

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

Original Application No. 410/2003

Jaipur, this the 25<sup>th</sup> day of January, 2005.

**CORAM : Hon'ble Mr. M. L. Chauhan, Member (J).**

B. L. Kothari  
S/o Late Shri Ganesh Mal Kothari,  
R/o Plot No.13, Kalyan Colony,  
Tonk Phatak,  
Jaipur 302 015.

... Applicant.

By Advocate : Shri C. B. Sharma

Vs.

1. Union of India  
Through its Secretary  
Government of India,  
Department of Posts,  
Ministry of Communication,  
Dak Bhawan,  
New Delhi 110 001.
2. Chief Post Master General,  
Rajasthan Circle,  
Jaipur 302 007.

... Respondents.

By Advocate : Shri Tej Prakash Sharma

**: O R D E R (ORAL) :**

The applicant has filed this OA thereby praying  
for the following reliefs : -

"(i) That the respondents may be  
directed to allow retirement gratuity  
by adding 97% D.A plus basic pay while  
calculating retirement gratuity and to

release payment of difference of gratuity already paid and admissible by adding 97% D.A. along with interest at the rate of 12% from the date of retirement till payment.

(ii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.

(iii) That the costs of this application may be awarded."

2. The applicant while working on the post of Senior Superintendent, Post Officer, retired on superannuation on 31.10.1994. His basic pay at the time of retirement was Rs.4000/- with DA Rs.3500/-. The Government of India issued OM dated 19.10.1993 for adding 20% of DA in basic pay while calculating retirement gratuity effective from 16.9.1993. The Vth Central Pay Commission recommended the grant of interim relief equal to 10% of basic pay subject of minimum of Rs.100p.m. Accordingly, the applicant was allowed 97% of DA on basic pay subject to maximum of Rs.3500/-.

3. The ~~Contention~~ of the applicant is that the Government of India issued OM dated 14.7.1995, according to which, 97% of DA has been allowed for calculating gratuity up to basic pay Rs.3500/- and the gratuity amount was also enhanced up to the maximum limit of Rs.2.51acs from Rs.1.01ac but this order was to take with effect from 01.04.1995. The grievance of

the applicant is that the cut off date fixed by Government of India vide this OM is arbitrary and it is further submitted that the CAT, Mumbai Bench, has also settled this controversy and after considering the facts and circumstances, Full Bench of CAT Mumbai vide order dated 21.09.2001 answered the reference of division Bench as follows :-

"Para 19 - In view of the above discussions our answer to the reference made to the full bench is as follows :

" We do not find that there is any nexus or rational consideration in fixing the cut off date of First April, 1995 vide O.M. No.7/1/95-P&PW (F) dated 14<sup>th</sup> June, 1995 issued by the Ministry of Personnel, public Grievances and Pension (Department of Pension and Pensioner's Welfare (New Delhi)."

Learned Counsel for the applicant submits that his client is also entitled to the similar benefit.

4. Notice of this application was given to the respondents. Respondents have filed reply in which they have justified their action.

5. I have heard the learned counsel for the parties and gone through the material placed on record.

6. It is an admitted fact that the Full Bench of CAT, Mumbai, in OA No. 542/1997, 942/1997 and 943/1997 filed by Shri B. S. Dhuri and others decided on

21.9.2001 held that the cut off date i.e. 1.4.1995 is discriminatory and has no nexus or rational consideration, and the employees who retired between 1.7.1993 to 31.3.1995 are also entitled to the benefits of this scheme of merger of 97% D.A. in pay for purpose of emoluments while calculating retirement gratuity.

7. On the other hand, learned counsel for the respondents has stated that the applicant has filed the present O.A. in pursuance of the judgment passed by the CAT Mumbai Bench on 21.9.2001 and the Government has already filed a writ petition before the Hon'ble High Court of Judicature at Mumbai and the Hon'ble High Court of Mumbai has admitted the said writ petition on 29.4.2002 and now the matter is subjudice. The Hon'ble Supreme Court in SLP No.18367/2002 (arising from the order dated 3.5.2002 in CWP 4995/97 of Hon'ble High Court of Punjab & Haryana at Chandigarh) (State of Punjab & Ors. Vs. Amar Nath Goyal & Others) vide order dated 6.1.2003 has stayed the judgement & order dated 3.5.2002. Besides this, in an identical case a Review Application No.134/2002 in OA 636/DB/2002 had been filed before the Chandigarh Bench of the Tribunal vide

40

its order dated 6.6.2003 has revised its earlier order dated 10.7.2002 holding that the benefits shall be granted to the applicants therein after the decision of the Hon'ble Supreme Court if it is favourable. The Hon'ble Supreme Court in Civil Appeal No.129/2003 (State of Punjab vs. Amar nath Goyal) vide order dated 27.7.2004 has directed to transfer the pending writ petition from Bombay High Court to the Hon'ble Supreme Court so that all matters on similar question are finally determined. In another identical case the Bangalore Bench of this Tribunal in OA No.727/203 & others connected OAs (M. Damodaran & Ors. Vs. Union of India & ors.) vide order dated 2.4.2004 has passed the following order -

"Accordingly, the applications are disposed of with a direction that the claim of the applicants for revision of pension as well as death-cum-retirement gratuity would be regulated based upon the judgment to be rendered by the Hon'ble Supreme Court in Civil Appeals as well as connected petitions/appeals as cited above.."

9. I have given careful consideration to the rival contentions and the various decisions relied upon by the learned counsel of parties.  I find that the present case is squarely covered by the decision of Bangalore Bench of the Tribunal in the case of M. Damodaran (supra).  therefore, in respectful agreement with the aforesaid order passed by the Bangalore Bench of the Tribunal and  hold that the

aforesaid order passed by the Bangalore Bench shall be mutatis mutandis applicable to the case of the present applicant as well.

9. In the result, the OA is disposed of in the above terms. No costs.



(M. L. CHAUHAN)  
MEMBER (J)