

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

**Original Application No. 355 of 2005.**

This the 31<sup>st</sup> day of May, 2007


**HON'BLE SHRI JUSICE KEHM KARAN, VICE CHAIRMAN**

1. Sri Brij Mohan Gupta aged about 67 years son of late sri Bidhi Chand Gupta, R/o 29-A, Avas Vikas Colony, Mall Avenue, Lucknow.
2. Girish Chand Kandpal, aged about 70 years son of late sri B.D. Kandpal, R/o D-1/3, Paper Mill Colony, Lucknow.
3. Raj Kumar aged about 72 years son of late Sri Rajeshwar Dayal, r/o F-3098, Rajajipuram, Lucknow.
4. Trilochan Joshi aged about 72 years son of late Sri Damodhar r/o 3/111, Vinay Khand, Vidhayak puram, Gomti Nagar, Lucknow.
5. Din Dayal Goel, aged about 72 years son of late Sri G.P. Goel, R/o A-1543, Indira Nagar, Lucknow.
6. Suresh Chand Agarawal, aged about 69 years son of late Sri D.S. Agrawal, r/o of 102 A , Chandra Nagari Aishbagh, lucknow.
7. Desh Raj Narula, aged about 72 years son of late Sri D.C.Narula, R/o 556/20-A, Sujanpura Opp. Vijai Atta Chakki, Alambagh, Lucknow.
8. Suresh Chandra Khanduri aged about 73 years, s/o of late Gobardhan Khanduri, r/o HIG-4, Sector L, Kurshi Road, Lucknow.
9. Ram Bhushan Gupta, son of late Sri B.B. Lal. R/o C-1514, Aravali Marg, Indira Nagar, Lucknow.

**Applicants**

**By Advocate: Sri V.K.S. Chauhan for Sri D.R.Singh**

**Versus**

1. The Union of India through the Secretary, Ministry of Defence, South Block, New Delhi-110001.
  2. The Secretary, Ministry of Defence, South Block, New Delhi-110001.
  3. The Additional Secretary to the Govt. of India, Ministry of Personnel Public Grievance and Pensions, Department of Pensions and Pensioners Welfare Lok Nayak Bhawan, Khan Market, New Delhi-110003.
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4. Engineer-in-Chief, Army Head Quarters, Kashmir House, New Delhi-11001.

Opposite parties

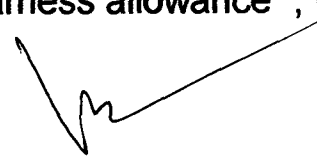
By Advocate: Sri S.P.Singh for Sri A.P. Usmani.

**ORDER**

**BY HON'BLE SHRI JUSTICE KHEM KARAN, VICE CHAIRMAN**

These 9 applicants, who retired prior to 1.1.96, have filed the O.A. with a prayer that the opposite parties be directed revise the death-cum-retirement gratuity by treating the dearness allowance admissible to them on the date of retirement as 'emoluments' for the purposes of calculating the amount of gratuity and be asked to pay the arrears of difference together with interest @ 18% per annum from the date gratuity became payable.

2. As per the averment made in the O.A., applicants No, 1,2,3, 4,5,6,7,8 and 9 respectively retired on 31.12.95,31.7.93, 31.12.95, 31.5.91, 28.2.91, 28.2.94, 28.2.91, 31.7.90 and 31.10.91. They were paid gratuity and other retiral benefits as admissible under the rules. It appears with a view to implement recommendations of Vth Central Pay Commission, O.M. dated 27.10.97 (Annexure 1), as amended by O.M. dated 4.12.2001 (Annexure 2) <sup>was</sup> ~~were~~ issued, for revising the pension of the persons, retired on or after 1.1.96. Earlier to these OMs, one O.M. dated 14.7.95 (Annexure 3) was issued in connection with the persons to retire after 1.4.95. The main feature of all these OMs was that dearness allowance , was



to be treated as part of emoluments for purposes of calculating gratuity etc. Applicants pension was revised. They say that since gratuity is included in the expression pension as provided in clause (O) of Sub Rule (1) of Rule 3 of CCS (Pension) Rules, 1972, so amount of gratuity out to have been revised and difference paid, by including dearness allowance within the expression 'emoluments'. They complain that no action was taken on representations given to Secretary, Ministry of Defence, Govt. of India.

3. In their reply, the respondents have tried to say that the O.A. is barred by limitation as it is being filed after a lapse of several years after issuance of office memorandum dated 27.10.97 and 4.12.2001. *They*

*say* According to definition of pension, as given in clause (O) of Sub Rule (1) of Rule (3) of CCS (Pension) Rules, 1972 itself gives a room for the possibility that gratuity is not always included in the expression pension. They say that various office memorandum issued by the Govt. for revising the pension, do not provide for revising the amount of gratuity, in case of persons retired earlier to 1.1.96. According to them, O.M. dated 27.10.97 as amended by subsequent O.M. dated 4.12.2001 does not apply to the persons who retired before 1.1.96 and the same were to apply to the persons retiring on or after 1.1.96.

