

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 405/2005

Friday this the 2nd day of December 2005

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

P. Vasudeva Menon, Data Processing Assistant
O/o The Commissioner of Income Tax, Cochin(Retd.)
37/1557, Saravas, Muttathil Lane, Kadavanthara
Cochin-20.

..Applicant

By Advocate Mr. A.R. Madhavan Unni

Vs.

- 1 The Commissioner of Income Tax (Cochin)
CR Buildings, IS press Road,
Ernakulam, Cochin-18
- 2 Union of India represented by the Secretary
Cabinet Secretariat, Department of
Pension & Public Grievances, 2nd Floor
Sardar Patel Bhavan, New Delhi. ..Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

ORDER

The applicant retired as a Data Processing Assistant on 30.4.1995 from the office of the office of the Commissioner of Income Tax, Cochin. He was paid DCRG and in calculating the same the DA was taken at the rate of 97% on the average pay and the prayer in the OA is that full DA at the rate of 125% should have been taken into account. He is also aggrieved by the fact that though a special increment for excellence in All India Civil Services Volley ball Tournament, Thiruvananthapuram held from 5th to 8th December, 1994 was sanctioned to him vide the order of the Chief Commissioner of Income Tax dated 9.7.1996, no amount has been

paid to him even after repeated requests.

2 The respondents have filed a reply statement. It is submitted that as per the OM No. 7/1/95-P&PW(F) dated 14.7.1995 of the Department of Pension &Pensioners' Welfare (Annexure R-1) Dearness Allowance at the rate of 97% of pay shall be treated as Dearness ~~Pay Allowance~~ for reckoning emoluments for the purpose of gratuity under the CCS Pension Rules 1972 in the case of Central Government employees who retire or die on or after 1st April, 1995. Since the applicant retired from service on 30.4.1995, Annexure R-1 is applicable in his case and as such the amount of DCRG sanctioned is justified and in order. Regarding the benefit of increment it is submitted that necessary instructions have been issued to the first respondent to make available the benefits conferred by Annexure A-2 order to the applicant.

3 The applicant has not chosen to file any rejoinder.

4 We have heard the learned counsel for the respondents who submitted that he has filed a copy of the judgment of the Hon'ble Supreme Court in which the OM dated 14.7.1994 has been upheld. The counsel for the applicant was not present on several occasions when the matter came up for hearing on 21.7.05, 18.8.05, 8.9.05, 7.10.05 and 14.10.05. He appeared on 16.11.05 when the case was adjourned. Again on the date of hearing the counsel was not present. The matter was therefore heard and reserved for orders.

5 In any case, the prayers of the applicant do not survive anymore because it is not disputed that he retired on 30.4.1995 and therefore the instructions in the OM dated 14.7.1995 which was applicable to all Central Government employees who retired or died on or after 1st April, 1995 is clearly applicable to him and he has been paid DCRG benefits in accordance with the OM. The cut off date fixed in the OM has been upheld by the Hon'ble Supreme Court in the judgment reported in State of Punjab and Ors. Vs. Amar Nath Goyal and Ors (2005 (2) SC SLJ

177) holding that " fixing the cut off date for giving the benefit of enhanced gratuity after considering the financial constraints cannot be said to be discriminatory, irrational or violative of Article 14 of the Constitution. Therefore, the applicant's prayer that he is eligible for calculation of full DA at the rate of 125% for computation of DCRG has no basis and is to be rejected outright.

6 Regarding the second prayer, the respondents have stated that instructions have been issued for payment of the due amount on account of the special increment to the applicant. According to the applicant the amount payable is Rs. 250/- There is no submission on behalf of the respondents that the amount has actually been paid. The said increment was sanctioned on 9.7.1996 and it is unfortunate that the payment could not be made to the employee till date. If it has not been paid, the respondents shall pay the amount due to the applicant along with 8% interest within three weeks from the date of receipt of the copy of this order.

7 The OA is disposed of with the above directions. No costs.

Dated ...2...12.2005

Sath Nair
SATHI NAIR
VICE CHAIRMAN

kmn