

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 6th day of December, 2005

ORIGINAL APPLICATION No 318/2005.

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

D.P.Upadhyaya
s/o Shri Bhagwan Sahai Upadhyaya,
aged about 72 years,
r/o Village Rajpur-Bada,
Tehsil Rajgarh,
District Alwar,
presently retired as SA (BCR)
From SRO, Bandikui,
Jaipur.

.. Applicant

(By Advocate: Mr. P.N.Jatti)

Versus

1. Union of India through
the Secretary to the Govt. of India,
Department of Posts,
Dak Bhawan,
Sansad Marg,
New Delhi.
2. Principal Chief Postmaster General,
Rajasthan Circle,
Jaipur.
3. Senior Superintendent,
Railway Mail Service,
JP Dn. Jaipur.
4. Director of Accounts (Postal)
Services,
Rajasthan,
Tilak Nagar,
Jaipur.

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

O R D E R (ORAL)

The applicant has filed this OA with the prayer that direction may be issued to the respondents to allow him the amount of Dearness Allowance in the payment of gratuity as per the decision rendered in the case of Pritam Singh vs. Union of India, which decision was also upheld by the Apex Court while dismissing the SLP in limine.

2. Briefly stated, facts of the case are that the applicant retired on superannuation from Department of Posts and Telegraphs on 31.8.1991 while working as Sorting Assistant. He was granted gratuity amount taking into consideration his basic pay. His grievance is that Dearness Allowance which was admissible to the applicant on the date of retirement should also be taken into consideration while granting the benefit of Death-cum-Retirement Gratuity. It is further stated that the Department of Posts allowed 20% Dearness Allowance w.e.f. 16.9.1993 and vide order dated 14.7.1995 94% of Dearness Allowance was allowed to the

employees of the Department of Posts w.e.f. 1.4.1995. Request of the applicant for grant of Death-cum-retirement Gratuity with higher ceiling was refused. Accordingly, he has filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, it has been stated that the applicant retired from service on 31.8.1991 and accordingly he was paid retirement gratuity at the rates applicable at that time. It is further stated that the Department of Pension and Pensioners Welfare, Ministry of Personnel, Public Grievances and Pension vide order dated 19.10.1992 has ordered that 20% of basic pay was to be treated as Dearness Pay for reckoning emoluments for the purpose of retirement gratuity for the officials who retired or died on or after 16.9.1993. It is further stated that these orders remained effective for the period from 16.9.1993 to 31.3.1995. Thereafter vide another OM dated 14.7.1995, the officials died or retired on or after 1.4.1995 were entitled for the dearness allowance at enhanced rate on the basic pay and the dearness allowance was to be added to the basic pay for reckoning emoluments for the purpose of retirement gratuity depend upon the pay range. Since the applicant retired prior to issuance of these two OMs, as such, the applicant was not entitled for

revision of retirement gratuity as per clarification issued vide OM dated 18.2.2003. So far as second contention of the applicant that he is entitled to the benefit on the basis of the judgment rendered in that case of Pritam Singh (supra) which decision was upheld by the Apex Court, the respondents have stated that the applicant is not entitled to the benefit on the basis of the judgment dated 13.2.2002 in SLP No. 11043/2005 rendered in the case of Pritam Singh and Kulwant Singh as the same is applicable to the facts and circumstances of that case and the Apex Court has not laid down any law. It is further stated that the said judgment came to be rendered under the provisions of Payment of Gratuity Act, 1972 which are not applicable to the present and former Central Govt. employees including the applicant in this OA. The respondents have further stated that it is within the competence of the Govt. of India to fix cut off date for grant of gratuity. Thus, according to the respondents, the applicant has got no case whatsoever.

4. I have heard the learned counsel for the parties and gone through the material placed on record.

4.1 According to me, the matter is no longer res-integra and the same stand concluded by the judgment of the Apex Court in the case of State of Punjab and Ors. vs. Amar Nath Goyal, 2005 (2) SCSLJ 177. Vide the aforesaid judgment, the Apex Court decided number of

petitions which were filed against the decisions rendered by various High Courts. The Hon'ble High Court has held that persons who retired between 1.7.1993 and 31.3.1995 are entitled to benefit of enhanced gratuity to the extent of 20% consequent upon merger of Dearness Allowance into basic pay. However, the Hon'ble High Court refused to grant this benefit to employees who retired before 1.7.1993. The Hon'ble High Court also directed that the employees who retired on or before after 1.4.1995 are also entitled to the benefit of higher amount of Death-cum Retirement Gratuity in terms of order dated 14.7.1995. The Apex Court after considering Civil Appeals filed by the Union of India/State Governments as also by the pensioners who retired before 1.7.1993 and in whose case the Hon'ble High Court has held that they are not entitled to the benefit of increased amount of Death-cum-retirement gratuity, upheld the memorandum issued by the Government and held that High Courts and Tribunals were not right in directing that the employees who retired between 1.7.1993 and 31.3.1995 were also eligible for the benefit of enhanced gratuity in terms of OM dated 14.7.1995. The Apex Court also dismissed the cases of those employees who retired prior to 1.7.1993 and in whose cases no relief was granted by the Hon'ble High Court. The Apex Court in Para 37 of the judgment while upholding the cut off

date as fixed on 1.4.1995 has made the following observations:-

“37. In the instant case before us the cut off date has been fixed as 1.4.1995 on a very valid ground, namely, that of financial constraints. Consequently, we reject the contention that the fixing of cut-off date was arbitrary, irrational or had no rational basis or that it offends Article 14.”

6. Thus viewing the matter from the law laid down by the Hon'ble Apex Court, I am of the firm view that the applicant is not entitled to increased gratuity in terms of OMs dated 16.9.1993 and 14.7.1995 as the applicant has already retired on 31.8.1991. The benefit of the said OMs is restricted to the employees who retired between 16.9.1993 to 31.3.1995 and in their case dearness allowance at the rate of 20% of basic pay and the pensioners who retired on or after 1.4.1995 dearness allowance at the rate of 97% to 63% of basic pay depending upon the pay range was treated as dearness pay for the purpose of Death-cum-retirement gratuity and for no other purpose. Similarly, the applicant retired as Central Government employee, as such provisions of Payment of Gratuity Act, 1972 are not applicable in his case and he is entitled to pensionary benefits in terms of CCS (Pesnsion) Rules. As such applicant is also not entitled to the benefit of the judgment in the case of Pritam Singh (supra) render under the provision of Payment of Gratuity Act, 1972.

7. For the foregoing reasons, the OA is bereft of merit and the same is dismissed with no order as to costs.



(M.L.CHAUHAN)
Judicial Member

R/