

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

JAIPUR, this the 7th March, 2005

ORIGINAL APPLICATION No. 38/2004

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (J)
HON'BLR MR. A.K.BHANDARI, MEMBER (A)

1. Radha Kishen s/o Shri Ganpat Lal,
r/o in front of New Sabji Mandi,
Gali No.2, Lokshan Nagar,
BEAWER.
2. Heera Singh s/o Shri Dhanna Singh,
r/o village and Post, Rajosi,
Distt. Ajmer.
3. Shrichand Chatter s/o Shri Inder Chand Chatter,
r/o 246/4, Lakan Kothri,
Darji Mohalla, Ajmer.
4. Chunni Lal s/o Shri Heera Lal
r/o Prem Nagar,
Sendra Road, Beawer.
5. Hardev s/o Shri Jetha,
r/o Chang Chitar Road,
Raidaspura,
Beawer.
6. Amar Chand s/o Shri Deva Ram,
r/o Khati Kan Mohalla,
Beawer.
7. Bhanwar Lal s/o Shri Jetha Ram Arya,
r/o H.No.1/232, Saket Nagar
Housing Board,
Beawar.
8. Govind Prasad s/o Shri Maya Ram Phulwari,
r/o Regran Mohalla,
Chetabas Mewari Gate,
Beawar.
9. Chandrika Prashad s/o Shri Balu Ram Agnohotri,

r/o Ramlila Ka Bada, Nagara, Ajmer.

.. Applicants

(By Advocate: Shri H.S.Chaudhary)

Versus

1. Union of India through
General Manager, North Western Railway,
Jaipur.
2. Railway Board through,
Secretary, Railway board, Rail Bhawan,
Rafi Marg,
New Delhi.
3. Financial Advisor and Chief Accounts
Officer (Pension), North Western Railway,
Jaipur.
4. Deputy Chief Accounts Officer (TA)
Western Railway, Ajmer.
5. Deputy Chief Electrical Engineer (Workshop),
North Western Railway, Ajmer.
6. Deputy Chief Mechanical Engineer (Loco and
Carriage), North Western Railway, Ajmer.
7. Divisional Railway Manager,
Ajmer Division, North Western Railway,
Ajmer.

.. Respondents

(By Advocate: S/Shri Shailesh Prakash & U.D.Sharma)

OA No.204/2004

1. Mahesh chand s/o Shri Govind Singh Ji mathur,
r/o F/207, Chanderverdai Nagar, Ajmer.
2. Ganga Ram s/o Mehramji Tanwar,
r/o Tanwar Colony, Masuda Road,
Beawar.
3. Chotu s/o Shri Ramsukhji

u/s

r/o Gali No.3, Sanjay Nagar,
Beawar.

4. Deva Ram s/o Shri Gainaji
r/o Village Sainpura, Post Delwada,
Beawar.
5. Narain s/o Shri Jhalaji
r/o Regaran Mohalla Gali No.1,
Chotabas, Beawar.
6. Ghevar Chand s/o Shri Mangal Ram Ji,
r/o Pratap Nagar, Shankla Colony,
Gali No.3, Beawar.
7. Mangilal s/o Shri Mangal Ram ji,
r/o Aryasamaj Gali No.2,
Shahpur Mohalla,
Beawar.
8. Tulsi Ram s/o Shri Bhinjraj
r/o Jahalia Road,
Beawar.
8. Kesulal s/o Shri Kanaji,
r/o Regaran Mohalla,
Badabas,
Beawar.

.. Applicants

(By Advocate: Shri H.S.Chaudhary)

Versus

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General Manager, North Western Railway,
Jaipur.
2. Railway Board, through
Secretary, Railway Board, Rail Bhawan,
Rafi Marg, New Delhi.
3. Financial Advisor and Chief Accounts
Officer (Pension), North western Railway,
Jaipur.
4. Deputy Chief Electrical Engineer (Workshop),
North Western Railway,
Ajmer.
5. Deputy Chief Mechanical Engineer (Loco &
Carriage), North Western Railway, Ajmer.

