

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 541/98, 637/98 and 638/98.

Date of Decision: 15.3.1999.

Shri M.S. Desai and others Applicant.

Shri A.K. Dhavale and others

Shri D.A. Ambekar and others.

Ms. Seema Sarnaik Advocate for Applicant.

Versus

Union of India and others Respondent(s)

Shri V.G.Rege. Advocate for Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G. Vaidyanatha, Vice Chairman

Hon'ble Shri. D.S. Baweja, Member (A)

- (1) To be referred to the Reporter or not? *Yes*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *No*

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO : 6
PRESCOT ROAD, MUMBAI:1

Original Application Nos. 541/98, 637/98 and 638/98.

Monday the 15th day of March 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A).

O.A. 541/98

1. Manohar S.Desai
2. Moreshwar G.Gaidhani
3. Mahadev S.Gaware
4. Namdev P. Wagh
5. Bhaskar R.Jadhav
6. Shantanu H. Bhavsar
7. Harikishan R.Pande
8. Parasram L. Lalwani
9. Ramkrishna S.Barve
10. Kamalakar M.Pachkshri
11. Balakrishna R.Rao
12. Ganesh N.Khare
13. Suryakant D.Dhongde
14. Sharad P. Patharkar
15. Chandrakant M. Joshi
16. Murlidhar T.Pawar
17. Madhusudan L. Vaidya
18. Nirmal K. Sarkar
19. Krishna B.Gurav
20. Vishwas V.Shindikar
21. Bajirao H. Aware
22. Jagannath G.Sawant
23. Narayan R.Karmase
24. Vithal S.Raut
25. Pandurang K. Sarolkar
26. Vishnu H. Jagtap
27. Govind D.Mahale
28. Digambar D.Jadhav
29. Dhondiba M. Vengurlekar
30. Ichharam N. Katyare
31. Nivrutti R.Jagtap
32. Shabirkhan M. Pathan
33. Nilkanth J. Chakranerayan
34. Govind D.Pagare
35. Shrikant Sohani
36. Komal K. Patil
37. Ramesh R.Namjoshi

38. Amruta B. Chaudhari
39. Shrikant G. Sidhyaye
40. Dattatray P. Kulkarni
41. Sudhin Gupta
42. Purushottam R. Lohar
43. Gangadhar K. Vandre
44. Dinkar S. Ahire
45. Murlidhar S. Ghode
46. Shankar S. Nawghane
47. Ashit Kumar Paul
48. Ismail Suleman Shaikh
49. Arun Kumar Day
50. Jankiram R. Nikumbha
51. Prabhakar D. Nemade
52. Pandit E. Mahale
53. Tirathadas S. Makhijani
54. Shankar R. Soman
55. Dinkar L. Joshi
56. 3 Pandit Z. Pawar
57. Pramod G. Anantwar
58. Damu R. Suralke
59. Murlidhar B. Waghmare
60. Atmaram J. Jadhav
61. Anis Ahamed Kadumla Shaikh
62. Hussain Ali Mohamed Ali Sayyad
63. Shaligram G. Gedam
64. Amallesh Banerjee
65. Smt. Chandramathi C. Menon
66. Pannalal G. Johare
67. Kashinath L. Gade
68. Dattatraya V. Kulkarni. ... Applicants.
C/o M.S. Desai , 5, 'Suyog',
Jeevan Vihar Housing Society,
Jai Bhavani Road, Nashik Road Camp

O.A. 637/98

1. Dhavale Ashok Kashinath
Block No. 7, Shree Co-op.
Housing Society, Datta Mandir
Road, Nashik Road, Dist. Nashi.
2. Vaijnath Narayan Zadbuke
'Shivkripa' Behind Bytco College
Vidya Vihar Colony, Nashik Road,
Dist Nashik.
3. Paranjape Charuchandra Vishnu
779, Gyanupaga Lane,
Raviwar Peth, Nashik. ... Applicants.



O.A. 638/98.

