

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.31/2004.

Thursday this the 30th day of September 2004.

CORAM:

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

R.Unnikrishnan Nair,
S/o late Raman Nair,
Retired Postal Assistant,
Residing at Lakshmivilasam House,
Karimkunnam P.O.,
Idukki District, Pin - 685 586 Applicant

(By Advocate Shri.P.C.Sebastian)

Vs.

1. Union of India represented by Secretary
to Govt. of India,
Ministry of Personnel, Public Grievance and Pension,
Department of Pension & Pensioners Welfare,
New Delhi.
2. The Director of Postal Accounts,
Sasthamangalam, Thiruvananthapuram.
3. The Senior Accounts Officer (Pension),
Office of the Director of Postal Accounts,
Sasthamangalam, Thiruvananthapuram.
4. The Superintendent of Post Offices,
Idukki Division,
Thodupuzha - 685 584. Respondents

(By Advocate Shri M.R.Suresh, ACGSC)

The application having been heard on 30.9.2004,
the Tribunal on the same day delivered the following:

O R D E R (Oral)

HON'BLE MR.KV.SACHIDANANDAN, JUDICIAL MEMBER

The applicant was retired from the Postal Service on superannuation on 31.3.1995 (A/N). He was sanctioned pension and DCRG as per PPO No.6423/LPS/TVM dated 3/95 (A1) issued by the 2nd respondent on the basis of the pension calculation sheet. Vide Annexure A-2, the Department of Posts, issued a letter dated 10.8.95 enclosing a copy of O.M.No.7/1/95-P&PW(F) dated 14.7.95 issued by the Ministry of Personnel, Public Grievances and Pensions, Dept. of Pension and Pensioners'

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Welfare, extending the benefit to the Postal employees treating DA as DP for the purpose of death gratuity and retirement gratuity and on that basis the basic pay of those who are having the range of Rs.3500/- per month for drawing pension, 97% of the basic pay was to be added to the pay for calculating gratuity. The 5th Central Pay Commission in its Second Interim Report had recommended that DA as linked to average All India Consumer Price Index (AICPI for short) 1201.66 as on 1.7.1993 had to be treated as DA for reckoning emoluments for the purpose of DCRG under CCS(Pension) Rules, 1972 and ceiling on DCRG enhanced from Rs.1 lakh to Rs.2.50 lakhs. This recommendation was to be implemented with effect from 1.4.1995. Pursuant to the Vth Central Pay Commission the 1st respondent issued O.M.No.7/1/95 P&PW(F) dated 14.7.95 that at the rate of 97% ^{of the basic pay} be merged with pay and has to be treated as DP for the purpose of DCRG in the case of employees drawing pay upto Rs.3500/- and who retire on or after 1.4.1995 (A2).)) The applicant is aggrieved by not granting this benefit to him and therefore, he has filed this O.A. seeking the following main reliefs:

- i. to call for the files relating to A-4 and A-5 and quash them;
- ii. to declare that applicant is entitled to have his DCRG revised merging the DA he was drawing at the time of retirement to his pay for the purpose of computation of DCRG;
- iii. to direct the respondents to revise applicant's DCRG after recalculation of the same adding, DA to the pay which applicant was drawing at the time of retirement and to effect payment of the arrears due to the applicant in this regard, within a time limit as deemed fit to this Hon'ble Tribunal;




2. The applicant in the O.A. averred that since he had retired on 31.3.95(A/N), he should have been considered as a pensioner with effect from 1.4.95 and the benefit of this O.M. should also be extended to him.

