

100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH; GUWAHATI.5

ORIGINAL APPLICATION NO. 390/2000

... Aradhendu, Sekhar Gupta and ors.
Applicant.
versus

Union of India & Ors Respondents.

For the Applicant(s) Mr. B. Das, Ms. S. Das,
Mrs. S. Roy,
Mrs. U. Roy.

For the Respondents.

C.G. S.C.

NOTES OF THE REGISTRAR DATE ORDER

application is in form but no ~~re~~ Condonation
Petition is filed vide
M.P. No. C.F.
for Rs. 50/- deposited vide
L.R.T.B.D. No. 007902
Dated..... 30.10.2000

4.4.01 Put up only after removal of
the defects. The Deputy Registrar
to look into the matter and take
remedial measure.

I C U Shaha

Member

Vice-Chairman

Dy. Registrar.

P.G

The following ^{has} After
Service the following
defects has been found
as follows:-

5.7.01 List on 8.8.01 for Admissio
after removal of the defects.
Office to inform the learned co
counsel for the parties to remo
the defects. Learned counsel for
parties to do the needful.

Vice-Chairman

① Service of Notice Address
incomplete.

② Service 2 Notices Copies
2(two) copy filed instead of
4 Copies required.

③ The applicant has not
mentioned last Service
of Working for Department.

1m
N.B
S.Y.H.O

The learned Advocate has not
given a joint prayer in a
Single Application.

10/10/2000

Putting after
compliance
my 10/10/2000

8.8.2001

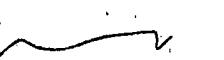
The application is admitted. Call for the records. Office to furnish two copies of the application alongwith the annexures to Mr A. Deb Roy, learned Sr. C.G.S.C. within three days.

List for orders on 19.9.01.


Vice-Chairman

17-1-2001
19.9.01

List on 16/11/01 to enable the respondents to file written statement.


Vice-Chairman

16.11.2001

The application is defective. The applicant was intimated about its defects. But the applicant have not rectified the defects sofar. The applicants is ordered to rectify the defects.

List the case on 14.12.2001 for further order.


Member

14.12.01
None is present for the applicant. The application is defective. Office to inform the applicant to remove the defects. List on 11.1.02 for order.


Member

Order dtd 5/7/01 Communicated to the Parties Counsel. vtd D1 No dd

8/8/01:
An her order dtd 8/8/01.
Two Copies of application alongwith order furnish to Mr. A. Deb Roy, Sr. C.G.S.C.
Vide D1 No 3054
dd dtd 16/8/01

order dtd. 16/12/01
Communicated to the Applicant
by
20/12

10/8/01: Order dtd 16/11/01
Communicated to the parties
Counsel.

29/11/01:

Notes of the Registry	Date	Order of the Tribunal
	11.1.02	Mr. M. Chanda learned counsel entered appearance on behalf of the applicant and prays for 3 weeks time to rectify the error. Prayer is allowed. List on 13.2.02 for orders.
	1m	Vice-Chairman
	13.2.02	As per order dated 11.1.2002 the applicant was directed to rectify the error and the time was given ^{why} to-day on 13.2.02. As ^{still} to-day the defects has not been removed, Another opportunity is given to the applicant to remove the error. List on 1.3.02 for orders.
		LLW Member
14.2.2002 WPS submitted on behalf of the Respondents Nos 1, 2 and 3.	1m	
	1.3.2002	Pleadings are complete. List the case for hearing on 27.3.02.
Order dtd. 13/2/02 Communicated to the Applicant Adv. H 1572	nk m	Vice-Chairman
	27.3.02	Heard learned counsel for the parties. Hearing concluded. Judgement delivered in the open court, kept in separate sheets. The application is dismissed. No order as to costs.
Copy of the judgment sent to the D/Sec. on 22/4/2002	trd	Vice-Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R.A. No. 390/2000 . . . of

DATE OF DECISION 27.3.2002

Sri Ardhendu Sekhar Gupta & 8 Ors.

APPLICANT(S)

Mr. M.Chanda

ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

Union of India & Ors.

RESPONDENT(S)

Mr. A. Deb Roy, Sr. C.G.S.C.

ADVOCATE FOR THE RESPONDENTS.

THE HON'BLE MR. JUSTICE D.N.CHOWDHURY, VICE-CHAIRMAN.

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?
5. Judgment delivered by Hon'ble Vice-Chairman.

N

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 390 of 2000

Date of decision : This the 27th day of March, 2002.

Hon'ble Mr. Justice D.N.Chowdhury, Vice-Chairman.

Sri Ardhendu Sekhar Gupta,
Son of Late Atul Chandra Gupta,
Bijoy Kumar Choumuhani,
P.O. Agartala-799 001,
P.S. West Agartala,
District-West Tripura & 8 Ors.

...Applicants

By Advocate Mr. M. Chanda.

-versus-

1. The Union of India,
New Delhi.
2. The Secretary to the Government of India,
Ministry of Finance,
New Delhi.
3. The Secretary to the Government of India,
Ministry of Personnel, Public
Grievances and Pension (Department
of Pension and Pensioners Welfare),
New Delhi.

..Respondents

By Advocate Mr. A.Deb Roy, Sr. C.G.S.C.

O R D E R (ORAL)

CHOWDHURY J.(V.C.)

By the Office Memorandum dated 14.7.1995 the
Government of India, Ministry of Personnel, Public
Grievances & Pensions notified the decision of the
interim report of the 5th Central Pay Commission linking the
Dearness Allowance to AICPI 1201.66 treating as D.A. for the
purpose of retirement gratuity/death gratuity under the

Central Civil Services (Pension) Rules, 1972 and also enhancing the ceiling on gratuity/death gratuity to Rs. 2.5 lakhs. Accordingly the Government of India decided that dearness allowance linked to AICPI 1201.66 was to be treated as dearness pay for reckoning emoluments for the purpose of retirement gratuity/death gratuity under the Civil Services (Pension) Rules, 1972 in the case of Central Government employees who retire or die on or after 1.4.1995. By the aforementioned decision the ceiling on the maximum amount of retirement gratuity/death gratuity was raised from 1.00 lakh to Rs. 2.50 lakhs with effect from 1.4.1995. The nine applicants by this application sought for a direction for giving effect to the said communication to those employees who retired from service for the period between 31.7.1993 and 31.3.1995. The applicants asserted that the cut off date fixing as 1.4.1995 is seemingly arbitrary and discriminatory and therefore violative of Article 14 of the Constitution of India.

2. Mr. M.Chanda, learned counsel appearing on behalf of the applicants strenuously contended that the aforesaid decision of the respondents fixing 1.4.1995 as cut off date is violative of Article 14 of the Constitution of India and also contrary to the principle laid down in the case of D.S. Nakara and Ors. Vs. Union of India & Ors. reported in (1983) SCC Vol.I, 305. Mr. Deb Roy, learned Sr. C.G.S.C. opposing the application submitted that the Government has prepared a scheme for persons those who superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the date of superannuation. Whenever revision takes place fixing of a

Contd..

cut off date becomes imperative and the benefit has to be granted within the financial resources available to the Government. Mr. Deb Roy in support of his submissions referred to the decision rendered by the Supreme Court in Civil Appeal No. 517 of 1987, Union of India Vs. P.N.Menon and Ors. (1994) ATC 515. Mr. Deb Roy also referred to a series of decisions rendered by the different Benches of the Central Administrative Tribunal.

3. In view of the recommendation of the 5th Central Pay Commission the Government had to take the decision on the matter of revision of death gratuity etc. A cut off date therefore had to be fixed for giving the revised benefits. Assessing the financial capability the Government decided to make revision and accordingly a cut off date was fixed, which in the circumstances cannot be said as arbitrary and discriminatory.

4. In the set of circumstances I do not find any illegality in the aforesaid action of the respondents. Accordingly the application is dismissed. There shall however be no order as to costs.



(D.N.CHOWDHURY)
Vice-Chairman

trd

Ardhendu Sekhar Gupta
Jyoti Choudhury
Raj Kumar Singh
Sukhendu Baruah

Moni Ranjan Baruah
Nageswar Baruah
Nikhil Ranjan Baruah
Nageswar Baruah

Prakash Dabakachary

Yubodh Choudhury
Moni Ranjan Baruah

Sukhendu Baruah

Dy. Ume Ray
Advocate

MRS. UME RAY
Advocate
Agartala, Tripura

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

O.A. NO. 390 OF 2000

Sri Ardhendu Sekhar Gupta and 8 others ... Applicants

V E R S U S

The Union of India and 2 others ... Respondents

I N D E X

<u>Annexure</u>	<u>Brief contents of the documents</u>	<u>Page No.</u>
-	Original application filed by the Applicants above-named.	1 to 14
A	O.M.No./1/95-P&PW(F), dated the 16th July, 1995 issued by the Deputy Secretary to the Government of India, Ministry of Personnel, Public Grievances & Pensions (Department of Pension & Pensioners' Welfare) regarding treatment of dearness allowance as dearness pay for the purpose of death gratuity and retirement gratuity and raising the maximum limit of gratuity from Rs.1.00 lakh to Rs.2.50 lakhs.	15
B	Representation, dated 5-9-1999 preferred by Sri Ardhendu Sekhar Gupta, Applicant No.1 addressed to the Deputy Secretary, Ministry of Personnel, Public Grievances & Pension, Department of Pension & Pensioners' Welfare, Govt. of India, New Delhi-11003 regarding deprivation of the increased benefit of Death-cum-Retirement Gratuity in case of Central Govt. Employees by raising the ceiling from Rs.1 lakh to Rs.2.50 lakhs.	16

Date:-

Place:- Agartala.

