

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.NO.346/2004

Thursday, this the 11th day of November, 2004.

CORAM:

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

K.Paru, W/o late Chinnappan,  
Retired Mail Driver,  
Southern Railway, Shornur,  
Residing at: Nedumparambil Veedu,  
Palghat. - Applicant

By Advocate Mr TC Govindaswamy

Vs

1. Union of India  
represented by the General Manager,  
Southern Railway,  
Headquarters Office,  
Park Town.P.O.  
Chennai-3.
2. The Senior Divisional Personnel Officer,  
Southern Railway,  
Palghat Division,  
Palghat. - Respondents

By Advocate Mrs Sumathi Dandapani

The application having been heard on 11.11.2004, the Tribunal  
on the same day delivered the following:

O R D E R

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

The applicant is the widow of late Chinnappan, retired  
Mail Driver, Southern Railway, Shornur, who died on 13.9.2000.  
Late Chinnappan retired on superannuation on 31.3.1995. His  
pensionary benefits were calculated and his gratuity was  
computed taking into account 20% of the basic pay as Dearness

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Pay. Coming to know that following a Full Bench ruling of the Central Administrative Tribunal, Mumbai in Baburao Shanker Dhuri and others v. Union of India and others [ATJ 2001(3) 437], the Ernakulam Bench of the Tribunal in O.A.No.165/2002 allowed the claim of K.Radhakrishnan, a colleague of the applicant's husband who was similarly situated like the applicant submitted A-4 representation on 16.8.2003 to the second respondent claiming recalculation and payment of gratuity due to her late husband taking into account 97% of the basic pay as D.A. As there was no response to this claim, the applicant has filed this application for a declaration that applicant's late husband was entitled to have the retirement gratuity calculated on the basis of his pay plus 97% of basic pay as decided in A-2 and A-3 and for a direction to the respondents to pay the applicant the difference of retirement gratuity paid and payable as per the above declaration with 12% interest to be calculated from the date as may be found just and proper.

2. Respondents resist the claim of the applicant. In the reply statement it is stated that the applicant's late husband who retired on 31.3.1995 was paid gratuity calculating 20% of pay as dearness pay, according to rules then existence that he did not make any claim or representation for enhanced gratuity and that therefore, the present claim by the applicant is not sustainable. It has also been contended that the Apex Court in a number of decisions, viz, 1991(2) SCC 104, 1995 Suppl. SCC(4) 592, 2001 (1) SCC, 736, 2002 SCC 1 (L&S) 234 upheld the

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validity of the cut off date and therefore the cut off date of 1.4.95 being valid, the application is devoid of merit.

3. I have heard the learned counsel on either side and have gone through the material placed on record. Learned counsel for the applicant Shri T.C.Govindaswamy, referring to the ruling of the Full Bench of the Central Administrative Tribunal, at Mumbai in Baburao Shankar Duri v. Union of India & others, 2001 (3) ATJ, 436 argued that once the Full Bench has declared that there is no nexus or rational consideration for fixing the cut off date as 1st April 1995 in O.M. dated 14.6.1995 and has allowed the claim of applicants therein and as the Full Bench ruling has not been set aside or modified by an appellate forum, this Bench of the Tribunal has to follow the ruling as has been done by a coordinate Bench of this Tribunal in O.A.165/2002. Learned counsel for the respondents on the other hand argued that the decision of the Full Bench has been challenged before the Hon'ble High Court of Mumbai and that the Bangalore Bench of this Tribunal in O.A.727/2004 and connected cases disposed of the applications with a direction that the claim of the applicants for revision of pension as well as DCRG would be regulated on the basis of the judgment which would be rendered by the Hon'ble Supreme Court in Civil Appeal as well as in the connected petitions, this Bench may also follow the course adopted by the Bangalore Bench. The counsel further argued that the Full Bench decided the issue based on the fact that the applicant before it were really in receipt of the D.A. at 97% and that not being the



case in the instant case, the decision of the Full Bench is not to be followed. Learned counsel for the respondents also invited my attention to the ruling of the Supreme Court reported in State Government Pensioners Association v. State of Andhra Pradesh [1986 3 SCC 501] wherein the apex court has upheld the fixation of cut off date and have declared that unless the order is specifically mentioned as retrospective in operation, it should be deemed to be only prospective.