3. The respondents have filed a reply statement contending that the 5th Central Pay Commission (CPC for short) in its interim report recommended that the DA as linked to Average Cost Price Index (ACPI for short) 1201.66 as on 1.7.1993 was treated as DP and recommended that the relief granted by A-2 OM will be effected from 1.4.95 which was accepted by the Government vide O.M.No.7/1/95-P&PW(F) dated 14.7.1995. It is further contended that a number of representations were received from employees retired prior to 1.4.95 for extending the benefits of O.M. dated 14.7.95. The contents of O.M.dated 14.7.95 (A2) would be applicable only to those Central Government Employees who retired or died on or after 1.4.1995. The Government has not agreed extension of the said benefits to retirees prior to 1.4.1995. A cut off date has to be fixed as and when any schemes are framed for persons who are to superannuate or have superannuated. Due to many constraints, especially financial constraints, it is not always possible to extend the same benefits to one and all and any benefits has to be within the financial position of the Government. In the past also, a portion of DA as linked to the Average Cost Price Index prevailing on some particular date was treated as DP but the benefits was extended from a specific date and not necessarily from the date on which the particular index was reached. The applicant who retired on 31.3.95 (A/N) at the age of 58 years is not entitled for the benefits, since he has retired prior to 1.4.95. He is also not entitled to have his



DCRG revised merging the DA as he was drawing at the time of retirement for the purpose of computation of DCRG and also not entitled for arrears due to him in this regard. It is also contended that the applicant has filed this O.A. after a lapse of 8 years after the Full Bench decision of the Mumbai Bench of this Tribunal dated 21.9.01. It is also averred in the reply statement that the Hon'ble Supreme Court in a catena of decisions held that, whenever a revision takes place, a cut off date becomes imperative, because the benefit has to ^{be} allowed within the financial resources available with the Government. The Full Bench of the Mumbai Bench of this Tribunal took a different view, which is against the decision of the Apex Court and also the recommendation of the 5th Central pay Commission in its interim report which is prospective in nature. Every rule is prospectively applicable unless specifically provided for retrospective application. The Hon'ble Supreme Court has granted an interim stay, staying the operation of similar judgement of the Hon'ble High Court of Punjab & Haryana and a stay order was granted by the Hon'ble Supreme Court in SLP(C)No.18367/2002(R2). In an identical case, a Review Application No.134/2002 in O.A.No.636/PB/02 had been filed before the Chandigarh Bench of CAT and the Tribunal by order dated 6.6.2003 in tune with the Supreme Court ruling, revised its earlier decision dated 10.7.2002 and modified the same by holding that the benefit shall ~~xx~~ be granted to the applicants therein after the decision of Hon'ble Supreme Court, if it is favourable to them vide Annexure R-3.



4. When the matter was taken up Shri P.C. Sebastian , learned counsel appeared for the applicant and Shri M.R. Suresh, ACGSC appeared for the respondents.

5. Learned counsel for the applicant submitted that since the applicant had retired on 31.3.95 he is entitled to the benefit. The applicant has relied on a decision of this Bench of the Tribunal in O.A.165/2002 dated 22.7.2003, wherein this Court after deliberating on the subject declared that:

"The Government servant who superannuates on 31.3.1995, becomes a retired government employee or a pensioner entitled to retiral benefits only with effect from the very next day i.e., 1.4.1995."

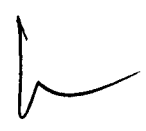
The Full Bench of this Tribunal also fortified the said decision in O.A.Nos.542, 942 and 943 of 1997^{of Mumbai Bench}, the operative portion of which is reproduced as follows:

"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".

6. It is also submitted that the Supreme Court ruling cited by the respondents are not identically applied to the persons on the ground of different facts and circumstances. The issue pertains to this case need not be deliberated upon

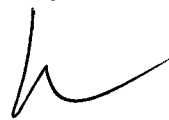


with the Supreme Court's decision rendered in an unidentical issue, since the issue involved in this case is, whether the applicant has to be considered as a pensioner as on 1.4.95 or not ? The facts of the other case cited by the respondents pertains to the benefit to be granted in view of the decision of the Full Bench extending the benefit retrospectively from 1.7.93 to 31.3.1995 which need not be germane to this case.

7. Learned counsel for the respondents Shri M.R.Suresh persuasively argued that a Writ Petition No.W.P.(C)9191/2004 is pending before the Hon'ble High Court of Kerala against the order in O.A.165/2002 and therefore, the relief cannot be granted at this stage.

8. I have heard the learned counsel of the parties and given due consideration to the arguments advanced by the counsel on both sides and also perused the pleadings and material on record. The crucial point as far as this case is concerned is, to evaluate whether a person who retired from service from 31.3.95 has to be considered as retired from 1.4.95. The O.M.in question extends the benefit to the employees who retired from 1.4.95 onwards.

