

**GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)
(RAILWAY BOARD)**

No. F(E)III/2000/PN1/57.

NEW DELHI

Dated: 15.06.2004

**The General Managers & FA&CAOs,
All Zonal Railways & Production Units.**

**Sub: Payment of gratuity to Government/Railway
servants retired during the period from 1.7.93 to
31.3.95 -----reg.**

Ref: Letter No. F(E)III/2000/PN1/57 dt. 24.3.2004.

A large number of original applications are being filed before the Hon'ble Tribunals by the Railway servants retired during 1.7.1993 – 31.3.95 seeking directions for payment of DCRG on the basis of the judgement passed by CAT/Mumbai Bench on 21.9.2001 in OA Nos. 542,942 & 943 of 97 filed by Shri B.S. Dhuri & Others. The latest position in respect of this judgement has already been conveyed vide Board's letter of even number dt. 24.3.2004 to facilitate Railway administration to draft suitable counter replies. In continuation, a note containing the factual position about the decision of the Government in regard to reckoning of emoluments for determining DCRG, and a copy of recent order of CAT/Bangalore Bench on a cluster of OAs of similar nature, are enclosed as Annexure I & II.

2. Moreover, in the OAs No. 408 & 489 - 491/2003 filed by Sri S. Manickam & others, the Hon'ble CAT/Bangalore allowed the applications vide orders dt. 04.11.2003 on the basis of CAT/Mumbai Bench's judgement in the case of Sh. B.S. Dhuri & others referred to in para 1 above. The Railway Administration filed Writ Petition No. 17929-32/2004 before the Hon'ble High Court, Bangalore against the order dt. 04.11.2003. The Hon'ble High Court heard the petition on 24.05.2004 and stayed the operation of order dt. 04.11.2003 passed by the Hon'ble CAT/Bangalore.

3. Of late, OAs are also being filed by the Railway servants retired during 1.1.1986 – 31.12.1995 for grant of DCRG on the basis of judgement dt.13.2.2002 of the Hon'ble Supreme Court in Civil Appeal No. 937 of 1995 – UOI Vs. Pritam Singh. A note explaining the circumstances under which this judgement has gone against the Railways is enclosed as Annexure III.

4. The contents of the note enclosed as annexures may be suitably incorporated in the replies to the OAs, writ petitions etc. which are required to be filed by the Railways.

5. Please acknowledge receipt.


(S.SREERAM)
Dy. Director Finance (Estt.) III.,
Railway Board.

Encl: Annexure I to III

Copy to: EDPC-I, DPC, EDV(E), DS(D), EDE(Res), EDE, JS, JS(G), JS(E), E(G), ERB-I, II, III, E(O)I,II,III and (CC), PC-III, IV, V, E(P&A)I, II.

भारत सरकार
रेल मंत्रालय (रेलवे बोर्ड)

सं. एफ (ई) III/2000/पी एन 1/57

नई दिल्ली, दिनांक: 15.06.2004

अतिप्रबंधक व वित्त सलाहकार एवं मुख्य लेखा अधिकारी,
राष्ट्रीय रेल/उत्पादन इकोइयां,

विषय : 1.7.93 से 31.3.95 की अवधि के दौरान सेवानिवृत्त हुए सरकारी/रेलवे सेवकों
को उपदान का भुगतान करने के संबंध में.

संदर्भ : 24.3.2004 का पत्र सं. एफ (ई) III/2000/पी एन 1/57.