Ardhendu Sekhar Gupta
Subodh Ch. Debnath
Raj Kumar Paul

Nikhar Ranjan Bhattacharya
Raj Kumar Paul

Nagendra Ga. & A/c

Kishpada Bhattacharya

1. Subodh Chandra Roy
2. Mono Ranjan Mozumder

Subhendu Das

By Uma Ray
Advocate.

MRS. UMA ROY
Advocate
Agartala, Tripura (W)

Date of filing

or

Date of receipt by post

Registration No.

Signature

For Registrar.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

O.A. NO. OF 2000

1. Sri Ardhendu Sekhar Gupta, son of Late Atul Chandra Gupta, Bijoy Kumar Choumuhan, P.O. Agartala-799 001, P.S. West Agartala, District- West Tripura;
2. Sri Subodh Chandra Debnath, son of Late Nagarbasi Debnath, North Banamalipur, P.O. Agartala-799 001, P.S. East Agartala, District- West Tripura ;
3. Sri Raj Kumar Paul, son of Late Jamini Kumar Paul, East of Circuit House, P.O. Agartala-799 005, P.S. East Agartala, District- West Tripura;
4. Sri Subhendu Das, son of Late Satish Chandra Das, Akhaura Road, North Joynagar, P.O. Agartala-799 001, District- West Tripura;

Abdul Gader Singh
Subash Ch. Debnath
Raj Kumar Seal

Nihar Ranjan Dutta Chowdhury

Nagendra Ch. Sarkar

Rishapada Bhattacharya

3. Subodh Chandra Roy
Mono Ranjan Majumder

Subodh Roy

By
Uma Ray
Advocate.

MRS. UMA ROY
Advocate
Agartala, Tripura (W)

✓

5. Sri Nihar Ranjan Dutta Chowdhury, son of Late Gouri Kumar Dutta Chowdhury, Joynagar North, P.O. Agartala-799 001, P.S. West Agartala, District- West Tripura;
6. Sri Gispada Bhattacharjee, son of Late Ramesh Chandra Bhattacharjee, village & P.O. Jogendranagar, Agartala-799010, P.S. East Agartala, District- West Tripura;
7. Sri Nagendra Chandra Sarkar, son of Late Gagan Chandra Sarkar, Dhaleswar Road No-13, P.O. Dhaleswar-799 003, Agartala, P.S. East Agartala, District- West Tripura;
8. Sri Mono Ranjan Majumdar, son of Late Harmohan Majumdar, West Pratapgarh, P.O. Arundhutinagar, Agartala-799 003, P.S. West Agartala, District- West Tripura;
9. Sri Subodh Chandra Roy, son of Late Hemkishore Roy, Ramnagar Road No-4, P.O. Ramnagar, Agartala-799 001, P.S. West Agartala, District- West Tripura.

... APPLICANTS

V E R S U S

1. The Union of India, New Delhi ;
2. The Secretary to the Government of India, Ministry of Finance, New Delhi ;
3. The Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Pension and Pensioners Welfare), New Delhi.

... RESPONDENTS

As per Order of the Government of India
Sarkar, dated 14-7-1995
Copy received from
Nihar Ranjan Mukherjee

Nageswar, C/o. Sarkar
Kishorabhalal Chatterjee

Yashoda Chandra Ray
Monoranjani Mozumder

Sukhendu Sen

By
Uma Ray
Advocate
MRS. UMA RAY
Associate
Agrt. Ad. Tribunal (W)

13

DETAILS OF APPLICATION :-

1. Particulars of the order against which the application is made.

The Office Memorandum No. 7/1/95-P&PW(F), dated 14-7-1995 issued by the Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Pension & Pensioner Welfare), New Delhi (copy enclosed).

2. Jurisdiction of the Tribunal.

The Applicants declare that the subject matter of the petition is within the jurisdiction of this Tribunal.

3. Limitation.

The Applicants further declare that the application is within limitation period prescribed by Section 21 of the Administrative Tribunals Act, 1985. In this connection it is pertinent to point out that though the Office Memorandum as indicated in paragraph-1 was issued on 14-7-1995, the Applicants have come to know the existence of the afore-said Office Memorandum

Address in Sender Gifte
Jubilee Park Ahmedabad
Ray Keenan Patel

Wicket Rayam Jitkar Chowdhury

Nageshwar Ctr. Sarkar

Prakash Bhattacharya

Indo-Asian
Monoranjani Mozena
5

Sukhendu

By
Uma Ray
Advocate.

MRS. ~~Uma Ray~~
Advocate
Agst. Ila Tripathi (W).

4

only recently and since the limitation starts from the date of knowledge, this application is within time. It is also submitted that the Applicants having no knowledge of the period of limitation could not make the application earlier and they pray to condone the delay as provided by sub-section 3 of Section 21 of the Central Administrative Tribunals Act, 1985 on a finding that the Applicants were prevented by sufficient cause from filing the application within time stipulated by sub-section 1 of Section 21 of the Act ibid.

4. Fact of the case :

(a) That the Applicants were serving under the Telecommunication Department of the Government of India and they proceeded on retirement on superannuation during the period between 31-7-1993 and 31-3-1995.

(b) That while they were in service, the Government of India appointed a Commission, namely, Fifth Pay Commission for recommending the revision in the

Aradhana Sankar Gupta
Subodh Ch. Debbarma
Ray Kumar Sardar

Nitin Ranjan Bista (Secretary)

Nageshwar Ch. Sarker

Chittapada Bhattacharya
Shobon Chandra Leef
Monoranjna Motiwala

Sukhendu Das

By Ume Ray
Advocate.

Mrs. ~~Ume Ray~~
Abinda Ray (Adv.)



pay structure of the Central Government employees
and also in regard to the rate of pension etc.

(c). That on the basis of the recommendation of the
Pay Commission, the Government of India, Ministry
of Personnel, Public Grievances and Pension (Depart-
ment of Pension & Pensioners Welfare) issued an
Office Memorandum No.7/1/95-P&PW(F), dated the
14th July, 1995, whereby it has been directed that
the Central Government employees, who were covered
-d by the Central Civil Services(Pension) Rules,
1972 and who has retired from service on and from
the 1st April, 1995 would be allowed higher rate
of gratuity by treating the rate of Dearness
Allowance at that time as Dearness Pay.

(d). That since there is a cut off date, the
Applicants were not and are not allowed the
afore-said benefit, which were allowed to and
enjoyed by the Pensioners retired on 1-4-1995
or thereafter.

Accidental Death Gratuity
of both Officers
Raj Kumar and
Nihar Ranjan Dutt Choudhury

Nageshwar Ch. Barker

Prakash Bhattacharya
Subodh Choudhury
Monorajani Mitra

Suklendra Das

By Uma Ray
Advocate

Mrs. ~~Uma Ray~~
Agarwal, Trinagar (WB)

10

(*) That there is no material before the Government of India to determine the afore-said date as the date for allowing the benefit of the Fifth Pay Commission's recommendation in regard to higher rate of gratuity by treating the Dearness Allowance as Dearness Pay. In this connection it is pertinent to point out that the recommendation of Central Fifth Pay Commission in regard to higher rate of pension and higher rate of death-cum-retirement gratuity treating 97% of the Dearness Allowance as Dearness Pay was made in May, 1993 but the said recommendation was not implemented soon thereafter. The Pay Commission is a body of experts and recommendation is made by the Pay Commission on the basis of the materials available to them. While making the recommendation the Pay Commission considers the various aspects of the pay structures prevailing in the country and after considering the Memoranda submitted by service unions/associations and after consulting experts in economy and also after consulting the various Departments of the Government. The Apex Court of the country has held that in such circumstances the recommendation of the Pay Commission has to be

Abhendu Senhor (Adv.)
Subodh Ch. Debbarma
Joy Kumar Paul

Niharkanjan Borthakar (Adv.)
Nagendra Ch. Sarkar

Chirupada Bhattacharya
8

Subodh Chanda Roy
Monoranjani Matzunder

Subhendu Ban

By Uma Ray
Advocate
MRS. ~~Uma Ray~~
Advocate

Adv. Tridibu (Adv.)

accepted unless there is very special circumstances to the contrary. Here in this case of the Petitioners and other similarly situated persons, who retired from service on or before 1st April, 1995 have not been allowed the benefit according to the interim recommendation of the Pay Commission that was issued in May, 1993. Had the recommendation been implemented immediately the Petitioners would not have been deprived of the benefit. It is arbitrary and unreasonable that a subsequent date was determined by the Central Government for allowing the benefit with effect from a subsequent date and that being un-reasonable that offends the provision of Article 14 and 16 of the Constitution of India.

(f). That it is submitted that the Apex Court has held that in regard to revision of non-contributory retirement pension & retiral benefits, all pensioners have equal right to receive the benefits of the liberalised pension scheme. Pensioners form a class as a whole and can not be micro classified by an arbitrary, un-principled and un-reasonable eligibility criteria for the purpose of grant of retiral benefits.

Abhijit Sen Gupta
Anubhav Ch. Debnath
Raj Kumar Paul
Nitin Ranjan Dasgupta
Nagendra C. Gakhar

Prishpada Bhattacharya
Subodh Chandra Ray
Monoforum Motzumder

Sukhendu Sen
By Umer Ray
Advocate.

