

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**



O.A.84/04 & O.A.369/04

Thursday this the 17th day of February 2005

C O R A M :

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

O.A.84/04

1. K.V.N.Prasad,
Telegraph Master (Rtd.),
X/46, Sarojini Road,
Veliparambu, Cochin – 682 001.
2. A.W.Bivera,
Chief Telegraph Master (Rtd.)
Manpurath House,
Mundamveli P.O., Cochin – 682 507.
3. A.Rocha,
Chief Telegraph Master (Rtd.),
X/1447, K.B.Jacob Road,
Cochin – 682 001.
4. Herbert Correya,
Telegraph Master (rtd.),
26/351, Harihar Nagar,
Konthuruthy, Thevara, Cochin – 682 013.
5. Antony D'cunha,
Chief Telegraph Master (Rtd.),
XVI/436, Karuvelipady, Cochin – 682 005.
6. Seline Gomez,
Senior Telegraph Master (Rtd.),
Kondath House, 44/1108,
L.F.C.Road, Kaloor, Cochin – 682 017.
7. Rymon Gomez,
Telegraph Master (Rtd.),
Kondath House, 44/1108,
L.F.C.Road, Kaloor, Cochin – 682 017.
8. Joseph D'Almeida,
H.G.Telegraphist (Rtd.),
45/57, Thaiparambil House,
Pachalam, Cochin – 682 012.

9. Francina Poduthas,
Telegraph Master (Rtd.),
Koravanparambil House,
Mulavukad P.O., Cochin – 682 504.
10. Cecilia D'souza,
Telegraph Master (Rtd.),
Jude Dale, XXVI/1646,
Maliyekal Road, Thevara, Cochin – 682 013.
11. Jacob Vaz,
H.G. Telegraphist (Rtd.),
Dinsan Cottage, People's Road,
Vaduthala, Cochin – 682 023.
12. M.Sadanandan,
Senior Section Supervisor (Rtd.),
VIII/1660-A, A.K.Road,
Koovapadam, Cochin – 682 002.
13. M.J.Bernad,
Senior Section Supervisor (Rtd.),
Maraparambil House, 9/493,
Nazreth, Cochin – 682 002.
14. Margaret J Thomas,
Senior Telegraph Master (Rtd.),
W/o.late Joseph Thomas,
Pulimoodu House, VII/94, Trichur – 5.
15. P.R.Thrivikraman Nair,
Section Supervisor (Rtd.),
49/206-G, Sopanam,
Kumarapillai Road, Punnakkal,
Elamakkara P.O., Cochin – 682 026.
16. G.Satyapal,
Accounts Officer (Rtd.),
31/461, Chelakulam Lane,
Menonparambu Road,
Edappally P.O., Cochin – 682 024.
17. V.K.Parameswaran,
Section Supervisor (Rtd.),
Yamunalayam, Waterland Road,
Palluruthy, Cochin – 682 006.
18. N.A.Joseph,
Telegraph Overseer (Rtd.),
1/976, Kottavalappu,

Fort Kochi, Cochin – 682 001.

..Applicant

(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. The Secretary,
Department of Telecom,
Sanchar Bhavan, Parliament Street,
New Delhi.

...Respondents

(By Advocate Mr.Sunil Jose,ACGSC)

O.A.369/04

1. V.V.Kamath,
Senior Telegraph Master (Rtd.),
8/1529, Mubarak Nivas,
A.K.Road, Mattanchery, Cochin – 682 002.
2. V.V.Chidambaram,
Chief Section Supervisor (Rtd.),
No.22/339/1, Kadavathu Road,
North Paravur.
3. V.Sankaranarayanan,
Chief Section Supervisor (Rtd.),
49/1393 G, Sansruthi,
Ponekara, Cochin – 682 026.
4. M.S.Paul,
Senior Section Supervisor (Rtd.),
8/176, Mattathil, Chettiparambil Lane,
Choorachal, Thekkumbaghom,
Tripunithura.
5. John Almeida,
Assistant Superintendent, Telegraph Traffic (Rtd.),
14/373, Sando Gopalan Road,
Karavelipady, Cochin – 682 005.

...Applicant

(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. The Secretary,
Department of Telcom,
Sanchar Bhavan, Parliament Street,
New Delhi.

..Respondents

(By Advocate Mr.Sunil Jose,ACGSC)

This application having been heard on 17th February 2005 the Tribunal on the same day delivered the following :

ORDER

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

As the issues involved in both these cases are similar these cases are being considered and disposed of by this common order.

