CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Common order in O.A.Nos.993/03, 990/03, 991/03, 981/03, 994/03, 69/04, 156/04, 185/04, 213/04 and 260/04:

this the 22nd. day of November 2004.

CORAM:

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

O.A.993/03:

V.Surendran Nair,
Preventive Officer of Customs (Rtd.),
Suvas, Puthiyaroad, Thammanam P.O.,
Cochin - 682 032. Applicant

(By Advocate Shri. CSG Nair)

Vs.

1. Union of India represented by the Secretary, Ministry of Personnel, Public Grievances & Pension, New Delhi.

2. The Commissioner of Central Excise & Customs, Central Revenue Buildings, I.S.Press Road, Cochin-682 018. Respondents

(By Advocate Shri C.Rajendran, SCGSC)

O.A.990/03:

P.Sreedharan,
Assistant Commissioner of Customs (Rtd.),
Leela Nivas, Edapally North P.O.,
Cochin-682 024. Applicant

(By Advocate Shri CSG Nair)

Vs.

1. Union of India represented by the Secretary, Ministry of Personnel, Public Grievances & Pension, New Delhi.

2. The Commissioner of Customs, Customs House, Wellington Island, Cochin-682009. Respondents

(By Advocate Smt. K.Girija, ACGSC)

O.A.No.991/03:

R.Ramasubramany,
Assistant Collector of Customs(Rtd.),
43/1419, St.Benedict Road,
Cochin-682 018. Applicant

(By Advocate Shri CSG Nair)

Vs.

1. Union of India represented by the Secretary, Ministry of Personnel, Public Grievances & Pension, New Delhi.

2. The Commissioner of Customs, Customs House, Wellington Island, Cochin-682009. Respondents

(By Advocate Smt.P.Vani, ACGSC)

O.A.No.981/03:

P.Mahadevan,
Accounts Officer (Rtd.),
39/5149, Swathi, Alappat Cross Road,
Cochin - 682 015. Applicant

(By Advocate Shri CSG Nair)

Vs.

1. Union of India represented by the Secretary, Ministry of Personnel, Public Grievances & Pension, New Delhi.

2. The Chief General Manager, Telecom Maintenance, Southern Region, No.39, Rajaji Salai, Chennai -600 001. Respondents.

(By Advocate Shri.C.Rajendran, SCGSC(R-1)
(By Advocate Shri P.Haridas (R-2)

O.A.994/03:

K.P.George,
Superintendent of Customs (Rtd.),
Kallapara House,
Malayidamthuruthu P.O., Edathala,
Ernakulam District, Pin-683 561. Applicant

(By Advocate Shri CSG Nair)

Vs.

1. Union of India represented by the Secretary, Ministry of Personnel, Public Grievances & Pension, New Delhi.

2. The Commissioner of Customs, Customs House, Wellington Island, Cochin-682009. Respondents

(By Advocate Shri Sunil Jose, ACGSC)

O.A.No.69/04:

1. M.J.George,
Postal Assistant(Rtd),
Maraparambil House, 11/772,
Pattalam, 3, Bishop's Garden,
Fort Kochi, Cochin-682 001.

2. A.Hameed Ghan,
Assistant Sub Post Master (Rtd.),
11/792, Pattalam Road,
Fort Kochi. Applicants

(By Advocate Shri CSG Nair)

Vs.

1. Union of India represented by the Secretary,
Ministry of Personnel, Public Grievances &
Pension, New Delhi.

2. The Secretary,
Department of Posts,
New Delhi.

3. The Senior Superintendent of Post
Offices, Ernakulam Division,
Cochin-11.

4. The Director, Postal Accounts,
Trivandrum-33. Respondents

(By Advocate Shri C.Rajendran, SCGSC)

O.A.No.156/04:

K.M.Susheela Devi,
Examiner of Customs (Rtd.),
Sree Gitanjali, Palarivattom,
Cochin-682 025. Applicant

(By Advocate Shri CSG Nair)

Vs.