6. Deputy Chief Mechanical Engineer (Workshop),
North Western Railway, Ajmer.
7. Divisional Railway Manager,
Ajmer Division,
North Western Railway,
Ajmer.

.. Respondents

(By Advocate:S/Shri U.D.Sharma & V.S.Gurjar)

OA No.585/2003

1. Suraj Mal s/o Shri Pukhraj Jain,
r/o Jain Hala Mandir Marg,
Nehru Nagar,
Beawar.
2. Ratan Lal s/o Shri Kalu Ram Goyal,
r/o H.No.31, Mill colony,
Beawar.
3. Mahendra Kumar s/o Shri Babu Lal Jain,
r/o 4/61, Veerchhaya, Saket Nagar,
Beawar.
4. Prahlad Victor s/o Shri James,
r/o Mission compound, Beawar.
5. Bhanwar Lal s/o Shri Jagdish Prashad
Sharma, r/o 20/124, Heda Gali,
Beawar.
6. Ram Lal s/o Shri Chhogga Lal,
r/o village Madhogarh, PO Kharwa,
Beawar.
7. Sohan Lal s/o Shri Moti Lal Ajmera,
r/o 2/62, Pratap Nagar,
Beawar.
8. Rampal s/o Shri Jugraj Maheshwari,
r/o 9, Bafna Market, Ajmerigate,
Beawar.
9. Silvester Rai s/o Shri Shrestha Prashad,
r/o Mission Compound, Nasirabad.
10. Poosa Ram s/o Shri Moti Lal,
r/o bidamnagar, Gatehpuria II,

Beawar.

11. Laxman Singh s/o Shri Doodh singh,
r/o Roj ji ka Badia, Todgarh road,
Beawar.
12. Poosa Ram s/o Shri Thana Ram,
r/o Basant Vihar colony,
Delwara Road, Beawar.
13. Man Singh s/o Champa Singh,
r/o Sandra Road, Beawar.
14. Rameshwar Prashad s/o Shri Mool Chand
Sharma, r/o 3/52, Saket Nagar,
Beawar.
15. Giriraj Prashad s/o Shri Kherati Mal
Vijay, r/o 4/126, Saket Nagar,
Beawar.
16. Om Prakash s/o Shri Ram Deo Gupta,
r/o 2/8, HIG Saket Nagar, Beawar.
17. Nemi chand s/o Shri Shbhagya Mal Dosi,
r/o 39/2 Khajana gali, Ajmer.
18. Lal Chand s/o Shri Gulab Chand Jain,
r/o 12/13, Kundan Nagar,
Beawar.
19. Naradmuni s/o Shri Shiv Lahari Sharma,
r/o Near Madar Power House,
Madar, Ajmer.
20. Mohar singh s/o Shri Raghuvan Dayal
Sharma, r/o 592/03, Jawahar Nagar,
Lohagal Road, Ajmer.
21. Om Prakash s/o Shri Jugal Kishore Jain,
r/o Kanta Niketan, Jain Colony,
Kishangarh.
22. Dharam Chand s/o Shri Manak Chand Patni,
r/o 1/510 Shanti Pura,
Vaishali Nagar, Ajmer.
23. Dayal s/o Shri Karan Chand Ratanchandani,
r/o Jatia Colony, College Road,
Beawar.
24. Ku. Shushila d/o Shri Dwarkanath Mehra,
r/o 9 Babu Mohalla, Kaisargunj,
Ajmer.

