

14

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No.860/2004**

This the 21<sup>st</sup> day of September, 2007

**HON'BLE MR.N.D.RAGHAVAN, VICE CHAIRMAN  
HON'BLE MRS. CHITRA CHOPRA, MEMBER (A)**

1. S.Subrahmanjan,  
Aged 75 years,  
S/o Late S.Ramamurty,  
Retd. DRO, S.E. Rly.,  
38-21-28 Bapujinagar,  
Visakhapatnam-7

**AND**

118 others (as per memo of parties) ....Applicants.

(By Advocate: Shri D.P.Dhalsamanta)

Versus

1. Union of India,  
Represented through the Secretary,  
Ministry of Finance, Government of India,  
New Delhi- 11000 1
  2. Secretary, Ministry of Pension & Trg.  
Department of Pension & Pension Welfare,  
Government of Indian,  
New Delhi-10001
  3. Secretary, Railway Board,  
Ministry of Railway, Rail Bhawan,  
New Delhi.
  4. F.A. & CAO.,  
East Coast Railway,  
Chandrasekharapur,  
Bhubaneswar,  
District Khurda
  5. General Manager,  
South Eastern Railway,  
Garden Reach,  
Kolkata-43.
- ce

6. General Manager,  
East Coast Railway,  
Chandrasekharapur,  
Bhubanswar,  
District Khurda. ....Respondents

(By Advocate: Shri U.B.Mohapatra for Respondents  
Nos. 1 & 2 and Shri S.K.Ojha for Res-  
pondents Nos.4 to 6.

### ORDER

By virtue of this OA, the applicants challenge the inaction of the respondents to grant similar benefits as given to similarly situated persons pursuant to Hon'ble Supreme Court's order dated 13.02.2002 in Civil Appeal No.937/1995 along with SLP No.11043/95 "*Union of India Vs. Pritam Singh*" and order dated 21.9.2001 of Full Bench of Mumbai Bench of CAT.

2. The facts leading to the filing of the present OA are briefly stated as under:-

- i) The applicants are the retired employees of South Eastern Railways and after bifurcation they came under administrative control of East Coast Railway i.e. Respondent No4.
- ii) The pensioners who retired prior to 16.9.1993 on their retirement were granted Death-cum-Retirement Gratuity (DCRG) as admissible and emoluments in their cases were determined with reference to the last emoluments drawn by them and for the purpose of emoluments, the dearness allowance was not included as required under the rules.

ce

- iii) In accordance with OMs dated 19.10.93 and 14.7.1995 (Annexure A-1 and A-2 respectively) issued by Respondent No.1, 20% of the basic pay was to be treated as Dearness Pay for reckoning the emoluments for the purpose of DCRG under the CCS (Pension) Rules.
- iv) The petitioners, who retired or died on or after 16.9.1993 and 01.04.1995, were deprived of the aforesaid benefits contained in Annexure A-1 and A-2. While similarly situated persons, like the applicants, have been granted the benefit of DCRG taking into account the Dearness Pay as available to them at the time of retirement. Pursuant to judgment of Chandigarh Bench of this Tribunal which has been upheld by the Apex Court in Pritam Singh's case (Supra), no action has yet been taken.

6. In the counter affidavit, the averments made in the OA have been denied by the respondents and it is submitted that the OA is not tenable in view of law laid down by the Hon'ble Apex Court in the case of ***Union of India Vs. Manik Lal Banerjee (2006 SCC (L & S) 1959***).

7. It is submitted that in the OA the applicants have stated that they are retired employees of the Railway who retired prior to 1.4.1995 and the only stand taken in the OA is that since the Hon'ble Apex Court had confirmed the order passed by the C.A.T., Chandigarh Bench in ***Pritam Singh's case (Supra)***, the applicants are entitled to get all the benefits as have been given to said Pritam Singh.

ce

8. It has further been submitted that the applicants are not the casual employees and they do not come within the purview of Section 2(e) of Payment of Gratuity Act, 1972 (for short "the 1972 Act"). It is clear from the provisions of the 1972 Act that it is applicable to the person/persons working under the Railway Company or shop. But so far as the applicants are concerned, they are not the employees of any Railway company rather they have been appointed by the appropriate Government and are holding the said posts. As has been indicated by the Hon'ble Supreme Court, no Railway employee except casual labour employee on wages not exceeding Rs.1000/- per month and was holding a civil post in the Central Government, but subsequently absorbed in temporary regular service as temporary Laskar in the same establishment will get the benefit under the Payment of Gratuity Act, 1972 and also these persons are coming within the purview of Section 2 (e) of the said Act.

9. In view of the above position, and the law laid down by the Hon'ble Supreme Court in Manik Lal's case (Supra), the applicants are not covered under the 1972 Act and they are not entitled to get any such benefit as they are claiming, rather they are covered under the Railway Services Pension Rules, 1993 and are entitled to benefit as due and payable under Rule 70 of the said Rules.

