

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.021/00507/2018

Date of Order :31.07.2019.

Between :

1. M.Srinivasan, s/o M.Narasimha Chary,
Aged about 65 yrs, Gr.'B', Occ:Retd.Scientific
Officer/E, Nuclear Fuel Complex, Hyderabad,
R/o B-401, Gulmohar Gardens, Suryanagar,
Mallapur, Hyderabad-76.

2. E.Hanumanthu, s/o Veeraiah,
Aged about 63 yrs, Occ:Retd. Tradesman/H,
Nuclear Fuel Complex, Hyderabad,
R/o H.No.7/67, Anushakthi Nagar,
Dommaiguda, Nagaram, R.R.District.

3. M.Prabhakara Rao, s/o M.Ranga Seshagiri Rao,
Aged about 61 yrs, Occ:Retd. Tradesman/H,
Nuclear Fuel Complex, Hyderabad,
R/o Plot No.402, HMT Hills, Opp:JNTU,
Kukatpalli, Hyderabad-500 085.

4. C.V.Subramanya Sharma, s/o Venkatarama Sharma,
Aged about 65 yrs, occ:Retd. Tradesman/G,
Nuclear Fuel Complex, Hyderabad,
R/o Plot No.24 & 25, Flat No.303, GMRC Arcade,
Meerpet, Hyderabad-500 058.

5. M.Govardhana Rao, s/o late M.Seetaramaiah,
Aged about 65 yrs, Occ:Retd. Tradesman/H,
Nuclear Fuel Complex, Hyderabad,
R/o Manali Block, Unit No.818, 9 (B), Hills Country,
Bachipalli, Miyapur, Hyderabad-90.

...Applicant s

And

1. Union of India, rep., by the Secretary,
Dept. Of Atomic Energy, CSM Marg,
Mumbai-400 001.

2. The Nuclear Fuel Complex, rep., by its
Chief Executive, ECIL, PO, Hyderabad-500 062.

3. The Secretary, Dept. Of Personnel & Training,
Government of India, New Delhi.

... Respondents

Counsel for the Applicant ... Dr.A.Raghu Kumar

Counsel for the Respondents ... Mr.V.Vinod Kumar, Sr.CGSC

CORAM:

THE HON'BLE MR.B.V.SUDHAKAR, MEMBER (ADMN.)

ORAL ORDER

BY B.V.SUDHAKAR, MEMBER (ADMN.)

2. The OA is filed challenging the order in letter No.NFC/Estt.II/Pension/2017/377, dated 05.12.2017, informing the applicants that by granting Dearness Relief as admissible to the pensioners, the respondents have complied with the directions of this Tribunal in O.A.No.837/2015 & batch, dated 10.04.2017, whereas this Tribunal directed the respondents to take into consideration the DA that would be accruing on 1st July for the purpose of fixing pension and pensionary benefits.

3. The brief facts of the case are that the applicants retired from service on 30.06.2010, 30.06.2014, 30.06.2014, 30.06.2013 and 30.06.2009 respectively. They approached this Tribunal by filing OA.No.837/2015 challenging the earlier decision of the respondents contained in their letter dated 22.07.2014, wherein the respondents have rejected the claim of the applicants for grant of increment as on 1st July of that particular year as they have completed one full year of service. This Tribunal after detailed consideration of the matter framed two issues for consideration viz., (i) whether a Government servant who retired on the last working day of the preceding month and whose annual increment falls due on the first of the succeeding month is entitled for sanction of annual increment for the purpose of pension and gratuity; and (ii) Whether a retired Government servant is entitled for revised rate of DA, which comes into force after such Government servant retired on attaining the age of superannuation, and after going through the Full Bench judgment of the Hon'ble High Court of Andhra Pradesh in W.P.Nos.22042/2003 & batch, dated 27.01.2015 in the Principal Accountant General, AP, Hyderabad v. C.Subba Rao (2003), and other judgments of the Hon'ble Madras High Court, Madurai Bench in WP (MD) Nos.7903 & batch in R.Athikesavan v. The Chairman, Tamil Nadu Generation and Distribution Corporation Limited & Others, held as follows:

"In the circumstances and in view of the aforesaid position of law, as held by the Full Bench of the Hon'ble High Court of Andhra Pradesh at Hyderabad (supra), the OAs are partly

allowed directing the respondents to consider to grant the enhanced Dearness Allowance to the applicants as on the first day of the July of the year in which they have retired and to release the consequential arrears, if any, within three months from the date of receipt of this order. The relief in regard to the grant of increment as on the first day of July of the year, in which the applicants retired, is rejected. No costs."

