

THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

O.A. No. 617/03  
T.A. No.

200

DATE OF DECISION 24.12.2004

<u>S.P.Gupta</u>	Petitioner
<u>Shri C.B.Sharma</u>	Advocate for the Petitioner(s)
Versus	
<u>UOI &amp; ors</u>	Respondent
<u>Shri N.C.Goyal</u>	Advocate for the Respondents(s)

CORAM:

The Hon'ble Mr. M.P.Singh, Vice Chairman

The Hon'ble Mr. M.L.Chauhan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? NO
2. To be referred to the Reporter or not? ~~or not~~ Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUROriginal Application No.617 of 2003

Jaipur, this the 24th day of December, 2004

Hon'ble Shri M.P.Singh - Vice Chairman  
 Hon'ble Shri M.L.Chauhan - Judicial Member

S.P.Gupta son of late Shri L.C.Gupta,  
 aged about 68 years, resident of 87,  
 Muktanand Nagar, Gopalpura Road, Jaipur-  
 302018. Retired as Senior Superintendent  
 of Post Offices, Udaipur Division, Udaipur  
 (Rajasthan) on 31.8.1993.

- APPLICANT

(By Advocate - Shri C.B.Sharma)

Versus

1. Union of India through its Secretary to  
 the Government of India, Ministry of  
 Personnel, Public Grievances and Pension,  
 Department of Pension and Pension Welfare,  
 Lok Nayak Bhawan, Khan Market, New Delhi-110003.

2. Union of India, through its Secretary to the  
 Government of India, Ministry of Communication,  
 Department of Posts, Dak Bhawan, Sansad Marg,  
 New Delhi-110001.

3. Chief Post Master General, Rajasthan Circle,  
 Jaipur-302007.

4. Post Master General, Rajasthan Southern Region,  
 Ajmer-305001.

- Respondents

(By Advocate - Shri N.C.Goyal)

O R D E RBy M.P.Singh, Vice Chairman -

By filing this Original Application, the  
 applicant has claimed the following main reliefs:-

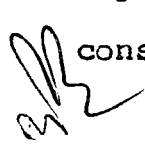
"(i) That the respondents may be directed to allow  
 gratuity by adding 97%D.A. in basic pay while  
 calculating retirement gratuity by declaring  
 O.M.dated 14.7.1995 (Annexure-A/1) and O.M.dated  
 18.2.2003 (Annexure-A/2) as discriminatory  
 unconstitutional to the extent of fixing cut of  
 date i.e.1.4.1995 instead of 1.7.1993.

(ii) That the respondents be further directed to pay  
 difference of gratuity already paid and to be  
 paid after adding 97% D.A. in basic pay along with  
 interest @ of 12% from the date of retirement till  
 payment."

2. The brief facts of the case are that the applicant  
 while working as Senior Superintendent of Post Offices,  
 Udaipur Division in the senior scale of Indian Postal  
 Service retired on superannuation on 31.8.1993. His basic

pay was Rs.3700/- which was further revised to Rs.3750/- and on the basis of this basic pay retirement gratuity was paid to the applicant. The Government of India issued O.M. dated 19.10.1993 for adding 20% of D.A. in basic pay while calculating retirement gratuity effective from 16.9.1993. The 5th Central Pay Commission recommended the grant of interim relief equal to 10% of basic pay subject to minimum of Rs.100/-p.m. After taking into consideration <sup>The recommendations of</sup> the 5th CPC, the respondent no.1 issued O.M. No.7/1/95-P&PN(F) dated 14.7.1995 declaring that the dearness allowance was to be merged in the pay and has to be treated as dearness pay for the purpose of DCRG at 97% of basic pay for those drawing pay upto 3500/-, at 73% of pay subject to minimum of Rs.3395/- to those drawing pay above Rs.3500/- and upto Rs.6000/-p.m.; and at 63% of pay subject to minimum of Rs.4380/- to those drawing pay above Rs.6000/-under the CCS(Pension)Rules,1972 by fixing cut of date 1.4.1995. By this action, the employees like the applicant, who retired prior to 1.4.1995 were not allowed 97% of dearness pay while calculating retirement gratuity and also not allowed 20% of basic pay because earlier O.M. dated 19.10.1993 was effective from 16.9.1993. The applicant at the time of retirement was drawing 97% dearness allowance but by fixing cut of date, he was not allowed benefit of gratuity adding 97% of dearness allowance in basic pay, as allowed to employees retired on or after 1.4.1995. The applicant also made a request before the respondents on 18.12.2002 stating therein that he may be allowed difference of gratuity amount by computing the same taking into consideration of 97% but no reply has been given by the respondents till this date. Hence this O.A.

3. The respondents in their reply have stated that the Government has not agreed to extend the said benefit to retirees prior to 1.4.1995. A cut off date has to be fixed as and when any schemes are framed for persons who are to superannuate or have superannuated. Due to many financial constraints, it is not always possible to extend the same

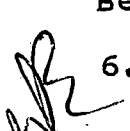


benefits to one and all and such benefit has to be within the financial position of the Government. The 5th CPC in its interim report had recommended the dearness allowance as limited to average cost price index 1201.66 as on 1.7.1993, may be treated as dearness pay for reckoning emoluments for the purpose of DCRG and raised the limit of gratuity from 1.0 lac to 2.50 lac (now 3.5 lac). The Commission itself had recommended that this may be made effective from 1.4.1995 and the same was accepted by the Government and accordingly office memo dated 14.7.1995 was issued.

4. Heard the learned counsel of both the parties.

5. The learned counsel for the applicant has stated that Full Bench of this Tribunal, Mumbai Bench in O.A.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.

6. On the other hand, the 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 judgment & order dated 3.5.2002. Besides this, in an identical case a Review Application No.134/2002 in OA 636/PB/2002 had 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

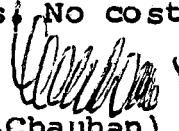



holding that the benefits shall be granted to the applicants therein after the decision of the Hon'ble Supreme Court if it is favourable. The Hon'ble Supreme Court in Civil Appeal No.129/2003 (State of Punjab Vs.Amar Nath Goya) vide order dated 27.7.2004 has directed to transfer the pending writ petition 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 O.A.No.727/2003 & other 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.."

7. We have given careful consideration to the rival contentions and the various decisions relied upon by the learned counsel of parties. We find that the present case is squarely covered by the decision of Bangalore Bench of the Tribunal in the case of M.Damodaran(supra). We are, therefore, in respectful agreement with the aforesaid order passed by the Bangalore Bench of the Tribunal and we hold that the aforesaid order passed by the Bangalore Bench shall be mutatis mutandis applicable to the case of the present applicant as well.

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

  
(M.L.Chauhan)  
Judicial Member

  
(M.P.Singh)  
Vice Chairman