

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

19

PRINCIPAL BENCH : NEW DELHI

OA No.3196/2001

Date of decision: 9.5.2003

Sh. Mam Chand Rohilla .. Applicant

(By Advocate: Shri S.S.Tiwari)

versus

Union of India & Others .. Respondents

(By Advocates: Ms. Harvinder Oberoi)

CORAM:

The Hon'ble Sh. Shanker Raju, Member(J)

1. To be referred to the reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal?

S. Raju

(Shanker Raju)
Member(J)

Central Adminisrative Tribunal
Principal Bench

O.A.No.3196/2001

29

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 9th day of May, 2003

Sh. Mam Chand Rohilla
s/o Late Shri K.L.Rohilla
r/o 19/16A, Tilak Nagar
New Delhi-18.
and retired as Sr. Stores
Supdt. from COD,
under M/o Defence
Delhi Cantt-10. ... Applicant

(By Advocate: Sh. S.S.Tiwari)

Vs.

1. Union of India through
Secretary
Ministry of Defence
South Block
New Delhi.
2. Secretary
Dept. of Pension & Pensioners' Welfare
Ministry of Personnel, Public Grievances
& Pensions
North Block
New Delhi.
3. Commandant
Central Ordnance Depot
Delhi Cantt-10.
4. A.O. (P)
Office of the C.G.D.A.
West Block-V, R.K.Puram
New Delhi - 66.
5. The Principal Controller of Defence
Accounts (Pensions)
Draupadighat
Allahabad - 211014. ... Respondents

(By Advocate: Ms. Harvinder Oberoi)

O R D E R

By Shri Shanker Raju, M(J):

Applicant impugns respondents' order dated 14.9.2001 wherein his request for grant of pensionary benefits, as recommended by Fourth Pay Commission, effective from 1.1.1986 has been denied to him on the

-2-

(21)

basis that as he had retired on superannuation w.e.f. afternoon of 31.12.1985 and the same cannot be treated as on 1.1.1986.

2. Applicant's counsel Shri S.S.Tiwari, contended, placing reliance on a decision of Full Bench of this Court in Venkatram Rajagopalan & Anr. v. Union of India & Others, 2000(1) ATJ 1, that a Government servant who retires in the afternoon of last day of the month would be deemed to have effectively retired w.e.f. the first day of next month. Applying the ratio of the aforesaid decision, it is contended that as the applicant retired on superannuation in the afternoon of 31.12.1985, he is deemed to have been retired w.e.f. 1.1.1986, and as per the Fourth Central Pay Commission's recommendations which are effective from 1.1.1986, applicant is entitled for all the consequential benefits including the refixation of pension, arrears and other benefits.

3. Applicant's counsel further contended that even if the decision of Full Bench of this Court at Mumbai, has been stayed by the High Court of Mumbai, which is not an order on merit and till the decision of the Full Bench is modified or reversed in appeal it remains effective and is to be followed. For this, learned counsel for applicant places, reliance on the decisions of the Full Bench of this Court in Ganga Ram and Others v. Union of India & Others, Full Bench Judgements of CAT 1989-91(Vol.II), Page 441 (Bahri Brothers), as well as the decision of the Full Bench

of this Court at Bangalore in R.Srirangaiah & Others
v. Union of India & Others, ATFBJ 1997-2001 Page 207
(J.S.Kalra's).

4. On the other hand, Ms. Harvinder Oberoi, learned counsel for respondents by referring to a decision in OA 1676/2001 where the similar issue has been decided, contended that as the decision has been stayed by the High Court of Delhi, and as the ratio of the Full Bench in dispute, the same cannot be treated as binding precedent.

5. Moreover, it is contended that as per Rule 35 of the CCS (Pension) Rules, 1972, the Government servant who was retired afternoon of the last date of the month in which his date of retirement falls as per FR 56, and as the decision of Full Bench has been stayed by the High Court of Mumbai, the present OA is liable to be dismissed.

6. I have carefully considered the rival contentions of the parties and perused the material on record. Full Bench in Venkatram Rajagopalan's case supra held as follows:

"A Government servant completing the age of superannuation on 31.3.1995 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."

