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CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH
JABALPUR

Original Application No. 856 of 2005

Jabalpur, this the 12th day of September, 2006

Hon'ble Shri A.K. Gaur, Judicial Member

Pyarelal Patel, aged 72 years,
S/o. Late Shri Dalchand Patel,
Occupation Retired Chief Controller
Shitting Bhopal, control office in DRM
office Central Railway (at present west central
Railway) Bhopal and the secartory Retired
Railway employees Pensioners association
Branch Hoshangabad (MP), R/o. Patel Niwas,
Narayan Nagar, ITI Road,
Hoshangabad (MP).

..... **Applicant**

(By Advocate – Shri B.R. Nagle)

V E R S U S

1. Union of India, through the
Chairman, Railway Board,
Ministry of Railway, Rail
Bhawan, New Delhi.
2. The General Manager,
West Central Railway, Jabalpur.
3. The Divisional Railway Manager,
West Central Railway, Bhopal.

..... **Respondents**

(By Advocate – Shri H.B. Shrivastava)

O R D E R

By means of this Original Application the applicant has prayed for issuing direction to the respondents for payment of dearness allowance along with the gratuity payment, admissibile at the time of retirement and to pay the full gratuity for the completed years of service rendered up to the superannuation i.e. for 39 years and 8 months.

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2. The brief facts of the case are that the applicant has retired after attaining the age of superannuation i.e. after completion of 33 years of service from the post of Chief Controller. The grievance of the applicant is that the respondents have not added the dearness allowance along with the gratuity admissible at the time of retirement for full gratuity for the full service of 39 years and 8 months, without any plausible or cogent reasons.

2.1 The applicant was initially appointed on 12.7.1952 and retired after attaining the age of superannuation on 31.3.1992. Along with the Original Application the applicant has furnished his Bio Data form as Annexure A-4. It is alleged on behalf of the applicant that series of representations have been made to the respondents in this regard but no heed has been paid by the respondents. The applicant sent notice on 16.12.2004 (Annexure A-5) and thereafter sent memorandum on 9.9.2003 under the signature of several pensioners (Annexure A-6). Various other representations of the applicant and other pensioners have also been sent to the respondents but of no use. The main contention of the applicant is that on the basis of the judgment of the Tribunal in Union of India Vs. Shri Pritam Singh (Annexure A-1) and the judgment of the Hon'ble Supreme Court in the same case he is entitled to get the benefits as prayed in this Original Application. It has also been submitted on behalf of the applicant that the CCS (Pension) Rules, shall not apply to the railway servants and in support of the case the applicant has placed reliance on the decision of the Chandigarh Bench of the Tribunal rendered in the case of Union of India Vs. Pritam Singh and SLP No. Civil Appeal No. 937 of 1995 decided by the Hon'ble Supreme Court in the matter of Union of India Vs. Pritam Singh.

3. On the other hand by filing reply the respondents have stated that the applicant by filing the instant Original Application has claimed payment of gratuity as per the provisions of Payment of

Gratuity Act, 1972 and dearness allowance there on for full completed years of service i.e. 39 years and 8 months rendered at the time of superannuation, as provided under the definition of Employees detailed under the Payment of Gratuity Act, 1972 on the basis of the judgment in Pritam Singh Vs. Chief Works Manager Jagadhari Workshop, Northern Railway which was upheld by Chandigarh Bench of the Tribunal in OA No. 1686 of 1991 decided on 2.5.1994. The order dated 2.5.1994 was further challenged by the Northern Railway before the Hon'ble Supreme Court in Civil Appeal No. 937 of 1995 titled as Union of India Vs. Pritam Singh, which was dismissed on 13.2.2002 at the admission stage itself. It has been submitted on behalf of the respondents that a similar issue was raised before the Chandigarh Bench of the Tribunal in OA No. 899 of 2003 – Heeralal and Others Vs. Union of India and others decided on 30.9.2000 reported in 2005 (3) ATJ 474. The said OA was dismissed by the Chandigarh Bench of the Tribunal holding that the judgment in Pritam Singh's case is per-incuriam. It is urged on behalf of the respondents that the applicant is not covered under the definition of Section (2) of Payment of Gratuity Act, 1972. According to the respondents the applicant is governed under the Railway Servants (Pension) Rules, 1993 and does not fall under the definition of employees under the Payment of Gratuity Act, 1972. All his retiral dues including gratuity have been regulated under the Railway Servants (Pension) Rules, 1993. The applicant has already been paid full Gratuity as provided in Railway Servants (Pension) Rules, 1993 and is not entitled to further benefits as claimed in this OA. The judgment rendered in Pritam Singh case is per-incuriam and as such the applicant cannot claim parity with the said judgment. The respondents also submit that the case of Pritam Singh, before the controlling authority under Payment of Gratuity Act and further before the Hon'ble Supreme Court was not properly handled by the concerned officials and other legal aspects of the matter were neither raised nor discussed, therefore, the whole issue was properly

discussed before the Chandigarh Bench of the Tribunal in OA No. 899 of 2003 decided on 30.9.2005. It has also been argued on behalf of the respondents that the OA is otherwise hopelessly time barred. The applicant has retired on 30.3.1992 and the present OA has been filed after a lapse of 13 years and for which no reasonable or plausible explanation has been offered by the applicant. Rule 49 of Railway Servant (Pension) Rules, 1993 is annexed as Annexure R-1 by the respondents.

