

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 737 of 2005

Jabalpur, this the 13th day of December, 2005

Hon'ble Shri M.P. Singh, Vice Chairman

Jagdish Prasad Pandey, (J.P. Pandey for short),
Aged about 69 years, S/o. late Mahesh Prasad
Pandey, Pensioner of Defence Estate Service,
(Now Advocate), R/o. H. No. 2371, Wright Town,
Jabalpur (MP).

.... Applicant

(By Advocate – Shri Dharmesh Bhatt)

V e r s u s

1. Union of India, Ministry of Defence,
Through Defence Secretary, New Delhi.
2. Principal Controller of Defence Accounts
Pension (PCDA pension for short), Draupadighat,
New Cantt., Allahabad (UP).

.... Respondents

(By Advocate – Shri S.K. Mishra)

O R D E R (Oral)

Heard the learned counsel for both the parties.

2. By filing this Original Application the applicant has sought the following main relief :

“(i) to order that letter dated .../7/2005 which declines to give benefit of payment of difference/additional DCRG to the applicant (Annexure A-8) is quashed.”

3. The brief facts of the case are that the applicant was an employee of the Defence Estate Service and retired on 30th November, 1994 attaining the age of superannuation. In this application the applicant has sought the benefit of the judgments of the Bangalore Bench of the Tribunal in OA No. 568/2003 – R. Thiagraj and Ors. Vs. Union of India, dated 5.11.2003

and of the Full Bench of Mumbai Bench in the case of Sh. Baburao Shankar Dhuri & Ors. Vs. Union of India & Ors., 2001(3) ATJ 436.

4. During the course of arguments the learned counsel for the respondents has submitted that the issue involved in the present case has finally been considered by 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. The learned counsel for the applicant agreed to it.

5. I have considered the submissions made by the learned counsel for the parties and have gone through the aforesaid judgment of the Hon'ble Supreme Court in the case of Amar Nath Goyal (supra). The matter before the Hon'ble Supreme Court was as under :

The Central Government issued an OM dated 14.7.1995 whereby nearness allowance linked to the All India Consumer Price Index 1201.66 (as on 1-7-1993), was tread 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".

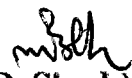
Their lordships have set aside the order passed by the Full Bench of the Mumbai Bench of the Tribunal in the case of Sh. Baburao Shankar Dhuri

(supra).



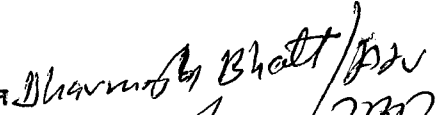
6. As the issue involved in the present case, as to whether the employees who retired during the period between 1.1.1986 and 31.3.1995 are entitled for the benefit of merger of DA with their pay for the purpose of calculation of DCRG/retirement gratuity has already been considered and decided in the 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.

7. 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.



(M.P. Singh)
Vice Chairman

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(2)
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S.K. Mishra

22/12/2000


27.12.05