25. Ramnik Lal s/o Shri Kripa Shanker Shukla,
r/o 12 Basant Vihar Colony,
Delwada Road,
Beawar.
26. Sajjan Mal s/o Shri Jorawar Mal Dhadiwal,
r/o Santosh Bhawan,
Sarawgi Mohalla, Beawar.
27. Badri Lal s/o Shri Nath Mal Sharma,
r/o 14, Basant Vihar Colony,
Delwada Road, Beawar.
28. Shanti Lal s/o Shri Naurat Mal Sethi,
r/o Fatehpuria Bhawan,
Naya Bazar, Ajmer.
29. Pukh Raj s/o Shri Gulab Chand Jain,
r/o 130/51, "Sidhart", Lakan Nadi,
Police Lines, Ajmer.
30. Ram Chander s/o Shri Nand Kishore Verma,
r/o Dr. Gupta Gali, Beawar.
31. Jagdish Prashad s/o Shri Narain Prashad
Yadav, r/o Shivjunj Colony,
Delwada Road, Beawar.
32. Anandi Lal s/o Shri Moti Lal,
r/o Dungri Road,
Beawar.
33. Sohan Lal s/o Shri Shanker Lal Gupta
r/o Gali No.1, Adharsh Nagar,
Beawar.
34. Banikam Chand s/o Shri Khinwaji Kumawat,
r/o Near Gita Bhawan,
Nehru Nagar,
Beawer.
35. Jagdish Prashad s/o Shri Prabhu Lal
Sharma, Gali No.1, Kishangunj,
Beawar.
36. Ramdeo s/o Shri Jaganath Mali,
r/o Diggi Chowk, Beawar.
37. Madho Lal s/o Shri Dhokal,
r/o Village and Post,
Suhana, Beawar.
37. Vimal Chand s/o Shri Dilsukhlal Jain,
r/o A-68, Chhatri Yojana,
Viashali Nagar,

Ajmer.

.. Applicants

(By Advocate: Shri H.S.Chaudhary)

Versus

1. Union of India through General Manager, North Western Railway, Jaipur.
2. Railway Board, through Secretary, Railway Board, Rail Bhawan, Rafi Marg, New Delhi.
3. Financial Advisor and Chief Accounts Officer (Pension), North Western Railway, Jaipur.
4. Deputy Chief Accounts Officer (Workshop), North Western Railway, Ajmer.
5. Deputy Chief Mechanical Engineer (Loco and Carriage), North Western Railway, AJmer.
6. Divisional Railway Manager, Ajmer division, North Western Railway, Ajmer.
7. Divisional Railway Manager, Rajkot Division, Western Railway, Rajkot.

.. Respondents

(By Advocate: S/Shri U.D.Sharma and V.S.Gurjar)

ORDER

Per Hon'ble Mr. M.L.Chauhan, Member (J)

By this order, we propose to dispose of the aforesaid 3 Original Applications as common question of facts and law is involved in these cases.

2. Briefly stated, the applicants in these OAs are retired Railway servants. With the consent of the parties, for the purpose of deciding the matter in controversy, we are referring to the pleadings made in OA No.585/2003, Suraj Mal Jain and ors. Vs. Union of India and ors.

3. The applicants in this OA have retired on superannuation from railway service on different dates in the year 1986 to 1995. The grievance of the applicants in this OA is that on the recommendation of the 5th Central Pay Commission, respondents had issued OM dated 8.8.1995 declaring that the Dearness Allowance was to be merged in the pay and has to be treated as dearness pay for the purpose of D.C.R.G. at 97% of the basic pay for those drawing pay upto Rs. 3500/- p.m. by fixing cut off dated as 1.4.1995. Since the applicants have retired prior to 1.4.1995, the said benefit was not extended to them. It is stated that the applicants filed representation to the respondents to that effect but nothing was heard. Thus, according to the applicants, they are entitled to DCRG payment on the basis of circular dated 8.8.1995 and fixing the cut off date as 1.4.1995 for that purpose is arbitrary. It is further pleaded that the CAT-Mumbai Bench vide its order dated 21.9.2001 has allowed the retirees between 1.7.1993 to 31.3.1995 to have the benefit of merger of the scheme of merger

of 97% of DA for the purpose of emoluments for DCRG, as such, the benefit of said judgment may be extended to the applicants. The applicants have further pleaded that they are also entitled to gratuity as ^{admissible} under Gratuity Act. The issue also came before the Apex Court in Civil Appeal No.937 of 1995 filed by the Union of India and vide order dated 13.2.2002 (Ann.A6) the said appeal was dismissed. It is on these basis, the applicants have filed these OAs thereby praying that appropriate writ, order or direction be issued to the respondents thereby declaring the cut off date of 1.4.1995 unconstitutional and respondents be directed to pay full benefit of DA on gratuity which was available at the time of retirement of all the applicant who have retired prior or after 1.4.1995.