4. I have heard the learned counsel for the applicant Shri B.R. Nagle and Shri H.B. Shrivastava counsel for the respondents.

5. It is seen from the record that the applicant while working as Chief Controller at Bhopal after attaining the age of superannuation retired on 31.3.1992. He has already been paid all his settlement dues as per the provisions of Railway Servant (Pension) Rules, applicable at the time of retirement. Under the provisions of Railway Servant (Pension) Rules, it is clearly provided that the gratuity will be paid to the pensionable employees on their retirement or to their family in the event of their death while in service. This will be granted in addition to the ordinary gratuity or monthly pension that may be admissible to be employee under the rules. The rate of death cum retirement gratuity is one fourth of the monthly emoluments for each completed six monthly period of qualifying service subject to a maximum of 16 and a half times of the emoluments. The amount of DCRG shall not exceed Rs. 1,00,000/-.

5.1 Reliance has also been placed upon the judgment rendered in Pritam Singh case by Chandigarh Bench of this Tribunal on 2.5.1994, which was further challenged by the Northern Railway before the Hon'ble Supreme Court in Civil Appeal No. 937 of 1995 dismissed on 13.2.2002. The learned counsel for the respondents has also relied upon the decision of the Chandigarh Bench of the Tribunal rendered in the case of Hira Lal & Ors. Vs. Union of India & Ors. decided on

30.9.2005 reported in 2005 (3) ATJ 474. After careful analysis of the various decisions including the decision rendered in Pritam Singh's case it has clearly been observed by the Tribunal that Payment of Gratuity Act excludes any such person who holds a post under the Central Government and is governed by any act or any rules providing the payment of gratuity. Since the applicant is a Railway employee and holds post under the Central Government and is governed by the provisions of Indian Railway Act, 1989 and he has also received the amount of DCRG under Railway Pension Rules, he is not entitled to get the benefits of payment of gratuity and dearness allowance thereon as provided under the definition of employees detailed under the Payment of Gratuity Act, 1972. In the said judgment, the Tribunal has specifically observed that the judgment rendered in Pritam Singh's case is per incuriam.

6. In my view the present Original Application is covered with the decision rendered by the Chandigarh Bench of the Tribunal in Hiralal & Ors. (supra). The Railway Board has issued instructions from time to time with regard to addition of dearness allowance in pay for the purpose of calculation of DCRG and those annexures have already been filed as Annexures R-2 to R-5 by the respondents. The Hon'ble Supreme Court in its latest decision has resolved the issue of taking the dearness allowance as emoluments for the purpose of DCRG in the case of State of Punjab and Ors. Vs. Amarnath Goyal and others, 2005 SCC (L&S) 910. The relevant paragraph No. 28 is being reproduced hereinunder:

"28. Even at that time, interestingly, the benefits were not made admissible from 1.3.1988 i.e. the date of the Average Consumer Price Index of 729.91, but from a much further date i.e. 16.9.1993. The Central Government adopted the same policy while issuing OM dated 14.7.1995. 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.

Similarly, the increase in the ceiling of gratuity was a mere consequential step, which was also made applicable from 1.4.1995. As we have already noticed, 1.4.1995 was 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 facto 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 characterised as irrational, nor as arbitrary so as to infringe Article 14 of the Constitution."

7. In the present case also the applicant has already retired in the year 31.3.1992 and has claimed for payment of DCRG with inclusion of the dearness allowance. The claim of the applicant has no legs to stand. Therefore, the OA has no merits and is liable to be dismissed. Accordingly, the same is dismissed. No costs.

(A.K. Gaur)

Judicial Member

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पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिनिधि अवशिष्ट:-

- (1) सचिव, जिला न्यायालय वारा एलोगिशन, जबलपुर
- (2) आदेशक श्री/श्रीमती/वृ.....के काउंसल
- (3) प्रत्यक्षी श्री/श्रीमती/वृ.....के काउंसल
- (4) अध्यक्ष, कोर्ट, जबलपुर न्यायाधीश

सचन एवं आवश्यक कार्यवाही हेतु

उपस्थित

B.R. Nagle Adv BP
H. R. Shrivastava
Adv BP

Dismissed on
13.9.06
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