1. Union of India represented by the Secretary,
Ministry of Personnel, Public Grievances &
Pension, New Delhi.

2. The Commissioner of Customs,
Customs House, Wellington Island,
Cochin-682009. Respondents

(By Advocate Shri George Joseph, ACGSC)

O.A.No.185/04:

1. G.Purushothaman Nair,
Senior Scientific Officer Grade II(Rted.),
Nakanath Madom, Elamana Road,
Thripunithura - 682 301.

2. V.M.Gopalakrishnan Nair,
Forman(Rtd.),
Thazhayil House, Hospital Hill,
Nilambur - 679 329. Applicants

(By Advocate Shri CSG Nair)

Vs.

1. Union of India represented by the Secretary, Ministry of Personnel, Public Grievances & Pension, New Delhi.

2. The Director General, Quality Assurance, Ministry of Defence, DGQA Complex, New Delhi-110011. Respondents

(By Advocate Shri Sunil Jose, ACGSC)

O.A.213/04:

Mr.TV Rajagopal, Assistant Commissioner of Customs (Rtd.), H.No.14/1621, Kaveri, K.K.Vishawanathan Road, South By Lane, Cochin -682 005. Applicant.

(By Advocate Shri CSG Nair)

Vs.

1. Union of India represented by the Secretary, Ministry of Personnel, Public Grievances & Pension, New Delhi.

2. The Development Commissioner, Cochin Special Economic Zone, Kakkanad, Cochin-682 017. Respondents

(By Advocate Smt.K.Girija, ACGSC)

O.A.260/04:

1. Mr.NV Krishnan, Post Master (Rtd.), Nikathil House, Elamkunnapuzha P.O., Ernakulam District, Pin-682 503.

2. S.Rajappan, Postman (Rtd.), Nadayapallil House, Ochanthuruthu P.O., Ernakulam District, PIN-682 508. Applicants

(By Advocate Shri CSG Nair)

Vs.

1. Union of India represented by the Secretary, Ministry of Personnel, Public Grievances & Pension, New Delhi.

2. Chief Postmaster General, Kerala Circle, Thiruvananthapuram-695 033.

3. The Senior Superintendent of Post Offices, Ernakulam Division, Cochin-11.

4. The Senior Superintendent of Post Offices, Alappuzha. Respondents

(By Advocate Shri C.Rajendran, SCGSC)

O R D E R

HON'BLE MR.KV.SACHIDANANDAN, JUDICIAL MEMBER

All the applicants in the above O.As. are Central Government Pensioners retired from service on different dates who had been granted DCRG on the basis of pay drawn by them. When the matter came up for hearing the learned counsel on both sides submitted that the issues involved in these O.As.are similar and identical and therefore, they prayed for a joint hearing on these cases and disposal by a common order. Hence, these Original Applications were heard together and disposed of by this common order.

2. The applicants in O.As. mentioned below were retired respectively from the Central Government Service on the dates indicated against each:-

O.A.990/93	30.4.92
O.A.69/04	31.3.93 and 31.12.88
O.A.156/04	30.4.92
O.A.260/04	31.8.90 and 31.7.90
O.A.185/04	29.2.92 and 31.7.91
O.A.991/03	30.11.93
O.A.994/03	31.5.92
O.A.981/03	31.5.90
O.A.213/04	28.2.93
O.A.993/03	30.9.93 and
O.A.950/93	28.2.93.

