

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.187/04

Friday this the 24th day of December 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

1. E.K.Sivankutty,
Senior Foreman of Stores (Rtd.),
Plot No.93, LIG, GCDA House,
Shanthi Nagar, Koovapadam,
Mattancherry, Kochi - 682 002.
2. K.P.George,
Foreman of Stores (Rtd.),
Directorate of Installation Naval Training,
Kayyanikal House, May 1st Road,
Thammanam P.O., Cochin - 32.
3. K.Karunakaran,
Senior Foreman of Stores (Rtd.),
Priya Bhavan, Eramalloor,
Shertallai. Applicants

(By Advocate Mr.C.S.G.Nair)

Versus

1. Union of India represented by
the Secretary, Ministry of Personnel,
Public Grievances & Pension, New Delhi.
2. Flag Officer Commanding in Chief,
Southern Naval Command,
Willingdon Island, Cochin - 682 004.
3. Material Superintendent,
Material Organisation,
Southern Naval Command,
Willingdon Island, Cochin - 682 003. Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC)

This application having been heard on 24th December 2004
the Tribunal on the same day delivered the following :

O R D E R


HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN

Applicants 1-3 who retired from the service on
superannuation on 31.5.1995, 29.2.1992 and 31.3.1993 respectively
are aggrieved by refusal of their requests for inclusion of
Dearness Allowance of pay which existed on the dates of their
effective retirement as pay for the purpose of DCRG and therefore

they have jointly filed this application seeking to set aside Annexure A-6 order dated 19.2.2004 by which the claim of the 1st applicant for the said benefit was rejected. It is alleged in the application that denial of the benefit to the applicants on the basis of the cut off date is violative of Articles 14 & 16 of the Constitution as has been held by the Apex Court in D.S.Nakara's case and that O.M.No.45/86/97 (Annexure A-7) is arbitrary and irrational since it makes only those retired from 1.1.1997 eligible for the benefit.

2. The respondents in their reply statement seek to justify the impugned orders on the ground that as the report of the 5th Central Pay Commission was made effective from 1.1.1996 there is justification for fixing the cut off date as 1.1.1996.

3. I have heard the learned counsel on either side. Identical issue was considered by this Tribunal in a batch of cases (O.A.993/03 and connected cases by order dated 22.11.2004). Relying on the Full Bench ruling of the Mumbai Bench of the Tribunal in O.As.542/97, 942/97 & 943/97 declaring that the cut off date of 1.4.1995 fixed for the purpose of counting Dearness Allowance at the rate of 97% as an act of sub dividing the homogenous class of pensioners who retired on or after 1.7.1993 discriminatory and violative of Articles 14 & 16 of the Constitution, the Bench held that those who retired after 1.7.1993 would be entitled to the benefit of counting 97% of the Dearness Allowance as pay for the purpose of DCRG and allowed the application. Since the 1st applicant in this case retired after 1.7.1993, namely, on 31.5.1995 his case is squarely covered by the Full Bench decision as also the decision of the Ernakulam



Bench of the Tribunal in O.A.993/03 and connected cases, I find that the 1st applicant is entitled to the benefit. Since the remaining applicants retired prior to 1.7.1993 they are not entitled to the benefit.

4. In the result the claim of the applicants 2 & 3 for a declaration that they are eligible for the benefit of inclusion of Dearness Allowance existed on their effective dates of retirement for the purpose of computing emoluments for grant of DCRG is rejected. The claim of the 1st applicant is allowed and the respondents are directed to refix the DCRG due to the applicant reckoning 97% of the Dearness Allowance as pay for the purpose of DCRG and make available to the 1st applicant the consequential benefit after obtaining an undertaking from the applicant to refund the amount in case the finding of the Full Bench of the Mumbai Bench or the decision in identical cases are reversed by the Hon'ble Supreme Court in S.L.P. within a period of two months from the date of receipt of a copy of this order. There is no order as to costs.

(Dated the 24th day of December 2004)



A.V. HARIDASAN
VICE CHAIRMAN

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