1.7.1993-31.3.95 के दौरान सेवानिवृत्त हुए रेलवे कर्मचारियों द्वारा माननीय अधिकरणों के समक्ष भारी संख्या में मूल आवेदन दायर किए जा रहे हैं, जिनमें श्री बी.एस. धुरी एवं अन्यो द्वारा दायर किए गए 97 के मूल आवेदन सं. 542, 942 एवं 943 के संबंध में केन्द्रीय प्रशासनिक अधिकरण/मुंबई पीठ द्वारा 21.9.2001 को पारित निर्णय के आधार पर मृत्यु एवं सेवानिवृत्ति उपदान के भुगतान के संबंध में निर्देश देने की मांग की गई है. इस निर्णय के संबंध में नवीनतम स्थिति बोर्ड के 24.3.04 के समसंख्यक पत्र के तहत पहले ही संसूचित कर दी गई है ताकि रेल प्रशासन को उपयुक्त प्रत्युत्तर तैयार करने में सुविधा हो. इसी क्रम में, मृत्यु एवं सेवानिवृत्ति उपदान का निर्धारण करने के लिए परिलब्धियों की गणना करने के संबंध में सरकार के निर्णय के बारे में तथ्यात्मक स्थिति से संबंधित नोट तथा इसी प्रकार के कई मूल आवेदनों पर केन्द्रीय प्रशासनिक अधिकरण/बैंगलूरु पीठ के हाल ही के आदेशों की प्रति अनुबंध I और II पर संलग्न है.

2. इसके अलावा, श्री एस. माणिकम तथा अन्यो द्वारा दायर किए गए 2003 के मूल आवेदन सं. 408 एवं 489-491 के संबंध में माननीय केन्द्रीय प्रशासनिक अधिकरण/बैंगलूरु ने उपर्युक्त पैरा 1 में उल्लिखित श्री बी.एस. धुरी एवं अन्यो के मामलों में केन्द्रीय प्रशासनिक अधिकरण/मुंबई पीठ के निर्णय के आधार पर 4.11.2003 के आदेशों के तहत आवेदनों को अनुमति दे दी है. रेलवे प्रशासन ने 4.11.2003 के आदेश के विरुद्ध माननीय उच्च न्यायालय के समक्ष रिट याचिका सं. 17929-32/2004 दायर की है. माननीय उच्च न्यायालय ने 24.05.2004 को याचिका की सुनवाई की तथा माननीय केन्द्रीय प्रशासनिक अधिकरण/बैंगलूरु द्वारा पारित किए गए 4.11.2003 के आदेशों के कार्यान्वयन पर रोक लगा दी.

3. हाल ही में, भारत संघ बनाम प्रीतम सिंह 1995 की सिविल अपील सं. 937 में माननीय उच्चतम न्यायालय के 13.2.2002 के निर्णय के आधार पर मृत्यु एवं सेवानिवृत्ति उपदान प्रदान किए जाने के लिए 1.1.1986-31.12.1995 के दौरान सेवानिवृत्त हुए रेल कर्मचारियों द्वारा मूल आवेदन दायर किए जा रहे हैं। एक नोट अनुबंध III के रूप में संलग्न है जिसमें यह स्पष्ट किया गया है कि किन परिस्थितियों में यह निर्णय रेलवे के विपक्ष में गया है।

4. अनुबंधों के रूप में संलग्न नोट की विषयवस्तु को मूल आवेदनों के उत्तरों, स्टि याचिकाओं इत्यादि जिन्हें रेलों द्वारा दायर किया जाना अपेक्षित है, में उपयुक्त रूप से शामिल किया जाए।

5. कृपया पावती दें।

उत्तराधिकारी
(एस. श्रीराम)

उप निदेशक वित्त (स्था.) III
रेलवे बोर्ड

संलग्न : अनुबंध I से III.

The percentage of DA constituting DP for reckoning gratuity
In the IVth Pay commission scales of pay

1(i) The 4th Central Pay Commission recommendations came into effect from 01.01.1986. As per the decision of the government on the said recommendations, gratuity was payable to the retiring employees based on the last basic pay drawn in the time scale applicable to the employees at the time of retirement from service. There has been clamour from the Staff side members of the Joint Consultative Machinery (JCM) for a long time for treating part of the Dearness Allowance (D.A.) as Dearness Pay (D.P.) for the purpose of fixing gratuity. In the course of discussion in JCM, the Union Government conceded for merger of a portion of the DA as DP for the purpose of computation of gratuity, in the year 1992-1993. Accordingly, the Union Government issued a communication in the year 1993 directing treatment of DA component as it stood on 1.7.1988 as DP for the purpose of computation of gratuity (which stood at 20% of the basic pay). In compliance with Union Government's decision, the Railway Board issued letter No. PC/IV/93/DP/1, dated 25.11.1993 directing extension of similar benefits to all the Railway employees, who retired on or after 16.09.1993.