1. Dinkar Appaji Ambekar
Anjali Lokmanya Nagar
BYTCO Factory Road,
Nasik Road.
2. Jagannath Ravji Chavan
'Rajlaxmi' Bhima Shankar So.
Dattamandir Road, Nasik Road.
Nasik.
3. Nivrutti Ramchandra Warade
R/a Nasik Road, Gosavi Wadi
Near Vijay Sweet, Nasik Road.
4. Kashinath Rambhau Bagul
Kelkar Wadi, Sinnar Fata
Nasik Road,
5. Miss S.Saraswathi
R/a Flat No.6, 'Giriraj'
Building, BYTCO Industries
Road, Nasik Road.
6. Smt. Savita Rajaram Shirwadkar
R/a 8, 'Anand, Triveni Hsg.Soc.
New CIDCO, Magar Sidheshwar
Bus Stop, Nasik.
7. Mrs. Vijaya Prabhakar Barpande
R/a. 6(A), Bhalchandra Society
Shikhare Wadi.
Nasik Road.
8. Ramchandra Krishnaji Thite
11, Shivnevi Hsg. Soc. No.2
Opp. Kulthe Mangal Karyalaya
Jail Road, Nashik Road.

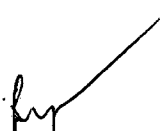
... Applicants.

By Advocate Ms. Seema Sarnaik.

V/s.

1. The Secretary,
Ministry Finance,
Govt. of India,
Dept. of Expenditure
New Delhi.
2. The Secretary
Ministry of Personnel
Govt. of India
Pensions & Pensioners Welfare,
New Delhi.
3. The Secretary
Ministry of Urban Development
Nirman Bhavan,
New Delhi.
4. The Directorate of Printing
Urban Development Ministry
Nirman Bhavan, New Delhi.

... Respondents in
all the three
O.As.



5. General Manager,
Govt. of India Press,
Ghandhi Nagar,
Nashik.
6. Assistant Manager
(Administration)
Government of India Press,
Ghandhi Nagar,
Nashik. ... Respondents in
O.A. 541/98.
7. General Manager
Currency Note Press
Jail Road, Nashik Road,
Nashik. ... Respondent in
O.A. 637/98.
8. General Manager,
India Security Press
Nashik Road,
Nashik. ... Respondent in
OA 638/98.

By Advocate Shri V.G.Rege.

O R D E R (ORAL)

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶.

These are three applications filed by the retired officials claiming quashing of Government of India order dated 14.7.1995. In O.A. 541/98 the respondents have filed reply. In other two O.As the respondents have orally opposed the admission of the applicants. We have heard the learned counsel for both sides regarding admission.

O.A. 541/98 is filed by 68 retired officials of Government of India Press, Nashik, O.A. 637/98 is filed by three retired officials of Currency Note Press, Nashik and O.A. 638/98 is filed by eight retired officials of India Security Press, Nashik. In all the three cases the officials who retired between 1993 to 1995 have approached this Tribunal for a direction that they should also be entitled to get the benefit of Government of India order dated 14.7.1995, counting the benefit of D.A. for the purpose of gratuity. According to them the Government of India order mentions cut off date

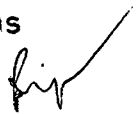
as 1.4.1995 which is illegal, void and arbitrary. Therefore they want the said Government of India order dated 14.7.1995 should be given effect to those employees who were in service as on 1.7.1993 and onwards.

In O.A. 541/98 the respondents have filed the reply and taken a stand that the applicants are not entitled to the benefit of the order dated 14.7.1995 which was given to effect from 1.4.1995 since the applicants have retired from service prior to that date.

3. We have heard the learned counsel for both sides. The learned counsel for the applicants contended that cut off date of 1.4.1995 is arbitrary and un-reasonable and violation of Article 14 of the Constitution of India. The learned counsel for the respondents supported the Government order and justified the action of the Government in prescribing the particular cut off date.

