Central Administrative Tribunal
Madras Bench

OA/310/00999/2019

Dated the 24th day of January Two Thousand Twenty

P R E S E N T

Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)

K.Palanisamy,
S/oKaruppanan,
9D, Thaiyammal Layout,
Gandhi Road,
Podannur. .. Applicant
By Advocate **M/s.B.Harikrishnan**

Vs.

1. The General Manager,
   Southern Railway,
   Park Town, Chennai 600 003.
2. The Chief Personal Officer,
   General Manager Office,
   Southern Railway,
   Park Town, Chennai.
3. The Divisional Personal Officer,
   Divisional Office,
   Southern Railway,
   Salem. .. Respondents

By Adovacte **Mr.Y.Prakash**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OA is filed seeking the following relief:-

> "...to direct the respondent to grant one notional increment to the applicant for the period from 01.7.2011 to 30.6.2012 by treating the applicant as having completed one full year of service on 30.6.2012, through his increment fell due on 01.7.2013 for the purpose of his pensionary benefits, within a time that may be stipulated by this Tribunal."

2. The applicant in this case had retired from service on 30.6.2012 from the Railways. According to him, the Central Government, on the recommendation of the 6th Central Pay Commission had fixed 1st July for granting increment to all employees. This was incorporated after amending Rule 10, CSS (Revised Pay) Rules, 2008. According to the applicant, he is entitled to get one more notional increment on 1st July of his retirement year as he had already completed one year of service on 30.6.2012. According to him, one Ayyamperumal had approached the Tribunal by filing OA 917/2015 for granting one more notional increment on 1st July, but the Tribunal had dismissed the said OA. Aggrieved by the same the said Ayyamperumal had filed an Appeal before the Hon'ble High Court as WP 15732/2017 and the Hon'ble High Court in the said case had granted the relief. So, according to the applicant, he is also entitled to get the benefit.

3. The respondents appeared and submitted that this question was decided by this Tribunal in batch of cases in OA 1710/2018 to OA 1714/2018 on 06.3.2019 filed by

N.Sadaksharam & Ors. v. UOI, rep. by the Secretary, Department of Posts & Ors., following the decisions of the Hon'ble Supreme Court in ***Chief General Manager, Telecom, BSNL & Another v. K.V.George reported in [(2008) 14 SCC 699], Achhaibar Maurya v. State of U.P. & Others [(2008) 2 SCC 639]*** and ***Union of India & 3 Others v. YNR Rao (WP 18186/2003)*** of Hon'ble Karnataka High Court and the earlier decision of the Hon'ble High Court of Madras in ***A.V.Thiyagarajan vs. The Secretary to Government (W.P.No.20732/2012 dated 27.11.2012)*** etc**.** Following the order passed in the said batch of cases, OA 309/2019 filed by K.Sundar v. UOI, rep. by its Secretary & Ors. and OA 677/2019 were also disposed of in the same lines. The facts of this case is also similar and therefore, the same preposition has to be followed in this case also.

4. We have heard both sides and perused the order produced by the respondents in OA 309/2019 dt. 19.3.2019 passed by this Tribunal. The relevant portion is reproduced as follows:-

> 5. The counsel for the applicant mainly rely on a decision of the Hon'ble Madras High Court in ***"Ayyamperumal v. Union of India (W.P. 15732/2017).*** The standing counsel for the respondent appeared and would content that the applicants had continued till 30.6.18 only on the basis of FR 56 and the Hon'ble Supreme Court in ***Chief General Manager v. U.V.George & Others (2008) 14 SCC 699*** had held that a person is considered as retired on his attaining 60 years and they are permitted to continue till 30.6.18 only for the purpose of pay and allowances only. He also submits that R-10 of CCS (Pension) Rules does not permit to take into consideration emoluments which fell due after his retirement.
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> 6. He also invited our attention to the Hon'ble Apex Court decision in ***Achhaibar Maurya v. State of U.P. & Others (2008) 2 SCC 639*** wherein it was held as follows:-
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> > "10. A benefit of getting an extended period of service must be conferred by a statute. The legislature is entitled to fix a cut-off date. A cut-off date fixed by a