(ii) On the demand of Staff side members of JCM, the Union Government constituted 5th Central Pay Commission by resolution dated 09.04.1994 to make recommendations as to pay structure, including retiral benefits, having regard to the economic conditions in the country and the resources of the Central Government. The Pay Commission was headed by the Hon'ble Mr. Justice Ratnavel Pandian, a former Judge of the Supreme Court. One of the terms of the reference to the Pay Commission was to consider the demand of "staff side members of JCM" to treat the D.A. component as DP including the 20% that has been already granted and submit interim report thereon, if the submission of the final report was not feasible within a period of 18 months from the date of its appointment. The 5th Pay Commission submitted its second interim report on 02.05.1995 recommending that DA linked to all India Consumer Price Index of 1201.66 may be treated as

DP to form part of emoluments for calculating gratuity and the ceiling limit of gratuity be enhanced to Rs. 2.50 Lakhs. The 5th Pay Commission recommended specifically that its Interim Report should be implemented only prospectively i.e. w.e.f. 1.4.1995. The Union Government accepted these recommendations and communicated its decision. The Railway Board accordingly issued a circular dated 08.08.1995 directing implementation of the above said decision of the Union Government. Therefore, the said decision would apply to the employees who retired from service/ died on or after 01.04.1995. Having regard to the above decision, 97% of D.A. was liable to be included as D.P. for the purpose of computation of gratuity in the case of employees drawing basic pay up to Rs. 3500/-, 73% of D.A. as D.P. subject to minimum of Rs.3,395/- in the case of employees drawing basic pay above Rs.3,500/- and up to Rs. 6,000/- and 63% of D.A. as D.P. subject to minimum of Rs. 4,380/- in the case of employees drawing basic above Rs.6000/-.

(iii) In view of the aforesaid position obtaining by virtue of implementation of the recommendations of 5th Pay Commission, the applicants who had retired during 1.7.1993 to 31.3.1995 are not entitled to plead for equating them with employees, retired on or after 1.4.1995 and that the OA filed by such of the applicants obviously on second thought or belated thought is not maintainable in law.

2. The Hon'ble CAT/Bangalore Bench, while disposing of a cluster of OAs of similar nature, have observed that (i) the present application can be disposed of as the Hon'ble Supreme Court in their order dt. 6th January 2003 passed in SLP (Civil) No. 18367/02 have not only granted the Leave against the order and judgement of Punjab and Haryana High Court but even stayed the operation of the said judgement; (ii) based on the said order dt 6th January 2003, Chandigarh Bench of the Tribunal in RA No. 134/02 in OA 636/PB/2002 passed order dated 6th June 2003 and recalled and modified its earlier order dt. 10 th July 2002. and (iii) it was further ordered therein that the applicant would be granted the benefit as prayed for only after the outcome of the decision of the Supreme Court. Accordingly the Bangalore Bench of the Tribunal disposed

of the application with the direction that the claim of the applicants for revision of DCRG would be based on the judgment to be rendered by the Hon'ble Supreme Court in civil appeal and connected petitions/appeals as cited above. A copy of CAT's order dtd. 2.4.2004 is enclosed as Annexure-II.

3. Stay has been granted by the High Court of Andhra Pradesh on 12.12.2003 in WMP No. 32918/2003 filed by the Railways against order passed on 29.7.2003 in RA No. 11/2003 in OA No. 337 of 2002. In WP MP No. 33175 of 2003 in WP No. 26242 of 2003 filed by UOI and 2 others, the Hon'ble High Court of Judicature of Andhra Pradesh, has ordered interim suspension of orders of CAT, Hyderabad Bench dated 3.9.2003 in OA No. 451/2003. Similarly, order passed by CAT, Bangalore Bench on 30.10.2003 allowing identical OAs, on filing Writ Petition by the Department of Posts in the Hon'ble High Court of Karnataka challenging the CAT order, the same has been admitted. The Hon'ble High Court has also stayed the operation of impugned order dated 30.10.2003.

