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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 924/2002

NEW DELHI THIS.. ~~07.11~~ DAY OF NOVEMBER 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Sh. A. Chowdhury S/o Late DD Chowdhury,
Flat No. 104, Buildon Apartment,
70 Bev Sarai,
New Delhi

.....Applicant

(By Shri P K Dey, Advocate)

VERSUS

1. Union of India through Secretary,
Ministry of Statistics
NSS Organisation
Data Proessing Centre,
Hans Bhawan, Wing-II
New Delhi - 110002.
2. National Sample Survey Oranisation,
Mahalanobis Bhawan,
164, GLT, Road,
Kolkatta - 35

through its Administrative Offier.
3. National Sample Surey Organisation,
through Deputy Director and Controlling Officer,
Data Processisng Centre, Hans Bhawan, Wing-II
New Delhi - 110002

.....Respondents

(By Shri R V Sinha, Advocate)

ORDER (ORAL)

By Hon'ble Shri Govindan S. Tampi, Member (A)

Applicant in this case seeks the benefit the OM No.
7/1/95 P&PW(F) dated 14.7.95, issued by the Deptt. of
Pension and Pensioners Welfare, treating him as having
retired on 1.4.95.

2. S/Shri P K Dey and R V Sinha, learned counsel appeared on behalf of the applicant and the respondents respectively.

3. M.A. No. 732/2002 for condonation of delay allowed, in the circumstances of the case, as this relates to pension which is a continuous cause of action, as laid down by the Hon'ble Apex Court in the case of M.R. Gupta Vs Union of India [1995 (5)SCALE 29]

4. The applicant who retired from service on superannuation on 31.3.95, was paid gratuity in terms of OM No. 1/2/93-P&PW (F) dated 19.10.93, directing that only 20% of dearness allowance be declared as dearness pay for the purpose of retirement purpose like gratuity etc. However, in terms of OM No. 7/1/95 P&PW dated 14.7.95, accepting the 5th Central Pay Commission recommendation, directed that dearness allowance linked to All India Consumer Price Index (AICPS) of 12.01.66 be treated as dearness pay for reckoning retirement of gratuity / death gratuity, in respect of the employees retiring on 1.4.95 or thereafter. The applicant who retired on superannuation on 31.3.95, holds that he was in service upto the midnight of the said date and ceased to be so only on 1.4.95 and as such entitled for the benefit of this OM as settled by the Full Bench of the Tribunal's decision in OA No. 459/97 dated 15.10.99 in Venkatram Rajagopalan Vs UOI & Others . Representation filed by the applicant on 11.7.2000, seeking the above benefit had not been replied to by the respondents, leading to the filing of this OA. Grounds raised in the OA are that:

- i) the Govt. servant superannuating on 31.3.95 should be deemed to be in service till the mid night of 31.3.95/1.4.95;
- ii) pensionary benefits start from the day following the retirement which in this OA was 1.4.95
- iii) the applicant was similarly placed as the applicant in OA 459/97 decided on 15.10.99 and entitled to the same benefits.

All the above pleas were reiterated by Sh. P K Dey, learned counsel for the respondents.

5. In the rebuttal on behalf of the respondents, duly reiterated by Sh. R V Sinha, during oral submission, the facts in the OA are ^{not} denied but it is pointed out that the applicants averment that he was to be deemed as being in service till 1.4.95 was misconceived and unacceptable. His date of retirement on superannuation was 31.3.95 and the same should not be stretched to 1.4.95, just to enable him to avail himself of the benefits of the OM No. 7/1/95-P&PW(F) dated 14.7.95. The applicant also is not entitled to get the benefit of the Tribunal's decision in OA No. 459/97 & 460/97 was applicable to those applicants only and none other. OA therefore deserves dismissal, urges Shri Sinha.

6. I have closely considered the matter and deliberated upon the rival contentions. The applicant in this case seeks the benefit of increased DCRG w.e.f. 1.4.95 or thereafter. The applicant whose date of superannuation fell on 31.3.95, has requested that he has to be treated as being in service till 1.4.95. It is in this context that the decision of the Full Bench of the Tribunal dated 15.10.99 in OA 459/97 and 460/97, filed by

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Venkatram Rajagopalan and Anr Vs UOI & Others [2000 (1)ATJ]

2] becomes relevant. Relevant portion of the said judgement is reproduced as below:

"7. According to Rule 83(1) of the Pension Rules, Pension becomes payable from the date on which Government servant ceases to be born on the establishment (emphasis given). A Government servant continues to be born on the establishment till midnight of the date of superannuation. The decision of the superannuation Bench of this Tribunal in T. Krishna Murthy's case (supra) cannot be brushed aside out by the Learned Counsel for the respondents retirement may by voluntary or on superannuation. The principles for payment of pension will not vary on the basis of these distinctions. According to us, "afternoon of 31st of March" or "forenoon of 1st of April" means one and the same thing and on this basis also we see no reason to hold that the said case is not applicable to the present cases. In short, we are of the view that in the present cases the effective date of retirement would be 01.04.1995 and not 31.03.1995.

8. The decision of the Supreme Court in Union of India Vs P N Menon & Others, Civil Appeal No. 417 of 1987 and several other cases relied on by the learned counsel for the respondents in support of his contention need no attention, because they are not exactly or remotely on the point under consideration. The OM dated 14.07.1995 is not challenged in these cases and, therefore, the argument tried to be made with reference to cut off date or financial implications in these cases, is misplaced.

9. For the foregoing reasons, our answer to the question before this Full Bench is as follows:

"A Government servant completing the age of superannuation on 31.03.1995 and relinquishing charge of his office in the afternoon of that day is deemed to have effectively retired from service with effect from 01.04.1995."

10. Facts in this OA being identical as a matter of judicial discipline, there is no ground for me to take any view, at variance from the decision of the Full Bench cited above. The same is squarely applicable to this OA. Respondents' plea that the said decision was only in personam and not in rem cannot be accepted, as the adoption of such a proposition would mean that every person covered

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by a settled position in law, ⁻⁵⁻ would have to be dragged to litigation, to vindicate their right already established in law, something which has been repeatedly ^{known} ~~known~~ upon by the courts. The instant applicant is correctly entitled to have the benefit of the judgement of the Tribunal dated 15.10.99, in OA 459 & 460/97 in this case. He is also deemed to have been borne on the establishment of the Govt. till 1.4.95 and as such authorised to have the benefit of P&PW OM dated 14.7.95.

8. OA in the above view of the matter succeeds and is accordingly allowed. The respondents are directed to treat the applicant as having been borne on the Government Establishment till 1.4.95 and thus entitled to the benefit of higher DCRG in terms of P&PW OM dated 14.7.95, with full consequential benefits. No costs.

(Govindan S. Tampi)
Member (A)

Patwal/

OA disposed of 07/07/02
frmt MA 720/01 - for implementation
order of