dated 14-7-1995 be extended to the employee concerned, on the undertaking that, if the connected matters pending at the time in the Bombay High Court were to be adversely decided against him, he would refund the monies with interest.

7. The Union of India moved the High Court of Himachal Pradesh by writ petition, CWP No. 462 of 2003, which was dismissed on the ground that a similar matter was pending before the Bombay High Court against a decision of the Full Bench of CAT (Mumbai Bench), and that the decision given by the Bombay High Court would decide the rights and contentions of the parties. The Union of India's Civil Review No. 32 of 2003 was also dismissed on 11-9-2003. Aggrieved thereby, the Union of India is in appeal.

23. The learned counsel for the Union of India and the State Governments contended that, though it is a fact that certain percentage of dearness allowance was to be merged with the basic pay with effect from 1-7-1993 (linked to All India Consumer Price Index Level 1201.66) and that the said dearness allowance admissible to the employees on 1-7-1993 was to be treated as dearness pay for reckoning emoluments for the purpose of death gratuity and retirement gratuity, financial constraints impelled the Governments, both at the Centre and the State, to restrict such payments only to the employees who had died or retired on or after 1-4-1995.

24. The learned counsel for the Union of India made available the Governments file from which it is seen that the Government took a conscious decision that the benefit of the increase in the quantum of gratuity, pursuant to the merged portion of the dearness allowance and the revised ceiling shall be made available from 1-4-1995, which was the date recommended in the Interim Report of the Fifth Central Pay Commission. The Government noticed that the consequential financial burden would be very heavy. Hence, the Central Government decided that these benefits would be made available only from 1-4-1995. The State Governments followed suit.

25. The only question, which is relevant and needs consideration, is whether the decision of the Central and State Governments to restrict the revision of the quantum of gratuity as well as the increased ceiling of gratuity consequent upon merger of a portion of dearness allowance into dearness pay

reckonable for the purpose of calculating gratuity, was irrational or arbitrary.

26. It is difficult to accede to the argument on behalf of the employees that a decision of the Central Government/State Governments to limit the benefits only to employees, who retire or die on or after 1-4-1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government, at the Centre or at the State level.

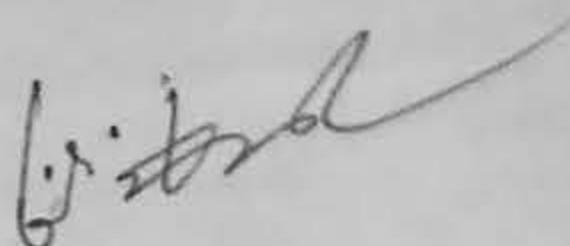
27. Even by OM dated 19-10-1993, all that happened was that a portion of the dearness allowance linked to Average Consumer Price Index of 729.91 obtaining as on 1-3-1988 (i.e. 20% of the basic pay) was treated as dearness pay. This would count only for reckoning the emoluments for the purpose of calculating retirement-cum-death gratuity under the applicable rules and for no other purpose. This change was brought into effect from 16-9-1993.

28. Even at that time, interestingly, the benefits were not made admissible from 1-3-1988 i.e. the date of the Average Consumer Price Index of 729.91, but from a much further date i.e. 16-9-1993. The Central Government adopted the same policy while issuing OM dated 14-7-1995. Although, dearness allowance linked to the All India Consumer Price Index 1201.66 (as on 1-7-1993), was treated as reckonable part of dearness allowance for the purpose of calculating the death-cum-retirement gratuity, the benefit was actually made available to the employees who retired or died on or after 1-4-1995. Similarly, the increase in the ceiling of gratuity was a mere consequential step, which was also made applicable from 1-4-1995. As we have already noticed, 1-4-1995 was the date suggested by the Fifth Central Pay Commission (Pay Commission) in its Interim Report. The Central Government took a conscious stand that the consequential financial burden would be unbearable. It, therefore, chose to taper down the financial burden by making the benefits available only from 1-4-1995. It is trite that, the final recommendations of the Pay Commission were not ipso facto binding on the Government, as the Government had to accept and implement the recommendations of the Pay Commission consistent with its financial position. This is precisely what the Government did. Such an action on the part of the Government can neither be characterised as irrational, nor as arbitrary so as to infringe Article 14 of the Constitution.

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3. The above decision of the Apex Court was not brought to the notice of this Tribunal at the time of final hearing. Thus, the Review Application deserves to be allowed and the matter heard by appropriate bench and appropriate orders be passed.

4. As the order under review cannot be modified without notice to the applicants in the OA, Registry is directed to issue notice to the parties for hearing on the matter in open court. Meanwhile, order under review shall stand stayed.



DR. K.B.S. RAJAN
JUDICIAL MEMBER