4. It is well known and well settled that while granting of the benefit of pay revision and D.A. etc. it is always necessary to have a cut off date. Without a cut off date an order cannot be effectivel y implemented. There cannot be a Government order for all retired officials without any cut off date. Therefore naturally a cut off date is required whenever the Government takes a new decision regarding policy matters, pay scale etc.

5. No doubt the Government enhanced the D.A. with effect from 1.7.1993 as may be seen by the order at page No.22 of the paper book. There is no dispute that those employees who were in service are entitled to enhanced rate of D.A. As far as



treating a portion of D.A. for the purpose of gratuity is concerned, earlier order was that 20% of the basic pay shall be treated as Dearness Pay for the purpose of calculating pension and gratuity. In the impugned order dated 14.7.1995, the Government of India on the recommendation of the interim report of Vth Pay Commission has also decided that 97% of pay (in the case of officials whose basic pay is up to Rs. 3,500/-) may be treated as Dearness Pay for the purpose of gratuity. The ceiling limit of gratuity was raised from 1 lakh to Rs. 2.50 lakhs. The order makes it clear that this is applicable to the Government employees who retired or died on or after 1.4.1995.

The applicants are challenging the cut off date of 1.4.1995 given in Government of India order dated 14.7.1995.

6. It is not necessary to go into the question on first principles since the matter is covered by number of decisions of this Tribunal and the Supreme Court. As already stated, whenever there is a revision of salary some cut off date has to be there, to make effective implementation. Such a cut off date cannot be said to be arbitrary and un-constitutional.

We may refer to the decision of the Apex Court in the case of State Government Pensioners Association and others V/s. State of Andhra Pradesh, where the gratuity was stepped up prospectively from a specified date. Same argument was pressed before the Supreme Court that prescribing the cut off date for enhanced gratuity was illegal and same has been rejected by the Supreme Court. The Supreme Court has pointed out that there is no illegality or

un-constitutionality in providing for prospective effect from a specified date of retirement.

Similarly in a case reported in (1998)1 SCC 449 (State of U.P. and Another V/s. Jogendra Singh and another) where it was challenged that the prospective operation from a particular cut off date is ultra virus of the constitution. The Supreme Court rejected the contention and held that there is nothing illegal if the prospective cut off date is mentioned in the order. Again similar view is taken by the Apex Court in the case reported in (1991)2 SCC 104 (Indian Ex-Services League and others V/s. Union of India and others) where the Supreme Court has upheld the decision of the Government for fixing a particular cut off date for liberalised pension scheme.

Therefore, in our view, merely because the Government has prescribed a particular cut off date is no ground for quashing the Government of India order as arbitrary and un-constitutional.

7. Now coming to the present impugned order for giving effect to the Government of India order from 1.4.1995 and not from 1.5.1993 as claimed by the applicants, there are number of decisions of the Division Benches of this Tribunal, who have taken the view that cut off date as 1.4.1995 for the purpose of treating portion of D.A. as Dearness Pay for pension calculation and gratuity is neither illegal nor un-constitutional. The learned counsel for the respondents has placed reliance on un-reported

judgements of Division Benches of this Tribunal,
which are as follows:

O.A. 962/CH/96 and 17 other O.As dated 25.7.1997.

O.A. 1296/96 dated 18.1.1997.

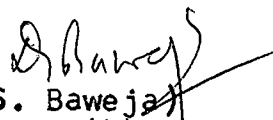
O.A. 634/CH/97 dated 3.6.1997.

O.A. 2630/96 dated 12.9.1997.

O.A. 1196/98 dated 29.6.1998.

Therefore in our view the present O.As
challenging the virus of 1995 Government of India
order are not maintainable, since the point is
covered by decisions of Supreme Court and number
of judgements of this Tribunal and therefore they
are liable to be rejected at the admission stage.

8. In the result all the O.As are rejected
at the admission stage. No order as to costs.


(D.S. Baweja)
Member (A)


(R.G. Vaidyanatha)
Vice Chairman

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