

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A.NO.352/2004**

**TUESDAY THIS THE 15TH DAY OF MARCH, 2006**

**CORAM**

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

1. A.N.Viswambaran, Retd. Station Master,  
CHTS, Southern Railway  
residing at Arnamulangara House,  
SDPY, VHSS Road, Palluruthy,  
Kochi.
2. Cletus Redrigues, Retd. Chief Train Ticket  
Inspector Gr.I, Southern Railway, Ernakulam  
residing at X/1344, Sereno, Amaravathy,  
Kochi.1.
3. A.V.Joseph, Retd. Welder (Engineering)  
Southern Railway, Ernakulam.  
Residing at Adichiyil House,  
Narayanasan Cross Road,  
Vytilla, Kochi.19. ....Applicants

(By advocate Mr.K.A.Abraham)

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1. Union of India represented by its Secretary  
to Government of India, Ministry of Railways,  
Rail Bhavan, New Delhi.
2. The General Manager,  
Southern Railway, Chennai.3.
3. The Divisional Railway Manager, Southern Railway,  
Thiruvananthapuram. ....Respondents

(By Advocate Mrs. Sumathi Dandapani)

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The application having been heard on 9.3.2005, the Tribunal on 15.3.2005 delivered the following:

**O.R D E R**

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

The applicants three in number retired from the service of the third respondent on 31.12.1995. They were paid Death-cum-Retirement Gratuity (DCRG) reckoning their basic pay plus 97% of the basic pay treated as Dearness Pay as applicable as on 31.12.1995. Their grievance is that they were not given the pensionery benefits including DCRG as applicable to pensioners as on 1.1.1996 treating 148 percent of the basic pay as Dearness Pay on the basis of the Railway Board letter dated 5.11.1999. Alleging that in view of the Full Bench judgment in **Venkataram Rajagopal and others Vs. Union of India and others, OA 459/97 and 460/97 reported in 2000(1) ATJ 1** declaring that a person who retired on 31.3.1995 should be treated as effectively retired from service on and from 1.4.1995 the applicants who retired on 31.12.1995 should be treated to have effectively retired on 1.1.96 and paid the DCRG and other pensionery benefits at the rate applicable as on 1.1.96 as per Annexure A.1 They have filed this application jointly for a declaration

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that the applicants are deemed to have been effectively retired from service on 1.1.96 and are eligible to get pensionary benefits at the rate admissible as on 1.1.96 as per Annexure.A.1 order of the Railway Board and for a direction to the respondents to re-fix the pension and pensionary benefits of the applicants from 1.1.96 and to disburse to them arrears with interest at the rate of 12 per cent per annum.

2. The respondents contend that the application is not only barred by limitation but the applicants are estopped from raising this issue once they have accepted the pension and DCRG and that as they have retired on 31.12.95 they are not entitled to the benefits of Annexure.A.1 which would enure to the benefit of pensioners who retired on and after 1.1.1996.

3. I have heard the learned counsel on either side and perused the materials on record. The contention that the O.A. is barred by limitation and that the applicants are estopped from making the claim was not seriously argued by the counsel of the respondents. Further pension is being a recurring cause of action and the claim is being made on the basis of a ruling of the Hon'ble High Court, I find no merit in the contention of the respondents on maintainability. The

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issue involved in this case is whether the applicants who were in service till 31<sup>st</sup> December, 1995 were entitled to the retrial benefits at the rate prevalent on 31.12.1995 or at the revised rates with effect from 1.1.1996. An exactly identical issue was considered by the Hon'ble High Court of Kerala in Union of India and others Vs. K.J.George and others. Rejecting the exactly identical contentions raised by the respondents the Hon'ble High Court vide its judgment reported in 2003(2) KLJ 978 held that the two respondents before the court who continued in service till midnight of December 31<sup>st</sup> became pensioners only on 1.1.1996 and therefore were entitled to have their pension determined at the rate prevalent on that date namely 1.1.1996. The principle is squarely applicable to the case on hand. The applicants in this case who retired from service on superannuation on 31.12.1995 became pensioners only with effect from 1.1.96 and therefore were entitled to have their pension and terminal benefits revised in terms of Annexure A.1 which relate the payment of pension, DCRG etc.

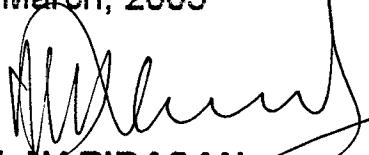
4. In the result, the application is allowed declaring that the applicants in this case are to be deemed to have effectively retired from service on 1.1.1996 and are eligible to get pensionery benefits

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at the rate admissible as on 1.1.1996 in terms of Annexure A.1 we direct the respondents to re fix the pensionary benefits of the applicants with effect from 1.1.1996 accordingly and disburse to them the arrears resulting from such refixation and revision within a period of two months from the date of receipt of a copy of this order with interest at six percent per annum from the due date till the date of payment. There is no order as to costs.

Dated this the 15<sup>th</sup> day of March, 2005

  
A.V. HARIDASAN  
VICE CHAIRMAN

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