MRS. UMER
Advocate
A.G.I.L. Tripura (W)

Criteria of date of enforcement of the scheme entitling benefits to those retiring after that date while depriving the benefits to those retiring prior to that date has been held to be violative of the Article 14 of the Constitution. Such unconstitutional part can be served from the otherwise constitutional provision by reading down the provision. Omitting the offending criteria will not make the scheme, having financial implications, retrospective in operation. The specified date is to be retained only for the purpose of recomputation of pension and other retiral benefits of those retired earlier. It has also been held that making of classification and further classification must be for a valid purpose. Over classification may be hit by Article 14. It is also submitted that pension and other retiral benefit is neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor an ex gratia payment. It is a payment for the past service rendered. It is a payment for the past service rendered. It is a social welfare measure rendering socio-economic justice to those in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would

Abdul Sattar Ghosh
Dulal Ch Debbarma;
Say, Kesar Patel
Sachin Ranjan Bhattacharya

Neogenrao Ch. Sarkar
Krishpada Bhattacharya
Subroto Chandra Ray
10
Monogram Motyamur
Sukhendu Ray

By Umer Ray
Advocate

MRS. UMA ROY
Advocate
Agent. l. Tripura (W.L.)

not be left in lurch. The pension and other retirement benefit must be in consonance with and for the furtherance of the goals of the Constitution.

(g). It is submitted that in the present case of the Applicants Article 14 is wholly violated inasmuch as the pension rules and rules regarding gratuity being statutory in character, the Memorandum, since the specified date accord differential and discriminatory treatment to equals in the matter of the benefit of higher rate of gratuity. It would have a traumatic effect on those like the Applicants, who retired just before that date.

(h). That having regard to the fact and circumstances as narrated above, the cut off date, i.e. 1-4-1995 in the impugned Office Memorandum, dated 14-7-1995 must have to be read down, followed by striking down. The reading down would not render the scheme vague, unenforceable or unworkable. By reading down as indicated above would merely sets at naught the unconstitutional portion of the impugned Office Memorandum, retaining the constitutional portion, meaning thereby that those people, who were in service

As Dr. Dr. Senio, Prof.
Subrahmanya Sekharam
Ray Kishore and
Sikhs Rajan Kishor Singh

Nagano Cn. Sakkar

krishpada BhaktiCharya
"Gubotra chandra boy
11
Monapanjari Maitreyi

Sundays

By June Ray
Advocate

MRS. UMA ROY
Advocate

when the Fifth Pay Commission made the interim recommendation shall have to be allowed the benefit of higher rate of death-cum-retirement gratuity by treating the Dearness Allowance as Dearness Pay for that particular purpose. Principles of reason and justice also demand that this be done.

5. Grounds for relief with legal provisions :

The grounds for relief prayed for by this application as indicated herein-above, i.e. the infringement of right guaranteed by Article 14 and Article 16 of the Constitution of India and also to certain extent the provision of Article 39(d) of the Constitution of India.

6. Details of the remedies exhausted :

On behalf of the Applicants a representation was sent to the Ministry of Personnel, Public Grievances and Pensions, Department of Pension & Pensioners' Welfare, Government of India, New Delhi on 5-9-1999, a copy of which is appended hereto as Annexure-B. Unfortunately no response has been received from the Government of India, though the reasonable period has elapsed and therefore the Applicants are making

As per the Service Rules
Sabolch Prabodh
Saf Karmak Paul
Sikhar Ranjan Bhattacharya
Sikhar Ranjan Bhattacharya

Respondent in Sarker
Kishor Chandra
-12-
Sukhendra Sarker
By
Uma Ray
Advocate.

MRS. UMA ROY
Advocate
S. U. I. T. Tripura (W).

This application as per provision of Section 19 of the
Central Administrative Tribunals Act, 1985.

7. Matters not previously filed or pending with any other Court.

The Applicants declare that they have/had not previously filed any application, Writ Petition or suit regarding the matter in respect of which this application is made before any Court or any other authority or any other Bench of the Tribunal nor any such application, Writ Petition or suit is pending before any of them.

8. Relief sought :

In view of the fact mentioned in paragraphs above the Applicants pray for the following relief :-

a) pass orders directing the Respondents and each of them to allow the Applicants the benefit of higher rate of death-cum-retirement gratuity as per Office Memorandum No.7/1/95-P&PW(F), dated the 14th July, 1995 issued by the Ministry of Personnel, Public Grievances & Pensions (Department of Pension & Pensioners' Welfare) reading down the cut-off date, i.e. irrespective of the date of retirement whether on or after 1-4-1995 or before that date ;

Alexander Seale Simple
Anilchandra Bhowmik
Rajib Kumar Ray
Nihar Ranjan Bhattacharya
Sri

Nagendranath Banerjee

Arupkumar Bhattacharya
Subodh Chandra Roy
Monoranjani Mozumder
Subendu Roy

By Umar Ray
Advocate.

MRS. UMA ROY
Advocate
C. O. D. Tripura (U.L.)

(b) pass orders in interim in terms of prayer (a)
above ;

(c) grant costs of and incidental to this
application to the Applicants;

(d) pass such further or other order or orders
or directions as seem fit and proper having
regard to the circumstances of the matter.

And for this gracious act, the humble Applicants shall
as in duty bound ever pray.

9. Interim order, if any, prayed for :

Interim order as prayed for in prayer (b) above.

10. The Applicants desire to have oral hearing at the
admission and subsequent stages.

11. Particulars of Bank Draft/Indian Postal Order filed
in respect of the Application Fee as :

State Bank of India,

Demand Draft No. 007702 Dated 30/09/ September,
2000.

12. List of enclosures :

(i) Annexures - 'A' to 'B'

(ii) Bank Draft - 1(one) number

(iii) Vakalatnama- 1(one)

(iv) Self addressed Envelop

(v) File size envelop with addresses of the Respondents.

Ardhendu Sekhar Gupta
Ardhendu Sekhar Gupta
By Kiemar Paul

Nishar D. Rajan & Sons (Counsel)
Nagendra Ch. Senka

Bishpada Bhattacharya
14 Subodh Chandra Roy

Monoranjani Moizwudin

Sukhendu Roy

By Uma Roy
Advocate

MRS. UMA ROY
Advocate
S. C. T. Tripura (N)

VERIFICATION

I, Sri Ardhendu Sekhar Gupta, son of Late Atul Chandra Gupta, aged 64 years, by profession- Pensioner, resident of Bijoy Kumar Choumuhan, P.O. Agartala-799 001, P.S. West Agartala, District- West Tripura, do hereby verify that the contents of Paragraph-1, Paragraph 4(a) to 4(e) are true to my knowledge and Paragraphs-4(f) to 4(h) are my submissions and prayer and Paragraphs 2 and 3 are believed to be true on legal advise and that we have not suppressed any material fact.

Date: September, 2000

Ardhendu Sekhar Gupta

Signature of the Applicant No.1.

Place: Agartala.

O.M.No.7/1/95-P&PW(F)
 Government of India
 Ministry of Personnel, Public Grievances & Pensions
 (Department of Pension & Pensioners' Welfare)

New Delhi, dated the 14th July, 1995.

OFFICE MEMORANDUM

Subject : Treatment of dearness allowance as dearness pay for the purpose of death gratuity and retirement gratuity and raising the maximum limit of gratuity from Rs. 1.00 lakh to Rs. 2.50 lakhs.

The Fifth Central Pay Commission, in its interim report, has recommended that dearness allowance as linked to the average All India Consumer Price Index (AICPI) 1201.66 may be treated as dearness pay for reckoning emoluments for the purpose of retirement gratuity and death gratuity under the Central Civil Services (Pension) Rules, 1972 and the ceiling on gratuity be enhanced to Rs.2.50 lakhs. Accordingly, the President is pleased to decide that dearness allowance linked to AICPI 1201.66 as indicated below shall be treated as dearness pay for reckoning emoluments for the purpose of retirement gratuity/death gratuity under the Central Civil Services (Pension) Rules, 1972, in the case of Central Government employees who retire or die on or after 1st April, 1995:—

Pay Range	Dearness allowance to be added to pay for calculating gratuity
1. Basic pay upto Rs.3,500/- p.m.	97% of pay.
2. Basic pay above Rs.3,500/- p.m. and upto Rs.6,000/- p.m.	73% of pay subject to a minimum of Rs.3,395/-
3. Basic pay above Rs.6,000/- p.m.	63% of pay subject to a minimum of Rs.4,380/-

The above rates are inclusive of the dearness allowance equivalent to 20% of basic pay already treated as dearness pay for the purpose of retirement gratuity/death gratuity w.e.f. 16th September, 1993 in terms of this Department's OM No. 7/2/93-P&PW(F) dated 19th October, 1993.

2. The President has also been pleased to decide that the ceiling on the maximum amount of retirement gratuity/death gratuity may be raised from Rs.1.00 lakh to Rs.2.50 lakhs w.e.f. 1st April, 1995.
3. In the case of persons who have already retired/died on or after 1st April, 1995, the retirement gratuity/death gratuity may be recomputed *suo motu* on the basis of these orders by the Pension Sanctioning Authorities and arrears, if any, paid.
4. These orders shall apply to all Central Government employees who are governed by CCS(Pension) Rules, 1972. Separate orders will be issued by the respective administrative authorities in respect of members of the Armed Forces and All India Services and Railway employees.
5. In so far as persons working in Indian Audit and Accounts Department are concerned, these orders have been issued in consultation with the Comptroller & Auditor General of India.
6. Formal amendment of Rule 33 of the CCS(Pension) Rules, 1972, will be issued separately.

Kashmiri Lal

(KASHMIRI LAL)
 Deputy Secretary to the Government of India

To

All Ministries/Departments of the Government of India (as per standard mailing list)

Attested

Uma Ray
 Advocate.

MRS. UMA RAY
 Advocate.
 c. a. l. Tripura (S)

31.7.93
 10
 31.3.93

(69) 21/9/93

To

The Deputy Secretary,
 Ministry of Personnel, Public Grievances & Pensions,
 Department of Pension & Pensioners' Welfare,
 Government of India,
 New Delhi - 11003.