9. I am in respectful agreement with the orders in O.A.165/02 which declares that, similarly situated applicants are entitled to the benefit of enhanced Dearness Pay who retired on 31.3.95 considering them as retired employees from 1.4.95. The matter considered by the Full Bench in its decision is whether the benefit to be extended to a pensioner who retired between 1.7.93 and 31.1.95 and the Full Bench had



given a retrospective operation of the benefit of the O.M. to a prior period. The Chandigarh Bench also on a same issue ordered the same and against the same, an S.L.P. is pending before the Hon'ble Supreme Court in (SLP No.1836/78) and an interim stay was granted by the Hon'ble Supreme Court. The facts relating to that case is not forthcoming to the fact that a Review Application has been filed before the CAT, Chandigarh Bench for deciding whether:

"The question relates to the application of the principle as to whether dearness pay should be counted for reckoning of emoluments for the benefit of retirement gratuity in case of Central Govt. employees who retired or die on or after 1st April, 1995."

The above RA was disposed of by Annexure R-3 order dated 6.6.2003 revising its earlier decision dated 10.7.2002 and modified the order as follows:

...."it is ordered that the benefit shall be granted to the applicant only after the outcome of the decision of the Supreme Court and if it is favourable to him."

10. Considering all the above aspects, I find that the entire issue is not involved in this case but the only issue to be decided in this case is whether the applicant who retired on 31.3.95 is entitled to the benefit extended to the employees as on 1.4.95 since he become a pensioner only on 1.4.95. In this context, the decision taken in WP(C)9191/04 of the Hon'ble High Court, as has been referred to earlier, declared that in such circumstances, the petitioners in the Writ Petition becomes pensioners on the next day of retirement, is also applicable i.e. in this case on 1.4.95. The Hon'ble High Court further



declared that it is only when the clock ticks 12 midnight that the relationship of the employer and employee ceases and the status of a pensioner commences.

11. I am in respectful agreement with the decision of O.A.165/02 in so far as it declares that applicant in a similar circumstances becomes a pensioner as on 1.4.95. It is also brought to my notice that the said order is under challenge before the Hon'ble High Court of Kerala in WP(C)9191/04 and in that case an interim stay has been granted which reads as follows.

"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 pay[ment 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."

12. Having considered the entire aspects, I am of the view that the applicant is entitled to the reliefs as claimed for. Since the applicant in the W.P(C) has already been granted the benefit as directed by the interim order in an indencical case it is always subject to the outcome of the orders in W.P.(C)9191/04. I do not find any reason to withhold the payment to the pensioners who is aged 66 years and it will not be proper to keep the matter pending. Therefore, this Court

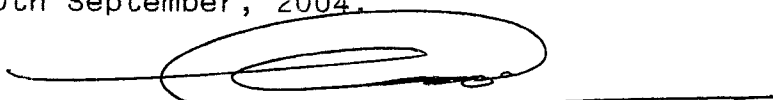


directs the same method to be adopted in this case also that has been adopted by the Hon'ble High Court by accepting an affidavit/undertaking from the applicant before the amount is disbursed.

13. Therefore, I declare that the applicant is entitled to the benefit of his retirement gratuity to be calculated on the basis of pay plus 97% of the basic treated as Dearness Pay and direct the respondents to pay the difference of retirement gratuity paid and payable after calculating their pay + 97% of the basic pay at the time of retirement and fix the pension accordingly and disburse the arrears within a period of three months from the date of receipt of a copy of this order. However, respondents are at liberty to obtain an affidavit or undertaking from the applicant to the effect that in the event of succeeding the Writ Petition/SLP filed by the respondents before the Hon'ble High Court/Supreme Court, if any excess amount is received by the applicant in terms of this order, the same shall be refunded to the respondents. In the facts and circumstances of the case, I am not inclined to grant any interest as the situation does not warrant the same.

14. The O.A. is allowed as indicated above. In the circumstance, no order as to costs.

Dated the 30th September, 2004.



K.V. SACHIDANANDAN
JUDICIAL MEMBER