4. When a dispute raised regarding the entitlement in a proceedings before a court, the court will have to decide the issue and cannot evade the responsibility of deciding it merely on the ground that similar or identical issues in different cases are pending before higher forum unless there is a stay. The individual cases are required to be decided on merits and if any party is aggrieved, there is remedy of appeal. Therefore I proceed to dispose of this case on merits. The Full Bench of the Tribunal has in its decision in Baburao Shankar Dhuri v. Union of India and others dated 21.9.2001 considered the following point:

"Whether there is any nexus or national consideration in fixing the cut off date of first April, 1995 vide OM No.7/1/95-P&PW(F) dated 14th June, 95 issued by Ministry of Personnel Public Grievances and Pension (Department of Pension and Pensioners' Welfare), New Delhi."

After considering the rival contentions the Tribunal observed that there was no rational nexus for fixation of cut off date 1.4.95 and that the applicants who retired between 1.7.93 to



31.3.95 were entitled to the benefit of merger of 97% of DA in the pay for purposes of emoluments for calculating pension and death/retirement gratuities. The referred point was therefore answered 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 OM No.7/1/95-P&PW(F) dated 14th June, 1995 issued by the Ministry of Personnel, Public Grievances and Pension (Department of Pension & Pensioners' Welfare), New Delhi."

The applicant's late husband in this case retired on 31.3.95 i.e. between 1.7.93 and 31.3.95. Therefore in view of the answer given by the Full Bench to the point referred, I am of the considered view that the applicant's late husband was entitled to have his retirement gratuity computed taking into account 97% of basic pay as DA for the purpose of emoluments. That the Union of India has carried the matter before the High Court of Mumbai and that an SLP in similar case has been filed before the Apex Court where a stay of operation of order of the Punjab and Haryana High Court have been obtained, are not reasons for not following the ruling of the Full Bench. The effect of stay of operation of a judgement by the Supreme Court is that the judgment against which appeal has been filed could not be implemented so long as the stay order operates andd not that the principeI enunciated in the judgment would not be followed.

5. In the light of what is stated above, since I do not find any reason not to follow the ruling of the Full Bench as also the decision of the Ernakulam Bench of this Tribunal in



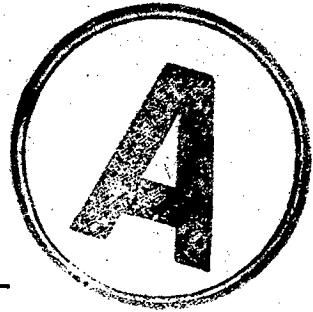
O.A.No.165/2002 I allow this application declaring that the applicant's late husband was entitled to have his retirement gratuity calculated on the basis of the pay plus 97% of the basic pay as D.A., I direct the respondents to pay to the applicant the difference between retirement gratuity paid and payable in terms of the above declaration within a period of three months from the date of receipt of copy of this order. The claim for interest at 12% is disallowed. No costs.

Dated, the 11th November, 2004.



A.V. HARIDASAN  
VICE CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. 165/02 & 346/04

.....TUESDAY.....THIS THE 22<sup>nd</sup> DAY OF AUGUST, 2006

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN  
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

OA 165/02:

K.Radhakrishnan, aged 65 years  
S/oP.Gopalan Nair,  
Retired Goods Driver  
Southern Railway, Shoranur,  
Palghat Division residing at Kripa Nivas,  
Ganeshagiri,Shoranur,.....Applicant

(By Advocate Mr.TCG Swamy)

V.

- 1 Union of India, represented by the  
Secretary to the Government of India,  
Ministry of Railway, Rail Bhavan,  
New Delhi.
- 2 The General Manager,  
Southern Railway, Headquarters Office,  
Park Town PO, Chennai.3.
- 3 The Senior Divisional Personnel Officer,  
Southern Railway,  
Palghat Division,  
Palghat. ....Respondents

(By Advocate Mr.Sumati Dandapani)

OA 346/04:

K.Paru W/o late Chinnappan,  
Retired Mail Driver,  
Southern Railway,  
Shoranur residing at Nedumparambil Veedu,  
Palghat. ....Applicant

(By Advocate Mr. TCG Swamy)

V.

- 1 Union of India, represented by the General Manager, Southern Railway, Headquarters Office, Park Town PO, Chennai.3.
- 2 The Senior Divisional Personnel Officer, Southern Railway, Palghat Division, Palghat.

