

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
CIRCUIT COURT SITTING AT GWALIOR

Original Application No 583 of 2005

Gwalior, this the 22nd day of November, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

1. Central Railway Pensioners Sangh, Gwalior
(Affiliated with Bharat Pensioners Samaj,
New Delhi) & All India Retired Railwaymens
Federation Mumbai, Registered under MP
Registration Act, 1973 No. 233687.
Through its President, Bijendra Indu Joardar,
S/o Shri Nitendra Nath Joardar, Occupation-
Retired Senior Trains Clerk, Age 71 years,
R/o Lohiya Bazar, Lashkar, Gwalior (MP).
2. Rameshwar Singh Sikarwar, S/o Shri Sarman Singh
Sikarwar, Age 74 years, Occupation-Retired Railway
Guard 'A' Special, Resident of 172, Laxmiganj, A.B.
Road, Lashkar, Gwalior (MP).
3. Kewalram Nindawat Charandas, S/o Shri Sadhuram
Nindawat, Age 75 years, Occupation-Retired Driver,
'A' Special, R/o Purana Dari Karkhana, Bai Saheb
Ki Pared, Lashkar, Gwalior (MP) Applicants

(By Advocate – None)

VERSUS

1. Union of India, through the Secretary,
Ministry of Personnel, Public Grievances
& Pensions Department of Pension &
Pensioners Welfare.
2. The Secretary, Railway Board,
Government of India, New Delhi.
3. The General Manager, Central Railway,
Mumbai CST.
4. The General Manager, North
Central Railway, Allahabad.
5. The Financial Adviser & Chief Accounts

Officer, Central Railway, Mumbai CST.

6. The Financial Adviser & Chief Accounts Officer,
North Central Railway, Allahabad (UP)
7. The Divisional Railway Manager,
North Central Railway, Jhansi (UP)
8. The Chief Workshop Manager,
North Central Railway Workshop,
Jhansi (UP)

Respondents

(By Advocate – Shri S.K. Jain)

ORDER (Oral)

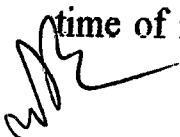
By M.P. Singh, Vice Chairman –

By filing this Original Application, the applicants have sought the following main reliefs :-

“(A) That the Non-applicants No.1 and 2 may kindly be directed to issue general mandate regarding merger of 100% DA with the basic pay of the railway employees in DCRG amount and direct payment of arrears with 18% interest per annum between the difference of the amount paid and payable in respect of employees who retired during 1.1.86 and 31.12.95 for which time bound direction may kindly be issued in the interest of justice.”

2. The brief facts of the case are that the applicant no.1 is an association of Central Railway Pensioners, registered under M.P. Registration Act, 1973, and applicants nos. 2 & 3 are members of the said association. The applicants are aggrieved by the non-inclusion of dearness allowance with their basic pay for calculation of Death-Cum-Retirement Gratuity (for short ‘DCRG’), to retired employees of Central Railway in the light of the judgment passed by Chandigarh Bench of this Tribunal in the case of Preetam Singh (Regn. No.1686/HR/91) decided on 2.5.1994 (Annexure-A-2).

2.1 It is further stated by the applicants that they have retired during the period from 1.1.1986 to 31.12.1995 and the respondents have not calculated the amount of gratuity payable to them at the time of retirement by merging the dearness allowance along with



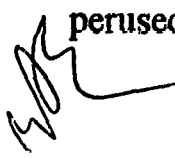
their pay as has been done in the aforesaid case of Preetam Singh, decided by the Chandigarh Bench and confirmed by the Hon'ble Supreme Court. Hence, this Original Application.

3. The learned counsel for the respondents has submitted that the 5th Central Pay Commission has made certain recommendations with regard to payment of DCRG. The recommendations of the 5th CPC became effective w.e.f. 1.1.1996. The recommendations of the 5th CPC have been accepted by the Government. The Railway Board has also issued a circular dated 8.8.1995 (Annexure-R-III) for implementation of the decision taken by the Government. As per this decision, the element of dearness allowance was to be merged with the pay for the purpose of calculation of DCRG, in the cases of the employees who retired or died on or after 1.4.1995, as indicated below:-

Pay range	Dearness allowance to be Added to pay for calculating gratuity
1. Basic pay upto Rs.3500 p.m.	97% of pay
2. Basic pay above Rs.3500 and Upto Rs.6000 p.m.	73% of pay subject to a minimum of Rs.3395
3. Basic pay above Rs.6000 p.m.	63% of pay subject to a Minimum of Rs.4380

According to the respondents, the applicants are not entitled to get merged 100% DA with their basic pay for calculation of their DCRG on the basis of the judgment of the Chandigarh Bench of the Tribunal, as confirmed by the Hon'ble Supreme Court, in the case of Preetam Singh(supra) as the said judgment is not in rem but it is a judgment in personnam.