4. The Government of India is within its competence to fix a cut-off date as per the guidelines prescribed by the Apex Court famously known as Nakara Case (1983 [1] SCC 305). Moreover, in the following cases, the Hon'ble Supreme Court of India upheld the decision of the Government in fixing a cut-off date for grant of retirement benefits.

- (a) 91(2) SCC 104-Indian Ex-Service League Vs. UOI
- (b) 94(4) SCC 68 -UOI Vs. P.N.Menon
- (c) 95 suppl SCC (4)592 -S.P.Ganguly Vs.UOI
- (d) 2000 (1) SCC 205- State of Punjab & Anr. Vs.J.L. Gupta & Ors.
- (e) 2002 SCC 1(L&S)234-State of WB & Anr.Vs WB Govt. Pensioners' Association & others.

5. It is the prerogative of the Government to decide whether the new principles for computing gratuity should be given retrospective effect or not. The Hon'ble Supreme Court in State Government

Pensioners' Association and Another Vs. State of Andhra Pradesh, AIR 1986 SC 1907 has held that gratuity is paid on the then prevailing basis as is obtained at the time of their retirement and the amount got crystallized on the date of retirement on the basis of the salary drawn on the date of retirement. Once gratuity is paid on that footing, the transaction is completed and closed. There is no scope for upward or downward revision in the context of upward or downward revision of the formula evolved in future unless the provisions on this behalf expressly provides retrospectively. In the said case the Hon'ble Supreme Court observed that "...Improvements in pay scales by the very nature of things can be made prospectively so as to apply to only those who are in the employment on the date of upward revision. Those who were in employment say in 1950, 1960 or 1970, lived spent and saved, on the basis of the then prevailing cost of living structure and pay scale structure, cannot invoke Article 14 in order to claim the higher pay scale brought into force say, in 1980. If upward pay revision cannot be made prospectively on account of Article 14, perhaps no such revision would ever be made. Similar is the case with regard to gratuity.....".

6. The Hon'ble Supreme Court in Ex-Service League Vs. Union of India AIR 1991 SC 1182, had observed that D.S. Nakara's judgement is one of limited application and there is no scope for enlarging the ambit of that decision to cover all claims made by the pension retirees. In the said D.S. Nakara's case, the Hon'ble Supreme Court struck down the classification of pensioners on the basis of their date of retirement for the purpose of computation of monthly pension since the same would have led to an anomalous situation in which employees in the same pay bracket would draw pension at different rates. In contra distinction, gratuity is a gratuitous payment given to an employee on discharge, superannuation or death. Gratuity is an amount paid unconnected with any consideration and not resting upon it, and has to be considered as something given freely, voluntarily or without recompense. Hence, retirement gratuity being one time payment and the quantum of the said payment would not have a bearing on the other retirement benefits of the

employee to be made in future so as to allege discrimination vis-à-vis a person who retired subsequently. Further, payment of gratuity is dependent on various economic factors that exist during the relevant time. It is for the employer to decide on the question of revising the quantum of gratuity from time to time and when such a decision is taken, the same can be made applicable only with reference to a cut off date. If a contrary stand is taken, the same would render the scheme unworkable.

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CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ANNEXURE - II

Second Floor,
B. D. A. Complex,
Indiranagar,
BANGALORE - 38

ORIGINAL APPLICATION NOS. DATED:

119 APR 2004
50 APR 2004

No. 727, 728, 729, 772 to 776, 908, 909, 913 to 937, 940, 943, 944, 946, 948
960 to 963, 967, 968, 986 to 990, 994, 996, 998, 999, 1000, 1003 to 1005
1014, 1015, 1017, 1020, 1024, 1066, 1067, 1071 to 2003, 01.03 to 06.26
to 31.33 to 37.42 to 44.89 to 99 (115) 116 to 121, 138 to 141, 146
to 163, 165, 166 to 168, 169, 171 to 173, 175, 194 to 202, 208 to 210
to 219, 241 to 243, 259, 260, 264, 267, 269 AND 285 TO 294 to 2004.