.....Respondents

(By Advocate Mrs. Sumati Dandapani)

These applications having been finally heard on 31.7.2006, the Tribunal on 22.8.2006 delivered the following:

ORDER

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

Both these O.As were earlier disposed of by separate orders. OA 165/02 was disposed of on 22.7.03 and OA 346/04 was disposed of on 1.11.04. The Government servants concerned in both the O.As retired from service on 31.3.1995 and their pension and other terminal benefits were settled immediately on the basis of the then existing rules and instructions. Thereafter, the Government of India, Ministry of Personnel, Public Grievances ad Pension (Department of Pension and Pensioners Welfare) issued OM No.7/1/95-P&PW(F) dated 14.7.95 declaring that certain percentage of Dearness Allowance has to be merged with the pay and has to be treated as Dearness Pay for the purpose of DCRG. Accordingly those who were drawing basic pay upto Rs. 3500/- p.m, dearness

allowance to the extent of 97% of pay has to be added to pay for calculating gratuity under the CCS (Pension) Rules, 1972 in the case of those Central Government employees who retired on or after 1.4.95.

Both the applicants in the aforesaid OAs have sought the benefit granted in the aforesaid OM dated 14.7.95 extended to them also.

2 The applicant in OA 165/02 relied upon the decision of the Full Bench of Bombay Bench in *Baburao Shanker Dhuri and others etc. Vs. Union of India and others reported in CAT Full Bench Judgments 1997-2001* in support of his claim. In the said case the Full Bench was considering the rationale of fixing 1st April, 1995 as the cut off date for the applicability of the aforesaid OM dated 14.7.95. Its conclusion was that there was no nexus or rationale consideration in fixing up the cut off date of 1st April, 1995 as the object was to link up the DA with the AICPI 1201.66 on DA having reaching the said level on 1.7.93 as recommended by the Pay Commission. Therefore, the cut off date should have been 1.7.93 instead of 1.4.95. Consequently the Full Bench held that all those who have retired between 1.7.93 to 31.3.95 are entitled to the benefit of the scheme of the merger of 97% DA in the pay for the purpose of emoluments for calculating the death/retirement gratuities. The contention of the applicant's counsel Shri TCG Swamy was that since the applicant's claim was also covered by the aforesaid Full Bench judgment, the OA was allowed on that basis with the direction to the

respondents to pay him the retirement gratuity to be calculated on the basic pay plus 97% of the basic pay to be treated as Dearness Pay.

3 The applicant in OA 346/04, who is the wife of the government servant who expired by then approached this Tribunal, after coming to know that the OA 165/02 was allowed following the decision in the Full Bench judgment. Being a covered case the said OA 346/04 was also allowed on similar lines.

4 In both the O.As, the second contention of the applicants was that the date of retirement of the applicant in OA 165/02 and applicant's husband in OA 346/04 should be deemed to be from 1.4.95 since the applicants have continued to be in service till the odd hours (00.00 hours) of 31.3.1995. Since the cases of both the applicants were covered by the aforesaid Full Bench judgment itself, the said contention was not considered. The Respondent Railways carried the orders of this Tribunal in OA 165/02 decided on 22.7.03 before the Hon'ble High Court of Kerala in WP(C) No.9161/04. The High Court allowed the Writ Petition vide its order dated 21.11.05 as in the meanwhile, the Hon'ble Supreme Court upheld the prescription of the cut off date and reversed the decision of the Full Bench in the case **State of Punjab and others Vs. Amarnath Goyal and others, 2005(6) SCC 764**. However, the Hon'ble High Court remitted the case to this Tribunal observing as under:

"The respondent approached the Tribunal praying for a direction to declare that the applicant is entitled to the

extension of the benefit of Annexure.A3 and the payment of retirement gratuity to be calculated on the basic pay plus 97% of pay treated as dearness pay. Annexure.A3 is the Full Bench decision of the Central Administrative Tribunal, Mumbai dated 21.9.2001. The respondent retired from service on 31.3.1995. Be that as it may, in the impugned Ext.P3 order, after referring to the contention, the Tribunal allowed the application on a different ground."

