

Central Administrative Tribunal  
Lucknow Bench Lucknow

Original Application No.197/2007  
This, the 06<sup>th</sup> day of February 2009

HON'BLE MR. M. KANTHAIYAH, MEMBER (J)

V.P. Saxena, aged about 74 years, S/o Late Shri Ladi Prasad, r/o G-64 Liberty Colony, Lucknow.

Applicant.

By Advocate:- Shri Manoj Kumar.

Versus.

1. Union of India through its Secretary, Directorate of Telecom, Telecom Department, New Delhi.

2. Chief General Manager, Telecom, Ashok Marg, Lucknow.

... Respondents.

By Advocate:- Shri G.S. Sikarwar for R-2.

Shri Vishal Choudhary for R-2.

ORDER

BY HON'BLE MR. M. KANTHAIYAH, MEMBER (J)

The applicant has filed the OA with a prayer to issue direction to the respondents for making payment of DA arrears of Rs.21,000/- with interest thereon on the ground that he being old pensioner

entitled for DA arrears as per the decision of the apex court.

2. The respondents have filed Counter Affidavit, denying the claim of the applicant stating that he is not entitled for the relief and further his claim is barred by limitation.

3. The applicant filed Rejoinder Affidavit, denying the stand taken by the respondents.

4. Heard both sides.

5. The point for consideration is whether the applicant is entitled for the relief as prayed for.

6. The admitted facts of the case are that the applicant retired on the post of Assistant Director Telecom (Admn.) w.e.f.30.11.1990 after attaining the age of superannuation and at that time, no D.A. was admissible with gratuity. He made representation to the respondents after 5<sup>th</sup> Pay Commission claiming as per the judgment of the Hon'ble Apex Court, the gratuity should be paid to the pensioner merging DA (Not exiting in 1990) who retired in 1990 and pre 1996. He also contended that the O.M. dt.4.12.2001 issued by (Ann.-A-5) intimating that DA should be merged with the

gratuity, should be paid to all the pensioner early who retired in 1990 and pre 1996. It is also the case of the applicant that such DA arrears had already paid in all Central Govt. Departments i.e. Railways, Military, Income Tax department after the judgment of Hon'ble Apex Court but such facilities has not been extended to the telecom pensioners, who retired in 1990 and pre 1996.

7. It is the case of the respondents that there is no judgment of the Hon'ble Apex Court, specifying that pre 1996 pensioners may have to be paid additional gratuity by adding D.A. at the time of retirement. Further, it has been clearly mentioned in O.M. dt. 17.2.2005 (Ann.CA-1) and dt. 27.10.2005 (Ann.-CA-2) that there is no judgment of Apex Court specifying that pre 1996 pensioners may have to be paid additional gratuity by adding D.A. at the time of retirement.

8. In O.M. dt. 17.2.2005 (Ann.-CA-1) and Dt. 27.10.2005 (Ann.CA-2) Govt. has categorically stated that the department has not issued any O.M. dt.4.12.2004 granting gratuity to pre 1996 pensioners and also stating that no judgment of Apex Court is available to support such claim of

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the pensioners, who retired in 1990 or prior to 1.1.1996. Similarly, the documents relied by the applicant in Ann-A-5 dt.4.12.2001 also there is no such relief and as such the said O.M. are not helpful to the applicant for entitlement of his claim as made in this OA.

9. But in the O.M. dt. 27.10.2005 (Ann.CA-2), in respect of extension of benefit of the judgment in Pritam Singh and Kulvant Singh case, department stated that Ministry of Law has opined that the judgment covers only the parties of the case and as such, it has no universal application and thus the benefit of said judgment cannot be extended to others. This is nothing but indirectly admitting the stand taken by the applicant in respect of allowing such claim in the case of Pritam Singh. Admittedly, the respondent department did not allow any such claims to pensioners, who retired in 1990 or pre 1996.

10. In view of the above circumstances, the respondents are directed to consider the claim of the applicant, who retired in 1990 for payment of D.A., which he made by way of notice dt. 15.5.2006 (Ann.A-2) and also treating this OA as additional

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representation and also taking into consideration of the judgment of the Apex Court in Pretam Singh with a reasoned order as per rules within three months from the date of supply of the copy of this order. The applicant is also directed to supply copy of representation dt. 15.5.2006 (Ann.-A-2) and copy of OA to respondent/ competent authority, along with copy of this order.

In the result, OA is disposed of with the above directions in para-8. No costs.



(M. KANTHAIAH)

MEMBER (J)

06.02.2009

AMIT/.