

3
O.A. No.400/06

ORDER DATED 20th NOVEMBER, 2007

Coram:

DR. K.B.S. RAJAN, MEMBER(J)

Neither the applicant nor the Ld. Counsel for the applicant is present. Mr. B.K. Mohapatra, Ld. Counsel for the respondents is present and heard.

2. This OA has to be dismissed as the reliance placed by the applicant upon the Full Bench Judgment of the Mumbai Bench of the Tribunal, vide order dated 21-09-2001 in OA Nos. 542, 942 and 943/97 (Annexure A-2) has been set aside 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:-

"40. We further allow Civil Appeals Nos. 129 of 2003, 132 of 2003, 1838 of 2003, 1847 of 2003, 902 of 2004, 1061 of 2005, Civil appeals @ SLPs (C) Nos. 12071-72 of 2004, Civil appeal @ SLP (C) No. 2947 of 2003, Civil appeals @ SLPs (C) Nos. 6855-86 of 2003 and TC No. 58 of 2004 [and set aside the order dated 21-9-2001 of CAT (Mumbai Bench) in O.A. Nos. 542 of 1997, 942 of 1997 and 943 of 1997] and dismiss Civil Appeal No. 133 of 2003 and TC No. 41 of 2005."

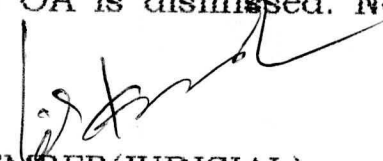
19

3. The benefit of 97% merger of DA with pay is not available to anyone who had retired from service prior to 01-04-1995, as could be seen in the case of **Union of India v. Manik Lal Banerjee, (2006) 9 SCC 643** wherein the Apex Court has held as under:-

"25. We have noticed hereinbefore that in terms of the 1993 Rules the emoluments were to be paid in terms of the recommendations made by the Fourth Pay Commission. The Fifth Pay Commission no doubt recommended that dearness pay be linked to All-India Consumer Price Index of 12-1-1966 as on 1-7-1993 but, the entitlement of the employees in terms thereof was directed to be prospectively affected with effect from 1-4-1995. **The Central Government accepted the said recommendations only with prospective effect from 1-4-1995 in terms whereof 97% of the dearness allowance was to be paid to those who were drawing salary up to Rs 3500 as basic pay. The respondent**

retired on 31-1-1995. The recommendations of the Fifth Pay Commission, thus, were not applicable in his case. (Emphasis supplied)"

4. In view of the above the OA is dismissed. No cost.


MEMBER(JUDICIAL)