Subject:- Dedrivation of the increased benifit of Death-cum-
 Retirement Gratuity in case of Central Govt. Employees
 by raising the ceiling from Rs.1.00 Lakh to Rs.2.50 lakhs.

Reference:- Govt. of India order No. O.M.No.7/1/95-P & PW(F)
 Dated New Delhi the 14th July, 1995.

Sir,

Most respectfully, I beg to draw your kind attention to the aforesaid Order of Govt. of India wherein the D.C.R.G has been raised from Rs.1.00 lakh to Rs.2.50 lakhs. But unfortunately the effect has been awarded to the employees retiring on or after 1.4.95.

In this connection, it would not be out of place to mention that the Fifth Central Pay Commission gave an interim report raising the D.C.R.G only to give relief to hardship of the retiring employees. But the Government has deliberately deprived all retired employees retiring between 1.7.93 to 31.3.95, although the Govt. accepted Pay Commission's recommendation of neutralising dearness allowance 100% prevailed on 1.7.93 for calculation of D.C.R.G.

In my case, I retired as D.E.Telem(DOT) at Agartala on 31.3.95 A/N. Thus by virtue of retiring one day earlier to the cutoff date of GOI, I lost nearly Rs.32,000/- (Rupees Thirtytwo thousand only) in DCRG, which in my retired life would have been helpful to meetup my last days family commitment. Such order giving effect from 1.4.95 is a deliberate attempt of the GOI to deprive a large number of its own employees retiring from 1.7.93 to 31.3.95 to save money in Central Exchequer.

I therefore request you to kindly re-consider the cutoff date from 1.7.93 instead of 1.4.95, so that poor retired employees who rendered invaluable service to the nation could spend their last days at ease.

Yours faithfully,
 Ardhendu Sekhar Gupta

(ARDHENDU SEKHAR GUPTA)

DET (RETD),
 Krishnanagar, B. R. Chowmohani,
 P.O:AGARTALA, Tripura West-799001.

Dated Agartala,

The 5.9.1999

Attested
 Umar Roy
 Advocate
 MRS. UMA ROY
 Advocate
 Agartala, Tripura (W)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI.

OA NO. 390 of 2000

14 FEB 2000

Shri Ardhendu Sekhar Gupta & Others Applicants

vs.

Union of India & Others Respondents

In the matter on behalf of Respondent No 1,2,3.

I, Shri C.Murmu, Vigilance Officer, Office of the Chief General Manager, BSNL, N.E.Circle Shillong do hereby solemnly affirm and declare as follows :

That a copy of the OA.No 390/2000 herein after referred as application have been served on the respondents and after going through the said application the respondents have understood the contents thereof. I categorically state that save and except what is specifically admitted in this writ statement, rest may be treated a total denial by all the three respondents. Before I go for the parawise comments of the present application, a background history of the case is incorporated in this written statement and same will constitute a part and parcel of defence.

Background of the facts

1. Respondent No.3 viz. The Ministry of Personnel, Public Grievances & Pensions have got 3 Departments under its administrative control viz. (i) Department of Personnel & Training, (ii) Department of Administrative Reforms & Public Grievances and (iii) Department of Pension & Pensioners' Welfare. Allocated function of the Department of Pension & PW, is formulation of policy and co-ordination of matters relating to retirement benefits to Central Government employees (Civil, Defence and Railway Pensioners). The Department also administers, inter-alia, Central Civil Services (Pension) Rules, 1972, covering retirement benefits to Central Government employees.
2. The applicants of OA.No.390/2000, who were working in the Department of Telecommunications, have challenged the OM No.7/1/95-P&PW(F) dated 14.7.1995 issued by the Department of Pension & PW (Annexure A-1 of OA), wherein cut-off date for treatment of Dearness Allowance and Dearness Pay for the purpose of Death-cum-Retirement Gratuity and raising the maximum limit of Gratuity from Rs. 1 lakh to Rs.2.5 lakhs (now Rs.3.50 lakhs w.e.f.1.1.1996) was made effective in the case of Central Government Employees who had retired or died on or after 1.4.1995. The applicants had retired between 31.7.1993 and 31.3.1995 and as such they are not benefited by the OM dated 14.7.1995.

3. It is submitted that the OM dated 14.7.1995 extending the benefits to the Central Government Employees who retired on or after 1.4.1995 has been issued only after a recommendation to this effect was made by the 5th Central Pay Commission (CPC) in its Interim Report which was accepted by the Government. The Government have not agreed to extension of 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 constraints, especially financial constraints, it is not always possible to extend the same benefits to one and all, and any benefit has to be within the financial position of the Government.

4. In fact, the Supreme Court of India in its Judgement dated 17th March, 1994 in Civil Appeal No.517 of 1987, Union of India Vs. P.N. Menon and Others (1994) 27 ATC 515 wherein their earlier Judgement in the case of D.S. Nakara vs. Union of India was also a subject of consideration inter-alia observed:-

"Whenever the Government or an authority, which can be held to be a State within the meaning of Article 12 of the Constitution, frames a Scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such any revised benefits, if implemented with a cut-off date, which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid..... Whenever a revision takes place, a cut-off date becomes imperative, because the benefit has to be allowed within the financial resources available with the Government".

5. It is, therefore, clear that the law is fairly well settled that the choice of a date cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances.

6. Various CAT Benches/Madras High Court have also passed orders dismissing the OAs/WP filed by Central Government pensioners upholding the decision of the Government of India in fixing a cut-off date for implementation of any recommendation of the Central Pay Commission. (Orders passed by various CAT Benches/Madras High Court annexed here as Annexure R2). The present OA filed by the applicants are identical to these cases. Therefore, the above said OM dated 14.7.1995 is neither illegal, arbitrary, discriminatory nor against the principles of equality enshrined in the Constitution of India. In the light of above mentioned facts and circumstances it is prayed that the OA may be dismissed devoid of merits by the Hon'ble Tribunal with costs.

Keeping the Background of the Case in mind the Parawise Reply is as follows :-

1. That with regard to the statement made in paragraph 1 of the application the respondents beg to state that as per the office memorandum mentioned by the applicant in Annexure "A", it is clearly mentioned that the Dearness Allowance is to be treated as Dearness Pay for the purpose of death gratuity and retirement gratuity, raising the maximum limit of gratuity from Rs 1 lakh to Rs 2.50 lakhs under the Central Civil Services(pension) Rules 1972 in cases of the Central Government employees who retire or die on or after 1st April 1995. The applicants are those who had retired before 1st April 1995 and hence they are not entitled to get this benefit.
2. That with regard to the statement made in paragraph 2 of the application the respondents have nothing to comment.
3. That with regard to the statement made in paragraph 3 of the application the respondents submit that the OA is not within the limitation. The reason shown by them that only recently they have come to know about the OM dated 14.7.1995 and as such the limitation starts from the date of knowledge is biased and not credible. By this reason itself the OA is liable to be dismissed.
4. That with regard to the statement made in paragraph 4(a) of the application the respondents have nothing to comment.
5. That with regard to the statement made in paragraph 4(b) of the application the respondents have nothing to comment.
6. That with regard to the statement made in paragraph 4(c) of the application the respondents beg to state that the memorandum dated 14.7.95 which was issued on the basis of the recommendation of the pay commission was not applicable to the applicants as they have retired before 1.4.1995.
7. That with regard to the statement made in paragraph 4(d) and 4(e) of the application the respondents beg to state that the contention made by the applicants in these paragraphs is totally denied. It has already been submitted in para 3 of the 'Brief facts of the Case' that the OM dated 14.7.1995 extending the benefits to Central Government Employees who had retired on or after 1.4.1995 has been issued only after a recommendation to this effect was made by the 5th CPC in its Interim Report which was accepted by the Government. As such the benefits recommended by the 5th CPC with a cut-off date as 1.4.1995, cannot be extended to all the Central Government Pensioners irrespective of their date of retirement. In case benefits have to be extended without a cut-off date, lakhs of retired employees would come forward to claim the benefits; the financial burden of which cannot be borne by the Government.

The statement that there is no material before the Government of India to determine the cut-off date is false and intended to mislead the Hon'ble Tribunal. The Dearness Allowance (DA) at average AICPI as sanctioned with effect from 1.7.1993 has been treated as Dearness Pay (DP) for the purposes for reckoning emoluments for calculating retirement gratuity/death gratuity w.e.f. 1.4.1995. However, it is denied that the cut-off date is unreasonable and as such offends the provisions of Article 14 and 16 of the Constitution of India. It is neither discriminatory nor violate any provisions of those Articles. The 5th CPC had itself recommended that the DA as on 1.7.1993 which is based on the average AICPI 1201.66 be treated as DP for reckoning emoluments for the purpose of Death-Cum-Retirement Gratuity under the Central Civil Service (Pension) Rules, 1972. The Commission had also recommended that these benefits be given effect to w.e.f.1.4.1995 which were considered and accepted by the Government. It was only after this that the OM.No.7/1/95-P&PW(F) dated 14.7.1995 was issued by the Government of India. It is further submitted that the Staff side of National Council (JCM) had also been consulted in the matter. In the past also a portion of DA as linked to the Average Price Index prevailing on some particular date was treated as DP but the benefit was extended from a specific date and not necessarily from the date on which that a particular price index was reached. The cut-off date of 1.4.1995 has been done on a rational basis taking into account also the recommendations of the 5th CPC and other relevant factors.

Moreover, in view of the order of Apex Court in Union of India Vs. P.N.Menon as mentioned in the Brief facts of the Case supra, a cut-off date becomes imperative because the benefit has to be allowed within the financial resources available with the Government. Hence, the arguments of the applicant that they have been deprived of the benefits contained in the OM dated 14.7.1995 does not appear to be based on any valid grounds.