3. The claim of the applicants is that at the time of retirement on superannuation, the applicants were paid retiral benefits including DCRG as per the then existing rules. Vide O.M.No.7/1/95 P&W (F) dated 14.7.1995, the respondent (Ministry) declared that the Dearness Allowance(DA for short) is to be merged with pay and has to be treated as Dearness Pay(DP for short), for the purpose of DCRG at 97% of the basic pay upto Rs.3500/- under the CCS(Pension) Rules, 1972 in the case of Central Government employees who retired on or after 1.4.1995. This was not extended to the applicants and therefore they have filed these O.As. seeking the following main reliefs.

i. To call for the records relating to Annexures A-1 to A-5 and to declare that the applicants are entitled to the payment of their retirement gratuity to be calculated on the basic pay plus 97% of the basic pay treated as Dearness pay ;

ii. To direct the respondents to pay the applicants the difference of retirement gratuity paid and payable after calculating their pay plus 97% of the basic pay treated as dearness pay at the time of retirement as per the declaration in prayer (1) and to direct the respondents to immediately fix the pay and pension accordingly and to disburse the arrears, and

iii. to quash the impugned orders issued by the respondents as unconstitutional.

3. The Mumbai Bench of this Tribunal in O.A. Nos.542, 942 and 943 of 1997 had declared that the cut off date 1.4.1995 fixed for the purpose of counting the DA at the rate of 97% as an act of sub dividing the homogenous class of pensioners who retired on or after 1.7.93, is discriminatory and violative of Articles 14 and 16 of the Constitution. The applicants therein had allowed the benefit declaring that there is no nexus or rational consideration in fixing the cut off date as 1.4.1995 as per the O.M.dated 14.7.1995 and that case was reported in 2001 (3) ATJ 436 (Full Bench). Various Benches of this Tribunal had followed

the said decision rendered by the Full Bench. The applicants submitted representations but, neither those were considered nor rejected and hence these O.As.

4.. The respondents have filed a detailed reply statement contending that, the Full Bench of this Tribunal(Mumbai) in O.A.Nos.542,942 and 943 of 1997, held that there was no nexus or rational consideration for fixing the cut-off date as 1.4.95. In SLP No.23307/2002 filed against the judgement of the Hon'ble High Court of Haryana and Punjab dated 3.5.2002, the Hon'ble Supreme Court has granted a stay in similar matter, and in furtherance, the Coordinate Bench of this Tribunal at Chandigarh, had reviewed the order dated 10.7.2002 (against which the SLP was filed) directing that the benefit of 97% of the pay as DP should be granted to the applicants therein, only if the decision of the Hon'ble Supreme Court is favourable to the applicants. In an identical matter against the decision of this Bench of the Tribunal in O.A.165/2002, the respondents have moved the Hon'ble High Court of Kerala by filing W.P.(C)No. 9161/2004, which is pending consideration and therefore, the claim of the applicants is premature and liable to be dismissed. The DCRG was calculated and paid to the applicants on the basis of the rules prevailing at the material time and the applicants who retired subsequently also were paid DCRG on the basis of the rules then in force and none of the applicants was entitled for any relief since they were retired from service before 1.4.95 as the counting of 97% of basic pay for the purpose of DCRG took effect from 1.4.95. During 1995, Ministry of Personnel, Public Grievance and pension (Department of Pension and Pensioners Welfare), New Delhi issued O.M. dated 14.7.95 stating that Dearness allowance is to be merged with the pay and has to be treated as DP for the purpose of DCRG at 97% of the basic pay upto Rs.3500/- under CCS(Pension)