APPLICANT (S) : M. DAMODARAN & ORS

V/S

RESPONDENTS : UNION OF INDIA & ORS

- TO:
01. Shri A.R. Holla, Advocate,
No. 3A, IInd Floor, 1st Cross,
Sujatha Complex, Gandhinagar,
BANGALORE - 560 009.
 02. Shri N. Amareesh, ACGSC,
No. 24, 1st Main,
Seshadripuram,
BANGALORE - 560 020.
 03. Shri M. Vasudeva Rao, Sh. CGSC,
High Court Buildings,
BANGALORE - 560 001.
 04. Shri Raghavendra Gayathri,
Advocate, No. 22, 1st Floor
Nehrunagar, BANGALORE-20.
 05. Shri Vishnu Bhat, ACGSC,
No. 24, 1st Main,
Seshadripuram,
BANGALORE - 560 020.
 06. Shri V.N. Holla, ACGSC,
No. 17, 7th 'C' Main,
Bandeppa Garden, Muthyala
Nagar, BANGALORE - 560 054
 07. Shri V. Donaldswamy, Advocate,
Amaravathi Layout,
BANGARAPET - 563 114.
 08. Shri ANV. Gowda, Rly Counsel
No. 8/7, Upstairs, R.V. Road.
BANGALORE - 560 004.
 09. Shri Jagadeeshgoud Patil,
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 10. Smt. Shwetha Anand,
Railway Counsel, No. 145,
G-2, 5th Cross, Krishna
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BANGALORE - 560 009.
 11. Shri S. Sugumaran, ACGSC,
No. 27, 1st Main, 2nd Floor,
Chandrashekar Complex,
Gandhinagar, BANGALORE - 09.
 12. Shri K.N. Chandrashekar,
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BANGALORE - 560 040.
 13. Smt. Shantha Chellappa,
Railway Counsel, No. 27/1,
3rd Cross, Sathyannarayana
Temple Street, Ulsoor,
BANGALORE - 560 008.
 14. Shri M.S. Anandaramu,
Advocate, No. 11, 1st Floor
1st Cross, S.C. Road Cross.
Opp: Movelland Theatre,
R.K. Puram, BANGALORE - 09.
 15. Shri B. Venkateshan, Advocate, No. H-44, 4th Cross,
Magadi Road, BANGALORE - 560021.

SUBJECT: Forwarding of copies of the Orders passed by the
Central Administrative Tribunal, Bangalore.

A copy of the Order passed by this Tribunal in the above
said application(s) is enclosed herewith for your information and
further necessary action.

The Order was pronounced on dated 2 APR 2004

for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

Appt/Cont 27/4.
This has to be
transmitted to
Rly Coun & inf.
27/4/2004

2. The Chief General Manager Telecom
BSNL, Karnataka Region
Telephone House
Bangalore-560 001

Respondents

(By Shri Vishnu Bhat, A.C.G.S.C.)

O.A. NO. 269/2004

R. Sumantharaya
S/O. Late R.V. Murthy
R/at No. 40, IV Main Road
3rd Cross, Chamaraipet
Bangalore-560 004

Applicant

(By Advocate Shri A.R. Holla)

vs.

1. Union of India
By its Secretary
Ministry of Personnel
Public Grievances & Pensions
Deptt. of Pensions and
Pensioners Welfare
Lok Nayak Bhavan
Khan Market, New Delhi-110 003

2. The PostMaster General
Bangalore Region
Bangalore-560 001

Respondents

ORDER

SHRI MUKESH KUMAR GUPTA, MEMBER (J)



Since common question of law and facts are involved in these cases, they are being disposed of by the present common order.

None appeared for the respondents despite service in O.A. Nos. 171/04, 172/04, 209 & 259 to 260/04, 217/04, 241/04 & 269/04. As far as O.A. Nos. 218/04 & 264/04 are concerned, notices were issued but neither acknowledgements

were received back nor any one appeared for the reply.
In O.A. No.776/2003, 2 sets of identical reply have
filed without showing any justification as to why the
time the identical reply was filed. Such practice cannot
allowed.