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Thus it is clear that the case of the employees retiring on 31.3.1995 though raised was not considered by the Tribunal. The Tribunal decided the issue on the ground of the alleged arbitrary fixation of the cut off date. The petitioners herein pursued the matter before the Supreme Court, against the Full Bench decision of the Bombay Tribunal referred to above, leading to State of Punjab and others V. Amar Nath Goyal and others (2005(6) SCC 754). The prescription of the cut off date was upheld and the Full Bench decision was reversed. It is the contention of the petitioners that in view of the judgment as above, the Writ Petition is to be allowed and the applications are to be dismissed.

Heard the learned Standing Counsel appearing for the petitioners and the learned counsel appearing for the respondent. As already observed by us above, the question that is considered by the Tribunal in the impugned Ext.P3 order is regarding the fate of those employees retired between 1.7.1993 to 31.3.1995. As far as the respondent is concerned, he is a person retired on 31.3.1995. His contention is that it is the settled position that the persons who retired on 31.3.1995 should be deemed and entitled for the benefits which have been brought into force from 1.4.1995. Apparently the issue requires fresh consideration by the Tribunal. We set aside Ext.P3. The matter is remitted to the Central Administrative Tribunal, Ernakulam Bench. The Tribunal shall consider Ext.P1 application afresh and dispose of the same in accordance with law."

5 OA 346/04 which was decided on 11.11.04 following the orders in OA 165/02 was also carried before the Hon'ble High Court in WP(C)7030/2005 and the same was also remitted to this Tribunal with similar directions as contained in the judgment in WP(C) No.9161/04.

6 After the aforementioned cases were remitted to this Tribunal for fresh consideration, parties have filed amended O.As and replies thereto. In an additional reply filed by the respondents they have submitted that during the pendency of the Writ Petition filed against the orders in OA 165/02, the respondents Railways had paid Rs. 28410/- to the applicant as additional retirement gratuity. After the petition was allowed they advised the applicant to remit the said amount by cash in lump sum by letter No. J/P.626/B/KR dated 20.3.2006. The applicant had filed M.A 328/06 seeking stay of the aforesaid letter dated 20.3.06 and the same was granted.

7 As observed by the Hon'ble High Court, the issue for consideration of this Tribunal is whether the employees retiring on 31.3.95 should be deemed and entitled to the benefits of OM dated 14.7.95. The contention of the applicants in both the O.As is that their date of retirement must be deemed to be 1.4.95 since they have continued in service till the odd hours(00.00 hrs) of 31.3.95. Shri TCG Swamy arguing on behalf of the applicants in both the O.As has relied upon another Full Bench judgment of the Mumbai Bench of the Tribunal in *Venkatram Rajagopalan and another Vs. Union of India and others, decided on 15.10.1999 (reported in 2000(1)ATJ* which was exactly an identical case. The Full Bench was considering the following issue:

*"Whether a Government servant completing the age of his superannuation on 31.3.1995 and relinquishing charge of his office in the afternoon of that day is deemed to have retired from service on superannuation with effect*

*from 31.3.1995 itself or with effect from 01.04.1995?"*

8 The arguments which were found favour with by the Full Bench was that the Government servant continued to be in service till the midnight of the last day of the month in which they retire and, therefore, they are deemed to have been retired from service with effect from the first day of next month only. A person cannot be deemed to be in service for one part of a day and out of service for the other part of the day. In other words, an employee retiring from service 'on the afternoon of the last day of the month is deemed to be continuing in service till the midnight of that day and accordingly for all practical and technical purposes, he must be deemed to have ceased from service or to have actually retired from service on and from the next date of attaining his age of superannuation, ie., with effect from 1st of the month following the month of superannuation.

9 The Hon'ble Supreme Court in *S.Banerjee Vs. Union of India and others, AIR 1990 SC 285* was considering a similar case of one of the Additional Registrars of the said court. His normal date of retirement was 31.3.87. He sought voluntary retirement and an order was passed permitting him to retire with effect from the forenoon of 1.1.86. The petitioner claimed the benefit of the recommendations of the 4th Central Pay Commission as contained in paragraph 17.3, but it was not allowed on the ground that he was not eligible, as he was not entitled to draw salary for January 1, 1986. The date of retirement of the petitioner could be treated as a non-working day

or, in other words, as the petitioner was not entitled to the salary for the day of his retirement, he was not entitled to the said benefit of the recommendation of the Pay Commission. The Apex Court has held that when the petitioner retired with effect from the FN of 1.1.86 as per the orders i.e., to say as soon as January 1, 1986 had commenced, the petitioner retired but nevertheless it was to be said that the petitioner had retired on 1st January, 1986 and not on December, 31, 1985. In the circumstances, the petitioner's case falls within the purview of paragraph 17.3 of the recommendation of the Pay Commission and entitled to the benefit thereunder.