4. Heard the learned counsel for the respondents and carefully perused the pleadings available on record.



5. The issue for consideration before us is as to whether the railway employees who retired during the period between 1.1.1986 and 31.3.1995 are entitled for the benefit of merger of DA with their pay for the purpose of calculation of DCRG/retirement gratuity. As per the decision taken by the Government on the interim report submitted by the 5th CPC only the Government servants who retired or died on or after 1st April, 1995 were entitled for merger of the dearness allowance with their pay for calculating gratuity, as per the ceiling mentioned in para 3 above.

6. We find that one Shri Pritam Singh had filed an Application No.1.1990 before the Controlling Authority, Yamuna Nagar, under Section 4 of the Payment of Gratuity Act, 1972, wherein the issue raised was "whether for purpose of calculation of gratuity, dearness allowance is also a part of wages". The said Application was allowed vide order dated 4.4.1991. The respondents in that Application i.e. Union of India through the Chief Works Manager, Northern Railway etc. had filed Original Application No.1686/HR/91 before the Chandigarh Bench of this Tribunal, challenging the aforesaid order passed by the Controlling Authority, and the said Application had been dismissed by the Tribunal vide order dated 2.5.1994. Thereafter, the Union of India had filed SLP© No.11043/1995 before the Hon'ble Supreme Court, against the aforesaid order 2.5.1994 passed by the Chandigarh Bench of the Tribunal and the said SLP was also dismissed vide order dated 13.2.2002 in the following terms

"Delay condoned.

The Special leave petition is dismissed".

Thereafter, the applicants had filed Writ Petition No.438/2004 before the Hon'ble High Court of MP, Jabalpur, and the Hon'ble High Court vide its order dated 14.2.2005, have passed the following order:

4. On a perusal of the pleadings what is discernible is that the petitioners have preferred this writ petition for grant of



service benefits though the association has put forth the claim. It is not disputed before us that the association can maintain the petition before the Central Administrative Tribunal if other employees join the petitioner as petitioners. It is well settled law that the employees cannot directly invoke the jurisdiction of this court without approaching the Tribunal first. Apprehension of the employees is that their claim may be thrown overboard by the Tribunal being barred by limitation as enjoined under Section 21 of the Administrative Tribunals Act, 1985. At this juncture, without expressing anything on the merits of the case, we are only inclined to state that if the cause of action is recurring in nature, said aspect has to be looked into by the Tribunal. In view of the aforesaid we permit the petitioners to invoke the jurisdiction of the Tribunal which shall scan in proper perspective issue of limitation and the relief sought. If such a petition is filed that shall be expeditiously dealt with by the Tribunal".

In pursuance of the aforesaid order of the Hon'ble High Court, the applicants have approached this Tribunal by filing this Original Application.

7. We find that this issue which has been raised by the applicants in the present OA had been considered by the Full Bench of this Tribunal at Mumbai in OAs Nos.542, 942 and 943 of 1997 vide order dated 21.9.2001; (**Sh.Baburao Shankar Dhuri and others etc. etc. Vs. Union of India and others**, 2001 (3) ATJ 436 and the same had also been considered by various Bench of the Tribunal and the Hon'ble High Court of Punjab and Haryana. The respondents-Union of India had also filed SLP before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide an interim order had directed that similar pending cases in all the High Courts be transferred to the Supreme Court and thereafter, the Hon'ble Supreme Court vide their order dated 11.8.2005 in the case of **Sate of Punjab and others Vs. Amar Nath Goyal and others**, (2005) 6 SCC 754 have decided the matter finally. The matter before the Hon'ble Supreme Court was as under:

The Central Government issued an OM dated 14.7.1995 whereby dearness allowance linked to the All India



Consumer Price Index 1201.66 (as on 1-7-1993), was treated as reckonable part of dearness allowance for the purpose of calculating the death-cum-retirement gratuity under the Central Civil Services (Pension) Rules, 1972. The said benefit was actually made available to the employees who retired or died on or after 1-4-1995 i.e. the cut off date suggested by the Fifth Central Pay Commission in its Interim Report. Following the aforesaid OM issued by the Central Government, the Government of Punjab also issued an order dated 13.12.1996 granting the same benefit fixing the said cut off date.