2. Briefly stated all the applicants retired
service between 1st July, 1993 and 31st March, 1995.
principal grievance of the applicants is to declare the
of effect notified as 1st April, 1995 in O.M. dated
July, 1995 as arbitrary, illegal and unconstitutional
also to quash the O.M dated 18th February, 2003 issued
the Department of Pension and Pensioners' Welfare, New Delhi
on the subject of treatment of D.A as emoluments
gratuity with effect from 1.1.1996.

3. The Vth Central Pay Commission (for short referred
as Vth CPC) in its second Interim Report recommended the
Dearness Allowance linked to average All India Consumer



Price Index (AICPI) 1201.66 as on 1.7.1993 be treated as
Dearness Pay for reckoning emoluments for the purpose of
Death-cum-Retirement Gratuity under the Central Civil
Service (Pension) Rules, 1972 and further that the ceiling
on gratuity be enhanced to 2.50 lakhs. The recommendations

came to be accepted by the Government of India and it was

decided that Dearness Allowance linked to the AICPI 1201.66

as indicated in the Government of India, Department of

Pension and Pensioners Welfare OM No.7/1/95 P&PW (F) dated

14.7.1995, would be treated as dearness pay for the purpose

of retirement gratuity/death gratuity under Central Civil Service (Pension) Rules, 1972 "in the case of the Central Government employees who retired or died on or after 1.4.1995".

4. The validity of the O.M dated 14th July, 1995 which was made operative with effect from 1st April, 1995 came up for consideration before a Full Bench of this Tribunal at Mumbai in the case of a Baburao Shankar Dhuri and Ors. vs. Union of India and Others, 2001 (3) ATJ 138 wherein the said cut off date, i.e. 1st April, 1995 was held to be discriminatory. The operative portion of the order and judgement read as follows:

"We do not find that there is any nexus or rational consideration in fixing the cut off date of first April, 1995 vide OM No.7/1/95-P&PW(F) dated 14th July (sic.) 1995 issued by the Ministry of Personnel, Public Grievances and Pension (Department of Pension & Pensioners' Welfare), New Delhi."



It is contended by the applicants that since retired in between 1st July 1993 and 31st March, 1995 they are entitled to the benefit of claim of merger of DA in pay for the purpose of emoluments for calculating death/retirement gratuity. In other words, the contention is that the applicants are entitled to extension of the benefit of the said order passed by the Full Bench. On the other hand, respondents have

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contested the present applications by contending that the relief prayed for cannot be granted as they run counter to the recommendations made by the Vth CPC.

6. We heard learned counsel for the parties at length and perused the pleadings.

7. Shri A.R. Holla, Shri R.G. Gayathri, Shri V. Doraiswamy, Shri Jagdish Patil, Shri B. Venkatesan and Shri M.S. Anandaramu appearing for the applicants strenuously urged that since the judgement rendered by the Full Bench of this Tribunal in Baburao Shankar Dhuri and Others case was a judgement in rem, the applicants being similarly placed, are entitled to the benefit of the said judgement. It was further contended that this Bench in a batch of cases decided on 30th October, 2003 followed the said Full Bench judgement and therefore, they are entitled to the extension of the benefit of the said Full Bench judgement and order.



8. The aforesaid claim was resisted by the respondents basically on two grounds:- firstly, that the present applications are barred by limitation and as such not maintainable and secondly, that the issues raised in the present cases are under consideration before Hon'ble Supreme Court. Against the judgement and order passed by the Chandigarh Bench of this Tribunal in an identical case, which was upheld by the High Court of

injab and Haryana, the Leave was granted and its operation has been stayed by the Hon'ble Supreme Court vide order dated 6th January, 2003. Therefore, the present applications should be disposed of without granting any relief, contended the respondents.

9. As far as the question of limitation is concerned, we may note that a Division Bench of this Tribunal vide order dated 30th October, 2003 passed in batch of cases has already rejected the said plea and therefore, we do not find any substance in the said contention. Accordingly, the plea of limitation is rejected.

