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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH : NEW DELHI

OA No. 1151/2000

Date of decision: 2.1.2001

Ms. Kamla Gupta

Applicant

(By Advocate: Shri G.D. Bhandari

versus

Union of India & Ors.

Respondents

(By Advocate: Shri S. Rajappa

CORAM:

The Hon'ble Shri V.K. Majotra, Member (A)

Shri Shanker Raju,

The Hon'ble ~~Shri S. Rajappa~~, Member (A)

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

(Shanker Raju)

~~Shri S. Rajappa~~

Member (A)

Cases referred:

1. Full Bench judgement dt. 15.10.99 in OA No.459/97 with OA No.460/97

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1151/2000

New Delhi, this 2nd day of January, 2001

Hon'ble Shri V.K. Majotra, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

Mrs. Kamla Gupta
MIG Flat 109, Pocket A-1
S-7, Rohini, Delhi-110 085 .. Applicant

(By Shri G.D.Bhandari, Advocate)

versus

1. Commissioner
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shahid Jeet Singh Marg, New Delhi
2. Sr. Accounts Officer (S)
Kendriya Vidyalaya Sangathan
18, Institutional Area
Shahid Jeet Singh Marg, New Delhi .. Respondents

(By Shri S. Rajappa, Advocate)

ORDER

By Shri Shanker Raju

In the present application, the applicant is seeking the benefit of DPF&W's OM dated 14.7.95 whereby with effect from 1.4.95 the benefit of dearness allowance was made available to government servants covered under CCS(Pension) Rules, 1972 by an order of the President.

2. The applicant is also relying upon the judgement of the Full Bench of this Tribunal dated 15.10.99 in OA No.459/97 with OA No.460/97 (Venkatram Rajagopalan Vs. UOI) whereby it has been held that the government servant completing age of superannuation on 31.3.95 and relinquishing charge of his office in the afternoon of that day is deemed to have effectively retired from service w.e.f. 1.4.95. In this background the applicant claims recalculation of his DCRG by adding 97% of pay element towards the DA on the basic pay and other ancilliary retiral benefits.

3. Respondents have contested this application on the ground that as per rule 35 of CCS(Pension) Rules, a government servant stands relinquished on the retirement date fixed and the same cannot be shifted or changed. It is further contended that after midnight deeming fixation of the date of retirement would not be applicable to the applicant. It is further contended that relationship between master and servant ends on 31.3.95 and as such the applicant cannot claim any benefit regarding retiral benefits which have been made available to other government servants with effect from 1.4.95.

4. We have carefully considered the contentions and applied our mind to the same. It is admitted that the applicant superannuated on 31.3.95 and stood relinquished on the same day in the afternoon. The Full Bench (supra) in a similar case has held as under:

"7. According to Rule 33(1) of the Pension Rules, Pension becomes payable from the date on which Government servant ceases to be borne on the establishment (emphasis given). A Government servant continues to be borne on the establishment till midnight of the date of superannuation. The decision of the Hyderabad 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 be 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 March or forenoon of 1st of April means one and the same thing and on this balance 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 UOI Vs. P.N. Menon & Ors, CA 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 14.7.95 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. 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".

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5. As per law laid down by the Full Bench supra we hold that the applicant has effectively retired from service with effect from 1.4.95. In view of the fact that the applicant is deemed to have retired on 1.4.95, the benefit of OM dated 14.7.95 (supra) would be made applicable to him for all purposes. We hold so accordingly.

6. In the result, we allow this OA and direct the respondents to treat the applicant to have retired with effect from 1.4.95 and pay him the benefits as enumerated in the OM dated 14.7.95. This exercise must be carried out 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)

V.K. Majotra
(V.K. Majotra)
Member(A)

/gtv/