8. That with regard to the statement made in paragraph 4(f) of the application the respondents beg to state that the demands of parity as a class with persons who retired later than the applicant is not reasonable. Government frames schemes for persons who superannuate from service. As mentioned in the Brief facts of the Case and in reply to the preceding paras, whenever a revision of pay scale takes place it is not possible to extend the same benefit to one and all irrespective of date of superannuation due to many constraints and a cut off date become imperative because the benefits have to be allowed within financial resources available with the Government.. Hence the statement made by the applicants is baseless and not reasonable.
9. That with regard to the statement made in paragraph 4(g) of the application the respondents beg to state that the cut off date become imperative because the benefits have to be allowed within the financial resources available with Government.

10. That with regard to the statement made in paragraph 4(h) of the application the respondents beg to state that the Government frames schemes for persons who superannuate from service but due to many constraints, it is not always possible to extend same benefits to one and all irrespective of the date of superannuation. Whenever a revision of scale takes place, a cut off date becomes imperative because the benefits have to be allowed within financial resources available with the government. In view of the submissions made in reply to the preceding paras of the OA, the cut-off date cannot be changed or altered just to accommodate the claims of the Applicants.

11. That with regard to the statement made in paragraph 4(g) and 4(h) of the application the respondents beg to state that it is the repetition of para 4(g) and 4(h) by the applicants. The respondents beg to state that the parawise comments has already been stated in para 9 and 10. In view of the averments made in the Brief facts of the Case and parawise reply, there are no grounds for the relief prayed for by the applicants. None of the provisions of Article 14,16 and 39(d) of the Constitution of India have been violated by the answering respondents.

12. That with regard to the statement made in paragraph 5 of the application the respondents beg to state that the grounds of relief sought for is not reasonable. Many representations were received from individuals on issues being deliberated upon by the 5th CPC. Once the Government decision on the issue was finalised, general orders were issued on this subject and no individual reply was necessary.

13. That with regard to the statement made in paragraph 6 of the application the respondents beg to state that the cut off date cannot be re-considered as a cut off date become imperative because the benefits have to be allowed within the financial resources available with the Govt. The Government of India decides the cut off date on the recommendation of the expert Committee on the basis of the material available before them for taking a view that the benefit is necessary to be given on the basis of certain leading conditions. Hence the reconsideration of the cut-off date is not reasonable.

14. That with regard to the statement made in paragraph 7 of the application the respondents have nothing to comment.

15. That with regard to the statement made in paragraph 8 (a) to (d) of the application the respondents beg to state in view of the statements made in the Brief facts of the Case and parawise reply, there is no justification for relief sought in para 8(a) to (d) by the applicants. Hence, the application may be dismissed by the Hon'ble Tribunal with cost.

16. That with regard to the statement made in paragraph 9 of the application the respondents beg to state that as per the Judgement and Order dated 29.6.98 passed by the Central Administrative Tribunal Principal Bench in OA.No 1196/1998 it is clearly mentioned that " the relief prayed for

cannot be granted for the simple reason that for implementation of any recommendation of pay commission, some cut off date has to be taken. If the prayer of the applicant is accepted, another employee who retired from a date earlier than that of the date of retirement of the applicant would come forward with a similar prayer. In this way there will be a flow of litigation and found that there is no violation of Article 14 of the Constitution. There was no case for interference in this OA. Accordingly, it is hereby dismissed."

(Judgement and Order passed by CAT, Principal Bench dated 29.6.98 is annexed here as Annexure R1).

17. That with regard to the statement made in paragraph 10,11, and 12 of the application the respondents have nothing to comment.

18. That the respondents submit that a set of orders passed by the various CAT Benches/High Courts has upheld the decision of the Government in fixing a cut off date for implementation of recommendation of 5th Central Pay Commission. Hence the case has no merit and is liable to be dismissed with cost.

(Orders passed by the various CAT Benches/ High Court is annexed here as Annexure R2).

VERIFICATION

I, C. MVR MV, Vigilance officer.....
as authorized do hereby solemnly declare that the statements made above in the Petition
are true to my knowledge, belief and information and I sign the verification on this

12/15..... day of February..... 2002.

h
12/21/02
DECLARANT

-8-

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

-30-

Annexure R

O.A. NO. 1196/1998

New Delhi this the 29th day of June, 1998

HON'BLE SHRI JUSTICE K. M. AGARWAL, CHAIRMAN

HON'BLE SHRI R. K. AHOOJA, MEMBER (A)

Amal Kanti Kanjilal S/O Lalit Mohan Kanjilal,
Retd. Central Govt. Pensioner,
R/O Ganguli Bagan Govt. Quarters,
Flat No. T-7, Block No. 16,
Calcutta-700047

(None present) Applicant

-Versus-

1. Union of India through
Secretary, Ministry of Finance,
Department of Expenditure,
Govt. of India,
New Delhi.

2. Secretary, Ministry of
Personnel, Public Grievances & Pensions,
Dept. of Pension and Pensioners' Welfare,
Govt. of India,
New Delhi-110001.

.... Respondents

O R D E R (ORAL)

Shri Justice K.M. Agarwal :-

There is an application dated 1.6.1998 by the applicant stating that his application may be decided in his absence. As he has not engaged an advocate, it has further been mentioned that without awaiting engagement of an advocate his application may be decided on merits and grounds stated in the application. Accordingly, we went through the application.

2. The applicant had retired before 1.1.1996. By this application, he wants that benefit of the Fifth Pay Commission be extended even to persons like him who retired before 1.1.1996. Besides this main relief, he has made a prayer for certain other consequential reliefs.

Ans ✓

3. The relief prayed for cannot be granted for the simple reason that for implementation of any recommendations of Pay Commission some cut-off date has to be taken. If the prayer of the applicant is accepted, another employee who retired from a date earlier than that of the date of retirement of the applicant would also come forward with a similar prayer. In this way there will be a flow of litigation.

4. A further prayer is that according to the recommendations of the Fifth Pay Commission, pensioners who retired before 1.1.1996 and thereafter, were to be treated alike. However, the Government did not accept this recommendation and treated pensioners retiring after 1.1.1996 as a different class from those who retired prior to 1.1.1996. No direction can be given to the Government to accept all or any particular recommendation of the Pay Commission. We can only see if the recommendation accepted by the Government results in any unreasonable classification or differential treatment to persons belonging to a



particular class. Looked from this angle, we find that there is no such violation of Article 14 of the Constitution. We, therefore, find no case for interference in this OA. Accordingly, it is hereby dismissed.

(K. M. Agarwal)
Chairman

(R. K. Ahuja)
Member (A)

/as/

कानूनी अदालत
CERTIFIED TRUE COPY

Date/.....

कानूनी अदालत/Section Officer
केंद्रीय न्यायालय अधिकारी
Central Administrative Tribunal
पश्चिम नगर, नई दिल्ली
वर्षांग दर्ता, New Delhi

PRINCIPAL BENCH

Q.A. 1120/97

with

0.Λ. 2777/97

New Delhi this the 15th day of May, 2000

HON'BLE SHRI S.R. ADIGE, VICE CHAIRMAN (A).
HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER (J).

O.A.1120/97

Amal Kanti Kanjilal
Block No. 16, Flat No. T-7,
Caltutta-700047.

By Advocate Shri G.S. Lobana.

Versus.

1. Union of India through
Secretary,
Ministry of Finance,
Department of Expenditure,
Govt. of India,
New Delhi-1.

2. Secretary,
Ministry of Personnel,
Public Grievance and Pension,
Department of Pension &
Pension Welfare, Lok Nayak Bhawan,
Khan Market,
New Delhi-3.

Respondents.

By Advocate S/Shri. K.C.D. Gangwani, R.R. Bharti and V.K. Rao

Q.A. 2777/97

1. Om Parkash Jasuja,
128, Sector 40,
Noida-201301 (UP).
2. Harjinder Singh Sachdeva,
235-C, MIG Flats,
Rajouri Garden,
New Delhi-110 027.
3. A.N. Ahuja,
460, Vikas Kunj, Vikas Puri,
New Delhi-110 048.
4. Kishan Lal Madan,
623/23, DLF Colony,
Rohtak-124001.
5. V.N. Sawhney,
98-C, Pocket A,
Dilshad Garden,
New Delhi-110 095.

Examiner, Judicial Deptt.
Central Administration, Delhi
Delhi Bench.

II. M.P. Sharma,
D-214, Sector 55,
Noida (UP).
MEMBERS OF BHARAT PENSIONERS' SAMAJ

7. Bharat Pensioners' Samaj,
(Regd. No. 4987/60),
PO Box No. 3303,
Jangpura PO,
New Delhi-110 014.
through Shyam Sunder
Secretary - General

... Applicants.

My Advocate Shri G.S. Lobana.

(2)

Versus

1. Union of India, through
Secretary,

(i) Ministry of Personnel,
Public Grievances,
Pensions & Pensioners' Welfare,
North Block,
New Delhi.

(ii) Chairman,
Telecom Commission,
Ministry of Posts & Telecommunications,
Department of Telecommunications,
Sanchar Bhawan,
New Delhi-110 001.

2. Chief General Manager,
Mahanagar Telephone Nigam Limited,
Khurshid Lal Bhawan,
New Delhi-110 050.

3. Chief General Manager,
(Maintenance - Telecommunication),
Northern Telecom Region,
Kidwai Bhawan, Janpath,
New Delhi-110 050.