A large number of employees, both of the Central Government as well as the State Governments of Punjab and Himachal Pradesh, who had retired prior to 1-4-1995, applied for getting the additional benefits of increased quantum of death-cum-retirement gratuity up to the increased limit of Rs.2.5 lakhs. Their claims were rejected in some cases and in other cases CAT and the High Court took the view that such of the employees who had retired between 1-7-1993 and 31-3-1995 were also eligible for the aforesaid benefits. The employees whose cases were wholly rejected or partly rejected and partly granted, as well as the Union of India and the State Governments have preferred appeal before the Supreme Court. The employees argued that there was violation of Article 14 of the Constitution. They contended that the decision of the Central Government/ State Governments to make available the increased quantum of gratuity (with revised ceiling) only to employees, who retired or died on or after 1-4-1995, was discriminatory and arbitrary. They also contended that all retirees/ dead persons form a homogeneous class and any discrimination or distinction between retirees/ dead persons prior to 1-4-1995 and those who retired/died on or after 1-4-1995 had no rational basis, nor was intended to serve any purpose.

By rejecting the aforesaid contentions, their lordships in the aforesaid case has held as under:

"It is difficult to accede to the argument that a decision of the Central Government/State Governments to limit the benefits only to employees, who retire or die on or after 1-4-1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government, at the Centre or at the State level. In the present case, the cut off date has been fixed as 1-4-1995 on a very valid ground, namely that of financial constraints. Consequently the contention that fixing of the cut off date was arbitrary,

irrational or had no rational basis or that it offends Article 14, is liable to be rejected" (Paras 26 and 37).

"Thus, although dearness allowance linked to the All India Consumer Price Index 1201.66 (as on 1-7-1993), was treated as reckonable part of dearness allowance for the purpose of calculating the death-cum-retirement gratuity, the benefit was actually made available to the employees who retired or died on or after 1.4.1995 i.e. the date suggested by the Fifth Central Pay Commission ("Pay Commission") in its Interim Report. The Central Government took a conscious stand that the consequential financial burden would be unbearable. It, therefore, chose to taper down the financial burden by making the benefits available only from 1.4.1995. It is trite that the final recommendations of the Pay Commission were not ipso fact binding on the Government, as the Government had to accept and implement the recommendations of the Pay Commission consistent with its financial position. This is precisely what the Government did. Such an action on the part of the Government can neither be characterized as irrational, nor as arbitrary so as to infringe Article 14".

Their lordships have set aside the aforesaid order dated 21.9.2001 of CAT (Mumbai Bench) in OAs Nos.542,942 & 943/1997.

8. As the issue involved in the present case, as to whether the railway employees who retired during the period between 1.1.1986 and 31.3.1995 are entitled for the benefit of merger of DA with their pay for the purpose of calculation of DCRG/retirement gratuity has already been considered and decided in the aforesaid judgment of the Hon'ble Supreme Court in the case of **Amar Nath Goyal** (supra) this Original Application has no merit and is liable to be dismissed.

9. Before we may part we may observe that as regard the decision of the Hon'ble Supreme Court in the case of **Pritam Singh** (supra), we find that case is distinguishable. Moreover, in the said case the SLP was dismissed at the admission stage. Therefore, the decision in the case of **Pritam Singh** is not applicable in the instant

case.



10. In view of the decision of the Hon'ble Supreme Court in the case of Amar Nath Goyal (supra), this Original Application has no merit and is accordingly dismissed, however, without any order as to costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

RKV.

पृष्ठांकन सं. ओ/नं. जबलपुर, दि.
पंक्ति/दि.
(1) सचिव, न्यायिक प्रशासन, जबलपुर
(2) अतिरिक्त सचिव, न्यायिक प्रशासन, जबलपुर
(3) सहायक सचिव, न्यायिक प्रशासन, जबलपुर
(4) मुख्य सचिव, न्यायिक प्रशासन, जबलपुर
सूचना एवं आवश्यक कार्यवाही हेतु

D.K. Narayan / ceri / pn
V.K. Bhargava / ceri / pn

Forcel
29.11.05

Forcel
9.12.05

माइलेज रु. 1/ के 45/-
लेबल

21/12/05
DY-REGISTRAR
केन्द्रीय प्रशासनिक अधिकरण
CENTRAL ADMINISTRATIVE TRIBUNAL
जबलपुर बेंच, जबलपुर
JABALPUR BENCH, JABALPUR