

Order dated 31.1.2001

Heard Shri D.P.Dhalasamant, the learned counsel for the petitioners and Shri U.B. Mohapatra, the learned Addl.Standing Counsel appearing for the Respondents.

In this Application, All India Central Government Pensioners' Association, the petitioner represented by its President Sri B.Mohanti, has prayed that the eligibility for the benefit of the addition of a portion of the basic pay in the emolument for the purpose of ~~reckoning the~~ Death-cum-Retirement Gratuity allowable to persons retiring after a specific date vide impugned orders at Annexures-1 and 2 be declared as unconstitutional and violative of Article 14 of the Constitution. The second prayer is that the benefit extended to retiring Govt. employees vide Annexure-2 should be given effect to with effect from the date when the instalment of Dearness Allowance became due and was sanctioned, i.e. 1.7.1986. Respondents have filed their counter opposing the prayer of the applicant. No rejoinder has been filed.

For the purpose of considering this petition it is not necessary to go into too many facts of this case. It is only to be noted that in order dated 19.10.1993 at Annexure-1 it was provided that ^{for} Central Govt. employees, who retire or die on or after 16th September/1993, a portion of the dearness allowance as linked to average Consumer Price Index of 729.91 obtaining as on 1.3.1988, i.e., 20% of basic pay should be treated as dearness pay. It was also provided that this dearness pay would be taken as emoluments for the purpose of retirement gratuity and death gratuity under CCS(Pension) Rules, 1972, and for no other purpose. It was further provided that this would come into force w.e.f. 16.9.1993 and all cases of death and retirement gratuity of persons, who have already died or retired on or after 16.9.1993 should be recalculated on the basis of this order and arrears, if any, should be paid. Subsequently in order dated 14.7.1995 at Annexure-2, following the interim recommendation of the Vth Pay (Central

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Pay Commission linking the Dearness Allowance to the average All India Consumer Price Index 1201.66 was ordered to be treated as dearness pay for the purpose of reckoning emoluments for retirement and death gratuity and ceiling on gratuity was also enhanced to 2.50 lakh. It was also provided that D.A. linking 1201.66, as indicated in a Table in this order should be treated as Dearness Pay for the purpose of calculating retirement/death gratuity in case of Central Govt. employees, who retired on or after 1st April/95. In this for basic ^{pay} upto Rs.3500/-, 97% of ~~pay~~ ^{was} dearness allowance ^{to} be treated as a dearness pay for the purpose of calculating retirement/death gratuity. This application has been filed by All India Central Govt. Pensioners' Association through its President Mr. B. Mohanti. The grievance of the Association is that while allowing the benefit of calculating 20% of the dearness allowance and dearness pay, in order at Annexure-1 and later on 97% as dearness pay, which is inclusive of earlier 20%, in order at Annexure-2, Govt. of India have fixed cut off dates, which are 16.9.1993 and 1.4.1995. The petitioners pray that this benefit should be allowed not from the cut off dates but from the date dearness allowance at those rates became due on the basis of ^{upward} movement of the Consumer Price Index, more particularly to the level of 729.29 on 1.3.1988 (as it appears from Annexure-1 filed by the applicant himself), and from 1.7.1993, when the All India Consumer Price Index reached the level of 1201.66. Applicant's case is that adoption of cut off dates is arbitrary and in this process persons who have retired prior to the cut off date are deprived of that benefit, which is sought to be given effect by virtue of these two orders.

The very same question had been the subject matter of several cases before different Benches of the C.A.T. and all these decisions have been filed by Shri U.B. Mohapatra, learned Addl. Standing Counsel, after serving copies thereof on Shri D.P. Dhalasamant, the learned counsel for the

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petitioner.

Before considering those decisions it has to be mentioned that fixing up cut off dates by itself is not illegal. Hon'ble Supreme Court in the case of Union of India vs. P. N. Menon reported in 1999(4) SCC 68 referring to a similar controversy arising out of earlier Pay Commission had held that cutoff date is natural in the matter of revising pensionary benefits. Even in respect of revising scale of pay the cut off date was given and it was held that a basis has to be fixed for extending the benefit. It was also ~~be~~ noted that cut off dates has to be fixed taking into account the resource liability, which will arise from the date ~~of~~ as a result of granting of some new benefits. In view of this fixing up of cut off dates, per se is not illegal and therefore, the contention of the applicant in this regard is held to be without any merit and the same is rejected.

As regards the prayer that the cut off dates should have been fixed ~~on~~ w.e.f. from the date when the Consumer Price Index reached the appropriate levels, as mentioned by us earlier, and not from the date as indicated in Annexurex-1 and 2, we find that these points have already been adjudicated by the Principal Bench in O.A. Nos. 2232/95, 2134/97 by rejecting the claim. We have gone through various decisions of the Principal Bench, Hyderabad Bench and Chandigarh Bench of the C.A.T. and we find that this controversy has already been settled in the above decisions of the Tribunal. In view of this we hold that the prayer of the applicant is without any merit and the same is rejected, but without any order as to costs.

MEMBER (JUDICIAL)

Sannath Ram
VICE-CHAIRMAN
31/1/2001

Free copy of order
dt. 31.1.2001 may
be given to the
counsel for both
sides.

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6/2/2001