10. The other judgment relied upon by the counsel for the applicant was one decided by the Hon'ble High Court of Keala in *Union of India and others Vs. K.J. George and others reported in 2003(4) KHCACJ.1(Ker)(DB)*. The question arose in that Writ Petition for consideration was whether the respondents who were in service till December, 31<sup>st</sup> 1995 were entitled to the payment of retrial benefits at the rates as prevalent on that day or at the rate as revised with effect from 1st January, 1996. The respondents in the said petition were working in the Telecom Department in the Office of the Senior Section Supervisor and Section Supervisor respectively and they continued in service till December, 31 1995. They were paid pension with effect from January, 1 1996. The 5<sup>th</sup> Pay Commission recommended the revision of pension and other retrial benefits. The respondents admittedly had drawn full salary for the month of

December, 1995 including the last day of the month ie., December, 31 1995. In fact, they were in service of the department till the midnight of December, 31,1995. It is only when the clock ticked 12 in the midnight they were ceased to be in service and the status of pensioners commenced. Thus from January, 1996, they became pensioners. Resultantly their claim to pension had to be determined at the rate prevalent on that date. While deciding so, the Hon'ble High Court also relied upon the judgment of the Apex Court in **Banerjee's case (supra)**.

11 The respondents have rejected the contention of the applicants that they are to be treated as retired from service on 1.4.95 to avail the benefit of OM dated 14.7.95. They have relied upon the following judgments in support of their contentions:

(i) **State Govt. Pensioners Association and others Vs. State of AP, 1986/SCC 501**, wherein it has been held that the principle as applicable in the case of pension cannot be extended with regard to gratuity, since gratuity accrues on the date of retirement and the same is also being drawn as a one time measure. Since the gratuity has already been paid on the then prevailing rules as it obtained at that time on the respective dates of retirement, the amount gets crystallized on the date of retirement ie., on 31.3.1995 on the basis of the salary drawn by them in the month of retirement. The gratuity had already been paid to the petitioner on the above footing. On the date of retirement, the transaction is completed and closed. In view

of the aforesaid decision of the Apex Court, the respondents submitted that there is no scope for upward or downward revision of the formula evolved later or in future, unless the provision in this behalf expressly so provides retrospectively. Moreover, at the time of retirement, gratuity had been accepted in full satisfaction without raising any objection and the same cannot be raked up at this late stage.

(ii) *Union of India Vs. All India Services Pensioners Association and another, AIR 1988 SC 501*, wherein it has been held that the pension is payable periodically, as the pensioner is alive. Gratuity is ordinarily paid only once on retirement. Hence the pensionary benefits and gratuity cannot be equated.

(iii) *Union of India vs. P.N. Menon and others, 1994(4) SCC 68* and (iv) *S.P. Ganguli vs. Union of India and others, 1995 Supp. 4 SCC 592*, wherein it has been held that a big section of employees are bound to miss the revision of the scale of pay having superannuation before that date. "An employee", who has retired on 31<sup>st</sup> December of the year in question will miss that pay scale only by a day, which may affect his pensionary benefits throughout his life. No scheme can be held to be foolproof, so as to cover and keep in view all persons who were at one time in active service.

(vi) *Krishnakumar Vs. Union of India 1990(4)SCC 207* and (vii) *Indian Ex-Servicemen League and others Vs. Union of India, 1991 (2) SCC 104*, wherein it has been held that the concept of

gratuity is different from pension. The claim for gratuity can be made only on the date of retirement on the basis of the salary drawn on the date of retirement and being already paid, on that footing the transaction was completed and closed. It could then not be re-opened as a result of the enhancement made at a later date for persons retiring subsequently.