4. Commissioner, Central Excise,
(New Delhi-I),
Central Revenue Bldg.,
New Delhi-110 023.

My Advocates S/Shri K.C.D. Gangwani, R.R. Bharti and V.K. Bhagat.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J),

The aforesaid two applications raise similar issues and
were being taken up together during arguments and hence are
being disposed of by a common order.

2. We have perused the pleadings and considered the submissions made by the learned counsel for the parties. (A)

3. The applicants in O.A. 2777/97 have challenged the action of the respondents in giving the cut off date in the impugned order dated 14.7.1995 (Annexure A-I) linking the Dearness Allowance (DA) to Average All India Consumer Price Index 1201.66 as on 1.7.1993. These issues were raised in M.M. Mathur & Ors. Vs. Union of India & Ors. (O.A.2232/95, O.A.1341/97 and O.A.2241/95) which were disposed of by the Tribunal's order dated 25.1.2000 (copy placed on record). This order has been relied upon by the respondents. Shri G.S. Lobana, learned counsel for the applicants, had submitted that he would make his written submissions within one week, which time was granted, to explain as to how the present cases are distinguishable from M.M. Mathur's case (supra). Learned counsel has, however, not submitted any written submissions nor have the same been received from the learned counsel for the respondents.

4. The applicants have submitted that they have retired between the period from 1.7.1993 and 31.3.1995 and have been denied the revision of retiral benefits as per the impugned order. They have challenged the cut off date 1.4.1995. They have relied on the judgements of the Punjab and Haryana High Court in Kartar Singh & Ors. Vs. State of Punjab and Haryana (CWP 16439/93) dated 18.9.1997. In this case, following the judgements in Shamsher Singh & Ors. - Vs. State of Punjab & Ors. (CWP 6863/86), decided on 18.4.1988 and Dr. Asa Singh Vs. State of Punjab (CWP 14763/90), decided on 22.4.1991, it had been held that the imposition of the impugned order was bad and that all State Governments

employees were to be treated alike irrespective of the fact whether they had retired before 31.3.1985 or after that date. Shri G.S. Lobana, learned counsel for the applicants has also submitted that the SLP filed against these judgements of Punjab and Haryana High Court had also been dismissed. However, these cases will not assist the applicants in the present set of facts because the grievance of the applicants before us is to link the DA to AICP index 1201.66 as on 1.7.1993.

5. The issues raised in the present O.A.s have been dealt with in Tribunal's order in M.M. Mathur & Ors. (supra) dated 25.1.2000 which had been given by the same DB. In those cases, the learned counsel had also submitted that the cut off date 1.4.1995 adopted by the respondents is arbitrary date which has no nexus to the objective sought to be achieved which is also the contention of the applicants in the present cases. In the present O.A.s, the applicants have referred to O.M. dated 14.7.1995 whereby DA was linked to AICP Index 1201.66 as on 1.4.1995 which, therefore, raises same facts and issues as raised in M.M. Mathur's case (supra). In that order, we had dealt with the question of choosing the cut off date of 1.4.1995 and had come to the conclusion for the reasons given therein that the cut off date cannot be held to be arbitrary and, therefore, there was no justification to interfere in the matter. Needless to say, the impugned cut off date in the present O.A.s have to be seen in the context of the O.M. dated 14.7.1995. Following the judgements of the Supreme Court and of the Tribunal mentioned in Tribunal's order dated 25.1.2000, O.A. 2232/95 with connected cases, were

RECORDED/ATTESTED

Mr. M. S. Mehta
Examiner, Judicial Deptt.
State Election Comm.

(5)

dismissed. In the facts and circumstances of the case, we agree with the submissions made by the learned counsel for the respondents that the reasoning in the order dated 25.1.2000 in the other cases is fully applicable to the present cases also.

7. In the result, for the reasons given above, O.A.1120/97 and O.A 2777/97 are dismissed. No order as to costs.

8. Let a copy of this order be also kept in O.A. 2777/97.

(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J)

(S.R. ADIGE)
VICE CHAIRMAN (A)

'SRD'

मुख्यमन्त्री/ATTF
राज्य, राज्य सभा
Examiner, Judicial Deptt.
संघ अधिकारी विभाग
Central Administrative Tribunal
न्यू डिल्ली, 110001
Delhi Bench, New Delhi

On 2630/26

(New Delhi) this the 12th day of September, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)

Hon'ble Sh. S.P. Biswas, Member (A)

Sh. G.S. Chaman,
3/8 Late Sh. Randa Ram,
R/o Flat No. 001, DDA Flats,
Buneria, New Delhi. Applicant

(Applicant in person)

versus

1. Union of India through
the Secretary, Ministry of
Personnel, Public Grievances
and Pensions (Dept of Pension
and Pensioners Welfare),
New Delhi.
2. Director, Intelligence Bureau,
Ministry of Home Affairs,
Govt. of India, New Delhi. Respondents
(through Sh. KCO Gangwani, advocate)

ORDER (ORAL)

Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)

This matter was argued earlier before
Single Member Bench and in view of the fact that it
relates to ceiling of gratuity, it was posted before
Division Bench for appropriate orders.

The applicant in this case is challenging
the wisdom of determining the cut-off date as 1.4.95
for the purpose of payment on enhanced gratuity. The
contention of the applicant is that the date fixed
for eligibility to draw enhanced gratuity is
arbitrary and without any reasonable basis.
According to him the cut-off date should have been
1.7.93, the date on which the D.A. was neutralised.

It is also relevant to mention that the applicant superannuated on 30/04/94. The cut-off date, being 1.4.95, has therefore, directly hit him and deprived him to get the benefit of the enhanced gratuity as far as the applicant is concerned.

After notice the respondents have filed the reply stating that the decision to grant additional gratuity depends upon various factors and it is a policy matter, and 1.4.95 being the beginning of the financial year, the Government took a decision on the basis of financial implication and other such factors involved while making a policy decision of this nature.

We are not equipped with the data necessary to review such a policy decision nor is there any averment to that effect which warrants a review of such determination of a cut-off date.

The applicant also argued that in view of the decision of the Hon'ble Supreme Court in Nakara's case as well as V.P. Gupta's case, the pensioner shall be treated as a single class and while determining a cut-off date, they shall not be discriminated in any manner. We find it difficult to accept this argument for the reason that the pensioner becomes a class as and when the particular pensioner retires and join that particular class and the cut-off date will obviously affect adversely.

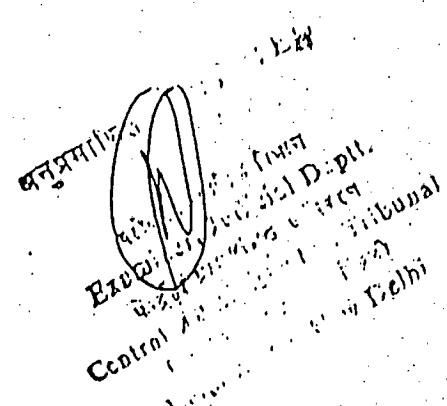
against those people who retires prior to the said date. [In the absence of retrospective application of the order wherein the respondents have decided to pay enhanced gratuity, with a determined cut-off date i.e. 1.4.95 based on certain criteria, we are unable to give any relief especially in the absence of any pleading showing contrary date that warrants our interference.]

With the aforesaid observations, this O.A. is disposed of. No costs.

(S.P. —
Member (A))

(Dr. Jose P. Vergliese)
Vice-Chairman (J)

/vv/



(15th June 1997)

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH.

Chandigarh: this 25th day of July, 1997.

CORAM: Hon'ble Shri S.C.Vaish, Administrative Member.
Hon'ble Shri Jasbir S. Dhaliwal, Judicial Member.

i) O.A. 962/CH/95

1. Narinder Singh Kohli, Sr. Audit Officer (Retd.)
2154, Sector 38-C, Chandigarh.
2. Jagat Narain Sood, 871, Sector 4, Chandigarh.
3. Ramesh Chander Hastir, 2652, Sector 37-C, Chandigarh.
4. Surinder Kumar Sharma, 2154/ 44-C, Chandigarh.
5. Surinder Pal Bagai, 3361, Sector 46-C, Chandigarh.
6. Darshan Lal Narchail, 1-54/38-B, Chandigarh.
7. Joginder Singh Chhabra, 2796/37-C, Chandigarh.
8. Vinod Kumar, 1078/38-B, Chandigarh.
9. Amrit Lal Vohra, 3059/1, sector 44-D, Chandigarh.
10. P.R.K.Gupta, 62/18, Chandigarh.
11. Krishan Kumar Trehan, 2727/38-C, Chandigarh.
12. Onkar Narain Puri, 404 Phase III/B-1, Mohali.
13. Rabinder Nath Sharma, 227/22-A, Chandigarh.
14. Surinderjilt Singh Walia, 1339 Phase III/B-11, Mohali.
15. Om Parkash Handa, 3150/1, Sector 23-D, Chandigarh.

16. Harbans Singh Cheek, 3372/19-D, Chandigarh.
17. M.S.Bhatia, 1028/2, Sector 45-B, Chandigarh.
(all Retired as Senior Audit Officer /Asstt. Audit
officer from o/o A.G. (Audit) Punjab, Chandigarh.)
(BY SHRI A.L. VOHRA, ADVOCATE Applicants.

versus

1. Union of India through Secretary
Ministry of Personnel, Public Grievances,
and Pensions (Dept. of Pensions and
Pensioners' Welfare, New Delhi).
2. Accountant General (Audit)
Punjab, Chandigarh. Respondents.

iii) O.A. 1052/ PR/95

Baldev Raj Sejii, Retired Post Master,
F-204, Rese Avenue, Kapurthala
(BY SHRI S.R. JULKA, ADVOCATE)

....Applicant

versus

Union of India through Secretary,
Govt. of India, Ministry of Personnel, Public
Grievances and Pension, New and another. ... Respondents.

