

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 591/2004

Wednesday, this the 21st day of September, 2005.

CORAM:

HON'BLE Mr. K. V. SACHIDANANDAN, JUDICIAL MEMBER

1. V.M.Thankamma
Retired Junior Supervisor
Residing at : Erezhathu House,
Moothakunnam P.O, North Parur
2. Lilly Varghese
Retired Telephone Inspector
Residing at : Thaiparambil House,
Udyogamandal P.O, Ernakulam
3. Celine Rozario
Retired Telephone Supervisor
Residing at : Jancy Villa,
Karshaka Road, Kochin - 23
4. N.Kalliani
Retired Junior Supervisor
Residing at : Kalthothara House
Cherai P.O., Ernakulam.
5. M.L.Saraswathi Amma
Retired Senior Telephone Supervisor
Residing at 59/3692, St.Vincent Road, Kochi-18
6. Leelamma Mathai ~
Retired Junior Supervisor
Residing at : Padinjarel House
U.C.College, PO., Aluva
7. K.M.Joseph
Retired Senior Supervisor
Residing at Karathottam House,
BMC P.O., Kochi – 21
8. Mrs.K.Babunathan
Retired Senior Supervisor
Residing at : Nath Mandir,
Thrikkakara P.O., Kochi – 21
9. Sundara Natarajan
Retired Junior Supervisor, Residing at : Palliparambil
House,Edappally P.O., Ernakulam

10. K.P.Chinnamma
Retired Senior Supervisor
Residing at : Krishnalayam, Kaloor, Kochi-17

11. M.Chacko
Retired Telephone Supervisor
Residing at : 35/2115 Kaousalya Nagar
Elamakkara, Kochi – 26

Applicants

(By Advocate Mr.P.A.Kumaran)

Vs.

1. Union of India represented by its
Secretary, Ministry of Communications,
New Delhi – 1

2. The Secretary,
Ministry of Personnel, Public Grievances and Pension
Department of Pension & Pensioner's Welfare,
New Delhi

3. The Chief General Manager
BSNL, Kerala Circle, Trivandrum – 33

4. The Chief Accounts Officer,
Telecom Accounts, Office of the PGMT, BSNL
Ernakulam Kochi- 16

Respondents

(By Advocate Mr. Sunil Jose, ACGSC)

O R D E R (Oral)

HON'BLE MR .K.V. SACHIDANANDAN, JUDICIAL MEMBER

There are 11 applicants who retired from service on superannuation from various offices under Ernakulam Secondary Switching Area of Department of Telecom between 30.09.1990 and 30.08.1995. According to the applicants, all of them except 10th applicant retired before 01.04.1995 and the 10th applicant retired before 01.01.1996. The applicants claim that they are eligible to get DA at the rate of 43% to 136 % respectively and the pensionary benefit payable were determined on the basis of the last pay drawn without taking into consideration of the admissible Dearness Allowance. The Vth Central Pay Commission recommended that DA shall be linked to the All India Consumer Price Index (AICPI) at 1201-66 as on 01.07.1993, be treated as dearness pay for reckoning emoluments for the purpose of retirement

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and death gratuity. For non granting of these benefits the applicants have filed this O.A seeking the following main reliefs:

- i. To quash Annexure A-5.
- ii. To declare that the applicants 1 to 11 are entitled to the benefit of the merger of full DA with the pay for the purpose of death gratuity and retirement gratuity ordered as per Annexure A2 and the cut off date of 01.04.1995 and 01.01.1996 fixed in Annexure A2 and A3 are void and inoperative.
- iii. To direct the respondents to delete the cut off date of 01.04.1995 and 01.01.1996 from Annexure A2 and A3.
- iv. To direct the respondents to revise the DCRG already determined and paid to the applicants 1 to 11 on the basis of the full DA merged with the pay without regard to the cut off date of 01.04.1995 and 01.01.1996 fixed in Annexure A2 and A3 and to re-determine the DCRG amount due to them on the basis of full DA merged with pay.
- v. To direct the respondents to disburse the difference of amount deducting the DCRG already paid to them.