Rules 1972 in the case of Central Government Employees who retired on or after 1.4.95. The benefit of such merger was not allowed to those who retired prior to 1.4.95. Aggrieved by that, some of the Postal Employees approached the Central Administrative Tribunal, Mumbai Bench in O.A.542, 942 and 943 of 1997 inter-alia praying for a declaration that the cut-off date as 1.4.95 for the purpose of counting DA @ 97% after treating/linking to All India Consumer Price Index (AICPI for short) level of 1201.66 (equivalent to 97% of the pay) as an act of sub-dividing homogenous class of pensioners, who retired on or after 1.4.95, is discriminatory and violatiive of Article 14 of the Constitution and also to declare the said date 1.4.95 in O.M. dated 14.7.95 as void. The applicants therein also sought for consequential benefits. The Hon'ble Supreme Court of India granted a stay order in a similar matter in SLP (c) No.23307/02 on 6.1.2003, against the High Court of Haryana & Punjab judgement dated 3.5.2002 in the case of S.H.Amarnath Goel and others Vs. State of Punjab (C & WP No.49995/97). The CAT Chandigarh Bench in R.A.134/2002 reviewed their orders dated 10.7.2002 in O.A.No.636/PB/02 vide its order dated 6.6.2003 directing that the benefit shall be granted to the applicants only after the decision of the Hon'ble Supreme Court in the SLP referred to above.

5. Shri CSG Nair, learned counsel appeared for the applicants in all the O.As. and the respective Central Government counsel as mentioned in the cause titles appeared for the respondents.

6. Learned counsel for the applicants submitted that the applicants who retired prior to 1.4.95 are also entitled to the benefit of the scheme of merger of 97% of DA in the pay for the purpose of emoluments for calculating death/retirement gratuity.

The Full Bench of this Tribunal has laid down the law with regard to the payment of gratuity and according to that decision, all the applicants are entitled to the benefits. The non-extending of the benefits to the applicants are arbitrary, discriminatory, contrary to law and violative of Articles 14 and 16 of the Constitution.

7. Learned counsel for the respondents on the other hand persuasively argued that, since the applicants had retired prior to 1.4.95 they are not entitled to get any benefit, much less to say that the applicants who had retired prior to 1.7.93 are not eligible for the said benefits as per the Full Bench decision of the Mumbai Bench of this Tribunal.

8. Heard the counsel on both sides and given due consideration to the materials, evidence and documents placed on record. The applicants had brought to my notice the order of this Bench of the Tribunal dated 22.7.2003 in O.A.165/2002 (wherein I was a party-member to the judgement), stating that it considered elaborately a similar claim in which the above mentioned O.M. was under challenge and the relief sought for was granted. The relief that has been sought in that O.A. was also the same as sought in these O.As. The respondents had resisted the claim of the applicants in that O.A. on similar footing. The Full Bench of this Tribunal had granted the relief after detailed discussions and deliberations on identical facts and circumstances in O.A. 542, 942 and 943 of 1997, the operative portion of which is reproduced as follows:

> "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.

10. Learned counsel for the applicants further brought to my notice the decision in Union of India Vs. P.N.Menon & Ors. reported in 1994 27 ATC 515 and D.S.Nakara & Others Vs.Union of India (1983(1) SCC 305) showing that, "the date of retirement cannot form a valid criteria for classification". But on going through the Full Bench decision, I find that the Full Bench have elaborately considered and dealt with this judgement and a final decision was derived at as quoted above. I am in respectful

agreement with the reasoning and the finding of the Full Bench of this Tribunal in the above case which is binding. Therefore, I hold that the applicant who had retired from 1.7.93 upto 31.3.95 and thereafter, are entitled to get the benefit. Even though the applicants' counsel argued that this benefit should be extended to them retrospectively from 1.7.93, the same cannot be accepted. Therefore, I hold that the benefit should be extended only to those applicants who had retired on or after 1.7.93. On perusal of the facts of each case, I find that the applicants in O.A.991/03 and 993/03 are only eligible and entitled to get the relief. Since all other applicants in other O.As. had retired prior to 1.7.93, they are not entitled to the benefit.

11. Then the question arises as to what are the modalities for disbursing the amount. Respondents have contended that in a similar matter the Hon'ble High Court of Punjab & Haryana at Chandigarh has granted the relief in CWP-499/97 vide judgement dated 3.5.02. When that matter was taken before the Hon'ble Supreme Court, in SLP(CC)9758/02 the Hon'ble Supreme Court has passed the following orders on 6.2.2003.