O.A.84/04

2. Applicants, 18 in number, retired on various dates prior to 1.1.1996. Their grievance is that they are being denied the benefit of inclusion of D.A. which existed on the effective dates of their retirement for the purpose of computing the emoluments for the grant of DCRG. They are aggrieved by the stipulation contained in Government of India, Department of Pension & Public Welfare O.M.No.45/86/97 dated 18.2.2003 which restricts the benefit of reckoning 97% of the D.A for the purpose of emoluments only to those who retired after 1.1.1996. They have, therefore, filed this application seeking to set aside the said O.M. (Annexure A-21), for a declaration that they are eligible for the benefit of inclusion of D.A existed on their effective dates of retirement for the purpose of computing emoluments for grant of DCRG and for a direction to the respondents to pay them the balance DCRG taking into account the Dearness Allowance also.

3. The respondents have filed a detailed reply statement in which they contend that the Government orders having been issued only prospectively there is no basis for the claim.

O.A.369/04

4. The 4th applicant in this case retired on 30.6.1990, applicants 1-3 retired on 31.5.1995, 30.4.1995 & 30.4.1995 respectively and the 5th applicant retired on 31.1.1995. They are aggrieved that the D.A which existed on the dates of their effective retirement is not being included as emoluments while computing DCRG on the basis of Annexure A-8 O.M of the Government of India, Department of Pension & Public Welfare dated 18.2.2003 which stipulates that this benefit would be due to those who retired with effect from 1.1.1996. The applicants, therefore, have filed this application seeking to set aside Annexure A-8 order, for a declaration that they are eligible for the benefit of inclusion of D.A existed on their effective dates of retirement for the purpose of computing emoluments for grant of DCRG and for a direction to the respondents to pay them the balance DCRG.

5. I have heard the learned counsel on either side. The application has been resisted by the respondents who have filed a reply statement.

6. The identical issue has come up for consideration before this Tribunal in various O.As. A Full Bench of the Tribunal sitting in Bombay vide its judgement in O.As 542/97, 942/97 & 943/97 elaborately considered the validity of the O.M and found that there was no rational nexus in fixing the cut off date in 1.4.1995. The Full Bench held that the applicants in those cases who retired between 1.7.1993 & 31.3.1995 are entitled to the scheme of merger of 97% D.A in the pay for the purpose of emoluments for calculating DCRG. Following this ruling of the Full Bench, this Bench of the Tribunal had in a large number of cases for example O.A.165/02 disposed of by order dated 22.7.2003 as also in a batch of cases O.A.993/03 and connected cases disposed of by order dated 22.11.2004 held that persons who retired after 1.7.1993 are entitled to have the benefit of reckoning 97% of D.A as emoluments for the purpose of computing DCRG and directed the respondents to grant the benefit to the

applicant in those cases and recompute and pay their gratuities after obtaining from them an undertaking that they would refund the amount if ultimately the Hon'ble Supreme Court would take a different view. Counsel on either side agree that this matter can also be disposed of in the same term.

7. In the light of what is stated above both these O.As are disposed of with the following directions :-

O.A.84/04

In this case the applicants 1, 4, 8, 10, 11, 15, 16 & 18 had all retired prior to 1.7.1993 and therefore they will not be entitled to the benefits. The remaining applicants who retired after 1.7.1993 are found entitled to the benefits of reckoning 97% of D.A payable to them on the date of retirement as emoluments for the purpose of computation of DCRG. The respondents are directed to recompute their DCRG accordingly and make available to them the amount due within a period of three months after obtaining undertaking from them that in case Hon'ble Supreme Court takes a different view the amount paid to them on the basis of this order shall be refunded.

O.A.369/04

The 4th applicant who retired on 30.6.1990 is not entitled to the benefit and all the remaining applicants who retired after 1.7.1993 are entitled to have 97% of D.A payable to them on the date of their retirement as emoluments for the purpose of computation of DCRG. The respondents are directed to recompute their DCRG accordingly and to make available to them the amount due within a period of three months after obtaining undertaking from them that in case Hon'ble Supreme Court takes a different view the amount paid on

the basis of this order shall be refunded by them. There is no order as to costs.

(Dated the 17th day of February 2006)

Sd/-
(A.V.HARIDASAN)
VICE CHAIRMAN

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