12 The respondents' counsel Smt. Sumati Dandapani has argued that since the Apex Court in the case of *State of Punjab and others Vs. Amar Nath Goyal and others, 2005(6) SCC 754* held that the views expressed by the Apex Court should apply to all cases of gratuity, where similar feature exist and it should apply to the instant cases also. She has also emphasized that the dictum laid down by the Apex Court in *All India Service Pensioners' Association case* (supra) being binding precedent, shall apply in these cases also. Therefore, this Tribunal cannot take a view different from that of the one taken by the Hon'ble Supreme Court as held in its judgment in *Govind Raja Mudaliar V. The State of Tamil Nadu, AIR 1973 SC 974*. She has also relied upon the judgment of The Apex Court in *Secretary, State of Karnataka Vs. Umadevi (3) 2006(4)SCC 1* in which the Apex Court has cautioned regarding adverse effect of trying to individualize justice with inconsistent precedents, constituting the binding law of the land.

13 We have heard Mr.TCG Swamy for the applicants and Smt. Sumati Dandapani for the respondents in great detail.

Mr. Swamy's argument is that a person who retired on the last day of the month of his service is deemed to have been retired on the 1st of the next month. To be specific, in these O.As the applicant in OA 165/2002 and the applicant's husband in OA 346/2004 having been retired on 31.3.1995 should be deemed to have been retired on 1st April, 1995 and their retirement benefits shall be determined in accordance with the rules prevailing as on 1.4.95. Even though this issue was raised in the O.As and there was a mention of the same in the earlier orders passed by this Tribunal, no findings were rendered. Since the issue raised by Mr. Swamy in these O.As were covered by the Full Bench judgment of the Bombay Bench in **Baburao Shanker Dhuri and others (supra)** this specific issue was probably considered not relevant at that time being the second or the alternative contention of the applicants. It has become relevant now because his first argument that the case was covered by the Full Bench judgment of the Bombay Bench in **Baburao Shanker Dhuri and others (supra)** is defeated as the same was reversed by the Apex Court and the cut off date prescribed in the order was held justified. It is for this reason that the Hon'ble High Court of Kerala has remitted this case back to this Tribunal for fresh considerations. As observed earlier, the entire issue of effective date of retirement has been gone into by the Full Bench of this Tribunal at Mumbai (camp at Nagpur) in its decision rendered on 15.10.1999 in the case of **Venkatram Rajagopal (supra)**. The specific question before the Full Bench was

whether the government servant completing the age of superannuation on 31.3.1995 and relinquishing charge of his office on the afternoon of that day was due to have been retired on 31.3.1995 itself or with effect from 1.4.95. After detailed consideration of the various aspects of the case laws, the court unequivocally answered the aforesaid question in the affirmative. In this case also the entitlement of the applicants for the benefits of OM dated 14.7.95 was the issue. This decision of the Full Bench entirely covers the present case also. In the case of **S.Banerjee (supra)** the Supreme Court way back in 1990 had held that the petitioner who retired with effect from the FN of January, 1 1986 cannot be considered as retired on December, 31, 1995. The judgment of the Hon'ble High Court of Kerala in the case of **K.J.George and others (supra)** also totally in consonance with the judgment of the 'Apex Court in **Banerjee's** case. It is much more close to the Full Bench judgment in **Venkatram Rajagopalan case (supra)**. The identical issue under consideration by the Kerala High Court was whether the government servant who was in service till December, 31, 1995 is entitled to the payment of retiral benefits at the rate as prevalent on that day or at the rate as revised with effect from 1st January, 1996. Again in unequivocal terms the High Court held that the government servants have actually continued in service till the midnight of December, 1995 and only from January, 1996 they had ceased to be in service and had acquired the status of

pensioners. Resultantly, their claim has to be considered from 1st January, 1996. In the face of such strong precedents of cases decided by the Apex Court, Hon'ble High Court of Kerala and the Full Bench of this Tribunal we do not consider that it is necessary to go into this aspect once again. The Full Bench decision as well as the Judgment of the Hon'ble High Court mentioned above are absolutely identical to the present case and therefore the decision in these O.As also cannot be different.

14 In the above view of the matter, we allow both the O.As. Accordingly we declare that the applicant in OA 165/02 and the husband of the applicant in OA 346/2004 are entitled to have their retirement gratuity calculated on the basis of the pay plus 97% basic pay upon their retirement on 1.4.95. However, in the facts and circumstances of the case we do not consider that the applicants are entitled for any interest in this case. There will be no order as to costs.

Dated this the <sup>22<sup>nd</sup></sup> day of August, 2006.

**GEORGE PARACKEN**  
**JUDICIAL MEMBER**

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**SATHI NAIR**  
**VICE CHAIRMAN**