4. The respondents have filed different replies. In OA no.585/2003 reply has been filed by respondent No.7, 6 and 5. The respondent No.7 by way of preliminary submissions has stated that the present OA is *bad* for mis-joinder of parties. It is stated that all the applicants do not have same cause of action and common interest in the matter. In fact the applicants have based their claim on the basis of the Full Bench decision rendered by the Mumbai Bench which deal with those persons who had retired between 1.7.93 to 31.3.1995 and were held entitled to the benefit of the scheme of merger of 97% DA in the pay for *up*

calculation of DCRG. Thus, the applicants who have retired prior to 1.7.93 are entitled to pensionary benefits which were admissible to them at the time of their retirement and they were also paid gratuity calculated on the basis of existing rules at the relevant time of their retirement. Therefore, they cannot be taken by adding DA at 97% of the DA in the exchequer emoluments. The respondent No.7 in the reply have also stated that the present OA is clearly barred by limitation as the applicants are challenging the letter dated 8.8.95 sometime in December, 2003 which is clearly beyond the prescribed period of one year as per Section 21 of the Administrative Tribunals Act, 1985. It is further stated that the gratuity is one time payment, unlike pension which is a recurring monthly payment. Thus, the cause of action had arisen to the said applicants on the issuance of the aforesaid order dated 8.8.1995 and is this is barred by limitation. For that purpose, the respondent have placed on record various decisions of the Apex Court. On merit, the respondent No.7 has justified that the cut off date of 1.4.1995 is based on recommendations made by the Pay Commission in its interim report and thereafter in the final report. Therefore, the said date cannot be termed as arbitrary. To the similar effect is the reply filed on behalf of respondent No.6. The respondent No.5 has also annexed copy of the decision rendered by the Supreme Court in Civil Appeal

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No. 129 of 2003, State of Punjab and ors vs. Amar Nath Goyal and ors, whereby the Apex Court has directed that the writ petition pending in the Bombay High Court shall be transferred to the Supreme Court. It was further observed that on receipt of the writ petition from the Bombay High Court notices shall be issued to the parties concerned in those cases and their respective counsels thereby justifying that the Hon'ble Supreme Court is seized of the matter. Respondent No.5 with its reply has also annexed copy of the judgment rendered by the CAT, Principal Bench in OA No.700/2001 wherein it has been stated that the gratuity act is not applicable to the railways servants.

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

5.1 At the outset, it may be stated that the learned counsel for the applicants submitted that he is confining this OA to the applicants who have retired between 1.7.93 to 31.7.1995 and seeking claim on the basis of the judgment rendered by the Full Bench of Mumbai CAT, as such no finding on other points is required to be given. It is further made clear that in case the applicants who have retired prior to 1.7.93 and are aggrieved that they are also entitled to the benefit of the scheme of merger of 97 % DA for the purpose of emoluments of DCRG, it will be open to them

to agitate the matter separately and this order will not come in their way to file such cases which will be decided on its own merit and respondents will be entitled to raise all permissible objections in accordance with law. As such the objection of misjoinder of parties raised by the respondents in their reply does not survive now.