> statute may not be struck down unless it is held to be arbitrary. What would, therefore, be an employees last working date would depend on the wordings of the Rules. It may seem unfortunate as some people may miss the extended period of service by a day, but therefor a valid provision may not be held to be invalid on the touchstone of Articles 14 or 16 of the Constitution of India. A statute cannot be declared unconstitutional for conferring benefit to a section of the people."

The Standing Counsel also invited our attention to the decisions of the Hon'ble Madras High Court in ***A.V.Thiyagarajan vs. The Secretary to Government (W.P.No.20732/2012 dated 27.11.2012)*** and ***Union of India v. R.Sundara Rajan (WP 28433/05)*** and the decision of Hon'ble Karnataka High Court in ***Union of India & 3 Others v. YNR Rao (WP 18186/2003)*** where it was held that

> "5. But for the provisions of FR 56, which provides that a Government Servant shall retire from service on the afternoon of last date of the month in which he had attained the age of 58 years, the respondent, who was born on 9.3.1937 would have retired on 8.3.1995. The provision for retirement from service on the afternoon of the last date of the month in which the Government Servant attains the age of retirement instead of on the actual completion of the age of retirement in FR 56 was introduced in the year 1973-74 for accounting and administrative convenience. What is significant is the proviso to clause (a) of FR 56 which provides that an employee whose date of birth is first of a month, shall retire from service on the afternoon of the last date of the preceding month on attaining the age of 58 years. Therefore, if the date of birth of a government servant is 1.4.1937 he would retire from service not on 30.4.1995, but on 31.3.1995. If a person born on 1.4.1937 shall retire on 31.3.1995, it would be illogical to say a person born on 9.3.1937 would retire with effect from 1.4.1995. That would be the effect, if the decision of the Full Bench of the CAT, Mumbai, is to be accepted. Therefore, a government servant retiring on the afternoon of 31.3.1995 retires on 31.3.1995 and not from 1.4.1995. We hold that the decision of the Full Bench (Mumbai) of the CAT that a government servant retiring on the afternoon of 31st March is to be treated as retiring with effect from the first day of April, that is same as retiring on the forenoon of first of April, is not good law."

7. We had anxiously perused the pleadings and heard the submissions made from both sides. The Hon'ble Supreme Court in ***Chief General Manager, Telecom, BSNL & Another v. K.V.George reported in (2008) 14 SCC 699*** has clearly laid down what will be the actual date of retirement of

> an employee under the Central Government as per FR 56. We are bound to follow the decision of Apex Court as to the actual date of retirement and as to the nature of employment of the employee till the last date of the month. The Hon'ble Supreme Court held that *"we are unable to countenance with the decision of the Tribunal and the High Court. As already noticed, they were retired w.e.f. 16.12.95 and 3.12.95 respectively but because of the provision under FR 56(a), they were allowed to retire on the last date of the month; the grace period of which was granted to them for the purpose of pay and allowances only. Legally they were retired on 16.12.95 and on 3.12.95 respectively and, therefore, by no stretch of imagination can it be held that their pensionary benefits can be reckoned from 1.1.96. The relationship of employer and employee was terminated in the afternoon of 16.12.95 and 3.12.95 respectively."*
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> 8. From the above, it can be seen that an employee legally retires on attaining superannuation (60 years) and as per the decision, the relationship of employer employee is terminated. They continue thereafter as a grace period given to the employee under FR 56. There is no provision to consider this grace period alongwith his service prior to his retirement."

5. Since the OA on hand is identical to the one in OA 1710/2018 to OA 1714/2018, following the same ratio, the present OA has also to be dismissed.

6. Accordingly, the OA is dismissed at the admission stage.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

24.01.2020

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