

**Central Administrative Tribunal, Lucknow Bench,
Lucknow**

Original Application No. 332/2005

This the 23rd day of December, 2009

**Hon'ble Ms. Sadhna Srivastava, Member-J
Hon'ble Dr. A.K. Mishra, Member-A**

1. C.F. Philips, Aged about 70 years, S/o late Sri E.V. Philips, R/o Cinema Lane, 2-A Quinton Road, Lalbagh, Lucknow.
2. Dr.K. Banerjee, Aged about 69 years, S/o late Sri S.N. Banerjee, R/o 15/523, Indira Nagar, Lucknow.
3. B.R. Ahuja, Aged about 71 years, S/o late Sri G.D. Ahuja, R/o S-3/1 Chander Nagar Market, Alambagh, Lucknow.
4. S.N. Dwivedi Aged about 71 years, S/o late Sri B.D. Dwivedi, R/o 4/514 Vikas Nagar, Lucknow.
5. H.S. Singh, Aged about 68 years, S/o late Sri Bhairon Singh, R/o 10 Basant Kunj, Near Sector 14, Lucknow.
6. J.N. Grover, Aged about 71 years, S/o late Sri Amir Chand Grover, R/o 5/21 Vikas Nagar, Lucknow.
7. R.S. Mishra, Aged about 70 years, S/o Sri R.C. Mishra, R/o 5/121, Vikas Nagar, Lucknow.
8. S.N. Srivastava, Aged about 71 years, S/o late Sri K.D. Srivastava, R/o C-5, Sector-B, Aliganj, Lucknow.
9. A.K. Srivastava, Aged about 67 years, S/o late Sri Jagannath Prasad, R/o 5/127, Vikas Nagar, Lucknow.
10. K.L. Khattri, Aged about 68 years, S/o late Sri Ram Khattri, R/o 325, Sanjay Gandhi Puram, Faizabad Road, Lucknow.

.....Applicants

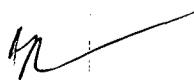
By Advocate: Sri Rakesh Srivastava.

Versus

1. Union of India through its Secretary, Ministry of Personnel, P.G. & Public Grievances, Department of Pension, Pensioner's Welfare, Lok Nayak Bhawan, Khan Market, New Delhi.
2. Chief Commissioner, Central Excise & Customs, Lucknow.

.....Respondents

By Advocate: Sri A. Khan.



ORDER**By Dr. A.K. Mishra, Member-A**

This application has been made challenging the directives of the Government for payment of Gratuity after addition of 100% of DA to the pay of employees, who superannuated after 1.1.1996.

2. The applicants are employees of the Central Excise and Customs, Government of India, who had retired prior to the cut off date of 1.1.1996. At the time of hearing, the learned counsel for the applicant submitted that the declared cut off date of 1.1.1996 was arbitrary and illegal. Those employees who retired prior to 1.1.1996 and those afterwards belonged to same class for the purpose of retiral benefits and no classification between two categories could be made, which can be sustained in the eyes of law.

3. The learned counsel for the respondents drew our attention to the judgment of Supreme Court in the case of State of Punjab and Others Vs. Amar Nath Goyal and Others (Civil Appeal no. 129 of 2003), which was decided on 11.8.2005. The Supreme Court has dealt with a number of Special Leave Petitions, which had been filed on similar grounds by the employees of Punjab, Himanchal Pradesh State Governments and Central Government. They examined the issue whether prescription of cut off date in the matter of application of specific retiral benefits was constitutionally valid or not. After covering the case law on the subject, the Supreme Court held that the Government on consideration of all aspects including financial implications were within their right to prescribe the cut off date. As a matter of fact, the cut off dates are prescribed for introduction of revised pay scales and many other benefits which are allowed by the Government from time to time. The employees who retired before the cut off date and those who have retired afterwards formed two separate classes and prescription of such a cut off date would not be hit by Article 14 of the Constitution of India.



4. Clearly, the facts of the present case are covered by the Supreme Court's case. The decision regarding merger of Dearness Allowance with pay for the purpose of calculation of Death-cum-Retirement-Gratuity benefit was taken pursuant to acceptance of recommendations of Vth Pay Commission, which were introduced by the Government w.e.f. 1.1.1996. Therefore, there was an objective consideration how the cut off date i.e. 1.1.1996 came into being in respect of the specific benefits claimed by the present applicants. Since the employees had retired before the cut off date of 1.1.1996, they do not have any legal claim for the benefit of Office Memorandum dated 27.10.1997, which was applicable to the employees retiring after 1.1.1996. In the circumstances, we don't see any merit in the application, which is accordingly dismissed. No costs.



(Dr. A.K. Mishra)
Member-A



(Ms. Sadhna Srivastava)
Member-J

Girish/-