

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH.

Decided on : March 14, 2005.

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

(1) O.A.No.466 of 2003

1. Ram Gopal Avasthi S/o Late Shri Ram Kishan Avasthi, aged 67 years, Retd. Chief Law Assistant and R/o 66/06, New Colony, Ramganj, Ajmer.
2. Raghuvir Dayal S/o Ved Ram aged 69 years Retd., Highly Skilled Turner Gr. I and R/o 539/26, Opposite Ramganj Water Hut, Mandir Wali Gali, Ramganj, Ajmer.

.... **Applicants**

By : Mr.N.K.Gautam, Advocate.

Versus

1. Union of India through General manager, North West Railway, Jaipur.
2. Chief Works Manager, North West Railway, Ajmer.
3. Railway Board, through its Secretary, Rail Bhawan, Rafi Marg, New Delhi.

.... **Respondents**

By : Mr. S.S.Hasan, Advocate.

(2) O.A.No.560 of 2003

1. Kanwar Lal Mittal S/o Shri Debi Lal Ji Mittal, aged 67 years, Retired Office Superintendent, Deputy Chief Accounts Officer (TA) Western Railway, Ajmer and R/o 139/12, Ram Gali, Hathi Bhata, Ajmer.
2. Bhola Ram Sharma S/o Shri Mathura Prasad Ji Sharma, aged 67 years, Retired Head Signaller, Divisional Railway Manager's Office, North West Railway, Ajmer and R/o 12/122, Laxmi Narain Mandirwali Gali, Hathi Bhata, Ajmer.

.... **Applicants**

By : None.

Versus

1. Union of India through General Manager, North Western Railway, Jaipur.

2. General Manager, Western Railway, Churchgate, Mumbai.
3. Divisional Railway Manager, North West Railway, Ajmer.
4. Deputy Chief Accounts Officer (Traffic A/cs), Western Railway, Ajmer.

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

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Respondents

ORDER (ORAL)

KULDIP SINGH, VC

Since common question of facts and law are involved in the above mentioned two cases, these are being disposed of by a common order.

For the facility of reference facts have been taken from O.A.No.466/2003 (Ram Gopal Avasthi etc. Vs. UOI etc.). The applicants who were working as Chief Law Assistant and Highly Skilled Turner Grade I respectively in the Railways, retired from service on 30.6.1994 and 31.7.1993 respectively. While making payment of Retirement Gratuity to the applicants, 20% Dearness Allowance was taken into consideration for working out the payment. By order dated 8.8.1995 (Annexure A-5), issued by the Ministry of Railways, the dearness allowance linked to All India Consumer Price Index (AICPI) 1201.66, as per particulars given therein, was to be treated as dearness pay for reckoning emoluments for the purpose of Railway Employees who retire or die on or after 1.4.1995. For basic pay upto Rs.3,500/-P.M., the dearness allowance added to pay for calculation of gratuity was 97% of the pay. This includes 20% of basic pay already treated as dearness pay for the purpose of retirement gratuity etc. w.e.f. 16.9.1993 onwards. Railway ceiling on the maximum amount of retirement gratuity / death gratuity was raised from Rs.1.00 Lakh to Rs.2.50 Lakh w.e.f. 1.4.1995. It was further directed that in case of

persons who have already retired / died on or after 1.4.1995, the retirement gratuity / death gratuity may be recomputed suo moto on the basis of the said orders by the Pension Sanctioning authorities and arrears, if any, be also paid. It is apparent from this letter that the benefit of linking of dearness allowance with average AICPI 1201.66 for treating it as dearness pay, was not to be given to the employees who retired between July, 1993 to March, 1995. The Railway Board by letter dated 25.2.2002 (Annexure A-7), decided that D.A admissible on the date of retirement / death, shall also be treated as emoluments along with other emoluments under rule 69 and 70 of Railway Servants (Pension) Rules, 1993.

The applicants in the above mentioned Original Applications are before this Tribunal pleading that persons like them who retired between July, 1993 to March, 1995 are entitled to the benefit of 97% D.A formula as extended to the persons who retired after 1.4.1995 and there is discrimination qua them by granting them benefits calculating @ 20%, which otherwise stands modified. They submitted representations to the respondents to extend them the benefit but to no avail.

The respondents have filed a reply contesting the Original Application. Their stand is that the persons like applicant who have retired prior to 1.4.1995, are not entitled to the benefit of Circular dated 8.8.1995. The applicants have also filed a rejoinder.

Learned counsel present for the parties have been heard and record on the file has also been examined.

A similar question of validity or otherwise of fixing of cut off date as fixed by the respondents came to be considered by a Full Bench of the Central Administrative Tribunal, Bombay Bench in O.A.No.542/97,942/97 and 943/97 (B.S.Dhuri & Others Vs. Union of

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India & Others) and vide order dated 21.9.2001, the Full Bench has found that there is no nexus or rational consideration in fixing the cut off date of 1.4.1995 vide OM 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 judgment was challenged before the High Court of Bombay and the said Writ Petition was admitted on 29.4.2002.

The High Court of Punjab & Haryana had also rendered a similar judgment like that of Full Bench of C.A.T., Mumbai, 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 said judgement of the High Court of Punjab & Haryana. The Apex Court also directed to 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 cases including O.A.No.727/2003 (M.Damodaran & Others Vs. UOI etc.), before the Bangalore Bench of C.A.T has been disposed of on 2.4.2004 and O.A.No.599/2003 (Tej Pal & Another Vs. UOI & Another etc.) before this Bench of the Tribunal has been disposed of on 24.1.2005, with the 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/appeal. To the same effect is another decision of this Tribunal in O.A.No.38/2004 decided on 7.3.2005 titled Radha Kishen & Others Vs. UOI etc.

In view of the above discussion, I am of the opinion that the

issue raised in these two cases is also covered by the above decisions. These cases are accordingly disposed of with a direction that the claim of the applicants for payment of gratuity would be regulated based upon the judgment to be rendered by the Apex Court in C.A.No.18367/2992 as well as connected appeals. No costs.

**(KULDIP SINGH)
VICE CHAIRMAN**

March 14, 2005.

HC*