4. In Supplementary reply dated 8.12.2006, it has been stated that memorandum dated 14.7.95 did not apply to applicants No. 2 to 9.



5. In Supplementary rejoinder, the applicants have stated in para 5 that since applicant No.1 has been allowed the benefit of Govt. of India's O.M. dated 14.7.95, so there is no justification to deny it to applicants No. 2 to 9.

6. I have heard the parties counsel and have perused the entire material on record.

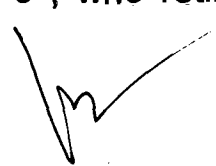
7. In so far as the plea of bar of limitation is concerned, I do not find much substance in it. The grievance of the applicants is that the respondents are not revising the amount of gratuity in spite of representation given to them. They have come with a continuing cause of action. It is not that the respondents have ever rejected their claim, so as to reckon the period of limitation from the date of rejection. I think the O.A. is not time barred.

8. In so far as, the applicant No. 1 is concerned, he does not appear to have grievance any more as amount of his gratuity has since been revised in terms of O.M. dated 14.7.95. The claim of the applicants No. 2 to 9, who retired earlier to the issuance of Govt. of India's order dated 14.7.95 is based on the premise that since gratuity is included in the definition of pension and since the Govt. of India has issued orders dated 27.10.97 and 4.12.2001 (Annexure 1 and 2) for revision of pension in terms thereof and since their pension has been revised so the gratuity should also be revised. Sri V.K.S. Chauhan B/h for Sri D.R.Singh has contended that according to O.M. dated 27.10.97 (Annexure 1) read with O.M. dated. 4.12.2001



(Annexure 2) , dearness allowance is to be included in the expression <sup>4</sup> of "emoluments" for purposes of calculating the gratuity, so the applicants No. 2 to 9 are entitled to the revision of gratuity on the same lines.

9. After having gone through the said O.M. of 1997 and 2001, I am of the views <sup>4</sup> that these do not apply to the persons, who retired prior to 1.1.96. Para 3.1 of Memo dated 27.10.97 says that revised provisions as per these orders shall apply to Govt. servants who retire /die in harness on or after 1.1.96 and separate orders will be issued in respect of employees who retired/died before 1.1.96. So nothing contained in Memorandum dated 27.10.97 can be read to the benefit of applicants No. 2 to 9, who retired prior to 1.1.96. O.M. dated 4.12.2001 ( Annexure 2) has simply amended certain portion of O.M. dated 27.10.97. It no where extends the application of memo dated 27.10.97 to the servants, who retired before 1.1.96. In so far as O.M. dated 14.7.95 (Annexure- 3) is concerned, it is again not applicable to the applicants No. 2 to 9. It says that in the case of Central Govt. employees, who retire or die on or after 1<sup>st</sup> April, 1995, dearness allowance shall be reckoned for purposes of emoluments for determining the amount of gratuity and death gratuity under the C.C.S. (Pension) rules, 1972. Since the applicant No.1 retired on 31.12.95, ( after the date mentioned in O.M. dated 14.7.95) so his gratuity has rightly been revised in terms of said O.M. dated 14.7.95. I fail to understand as to how the applicants No.2 to 9 , who retired



before 1.4.95 can claim the benefit of O.M. dated 14.7.95 (Annexure 3).

10. It is true that normally the expression 'pension' will include gratuity but when the subject of gratuity is being separately dealt with and when the said O.Ms asking for revision of pension do not speak for revision of the amount of gratuity of the persons, who retired prior to 1.1.96, how the applicants No. 2 to 9 can legally claim that amount of gratuity should be re-calculated or revised by taking dearness allowance within the definition of "emoluments". Earlier to these OMs, dearness allowance was not included in the definition of emoluments for purposes of calculating the pension. This benefit was given on the basis of interim and final recommendations of the Vth Pay Commission to the persons mentioned in the above three OMs. Learned counsel for the applicants has not been able to place on record any order or rule on the basis of which it could have been said that amount of gratuity paid to the persons, who retired prior to 1.1.96 is to be revised by including the dearness allowance within the definition of "emoluments". In the result, O.A filed by respondents no. 2 to 9 is dismissed but with no order as to costs. In so far as applicant No.1 is concerned, O.A. is dismissed as in-fructuous as he has already been given the relief by the respondents.

  
31.5.07  
Vice Chairman

HLS/-