5.2 So far as other contention raised by the respondents that the present applications are beyond the period of limitation as the cause of action has arisen in favour of the applicants in the year 1993, it may be stated that the matter is no longer res-integra. This issue has been considered by this Tribunal in OA No.71/2004 decided on 15.2.2005 whereby this Tribunal has given the following findings:

"6. At the outset, it may be stated that the matter regarding merger of the DA pursuant to the recommendation of Vth Central Pay Commission by fixing cut off date 1.4.1995 is under consideration before the Apex Court. It may also be relevant to state here that in pursuance to the judgement passed by the CAT-Mumbai Bench on 21.9.2001, the Government of India has already filed a writ petition before the Hon'ble High Court of Judicature at Mumbai and the Hon'ble High Court has admitted the said writ petition on 29.4. 2002. It may further be stated here that 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 and Haryana at Chandigarh) (State of Punjab and ors. vs. Amar Nath Goyal and ors) vide order dated 6.1.2003 has stayed the judgment and the order dated 3.5.2002. Besides this, in an identical case a review application No.134/2002 in OA 636/PB/2002 has been filed before the Chandigarh Bench of the Tribunal and the Tribunal vide 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.

7. Thus, from the facts as stated above, it is clear that the matter has not been settled finally and the Hon'ble Supreme Court is seized of the matter. It is in this context the present OA has to be viewed. Thus, the contention of the respondents that since the applicant is claiming relief on the basis of the judgment rendered by the Mumbai Bench in Babu Rao Shankar Duri vs. UOI (Supra), which was decided on 21.9.2001, whereas the present OA has been filed in March, 2004, as such the same cannot be entertained in view of the decision rendered by the Apex Court in the case of State of Kanataka vs. S.M.Kotrayya (supra) cannot be accepted. As already stated above, the writ petition failed against the CAT-Mumbai Bench has also been requisitioned by the Supreme Court for hearing, as such, no direction can be given on the basis of the judgment rendered by the CAT-Mumbai Bench and the issue is still open. As such, I am of the view that the question of limitation does not arise at this stage and the OA is premature. Since no relief is being granted to the applicant on the basis of judgment rendered by the Full Bench, CAT-Mumbai, as such, question of limitation does arise. The respondents can take assistance of the judgment only when the decision is final. Thus, the objection raised by the respondents is bereft of merit.

8. So far as the second contention raised by the respondents that the present OA is not maintainable as the gratuity is not a subsisting cause but is only one time action, as such the applicant should have filed OA immediately after his retirement when the notification dated 8.8.1995 was issued is also without substance. As already stated above, the DP for the purpose of DCRE at 97% of the basic pay shall be admissible to the applicant - in case the Apex Court held cut off date of 1.4.1995 as arbitrary and discriminatory and came to the conclusion that

the said benefit shall also be extended to the employees who have retired between 2.7.1993 to 31.3.1995. It is only in that eventuality that the applicant will be entitled for the additional benefit pursuant to such decision. This stage has not come yet. The right in favour of the applicant will be accrued only when the judgment is rendered by the Apex Court in favour of the employees who have retired between 1.7.1993 to 31.3.1995 thereby holding the cut off date as 1.4.1995 as arbitrary and discriminatory and cause of action in favour of the applicant will arise only on that date. Since it has been held that the present OA is premature and no relief can be granted to the applicant at this stage, the OA could have been dismissed on this ground alone. But I am of the view that instead of forcing the applicant to file another OA in case the decision is rendered by the Apex Court in favour of the employees who have retired between 1.7.1993 to 31.3.1995 and held entitled for the DCRG at 97% of basic pay in terms of OM dated 8.8.1995 (Ann.A4), ends of justice will be met if the direction is given in the instant case that the claim of the applicant for the payment of enhanced retirement gratuity would be regulated based upon the judgment rendered by the Hon'ble Supreme Court in the aforesaid civil appeal."

5.3 The decision rendered by this Tribunal in the case of J.P.Mishra (supra) and as reproduced above is squarely applicable in the instant case. Accordingly, we are of the view that the present application can be disposed of with the direction that the claim of the applicants who have retired between 1.7.1993 to 31.3.95 for payment of gratuity would be regulated based upon the judgment to be rendered by the Hon'ble Supreme Court in Civil appeal No.18367/2002 as well as connected appeals as referred in the earlier part of the judgment.

6. With these observations, the OAs are disposed of with no order as to costs.

(A.K.BHANDARI)

Member (A)

(M.L.CHASHAN)

Member (J)