> "Printing dispensed with. Additional documents, if any , be filed within six weeks. Original record need not be called for.
>
> In the meantime the judgement under challenge shall remain stayed."

12. Following the judgement of Punjab & Haryana High Court, the Chandigarh Bench of this Tribunal had granted similar relief in O.A.636/PB/2002 which was later reviewed vide its order in R.A.134/2002 dated 6.6.2003 (Annexure R-2 in O.A.990/03) in view of stay granted by the Hon'ble Supreme Court. It is pertinent to note that the dispute in that case is whether the employees of Punjab Government(under Central Pool) are also entitled to the benefit of this O.M. as that of Central Government employees.

The counsel for the applicant submitted that the Hon'ble Supreme Court has stayed only the judgement "under challenge". Therefore, it will not be a judgement in rem, at least for the time being and Article 141 of the Constitution will not apply in stay matters since it has not become final.

13. Learned counsel for the respondents also brought to my notice the decision of the Bangalore Bench of the Tribunal in O.A. Nos.727/04 and 728/04 etc. dated 2.4.2004 and submitted that a Coordinate Bench of this Tribunal has moulded the relief by giving a direction to regulate the same based upon the judgement to be rendered by the Hon'ble Supreme Court in Civil Appeals as well as connected Petitions/Appeals like SLP (Civ).No.18367/02. The above argument have been well taken.

14. It is also pertinent to note that against the order in O.A.165/92 (identical/similar case) where the benefit was granted by this Tribunal , the respondents approached the Hon'ble High Court of Kerala by filing W.P.(C) 9191/2004 which is pending disposal. However, in the interim stay proceedings the Hon'ble High Court had 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 respondents on the basis of 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 respondents 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."

15. It is further submitted that the Full Bench decision of this Tribunal itself was challenged before the Hon'ble High Court of Mumbai and the Hon'ble High Court of Mumbai had granted a conditional stay and disbursement of the arrears on undertaking as that was done by the Hon'ble High Court of Kerala as above. Learned counsel of the applicant submitted that the interim order of the Hon'ble Supreme Court may not be binding under Article 141 of the Constitution and interim orders that too, on a particular case is binding only to that particular case where stay was granted, and the order of the Hon'ble High Court in modulating the relief by directing the applicants to give an undertaking will also safeguard the interests of the respondents of recovery in case of necessity. Counsel for the respondents on the other hand submitted that, great prejudice will cause to the respondents in recovering the amount, if such a course is adopted, since the applicants are very old persons. The fact that the applicants are aged persons is all the more reason in adopting such a modality by Hon'ble High Court for disbursing the amount forthwith, obtaining an undertaking since the benefits of the rule should be enjoyed by the pensioners themselves, in any case, not to wait for their legal heirs.

16. Considering the above facts and circumstances, I am of the view that the persons retired after 1.7.93 are entitled to have the benefit and accordingly the applicants in O.A.993/03 and 991/03 who fall under the category, are to be granted the relief. In the result, the impugned orders in O.A. Nos.991/03 and 993/03 are set aside and quashed. The respondents are directed to grant the benefits to the applicants therein and recompute their retirement gratuity in the light of the above observations on the strength of the CAT Full Bench decision and consequential benefits shall be given to the applicants by obtaining an

undertaking/affidavit from them so as to avoid any problem in recovering the overpayment, if any, in case the finding of the Mumbai Bench or the decision on identical cases are reversed by the Hon'ble Supreme Court. Consequential orders in accordance with the above directions shall be issued to the applicants in O.A.991/03 and 993/03, within a period of three months from the date of receipt of a copy of this order.

17. The O.A.Nos.991/03 and O.A.993/03 are allowed as indicated above. All other O.As. stand dismissed for the reasons as stated above. No order as to costs.

Dated the 22nd. November, 2004.

Sd/-
K.V.SACHIDANANDAN
JUDICIAL MEMBER

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