10. As far as the other aspects are concerned, we may note that it is undisputed fact that based on the order dated 6th January, 2003 passed in SLP (Civ.) No.18367/02, the Hon'ble Supreme Court not only granted the Leave against the order and judgement of Punjab and Haryana High Court but even stayed the operation of the said judgement. Based on the said order dated 6th January, 2003, Chandigarh Bench of this Tribunal, in R.A. No.134/02 in O.A. 836/PB/2002, passed order dated 6th June, 2003 and recalled and modified its earlier order dated 10th July 2002. It was further ordered that the applicant would be granted the benefit as prayed for only after the outcome of the decision of the Supreme Court, if it was favourable to him.



11. S/Shri A.N.V. Gowda, M.V. Rao, V.N. Holla, Amaresh, Vishnu Bhat, K.N. Chandrashekar, Sugumaran and Smt. Swetha Anand appearing for the respondents contended that in service jurisprudence the theory is to extend the benefit of judgement and order to those who do not approach the Court as long as the judgement/order

was based on the principles, the object being to avoid multiplicity of proceedings and save the burden on the exchequer.

12. It was further contended that since the issue raised in the present cases had been the subject matter before various Benches of this Tribunal, and is now seized of by different High Courts as well as Hon'ble Supreme Court of India, this Tribunal should regulate the relief so prayed for based on the decision to be taken by the Hon'ble Supreme Court. Shri N. Amaresh

learned counsel for the respondents drew our attention to paragraph 1.43 of the Vth CPC recommendations, reading of which will itself make clear that the recommendation were to be given effect only from 1st

April, 1995. Paragraph 1.43 of the Vth CPC recommendations is extracted hereunder:-

"1.43 The Commission submitted its first Report, which pertained to Interim Relief to pensioners, on 21st October, 1994 it was recommended that all pensioners and family pensioners be sanctioned an Interim Relief at a uniform rate of Rs. 50 per month. This was to be treated as a distinct and separate element to be set off



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against the retirement benefits to be finally recommended. The Second Report of the Commission was submitted to Government on 2nd May, 1995. It recommended the grant of Interim Relief equal to 10% of basic pay, subject to a minimum of Rs. 100/- per month. A further instalment of Interim Relief equal to 10% of the basic pension/family pension subject to a minimum of Rs. 50 per month was also recommended. It was suggested that Dearness Allowance linked to the average AICPI 1201.88 as on July 1, 1993 be treated as dearness pay for reckoning emoluments for the purpose of retirement and death gratuities, and the ceiling on gratuity be enhanced to Rs. 2.5 lakhs. These recommendations were to be given effect to from 1st April, 1995. (emphasis supplied)

It was further contended that this being the fact and the law being so settled that the Government can decide as a matter of policy the date from which the benefit be regulated, the Tribunal was not justified in holding the said date of 1st April, 1995 as illegal and arbitrary.

13. Shri A.N.V. Gowda, learned counsel for the respondents contended that prima facie case was made out before the Hon'ble Supreme Court and Leave has since been granted as well as other procedural aspects, i.e. preparation of paper books etc. being dispensed with and therefore this Tribunal should avoid further litigation in the interest of applicants as well as to avoid multiplicity of proceedings, and also regulate the order of the applicants in terms of the decision to be rendered by the Hon'ble Supreme Court. It was further contended that various Benches of this Tribunal have already passed the order in favour of the officials against which writ petitions have been preferred which have either been pending before different High Courts and the matter is seized of by them. It was further argued on behalf of the respondents that the pleadings filed by



the applicants do not even remotely show that any of the applicants have even made any representation to the concerned authorities seeking extension of the said order and judgement passed by the Full Bench.

14. Shri A.R. Holla, learned counsel for the

applicants agreed with the contention raised by the respondents that allowing the applications would result in multiplicity of proceedings but added that the Tribunal should protect the applicants interests too.

15. Without going into the merit and the

contentions raised by the parties, though in the normal circumstances we would have followed the judgement rendered by the Full Bench of the Tribunal in the aforementioned cases but in order to avoid multiplicity of proceedings and further litigation as well as in the interest of applicants, particularly in the circumstances as noted herein above, we are of the

considered view that the present applications can be disposed of as the Hon'ble Supreme Court is seized of the issue in question as mentioned above and may lay down the law applicable to all irrespective of the fact whether one is party before it or not. We are also of the considered opinion that in case we allow the claim of the applicants, who are pensioners and are within the age group of 67 - 69 years, it would be difficult for



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the State to recover any such amount paid, in the event the Hon'ble Supreme Court decide the matter in some other way.