(BY SHRI J.S. SIDHU, ADVOCATE)

iii) O.A. 1053/PR of 1995

1. S.S.Kalei, B VII/257, Lahori Gate, Kapurthala.
2. Sukhbir Singh 90/14, Subhash Nagar, Shahabad
Markanda, Distt. Kurukshetra.
3. O.P.Sukheeva, Newar Janki Dass Mandir, Kapurthala.
4. Ajit Singh Mankotia, Ajit Nagar, Kapurthala
5. Chaman Lal Gupta, Mchabat Nagar, Kapurthala.
6. Sham Lal Prashar, Moh. Naharpura, Kapurthala.
7. Ms. Kama Rattan, H.No. 157, Ecclesiast Street
Kapurthala.

....Applicants.

(THROUGH SHRI S.R. JULKA, ADVOCATE)

VERSUS

Union of India through Secretary, Ministry of Personnel,
Public Grievances & Pension, New Delhi and another

....Respondents.

(BY SHRI J.S. SIDHU ADVOCATE)

iv) O.A. 1054/PR of 1995

1. Prakash Singh Bhatti, Reg. 72, New Govt. Singh Sabha, Jalandhar
Patti, Jalandhar, Street No. 5/1, Abdurra, Jalandhar.
2. Sat Pal Bhatti, H.No. 113/36, Noida, (Uttar Pradesh);
Sector 61, Noida, Uttar Pradesh, Noida City.
3. Om Singh, 10, Kishan Nagar, Jalandhar.
4. Om Singh, Vill. 17, Post. Sector 10, J.S. 141318
Sector 10, J.S. 141318

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7. Gurdev Lal Ahir, Street No.6, Abadpura, Jalandhar.
8. Ram Parkash, V. Manan, P.O. Alawalpur, Distt. Jalandhar.
9. Tarlochan Singh, V. Maljjan Kalan, P.O. Talwandi Salem, Distt. Jalandhar.
10. Kuldip Singh Sandhu, 224, Lajpat Nagar, Jalandhar City.
11. Krishan Lal Jhamb, WQ 320, Basti Sheikh, Jalandhar.

(BY SHRI S.R. JULKA, ADVOCATE)

versus

1. Union of India through Secretary, Ministry of Personnel, Public Grievances & Pensions, New Delhi.
2. General Manager, Telecom, Jalandhar.

(BY SHRI I.S. SIDHU, ADVOCATE)

... Respondents.

v) OA 1055/PB/95

1. M.P. Sehgal, EE 120, Krishna Gali, Bagh Karam Bux Jalandhar.
2. Joginder Singh, 8 Preet Nagar, Kapurthala.
3. Ms. Santosh Behal, 46, Germany Dass Park, Kapurthala.
4. Gurcharan Singh, B-12/235, Amrit Bazar, Kapurthala.
5. Dhian Singh, NK-421, Circular Road, Jalandhar.
6. Ram Murti, 17 Link Road, Kapurthala.
7. Darshan Singh, Village Kaki Pind P.O. Dakoh, Jalandhar.
8. Himmat Rai Gill, Ashok Vihar, Kapurthala.
9. Tarlok Singh Dassan, 769-A, Urban Estate, Ph.1 Kapurthala.
10. Karamjit Singh, B-22/245 A, Mohabat Nagar, Kapurthala.
11. Shiv Darshan Kumar Sood, Mohabat Nagar, Kapurthala.
12. Amar Singh, V.Lidder Khurd, P.O. Lidder Kalan, Jalandhar.
13. Piar Lal Gupta, 6/262, Central Town, Jalandhar.
14. Manohar Lal, II. No. 313, Gali No.7, Jalandhar.
15. C.L.Vig, 5017/1, Modern Housing Complex, Manimajra.

(BY SHRI S.R. JULKA, ADVOCATE)

... Appellants

VERSUS

Union of India through Secretary, Ministry of Personnel, Public Grievances & Pensions, New Delhi and another.

(BY SHRI I.S. SIDHU, ADVOCATE)

... Respondents.

vii) OA 1096/CH/1995

S.M.Mehta, IAS Director, (Retd.)
Add: Rothi No. 69, Sector 16-A, Chandigarh.Applicant
(BY SHRI A.L.VOHRA, ADVOCATE)

VERSUS

Union of India through Secretary, Ministry
of Personnel, Public Grievances and Pensions,
New Delhi and another. Respondent
(BY SHRI I.S. SIDHU, ADVOCATE)

viii) OA 1165/PR/95

1. Smt. Veeran Devi, v/o P.O. Nadela, Kapurthala.
2. Smt. Kartar Kaur, vill. Sanghowal, P.O. Kishangarh, Jalandhar.

(BY SHRI S.R. JULKA, ADVOCATE)Applicant

VERSUS

Union of India through Secretary, Ministry of
Personnel, Public Grievances & Pensions, New
Delhi and another. Respondent
(BY SHRI I.S. SIDHU, ADVOCATE)

viii) O.A. 1168/PB/95

Smt. Kuldip Kaur, w/o late Sukhvinder Singh,
Add: Vill. & P.O. Dudwindi, Tehsil, Sultanpur Lodhi,
Kapurthala.Applicant
(BY SHRI S.R. JULKA, ADVOCATE)

VERSUS

Union of India through Secretary, Ministry of
Personnel, Public Grievances & Pension, New Delhi
and another. Respondent
(BY SHRI I.S. SIDHU, ADVOCATE)

Contd....5

ix)

OA 106/PB of 1996

1. R.N. Sultan, 382, Phase I, Mohali.
2. Rajinder Kumar Monga, 3413/32-D, Chandigarh.
3. S.K. Kaura, 616, Phase IV, Mohali.
4. Jawahar Lal Sharma, 1088/21-B, Chandigarh.
5. J.R. Narang, 968, Phase VII, Mohali.

(all retired from the office of A.G.(Audit) Punjab,
Chandigarh)

....Applicants.

(BY SHRI A.L.VOHRA, ADVOCATE)

VERSUS

Union of India through Secretary, Ministry of
Personnel, Public Grievances & Pensions,
(Dept. of Pensions & Pensioners' Welfare),
New Delhi and another

(BY SHRI I.S. SIDHU, ADVOCATE)Respondents.

x)

OA 118/PB of 1996

Shagan Lal Khurana, Retd. Sr. Audit Officer,
B. No. 395, Phase 2, SAS Nagar, Mohali.

(BY SHRI A.L.VOHRA, ADVOCATE)Applicant

VERSUS

Union of India through Secretary, Ministry of
Personnel, Public Grievances and Pensions,
(Dept. of Pension and Pensioners' Welfare),
New Delhi and another.

(BY SHRI I.S. SIDHU, ADVOCATE)Respondents.

xi)

OA 120/HP of 1996

F.P. Budhwar, Supervisor Trunks (Retired),
Wilder Cottage, near Bemloe Store,
Shimla

(BY SHRI A.L.VOHRA, ADVOCATE)Applicant

VERSUS

Union of India through Secretary, Ministry of
Personnel, Public Grievances & Pensions,
(Dept. of Pension & Pensioners' Welfare),
New Delhi and another

(BY SHRI I.S. SIDHU, ADVOCATE)Respondents.

xii)

O.A. 207/13 of 1996

1. Shri P. L. Kohli, H. No. 1051/37-B, Chandigarh.
2. Shri R. C. Gulati, 59 Gobind Nagar, Ambala Cantt.
3. Shri Jagan Nath Ahuja, 130-B, Gobind Nagar, Ambala Cantt.
4. Shri Gopal Narain Dass Jadhvani, Floor No.10, Bldg. No.23, Model Town Housing Society, Mahakali, Andheri, Bombay.

(BY SHRI S.R. JULKA, ADVOCATE)

VERSUS

Union of India through Secretary, Ministry of Personnel, Public Grievances, and Pensions, New Delhi and others.

...Respondents.

(BY SHRI S. S. SIDHU, ADVOCATE)

xiii)

O.A. 308/13/97

1. Inderjit Sharma, Plot No. 49, Kishen Kot, Islamabad post office, Khal-sa College, Amritsar.
2. Inderjit Lal, House No. 3108, Gali No.3, Azad Nagar, Putli, Amritsar.
3. V.N. A. Garwal, 1209 Haveli Mange Ram Sham Gali, Amritsar.
4. Mohan Lal Malhotra, 138, Golden Avenue, Amritsar.
5. Madan Mohan Gupta, H. No. 384, Katra Atma Singh, Amritsar.
6. Juggal Kishore Nanda, Plot No. 120, Friends Avenue, Amritsar.
7. Kassu Singh, B-1 903, Jandiala Guru, Amritsar.
8. Inder Mohan Kapoor, H. No. WL-341, Gali Nalke Wali, Jalandhar City.
9. Om Parkash Kundra, Plot No.8, Vijay Nagar, Amritsar.
10. Rajinder Singh Bawa - 264 - Green Avenue, Amritsar.
11. Inder Singh, 25, Guru Gobind Singh Nagar, Amritsar.
12. Tara Singh C-1-180, East Mohan Nagar, Amritsar.
13. Charan Dass, C-174, East Mohan Nagar, Amritsar.

...Applicants.

(BY SHRI A. L. VOHRA, ADVOCATE)

VERSUS

Union of India through Secretary, Ministry of Communications, Deptt. of Telecom, New Delhi and others

...Respondents.

