

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH.**

O.A.NO.513 OF 2003

April 21, 2005.

**CORAM : HON'BLE MR.KULDIP SINGH, VICE CHAIRMAN
HON'BLE MR.A.K.BHANDARI, MEMBER (A).**

N.K.Gautam S/o Shree Shyam Lal Ji, aged 68 years, Rtd.
Senior Section Officer (A/c), Dy. C.A.O. (TA) Ajmer & R/o 21-A,
Ary Nagar, Murlipura, Jaipur.

Applicant

By : Self.

Versus

1. Union of India through General Manager, Western Railway,
Churchgate Mumbai.
2. Dy. Chief Accounts Officer (Traffic Accounts), Western
Railway, Ajmer.

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Respondents.

By : Mr.U.D.Sharma, Advocate.

ORDER (oral)

KULDIP SINGH, VC.

The applicant retired from respondents Railways as Senior Section Officer on 31.7.1993 on attaining the age of superannuation (Annexure A-2). He was paid DCRG by taking into consideration only 20% of the D.A. By letter dated 7.10.1993, revised rate of D.A. Was notified w.e.f. July, 1993 and thus he claims that being in range of pay upto Rs.3,500/- he was entitled for D.A. @ 77% on his DCRG payment. The Railway Board vide letter dated 8.8.1995 notified the linking of D.A. With Average All India Consumer Price Index 1201.66 and

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D.A. Rates are also applicable for DCRG payment but effective from 1.4.1995.

The Railway Board vide letter dated 25.2.2002 (Annexure A-5), decided that D.A. Admissible on date of retirement/death shall also be treated as emoluments along with the other emoluments under rule 69 and 70 of Railway Services (Pension) Rules, 1993. Thus, he was entitled to grant of DCRG by taking into account emoluments at 97% of the D.A. And not only 20%. He submitted a representation on 18.4.2002 for grant of D.A. At proper rate but to no avail.

The applicant pleads that the persons like him who retired between July, 1993 to March, 1995 are entitled to the benefit of 97% formula of D.A as extended to the persons who retired after 1.4.1995 and non grant of the same is violative of equality clause enshrined in the Constitution of India.

By way of the present O.A he has prayed for issuance of a direction to the respondents to grant him DCRG by calculating D.A at the rate of 97% retirement along with interest etc. from due date.

The O.A has been resisted by the respondents by filing a detailed reply. They submit that applicant is not entitled to the benefit of enhanced D.A as he stood retired when the orders for such benefit were issued.

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We have heard applicant in person and learned counsel for the respondents at length and perused the material on the file.

The issue raised in this O.A. has been engaging attention of the Tribunals/Courts from the very beginning. The Bombay Bench of the C.A.T. In O.A.No.542/97 etc. (B.S.Dhuri & Others Vs. Union of India & Others) (Full Bench Decision), in its order dated 21.9.2001, has held that there is no nexus or rational consideration in fixing the cut off date of 1.4.1995 vide O.M. Dated 14.6.1995 issued by the Ministry of Personnel, Public Grievances & Pension (DoPT), New Delhi and the employees who retired between 1.7.1993 to 31.3.1995 are also entitled to the benefit of the Scheme of merger of 97% D.A in pay for the purpose of emoluments while calculating retirement gratuity. This judgement was challenged before the High Court of Bombay by way of a Writ Petition which was admitted on 29.4.2002.

The High Court of Punjab & Haryana had also rendered a decision in similar lines like full Bench of C.A.T. Bombay in C.W.P.No.4995/97 (Amar Nath Goyal & Others Vs. State of Punjab etc.) which was challenged before the Apex Court in SLP No.18367/2002. The Apex Court has stayed the judgement of the High Court of Punjab & Haryana and has also directed to

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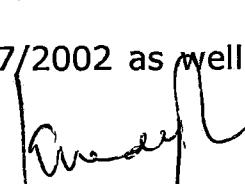
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transfer the C.W.P. Pending before the Bombay High Court to the Apex Court so that all matters on similar question are finally determined.

Number of O.As. Including O.A.No.727/2003 dated 2.4.2002 (M.Damodaran & Others Vs. UOI etc.) (Bangalore Bench); O.A.No.599/2003 (Tej Pal & Another Vs. UOI & Another), dated 24.1.2005 (Jaipur Bench); O.A.No.38/2004 dated 7.3.2005 (Radha Kishen & Others Vs. UOI etc.); O.A.No.466/03 etc.(Ram Gopal etc. Vs. UOI etc.), decided on 14.3.2005. 38/2004 and O.A.No.141/2004 (Gyan Prakash Goyal Vs. Union of India & Others), dated 15.3.2005 have been disposed of taking a view that claim of the applicants for revision of pension as well as DCRG would be regulated based upon the judgement to be rendered by the Apex Court in Civil Appeals as well as connected petitions/appeals.

Since the Hon'ble Apex Court is seized of the matter, this O.A. is also disposed of with a direction that the claim of the applicant for payment of gratuity etc. based on 97% D.A. Formula would be regulated based upon the judgement to be rendered by the Apex Court in C.A.No.18367/2002 as well as connected appeals. There shall be no costs.

~~(A.K.BHANDARI)~~
MEMBER(A)


(KULDIP SINGH)
VICE CHAIRMAN

HC* April 21, 2005