2. The respondents have filed a reply statement contending that the OA is not maintainable without specific notification as provided by the Administrative Tribunals Act and also submitted that as per a common order Annexure R-1 (OA 592/2003) the Mumbai Bench of the C.A.T has disposed of such identical claims. " Revision of pension /DCRG would be regulated in terms of the judgment to be rendered by the Hon'ble High Court of Mumbai and the Hon'ble Supreme Court in similar matters pending before different Benches of the Tribunal."

3. Mr. P.A. Kumaran , learned counsel appeared for the applicants and Mr.Sunil Jose, ACGSC appeared for the respondents.

4. The learned counsel for applicants submitted that this Court had occasion to consider OA 993/03 alongwith a batch of cases vide order dated 22.11.2004 wherein this Court granted the benefit to those applicants who



have retired after 01.07.1993 following the Full Bench decision of this Tribunal. Therefore, the 6th applicant who retired after 01.07.1993 is entitled to the benefit though others may not be eligible as per the said order. The 10th applicant who retired before 01.01.1996 has already received the benefit and therefore requires no adjudication.

5. The learned counsel for respondents persuasively argued that as per Annexure R-2 order though the Madras Bench of the Tribunal granted the reliefs to the applicants therein, the benefit was deferred till the disposal of the SLP filed before the Hon'ble Supreme Court.

6. I have given due consideration to the materials and evidence placed on record. As stated by the learned counsel for applicants this Bench already considered the point at issue in detail in O.A.No.993/03 and other connected O.As. Relying on the Full Bench decision of this Tribunal in OA No. 542, 942 and 943 of 1997, the reliefs were granted to the applicants therein. The operative portion of which is reproduced as under :-

"In the present case, it cannot be ignored that all factors being equal the applicants have been discriminated against on the ground that they had retired earlier than the cut off date. We, therefore, hold that the applicants who retired between 1.7.1993 to 31.3.1995 are entitled to the benefits of the scheme of merger of 97% DA in the pay for purposes of emoluments for calculating death/retirement gratuities".



The Full Bench of the Tribunal answered the question referred to it in the following words.;

"We do not find that there is any nexus for rational consideration in fixing the cut off date of first April, 1995 vide O.M.No.7/1/95-P&PW(F) dated 14th June, 1995 issued by the Ministry of Personnel, Public Grievances and Pension (Department of Pension & Pensioner's Welfare), New Delhi".

9. Further it is profitable to quote the reasoning given by the Full Bench for granting the relief, which reads as follows:

"The 5th Central pay Commission in their interim report which was submitted to the Government on 2nd May, 1995 recommended the grant of interim relief equal to 10% of basic pay subject to minimum of Rs.100/- per month. Further, instalment of interim relief equal to 10% of the basic pension/family pension subject to a minimum of Rs.50/- per month was also recommended. It was suggested that DA linked to the AICPI 1201.66 as on first July, 1993 be treated as dearness pay for reckoning emoluments for the purpose of retirement and death gratuity and the ceiling on gratuity be enhanced to Rs.2.5 lakhs. These recommendations were to be given effect to from first April, 1995(para 1.43 of the report Volume-1). It is seen from this that the objective of the Pay Commission was very clear namely that when the DA reached the average AICPI 1201.66 that DA was to be merged in pay for reckoning emoluments for purpose of retirement and death gratuities. Had the intention been otherwise, then, the Commission would have recommended the DA, which was being drawn as on 1.1.95 which was 125%, but that was not so. The idea was clearly to link it with the DA which was due at the level of AICPI 1201.66. That apart it is to be borne in mind that this recommendation was only in the interim report of the Pay Commission. When the final report of the Pay Commission was submitted the Pay Commission recommended complete parity between past and present pensioners. This is evident from the concern expressed by the Pay Commission about the glaring disparity between the people drawing Vastly unequal pension if they had retired at different points of time. The Commission, therefor, attempted a major policy thrust by suggesting complete parity between past and present pensioners at the time of 4th Central Pay Commission while recommending a modified parity between pre 1996 and post 1996 pensioners. The Pay Commission felt that the formula would ensure total equity as between persons who retired before 1986 and those who retired later. It also ensured that all pensioners get at least the minimum pension appurtenant to post 1996 revised scales of pay of the

