CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.30/04

Friday this the 1st day of October 2004

C O R A M :

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

P.C.Sebastian,
S/o.late Cherian,
Retired Asst. Supdt. of Post Offices,
Residing at SIS Bhavan,
Y.M.C.A. Road, Palarivattom,
Kochi - 682 025. Applicant

(By Advocate Mr.Martin G Thottan)

Versus

1. Union of India represented by
Secretary to Govt. of India,
Ministry of Personnel Public Grievances & Pension
Department of Pension & Pensioners Welfare,
New Delhi.

2. The Postmaster General,
Central Region, Kochi - 16.

3. The Director of Postal Accounts,
Sasthamangalam, Thiruvananthapuram.

4. The Senior Accounts Officer (Pension),
O/o.the Director of Postal Accounts,
Sasthamangalam, Thiruvananthapuram. Respondents

(By Advocate Mr.Rajendrakumar.M,ACGSC)

This application having been heard on 1st October 2004 the Tribunal on the same day delivered the following :

O R D E R

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

The grievance of the applicant who voluntarily retired from service on 6.12.1993 is that the benefit of O.M.No.7/1/95-P&PW(F) dated 14.7.1995 of Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioner's Welfare communicated to DG Posts, New Delhi by order dated 28.7.1995 for counting the dearness allowance at the rate of 97% of the pay as emoluments for the purpose of DCRG has not

been granted to him in spite of the fact that the Full Bench of the Tribunal had in its decision reported in 2001 (3) ATJ 436 had held that the benefit is due to those who retired prior to 1st April 1995 also and even though he made a representation in that behalf. Alleging that the denial to the applicant the benefits despite the declaration of law by the Tribunal being brought to the notice of the authorities and their Annexure A-4 order basing on the cut off date fixed in Annexure A-5 order is arbitrary, irrational and unconstitutional, the applicant has filed this application seeking to set aside Annexure A-4 and Annexure A-5 to the extent it prescribes the cut off date of 1.4.1995 and for a direction to the respondents to revise applicant's DCRG after recalculating the same adding D.A. to the pay which applicant was drawing at the time of retirement and also for direction to the respondents to pay arrears due to the applicant within a time limit to be fixed by the Tribunal.

2. The respondents resist the claim of the applicant on the ground that the prayer is barred by limitation as also that the Full Bench judgement not being in accordance with the ruling of the Apex Court in State of West Bengal & Anr. Vs. Govt. Pensioners Association & Others reported in 2002 SCC 1 (L & S) 234 the prayer in the O.A. is not sustainable.

3. I have carefully gone through the pleadings and materials on record. The question whether a Central Government employee who retired between 1.7.1993 to 31.3.1995 would be entitled to have 97% of the D.A. merged with the pay for the purpose of

emoluments and grant of gratuity was considered by a Full Bench of the Tribunal sitting in Bombay in Baburao Shankar Dhun & Ors. Vs. Union of India & Ors. reported in 2001 (3) ATJ 436. The respondents had contended that the cut off date of 1.4.1995 was valid and the O.M. dated 14.6.1995 of the Ministry of Personnel, Public Grievances and Pension was only prospective. After considering the rival contentions and in the light of the legal principles, the Full Bench answered the point as follows :

> " We do not find that there is any nexus or 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 ".

4. Basing on the Full Bench ruling, the Ernakulam Bench of the Tribunal in O.A.165/02 on identical issue held that the retirement gratuity was to be calculated on the basic pay plus 97% of the basic pay treated as Dearness Pay in the case of the applicant in that case who retired from service on 31.3.1995. Since the applicant in this case retired on 6.12.1993 i.e. between 1.7.1993 to 31.3.1995 I hold that the applicant is entitled to the benefit of merger of 97% of the D.A. in the pay for the purpose of reckoning emoluments for calculating the DCRG.

5. In the result, the application is allowed setting aside Annexure A-4 and Annexure A-5 to the extent that it would take effect only with effect from 1.4.1995. The respondents are directed to revise the applicant's DCRG recalculating the same adding 97% D.A. which the applicant was drawing at the time of his retirement to the pay as emoluments and to make available to

the applicant the balance DCRG due within a period of two months from the date of receipt of a copy of this order.

(Dated the 1st day of October 2004)

A.V.HARIDASAN
VICE CHAIRMAN

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