While the matter stood so, the respondents issued the present impugned order dated 05.12.2017, informing the applicants that by granting Dearness Relief as admissible to the pensioners, the respondents have complied with the directions of this Tribunal in OA.No.837/2015 & batch dated 10.04.2017, whereas this Tribunal directed the respondents to take into consideration the DA that would be accruing on 1st July for the purpose of fixing pension and pensionary benefits. Earlier OAs have been seeking grant of increment falling on 1st July of the year when the applicants retired on the previous day on the ground that they have already completed one year of service. The respondents' contention that they have given the Dearness Relief and hence complied with the order of this Tribunal is illegal and misleading. The question of DR comes on the 31st July of the said year and as such the respondents cannot claim that their impugned orders are sufficient compliance of the orders of this Tribunal. Aggrieved by the same, the present OA has been filed.

4. The contention of the applicant is that his case is fully covered by the orders of this Tribunal in O.A.No.252/2015, dated 18.11.2015, and that of the Hon'ble High Court of AP in the case of the Principal Accountant General, AP, Hyderabad v. C.Subba Rao (2003).

5. The respondents in their reply statement have stated that the applicants had earlier filed OA.No.837/2015 on the same issue and the said OA was disposed of by this Tribunal, vide common order dated 10.04.2017 with a direction to the respondents to consider grant of enhanced Dearness Allowance as on 1st July of the year in which they had retired, and the relief with regard to grant of increment as on the 1st July of the year in which the applicants retired was rejected. In compliance with the orders of this Tribunal, the representations made by the applicants were considered and disposed of by a speaking order dtd 05.12.2017.

The respondents further stated that the applicants retired from Nuclear Fuel Complex w.e.f. 30th June (A.N) in different years between 2009 to 2014. Thus, all the applicants retired from service after implementation of recommendations of VI Central Pay Commission. As per Rule 10 of Central Civil Services (Revised Pay) rules, 2008, there are two uniform dates of Dearness Allowance viz., 1st January and 1st July of every year. There is no dispute in grant of increment under F.R.26 in case they qualify as per the terms and conditions stipulated therein, provided the employee is on duty on the date of grant of increment. In otherwords, the employee shall hold the post and he shall not be on leave as he draws the leave salary during the leave period. The applicants are not governed alone by F.R.26, but also various other set of rules and all the rules are required to be applied in combination, wherever necessary.

The respondents further stated that the crux of the case is whether the applicants are eligible for grant of enhanced Dearness Allowance which is effective from 1st July to be granted to them on the date of their retirement on 30th June. Once the employee has retired from service on attaining the age of superannuation on 30th June, the said employee is a pensioner w.e.f. 1st July. Being a pensioner, the concept of Dearness Allowance is not applicable. Consequently they are eligible only for enhanced Dearness Relief on pension w.e.f. 1st July. The respondents therefore contended that the applicants have not made out a case and there is no merit in the present OA and prayed to dismiss the OA.

According to the respondents in the case of all kinds of Gratuity, DA admissible on the date of retirement/death shall continue to be treated as emoluments along with the emoluments as defined in paragraph 4.1 of the memo No.38/37/08-P & PW (A), dated 02.09.2008 of the Ministry of Personnel, Public Grievances & Pensions Department of Pension and Pensioners Welfare. The respondents also cited the orders of this Tribunal in OA.Nos.189/2016 and 190/2016, which were challenged before the Hon'ble High Court of AP and Telangana, at Hyderabad in W.P.Nos.35139/2017 and 35126/2017. The Hon'ble High Court has dismissed both the Writ Petitions stating that the orders of this

Tribunal were covered by the verdict of the Full Bench of the Hon'ble High Court of Andhra Pradesh & Telangana at Hyderabad, in W.P.Nos.22042, 24191, 24308 and 24324/2003. Consequently, respondents filed SLP Nos.5646/2018 and 5647/2018 before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court has stayed the operation of the impugned order dated 24.10.2017 of the Hon'ble High Court in W.P.Nos.35126/2017 and 35139/2017.

6. Heard Dr.A.Raghu Kumar, learned Counsel for the Applicants and Mr.V.Vinod Kumar, learned Sr. Central Govt. Standing Counsel for the Respondents, and perused the documents placed on record.

7. (I) The matter is now under adjudication by the Hon'ble Supreme Court in the SLPs referred to above. Hence, it is proper and appropriate to await the pronouncement of the Hon'ble Apex Court in the matter. Therefore, the respondents are directed to dispose of the request of the applicant based on the outcome of the said SLPs.

(II). With the above direction, the OA is disposed of. No order as to costs.

(B.V.SUDHAKAR)
MEMBER (ADMN.)

Dated: this the 31st day of July, 2019

DSN.