

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 16th day of November, 2005

ORIGINAL APPLICATION No.17/2005

CORAM:

HON'BLE MR. A.K.AGARWAL, VICE CHAIRMAN (ADMN)
HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

1. North Western Railway Retired Employees Association through its General Secretary, K.C.Sharma s/o S.N.Sharma, aged 68 years, retired Sr. Section Officer, Divisional Accounts Office, North Western Railway, Ajmer and r/o 20/24, Ram Kuteer, Vaishali Nagar, Ajmer.
2. S.K.Bhargav s/o Shri Raghu Nath Kisho aged, 60 years
3. M.L.Goyal s/o Shri Madan Lal, aged 70 years
4. M.P.Sharma s/o Shri Bal Chandra, aged 70 years
5. Ratan Lal Tak s/o Shri Heera Lal, aged 73 years
6. R.C.Goyal s/o Shri Madan Lal, aged 68 years
7. Rajendra Mathur s/o Shri Bhanwar Lal, aged 71 years
8. Hanuman Prasad s/o Shri Radha Krishan, aged 68 years
9. R.P.Sharma s/o Shri Badri Prasad, aged 72 years
10. M.B.Mathur s/o Shri Geesu Lal, aged 70 years
11. Jethanand Sabnani s/o Shri Bhag Chand, aged 68 years
12. Suresh Chand Rastogi s/o Shri Ram Swaroop, aged 71 years
13. M.L.Maheshwari s/o Thakur Dass, aged 70 years
14. Smt. Laxmi Maheswari w/o Chain Sukh Dass, aged 70 years
15. Banwari Lal Kumawat s/o Shri Bhura Mal, aged 72 years
16. Dileep Singh Ahluwalia s/o Prithvi Pal Singh, aged 72 years
17. Nathir Mal Boolchandani s/o Muraj Mal, aged 70 years
18. Roop Narain Gupta s/o Sua Lal ji, aged about 68 years.

.. Applicants

l/s (By Advocate: Mr. N.K.Gautam)

Versus

1. Union of India through
the General Manager,
North Western Railway,
Jaipur
2. The General Manager,
Western Railway,
Churchgate, Mumbai.
3. Divisional Railway Manager,
North Western Railway,
Ajmer.
4. Chief Works Manager,
North Western Railway,
Ajmer
5. Financial Adviser and Chief Accounts Officer,
Western Railway,
Churchgate, Mumbai
6. Dy. Chief Accounts Officer (Traffic Accounts),
Western Railway,
Ajmer.

.. Respondents

(By Advocate: Mr. Anupam Agarwal, for resp. No.1 & 4
Mr. U.D.Sharma, for resp. No. 2 & 3

ORDER (ORAL)

Applicants, 18 in number, have filed this OA
thereby praying for the following reliefs.

- (i) By an appropriate writ, order or direction impugned order dated 03.09.04 (Annexure-A1) and dated 28.08.03 (Annexure A/2) be declared illegal and be quashed and set-aside.
- (ii) By an appropriate writ, order or direction cut off date 1.1.1996 mentioned in Annexure A/26 may be declared unconstitutional and be struck down.
- (iii) By an appropriate writ, order or directions, respondents may be directed to pay full benefits of D.A. on gratuity at the time of retirement as due to all employees who retired from Ajmer Division w.e.f. 1.7.1986 alongwith interest @ 12% per annum.

(iv) Any other relief which is found just and proper in the facts and circumstances of the case be passed in favour of the applicants by the Hon'ble Tribunal."

2. Briefly stated, facts of the case are that the applicants are retired employees from railway service who retired between the period 30.6.1990 to 31.10.1994 i.e. prior to 1.1.1996. They have sought the benefit of the Railway Board Circular dated 8.8.95 by which 1.4.1995 has been fixed as the cut off date for the purpose of treating 97% of the Pay as Dearness Pay for the purpose of payment of D.C.R.G. However, the said cut off date of 1.4.1995 was subsequently revised as 1.1.1996 vide the Department of Personnel and Training OM No. 45/86/97-P&PW (A) dated 18.2.2003 (Ann.R6 with the reply). Since all the applicants had retired between the aforesaid period of 30.6.1990 to 31.10.1994 i.e. before 1.1.1996, the benefit of the aforesaid letter was not extended to the applicants. Representations made in this behalf were rejected vide Ann.A1 and A2. By way of this OA, the applicants have challenged the decision of the railway authorities on the basis of the judgment rendered by the Full Bench of the CAT, Mumbai Bench vide judgment dated 21.9.2002 whereby the cut off date fixed vide the aforesaid circular was quashed.

3. Notice of this application was given to the respondents. The respondents have filed reply. Besides raising preliminary objections as well as contentions on merit thereby stating that it was permissible for

the authorities to fix a cut off date, the respondents have also taken stand that the matter is sub-judice before the Supreme Court.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

4.1 At the time of final hearing, the learned counsel for the respondents brought to notice the decision of the Apex Court in Civil Appeal No. 129 of 2003, State of Punjab and others vs. Amar Nath Goyal and others and other connected matter, reported at 2005 (2) SCSLJ 177 whereby the Apex Court has decided the matter in controversy. The only question which was under consideration before the Apex Court in the aforesaid case was whether the decision of the Central and State Government to restrict the revision of the quantum of gratuity as well as increased ceiling of the gratuity consequent upon merger of a portion of dearness allowance into dearness pay reckonable for the purpose of calculating gratuity was irrational or arbitrary. The Hon'ble Apex Court after noticing the validity of the circular issued in respect of the matter in controversy and after noticing its earlier decision rendered on the point of cut off date including the well known decision of the Apex court in the case of D.S.Nakara held that the decision of the authorities in fixing of the cut

off date cannot be said to be as arbitrary, irrational or had no rational basis or that it offends Article 14. At this stage, it will be useful to quota para 37 of the judgment, which is in the following terms:-

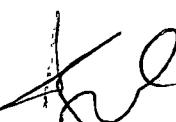
“37. In the instant case before us the cut-off date has been fixed as 1.4.1995 on a very valid ground, namely that of financial constraints. Consequently, we reject the contention that the fixing of the cut-off date was arbitrary, irrational or had no rational basis or that it offends Article 14.”

4.2 Thus, in view of the law laid down by the Apex Court in the case of Amar Nath Goyal (supra) which is squarely applicable to the facts of the present case, the applicants are not entitled to any relief. As can be seen from para 40 of the judgment, the Hon'ble Apex Court has also set-aside the order dated 21.9.2001 of the CAT (Mumbai Bench) rendered in OA Nos. 542/97, 942/97 and 943/97 on which reliance has been placed by the applicants in the present OA.

5 In view of what has been stated above, we are of the view that the applicants are not entitled to any relief. Accordingly, the OA is dismissed with no order as to costs.


(M.L. CHAUHAN)

Member (J)


(A.K. AGARWAL)

Vice Chairman