10. We have heard the rival contentions of both the parties and have perused the material placed on record.

11. The applicants have essentially claimed the benefit of the 1972

Act on the analogy of Pritam Singh's case (Supra). The only issue for

consideration is whether the applicants are entitled for getting benefit of gratuity as was allowed by the C.A. T., Chandigarh Bench in the case of Pritam Singh (Supra)?.

12. At the outset, we feel it necessary to see the provisions of Section 2(e) of the 1972 Act in terms of which the applicants are claiming the benefit/relief. As given in Para 11 of *Manik Lal's case*, Section 2(e) of the said Act defines "employee" to mean

*"any person ( other than an apprentice ) employed on wages, in any establishment, factory, mine, oilfield, plantation, port railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity."*

The definition, thus, excludes an employee holding civil post under the Central Government and governed by another Act or Rules providing for gratuity."

13. The interpretation clause contained in Section 2 (e) takes out from the purview of the said Act a person who holds, inter alia, post under the Central Government and whose terms and conditions of service are governed by an Act or the Rules providing for payment of gratuity. It is undisputed that the Railway employees (including retired Railway employees) are governed by the Railway Services (Pension) Rules, 1993. These Rules provide for payment of retirement/death gratuity in Rule 70 which reads as under:

*"70. Retirement gratuity or death gratuity – (1)  
(a) In the case of a railway servant, who has completed five years' qualifying service and has become eligible for service gratuity or pension under Rule 69, shall, on his retirement, be granted retirement gratuity equal to one-fourth of*

ce

*his emoluments for each completed six monthly period of qualifying service subject to a maximum of sixteen and one-half times the emoluments and there shall be no ceiling on reckonable emoluments for calculating the gratuity."*

14. The ambit of the entire Rule position of the 1972 Rules has been considered at length by the Hon'ble Apex in Manik Lal's case (supra) where the respondents who were also Railway employees, had claimed gratuity under the 1972 Act on the basis of C.A.T. Chandigarh Bench in Pritam Singh's case (Supra). The claim of the respondent Manik Lal Banerjee was allowed by the Tribunal as well as the High Court of Calcutta. On the SLP filed by the UOI, the Hon'ble Supreme Court has clearly ruled as under :-

*"Gratuity – Railway employees – Held, payment of Gratuity Act is not applicable in view of S. 2(e) thereof – Provisions of Ss. 2(a)(i), 2 (f) and 15(4) (ii) of Payment of Gratuity Act do not change this position as such employees are governed by the Railway Services (Pension) Rules – Although in case of one Pritam Singh, said to be similarly situated, benefit of gratuity in terms of Payment of Gratuity Act was allowed by CAT but that decision was rightly held by CAT in another case to have been rendered per incuriam as S.2(e) had not been taken into consideration – Merely because SLP preferred against Pritam Singh decision had been dismissed by Supreme Court by a non-speaking order ("This is not a fit case for out interference under Art.136...") would not mean that any law within the meaning of Art.141 was laid down by the Court so as to constitute a binding precedent – Railway Services (Pension) Rules, 1993, Rr.70 and 49 – Payment of Gratuity Act, 1972, Ss. 2(e), (a)(i), (f) and 15 (4)(ii)."*

15. Further, the Hon'ble Apex Court while clarifying the definition of an 'employee' contained in Section 2(e) of the 1972 Act for getting benefit under the 1972 Act has observed as under :-

*"18. It is well settled that a decision is an authority for what it decides and not what can logically be deduced there from. The decision in Pritam Singh having indisputably not taken into*

*consideration, the exclusionary clause contained in Section 2(e) of the 1972 Act cannot be held to be an authority for the proposition that despite the provisions of the 1993 Rules, the 1972 Act would apply in the case of the railway servants."*


*19. It is now well settled that if a decision has been rendered without taking into account the statutory provision, the same cannot be considered to be a binding precedent. This Court in Pritam Singh while exercising its discretionary jurisdiction, might have refused to interfere with the decision. The same, therefore, did not constitute any binding precedent. The Tribunal and consequently the High Court, therefore, committed a manifest error in holding otherwise.*

*20.xxxxx.*

*21. The High Court noticed the definition of "employee" contained in Section 2(e) of the 1972 Act but while deciding the issue it fell into an error in coming to the conclusion that there was nothing in the 1972 Act so as to exclude the benefit thereof to a Railway employee. It failed to properly construe the said provision."*

16. The Apex Court while allowing the appeal set aside the order of the C.A.T. as well as the High Court.

17. From the above, it clearly transpires that the applicants, being retired railway employees, and having been granted pension under the Railway Services (Pension) Rules, 1993 as applicable to them cannot obviously be covered under Section 2(e) of the 1972 Act. Their claim is not only misconceived but is without any basis. Resultantly, the OA is dismissed. No order as to costs.)

  
(CHITRA CHOPRA)  
MEMBER(A)

  
(N.D.RAGHVAN)  
VICE CHAIRMAN

/usha/