post and at the time of retirement. The thinking of the 5th Central Pay commission clearly establishes that the pay commission was not in favour of creating any disparity, but was for bringing parity. Considering this approach of the 5th Central Pay Commission in the Final report, in our considered view, these recommendations of the final report would prevail over the recommendations made in the interim report. Therefore, we feel that no distinction should have been made on the basis of the date of retirement while fixing the date of merger of DA of 97% in the pay from the date of 1.4.1995. The judgements referred to by the respondents have already been distinguished by the learned counsel for the applicant and we agree with the same. We are in agreement with the learned counsel for the applicant that in the present case there is no synchronisation of the date of grant of DA of 97% with the cut off date as in the case of P.N.Menon(Supra). The objective was to link to DA as on the date of average AICPI 1201.66 for the merger of DA in pay. This being so it would have been rational and it would have had a nexus with the objective if the date for merging 97% in pay had been fixed as 1.7.93 instead of 1.4.95, which has no nexus with the object. In the case of P.N.Menon (supra) the Hon'ble Apex Court held cut off date of 30.9.77 as reasonable and not arbitrary mainly because the date of grant of date and the cut off date were the same. The respondents have failed to put forth any convincing ground to justify the cut off date of 1.4.95 except that the pay commission had recommended it. The applicants are also justified in drawing support in the case of V.Kasthuri (Supra). A plea has been raised since it is a policy matter involving pay, allowances etc., it is not to be interfered with by the Tribunal. The judgement in the case of Union of India and another Vs. P.V.Hariharan (1997 SCC (L&S) 838) has been cited in support. In this case while holding that it is for the Expert Bodies like Pay Commission to go into the problems of pay, pay fixation etc. It has been held that unless a case of hostile discrimination is made out, courts would not be justified for interference for fixation of pay scales. Thus, if there is a hostile discrimination this Tribunal can consider adjudicating in the matter. In the present case, it cannot be ignored that all factors being equal the applicants have been discriminated against on the ground that they had retired earlier than the cut off date. We, therefore, hold that the applicants who retired between 1.7.93 to 31.3.95 are entitled to the benefits of the scheme of the merger of 97 % DA in the pay for purposes of emoluments for calculating death / retirement gratuities.

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7. This Court had occasion to go through the decision of the Hon'ble High Court of Punjab in WP(C) No.49995/97. It is the fact that the matter was taken before the Hon'ble Supreme Court. The learned counsel for applicants argued that there is no stay obtained either from the Hon'ble Supreme Court or from the High Court in any of the identical matters. Besides the decision dated 19.03.2004 in WP(C) No.9161/2004-S the Hon'ble High Court has passed the following orders:

“ Admit. Issue urgent notice to the respondents.

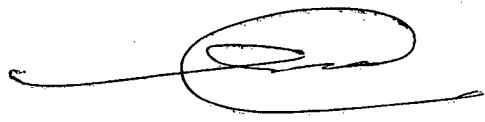
Having regard to the facts and circumstances of the case, we are not inclined to stay the proceedings in furtherance of Ext.P3 order of the Central Administrative Tribunal, Ernakulam Bench. However, it is made clear that any payment made to the respondent on the basis of Ext.P3 order will be subject to the final decision in this Writ Petition and also liable to be adjusted in terms of the final decision in the Writ Petition. The amount due under Ext.P3 order shall be paid to the respondent within one month of the respondent filing an affidavit before this Court undertaking that in the event of the petitioners succeeding in the Writ Petition, any excess amount received by him shall be refunded to the petitioners. Hand over the order. “

8. Considering the above orders, I am of the view that the 6th applicant alone is entitled to the benefit as he has retired after 01.07.1993 and the 10th applicant has already received the benefit. Therefore, I direct that the 6th applicant shall be given the benefit in tune with the order in OA 993/03. Regarding the implementation, since there is no stay from the Hon'ble Supreme Court, following High Court of Kerala order in WP(C) No. 9161/2004 , I direct the respondents to disburse the amount to the 6th applicant after obtaining an affidavit of undertaking from him that in the event of the respondents succeeding in the SLP, any excess amount received by him shall be refunded to the respondents.



9. The O.A is allowed as indicated above in so far as the 6th applicant is concerned. For other applicants the prayer is rejected. No order as to costs.

Dated, the 21st September, 2005.



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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