7. Admittedly, the decision of Full Bench at Mumbai has been stayed by the High Court of Mumbai and moreover, an order passed on the same line following

the Full Bench in OA No.1676/2001 has been stayed by the Delhi High Court. However, in Ganga Ram's case supra, Full Bench of this Court, observed as under:

23

"16. It will thus be seen that it is not a speaking order at all. It does not give any reason nor makes any declaration of law. Consequently, it is not a binding order under Article 141 of the Constitution. It will only have an effect in the case of Shri Rasila Ram and Three (SLPs(Civil)Nos.9345 to 9348 of 1989-OA No.89/88, 1667/87, 1497/88 and 1802/88]. Until the decision of the Full Bench is set aside, reversed or modified by the Supreme Court, the Full Bench decision of the Tribunal in the case of Rasila Ram (supra) remains effective."

8. In R.Srirangaiah's case supra, the Full Bench of this Tribunal at Bangalore held as follows:

"We also take notice of a subsequent decision of the Madras Bench of the Tribunal in O.A. 617/96, which has granted the relief sought by similarly placed applicants. It has been brought to our notice by the learned counsel for the respondents that the same decision of the Madras Bench has been stayed by the Hon'ble High Court at Madras. However, since an order of stay does not dispose of the case on merits, the said interim order of the Hon'ble High Court of Madras cannot stand in the way of our considering the matter before us. Further, the order passed by the Hon'ble High Court at Madras cannot be treated as binding on the Bangalore Bench of the Tribunal."

9. The doctrine of stare decisis though does not have any statutory sanction, but it is a rule of convenience, expediency, prudence and above all for public policy. According to which settled principle of law is binding on the Courts and to be followed in similar cases.

10. While dealing with the doctrine of stare decisis, in the conspectus of doctrine of precedents, the Apex Court in Sub-Inspector Rooplal v. Lt. Governor, (2000) 1 SCC 644, held as follows:

(24)

"The manner in which a Coordinate Bench of the Tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same Tribunal is most dissatisfying. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that difference of opinion between two Coordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under the Indian system&. This is a fundamental principle which every Presiding Officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in the judicial system in India. The Supreme Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a court cannot pronounce judgement contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement. (Para 12)"

11. The Apex Court in Saurashtra Cement & Chemical Industries Ltd. and Another v. Union of India & Others, 2001(1) SCC 91 held as follows:

"35. In the wake of the aforesaid, we do feel it expedient to record that taking recourse to the doctrine as above would be an imperative necessity, so as to avoid uncertainty and confusion, since the basic feature of law is its certainty and in the event of any departure therefrom the society would be in utter confusion and the resultant

effect of which would be legal anarchy and judicial indiscipline - a situation which always ought to be avoided. The Central Legislature introduced the legislation (MMRD Act) in the year 1957 and several hundreds and thousands of cases have already been dealt with on the basis thereof and the effect of a declaration of a contra law would be totally disastrous affecting the very basics of the revenue jurisprudence. It is true that the doctrine has no statutory sanction but it is a rule of convenience, expediency, prudence and above all the public policy. It is to be observed in its observance rather than in its breach to serve the people and subserve the ends of justice."

(25)

12. If one has regard to the aforesaid rulings, the doctrine of stare decisis applies to the decisions rendered by this Tribunal and accordingly the Full Bench's decision of the Tribunal is binding on Division Bench as well as Single Bench.

13. The decision of the Full Bench in Venkatram Rajagopalan's case supra where the ratio has been held that if a Government servant completing the age of superannuation on the last day of month is to be deemed to have effectively retired from service from first date of the next month, for example, in case of Government servant completed the superannuation on 31.3.1995, he is deemed to have effectively retired from service w.e.f. 1.4.1995. The aforesaid decision has only been stayed by the High Court which operates between the parties, it does not cease to be a precedent, remains effective and to be followed, unless reversed or modified. The same has to be applied in similar cases accordingly. This view of mine is fortified by the decision of Full Benche in Ganga Ram's case supra.

14. Following the aforesaid ratio, as the applicant has retired on 31.12.1985 his effective date of retirement is to be deemed as 1.1.1986 and in that event, he is entitled for the revision as recommended by Fourth Central Pay Commission which was effective from 1.1.1986.

(26)

15. In view of the doctrine of stare decisis and the ratio laid down in SI Rooplal's case supra as the Full Bench decision is binding and has not been over turned, I respectfully follow the same.

16. In the result, OA is allowed. Impugned order dated 14.9.2001 is quashed and set-aside. Respondents are directed to deem the date of retirement of applicant as 1.1.1986, and in that event revision as recommended by Fourth Central Pay Commission be made available with all consequential benefits including refixation of pension and arrears of pension. The aforesaid exercise shall be completed by respondents within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member(J)

/rao/