16. Accordingly, the applications are disposed of with a direction that the claim of the applicants for revision of pension as well as death-cum-gratuity would be regulated based upon the judgement to be rendered by the Hon'ble Supreme Court in Civil Appeals as well as connected petitions/appeals as cited above. There shall be no order as to costs.

Sd-
(MUKESH KUMAR GUPTA)
MEMBER (J)

Sd-
(S.K. GUPTA)
MEMBER (A)

np/mr.

सत्य प्रति
TRUE COPY



19/4/04
अनुभाग अधिकारी
Section Officer
केरीय प्रशासनिक न्यायालय
Central Administrative Tribunal
बेंगलूर बेंच, बेंगलूर
Bangalore Bench, Bangalore.

Decision of Hon'ble Supreme Court in the case of
Sh. Pritam Singh Vs UOI

The decision of the Controlling Authority, Yamuna Nagar for payment of gratuity to Sh. Pritam Singh under the Payment of Gratuity Act, 1972 is as a result of the failure of the respondent Railway to convince the said Authority about non-applicability of the provisions under the Payment of Gratuity Act, 1972 to Shri Pritam Singh. It could be observed from the decision of the Controlling Authority Yamuna Nagar that though the Railway had maintained that dearness allowance did not form part of the emoluments for calculation of gratuity of Shri Pritam Singh, the rule position in support thereof does not appear to have been brought out clearly with the result the Controlling Authority came to the conclusion that dearness allowance formed part of "wages" for calculation of gratuity under the Payment of Gratuity Act, 1972 and that Sh. Pritam Singh should be paid gratuity accordingly. The interpretation given by the Controlling Authority to the definition of the term 'Wages' in the Payment of Gratuity Act, 1972, is, no doubt, correct, but the issue as to whether this Act itself was applicable to Sh. Pritam Singh or not was not explained in sufficient detail during hearing of the case by the Controlling Authority. Had the Railway submitted its position in a convincing manner to establish that since Pritam Singh was a Railway servant at the time of his retirement and that he was governed by the Railway Pension Rules and not by the provisions under the Payment of Gratuity Act, 1972, the Controlling Authority would perhaps not have given a ruling in favour of Sh. Pritam Singh.

2. The provisions of the Payment of Gratuity Act, 1972 are applicable only to those employees who do not hold any post under the Government. As such, these provisions do not apply to a Railway servant, who holds a post on the Railways. The definition of the term 'employee' as appearing in para 2 (e) of the Act reads as under:-

"employee" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such

employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity."

On the Railways, casual labourers, including the temporary status assigned casual labourers, who do not hold any posts, are governed by the provisions of the Payment of Gratuity Act, 1972. When they cease to be in service while holding the status of casual labourers, they are paid gratuity under this Act subject to fulfilment of the stipulations laid down therein.

3. The decision of the Controlling Authority, Yamunanagar in the case of Shri Pritam Singh, as upheld by the CAT/Chandigarh and the Supreme Court, had to be implemented as a judgement 'Personem'. There was no option except to implement the judgement because the Railway was not able to substantiate non-applicability of the provisions under the Payment of Gratuity Act, 1972 to Sh. Pritam Singh, who was holding a post under the Railways.

4. Railway employees who were holding posts under the Govt. and retired during 1.1.1986 to 15.9.1993 were settled under the Railway Pension Rules. The said rules provided for reckoning the basic pay alone for calculation of gratuity. In respect of those who retired/died during 16.9.1993 - 31.3.1995, 20% of the basic pay was reckoned as emoluments in addition to the basic pay for calculating gratuity and in respect of those who retired during 1.4.1995 - 31.12.1995, dearness allowance linked to AICPI-1201.66 was to be treated as emoluments along with the basic pay for calculating gratuity.