(BY SHRI S. S. SIDHU, ADVOCATE)

xiv) O.A. 581/PB of 1996

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1. Raj Mangal Singh, Vill. Bhitar, Post office Kerakat, Distt. Jaunpur (UP)
2. Harbans Lal, vill. & P.O. Kamahi Devi Teh. Mukerian, Hoshangpur.
3. Sardar Singh, H.No.37, Gali No.5, New Sunder Nagar.
4. Mohinder Singh, H.No. 5480/20, Gali No.2, Nawan Kot Amritsar.

(BY SHRI A.L.VOHRA FOR SH. C.L.GUPTA, ADVOCATE)

versus

Union of India through Secretary, Ministry of Communication, Deptt. of Telecom, New Delhi and others.

...Respondents.

(BY SHRI I.S. SIDHU, ADVOCATE)

xv)

O.A. 626/CH of 1996

Swaran Singh, Public Relations Officer (Retd.)

from Western Command, Chandigarh under the Ministry of Information & Broadcasting, Govt. of India, New Delhi.

...Applicant.

(BY APPLICANT IN PERSON)

VERSUS

Union of India through Secretary, Ministry of Personnel, Public Grievances & Pensions, New Delhi and another

...Respondents.

(BY SHRI I.S. SIDHU, ADVOCATE)

xvi)

O.A. No. 602/HR of 1996

Ram Pal Kochhar, retired Inspector Income Tax, 964, Sector 11, Panchkula (Haryana)

...Applicant

(BY APPLICANT IN PERSON)

VERSUS

Union of India through the Secretary, Ministry of Finance, Deptt. of Revenue, New Delhi and another

...Respondents

(BY SHRI I.S. SIDHU, ADVOCATE)

xvii)

O.A. 701/FB/96

1. Surjit Singh, Vill. Kuka, Post Office Maksood, Distt. Kapurthala.
2. Harbans Singh H.No.173, El. Rat Nagar Gali Pharmacy, Batela Road, Amritsar.

...Applicant

(BY SHRI A.L.VOHRA, ADVOCATE)

VERSUS

Union of India and others

...Respondents

(BY SHRI I.S. SIDHU, ADVOCATE)

xviii) O.A. 235/CH of 1996

J.R. Vashistha Deputy Director, Census Operations, Punjab (Retired from the o/o the Director Census Operations, Punjab, Chandigarh. ...Applicant
(BY APPLICANT IN PERSON)

VERSUS

Union of India through Secretary, Ministry of Personnel, Public Grievances, and Pensions (Dept. of Pensions and Pensioners' Welfare) New Delhi and others.

(BY SHRI I.S. SIDHU, ADVOCATE) ...Respondents.

O R D E R

(Hon'ble Shri Jasbir S. Dhaliwal, JM)

...

These 18 OAs are being disposed by a single judgment as these involve identical questions of fact, the points in issue and law.

2. All the applicants are aggrieved by an OM dated 14-7-95, whereby dearness allowance linked to average All India Consumer Price Index 1201.66, as on 1-7-93, has been treated as dearness pay for reckoning emoluments for the purpose of grant of retirement gratuity and death gratuity under the CCS(Pension) Rules, 1972 in the case of Central Govt. employees who retire or die on or after 1st April, 1995. They all plead that they retired between 1-7-93 and 31st March, 1995 and thus have been denied the benefit of addition of dearness allowance actually drawn by them for being calculated in their pay for calculation of payment of gratuity.

3. The 5th Central Pay Commission in its interim report had made recommendation which has resulted in the issuance

of OM dated 14-7-95 and under it persons who retired on or after 1-4-95 can get retirement/death gratuity, upper limit of which has been increased to Rs. 2.50 lacs, instead of Rs. 1 lac (i.e. 3.50 lacs). The applicants thus feel that they are being deprived of enhanced gratuity which would have been paid to them if the cut off date had been either 1-7-93 or some date near their date of retirement, entitling them also to the benefit. The applicants. The Base CPI was 600 on 1-1-1980 and there was an increase of 7% as on 30-6-93 bringing it to 1201.66. Govt. of India on different slabs of dearness allowance, w.e.f. 1-7-93, fixed percentage of gratuity, which included DA equivalent as dearness pay for the cut off date being 1-4-95. It amounts to classifying the pensioners in 2 different classes, one who retired before 1-4-95 and the others on or after this date. They plead that if the purpose is to treat the dearness allowance as dearness pay, it should be related to the price index after the date of declaration or should be with effect from a date in 1980 when the

price index had actually increased. The persons who retired between 1-7-93 and 31-3-95 have suffered the effect of rising prices, i.e. the purchasing power of the rupee and thus are entitled to the benefits being given to the persons included in OM, Annexure A-1. They have thus prayed for a direct order to the respondents to issue the revised orders extending the benefit of OM at Annexure A-1 effect from 1-7-93 with all consequential benefit to the applicants and to pay to them all the difference in retirement gratuity payable

Under the orders dated 14-7-95 and the retirement gratuity actually paid to them at the time of retirement of each one of them.

4. We have heard the learned counsel for the parties and some of the petitioners, who were present in person, and have examined the material on the files.

5. We are aware of a number of judgments given by the Hon'ble Supreme Court on the question of choosing a cut off date and while choosing a particular cut off date, thereby giving some added benefits to the persons who retire after that cut off date, which naturally results in payment of higher amounts as compared to the persons who may have retired before the cut off date. Without reproducing the reasoning, some cases can be cited which are of recent origin like:

1. Dr. O.P. Malik and others vs. Union of India - (1996) 32 ATC 249.
2. Union of India vs. P.N. Menon - (1991) 27 ATC 515;
3. State of Rajasthan vs. Pt. Ram Raj - 1997(1) SLR 691 (S.C.)

There are many other judgments of the Hon'ble Supreme Court after the year 1983 in which similar questions, as raised in the present OMs, were raised and adjudicated

upon. This Bench of the Tribunal had occasion to consider identical questions in the case of J.S. Salota and another vs. Union of India and another - OA 380/CH of 1989 decided on 19-4-96 and in the case of C.P. Margish vs. Union of India and others in OA 634/CH of 1997 decided on 3-6-97. The latter case in fact, is based on the identical facts questioning the same OM which is impugned in the present cases. All the points raised by the petitioners before us were duly considered. The judgments of the Hon'ble Supreme Court have been cited in detail. Without

repeating the reasoning adopted therein, we are of the opinion that the present cases are fully covered under the ratio of those judgments which are based on the judgments of the Hon'ble Supreme Court cited therein.

6. Learned counsel for the applicants have argued before us that the judgment in the case of C.P. Angrish (supra) has not taken into consideration the point of the price index available on 1-7-93, while fixing the cut off date as 1-4-95 and stress that there is hostile discrimination between the persons who are to retire after 1-4-95 and the persons who retired before that date. We are placing the copies of those judgments on the file of these cases to stress that all the aspects raised by the petitioners have been considered by this Bench while following the law laid down by the Hon'ble Supreme Court in the various judgments cited which have taken care of the pleas of discrimination and the choosing of a date on which particular price index was available and holding that when a date has been chosen on the recommendation of a Pay Commission, it cannot be said that such choice of the Govt. of India is arbitrary. It is not the case of the applicants that persons who fall in their category have been given some added benefits under the impugned OM, but they have been denied. There would be discrimination only in such a situation. In one of the judgments by this Bench a quote was borrowed, wherein the Hon'ble Supreme Court had adopted the observations of Justice McKenna with approval to observe that "problems of Govt. are practical ones and may justify, if they do not require, enough accommodations, an illogical it may be and unscientific now."

or condemned. The courts intervene only when the action of the executive is palpably arbitrary. The courts have now taken the view that policy decisions taken by the Govt. should not be interfered with unless the same are shown to be capricious, malafide or contrary to any statutory rights. In the case of UDI vs. P.N. Menon-(1994) SCC 860, the Hon'ble Supreme Court dealt with identical questions in issue in which the court observed that public service is bilateral in nature in the sense that public servant is remunerated for the service he renders to the public and he shall get pension after retirement. He becomes entitled to pension under the relevant rules to ensure that he lives and leads a dignified life even after retirement, but the demand of parity as a class with persons who retired later than him was considered to be not reasonable. Govt. frames schemes for persons who superannuate from service and due to many constraints, it is not always possible to extend the same benefits to one and all irrespective of the dates of superannuation. Whenever a revision of pay scales takes place, a cut off date becomes imperative because the benefits have to be allowed within financial resources available with the Govt. An example was considered that at the time of revision of pay scales the Govt. may fix 1st of January of the same year or of the last year as the date for implementation and by this a big section of employees are bound to miss the said revision if they superannuated before that date and some may miss it just by one day. In such a situation, no scheme can be held to be fool-proof so as to cover and keep in view all persons who have

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has been mentioned to come to the conclusion that courts should not interfere in matters of pay scales and the present is not a case of fixation of pay scales. It is true that the case related to matter of pay scales, but the observations made by the Hon'ble Supreme court were that Tribunal should not adjudicate upon such matters which will have cascading effect on number of employees employed with the Govt. which takes a decision in view of its financial resources and financial crunch, which the Govt. may be having at a particular point of time. Thus the principles enunciated in that judgment can be extended to the present cases also to keep our hands off from the matters of Govt. policy decisions.

Q. Finding that the present cases are covered under the judgments as delivered by this Bench in the cases of 'J.S. Sahota' and 'C.P. Angrih' (supra), and the judgments of the Hon'ble Supreme Court, ye find no merit in these OAs and the same are dismissed. No costs.

(MR. SIR S. DHALIKAL)
JUDICIAL MEMBER
25.7.77

(S.C. VAISH)
ADMINISTRATIVE MEMBER

RK

Certifying This Conviction

S.C. VAISH (Judg)
Executive Member
Central Administrative Tribunal
Yogesh Chandra Bhattacharya
Administrator