

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH

O.A.NO.349 OF 2002

December 22, 2005.

CORAM: HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN.

Dr. Goverdhan Harpalani S/o Shri Vadhumal, aged about 67 years, resident of 2/67, S.F.S. Mansarovar, Jaipur.

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Applicant

By : Mr.R.N.Mathur, Advocate.

Versus

1. Union of India through Secretary, Ministry of Finance, Department of Expenditure, Government of India, New Delhi.
2. Union of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension & Pensioner's Welfare, Lok Nayak Bhawan, Khan Market, New Delhi through its Secretary.
3. Union of India, Ministry of Health & Family Welfare, Department of Health, Nirman Bhawan, New Delhi through its Secretary.
4. Manager, Bank of Baroda, M.I.Road, Jaipur.

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Respondents

By : Mr.J.P.Garg, Proxy Counsel for Mr.Bhanwar Bagri, Advocate.

O R D E R (oral)

KULDIP SINGH, VC

This O.A. has been filed by a retired employee as he has a grievance regarding incorrect calculation of his pension.

The facts in brief as pleaded by the applicant are that he was working as a Medical Doctor under the respondents and the post of Doctors serving under the Union of India are entitled to get Non



Practicing Allowance (for short 'NPA'). Case of the applicant is that NPA should also be included for arriving at average emoluments for the purpose of pensionary benefits but the department has denied the same.

The respondents who are contesting the O.A. submit that NPA is not included as part of the salary and the same cannot be taken into consideration for the purpose of calculating average of last 10 months pay for the purpose of pensionary benefits.

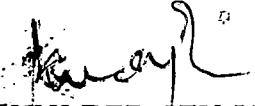
Learned counsel for the applicant submitted that on the same point various other Doctors had filed a Petition before the Madras Bench of the C.A.T. as well as before the Principal Bench of the C.A.T. The Principal Bench rejected the O.A. against which the petitioner therein filed Writ Petition before the Delhi High Court. The Writ Petition was registered as C.W.P.No.7980 of 2001 which was allowed vide judgment dated 17.5.2002. Since against that judgment of the Delhi High Court the department had gone in SLP in the Hon'ble Supreme Court, this case was adjourned from time to time to await the decision of the Hon'ble Supreme Court. Ultimately the Department itself has withdrawn the SLP and the same was dismissed as withdrawn and the judgment given by the Hon'ble High Court of Delhi became final.

Learned counsel for the applicant has also referred to a judgment given by the Madras Bench of the Tribunal wherein similar petition filed by the Doctors has been allowed. The Madras Bench has held that the respondents are bound to take into consideration the Non-Practicing Allowance for the purpose of calculating Pension.



In the circumstances, I am of the view that since SLP filed by the department against the decision of the Delhi High Court has been withdrawn and Madras Bench of the C.A.T. has also held that the respondents are bound to take into consideration the NPA in arriving at average emoluments for the purpose of pensionary benefits, the issue is no longer res-integra and stands settled. So, I feel that this O.A. should also be allowed being covered by the aforesaid decisions. This O.A. is accordingly allowed with direction to the respondents to recalculate the pensionary benefits of the applicant by taking into consideration the NPA towards average emoluments.

This order be implemented within a period of 4 months from the date of receipt of copy of the order.



(KULDIP SINGH)
VICE CHAIRMAN

HC*