

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(22)

Hon'ble Shri Shanker Raju, Member (Judicial)

O.A.No.1039/2000

New Delhi, this the 8th day of February, 2002

Ganga Bassi
s/o Sh. Jaman Singh
H.No.645-A, Shiv Colony
Rewari (Haryana). Applicant

(By Advocate: Shri Yogesh Sharma)

Vs.

1. Union of India through
The General Manager
Northern Railway
Baroda House
New Delhi.
2. The Divisional Railway Manager
Northern Railway
Bikaner Division
Bikaner.
3. The Divisional Personnel Officer
Northern Railway
DRM Office
Bikaner. Respondents

(By Advocate: Shri P.M.Ahlawat with Shri Rajeev
Sharma)

O.R.D.E.R(Oral)

By Shanker Raju, Member (J):

Applicant, in this OA, has sought fixation of his pension and other retiral benefits in revised pay scale effective from 1.1.1996 as per Fifth Central Pay Commission. The contention of the learned counsel for the applicant is that as the applicant retired in the 'Afternoon' of 31.12.1995, he is deemed to be treated as retired on 1.1.1996 in view of the decision of Full Bench of this Court in Venkatram Rajagopalan & Anr.

Vs. Union of India & Others, 2000(1) ATJ (CAT, Mumbai) Page 1. It is also contended by placing resort to the decision of the Full Bench in Ganga Ram Vs. Union of India (OA No.184/90 decided on 13.2.1991) CAT (FB) Vol.2 Page 441 that in the event

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of stay of the decision of this Court the Higher Court, unless the same is modified or set-aside the same would continue to have its effect and would be implemented as precedent to accord benefits to the parties.

2. On the other hand, the learned counsel for the respondents stated that against the Full Bench decision a Writ Petition has already been preferred before the High Court of Mumbai and the decision has already been stayed. However, it is admitted that the decision of the Full Bench is yet to be reversed or modified.

3. We have carefully considered the rival contentions and perused the record. Having regard to the Full Bench decision of Bangalore Bench in Shri R.Sri Ranganaya and Another Vs. Union of India, ATJ FB Judgements 1997-2001 Page 207 wherein it has been held that stay order passed by the High Court can not stand in the way for consideration of the decision appealed against in another Bench and the same is also not binding.

4. In this view of the matter as nothing on record has been brought to indicate that the decision of the Full Bench in Venkataram Rajagopalan's case supra has been reversed or modified, I am of the considered view that the same is to be given effect to in the case of the applicant. As a result the applicant who retired in the afternoon of 31.12.1995 is to be treated as deemed retired w.e.f. 1.1.1996. In that event he is entitled to be accorded the

benefits of OM dated 5.11.1971 where the revised provisions are effective to the persons who retired on or after 1.1.1996.

5. Learned counsel for the respondents, Shri P.M.Ahlawat, has stated that to calculate the pensionary benefits, the average emoluments of the last ten months are considered in accordance with the rules. As the applicant even if he is assumed to have been deemed retired on 1.1.1996, as he has not drawn any pay on that day, event it is difficult for the respondents to revise the pension in accordance with their circular taking into account the average 10 months emoluments.

6. I have carefully considered the rival contentions of the parties and also perused the material on record. I am not impressed by respondent's contentions. As the Railway Board's circular issued in 1971 clearly envisages that the railway servant who retired on or after 1.1.1996 his pensionary benefits are to be revised. In that event, the applicant who had retired in the Afternoon of 31.12.1995 and having regard to the Full Bench decision supra he is deemed to have retired on 1.1.1996 consequently he cannot be deprived of the benefits as he is eligible in all respects. It is for the respondents to disburse the arrears and difference in accordance with and instructions and as per their own circular.

7. In the result and having regard to the reasons recorded above, keeping in view the decision of the Full Bench, I allow this OA and set-aside the impugned order dated 27.11.1998 and direct the respondents to revise the pensionary benefits strictly as per their circular deeming the applicant retired w.e.f. 1.1.1996. The aforesaid directions shall be complied with within the period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(SHANKER RAJU)
MEMBER(J)