

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00765/2019

DATED THIS THE 13TH DAY OF FEBRUARY, 2020

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

Sri D. Mohan Raj, 60 years,
S/o Sri Doraiswamy,
Senior Divisional Electrical Engineer
TRD/SBC (Formerly Dy. CEE/CN/BNC
DRN/O/SBC)
Residing at Door 131/A, 3rd Main,
4th Cross, BTM II Stage,
Dollars Colony, N.S. Palya,
Bengaluru 560 076

....Applicant

(By Advocate Shri P.A. Kulkarni)

Vs.

1. General Manager
And Disciplinary Authority,
South Western Railway,
Gadag Road, Hubballi: 580 023
For and on behalf of Union of India

2. Divisional Railway Manager,
Divisional Office,
South Western Railway,
Bengaluru 560 023

3. The Secretary,
Railway Board,
Ministry of Railways,
New Delhi 110 001

....Respondents

(By Shri N.S. Prasad, Counsel for the Respondents)

O R D E R (ORAL)
(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. The learned counsel for the applicant relies on the decision
of the Hon'ble Apex Court reported in **Chief General Manager, Telecom,**

BSNL Versus K.J. George and Others reported in (2008) 14 SCC 699,

which we quote:

“O R D E R

CIVIL APPEAL NO.2907 & 2908 OF 2005

1. *The respondents were working in the Telecom Department on the posts of Senior Section Supervisor and Section Supervisor retired on 16.12.1995 and 3.12.1995 respectively. In view of the provision of FR 56 they were made to retire with effect from afternoon of 31st December, 1995. The Report of Fifth Central Pay Commission came into force with effect from 1.1.1996. Clause 3.1 of the Fifth Central Pay Commission Report states that the revised provisions shall apply to Government servants who retire/die in harness on or after 1.1.1996.*

2. *The grievance of the respondent raised before the High Court was that they should be allowed to reckon their pensionary benefits on the basis of Fifth Central Pay Commission with effect from 1.1.1996. The Division Bench of the High Court was of the view that since they were made to retire with effect from 31.12.1995 till the midnight of 31.12.1995 they were in service and, therefore, entitled to retiral benefits from 1.1.1996. We are unable to countenance with the decision of the Tribunal and the High Court.*

3. *As already noticed that they were retired with effect from 16.12.1995 and 3.12.1995 respectively but because of the provision of FR 56 they were allowed to retire till 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 16.12.1995 and 3.12.1995 respectively and, therefore, by no stretch of imagination it can be held that their pensionary benefits can be reckoned from 1.1.1996. The relationship of the employer and employee terminates in the afternoon of 16.12.1995 and 3.12.1995 respectively. In view thereof the order of the Tribunal and the High Court are accordingly set aside and these two appeals are allowed with no order as to costs.*

CIVIL APPEAL NO.789 OF 2005

4. *In this case the respondent was voluntarily retired on 1.1.1996. In this view of the matter he is entitled to reckon the pensionery and retiral benefits in terms of the Fifth Central Pay Commission Report. The appeal is accordingly dismissed.”*

2. He relies on paragraph 3 which indicates that on the particular day on which the age of the concerned person had become eligible for

superannuation the master and servant relationship has been terminated. It is correct but at the same time on an artificial machination it is not unilaterally but bilaterally it has been extended to the end of the month even though it may be for the purpose of ease in accounting procedures. Since both the parties are benefitted and the consideration had flown from one form to another it is a contract completed. Since the contract is completed and the applicant had received money for the service extracted from him during that period it is clear that, under the Indian Contract Act, it is a completed contract which he cannot unilaterally get out of it. If in the interregnum if anything happened which is prejudicial to him it will befall on his shoulders. Without any doubt, even though the master and servant relationship was severed on the date of retirement it had on a mutual consent continued till the end of the month. There is no merit in the OA. Even though his date of birth was on 14th June, the action was taken against him on 28th of June of the same month.

3. Therefore, the OA will not survive. The OA is dismissed. No order as to costs.

(C.V. SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00765/2019

Annexure A1 Copy of the charge memo dated 28.06.2019
Annexure A2 Copy of the ruling of the Hon'ble Apex Court reported in 1986 4 SCC 59
Annexure A3 Copy of the ruling of the Hon'ble Apex Court reported in 2008 14 SCC 699
Annexure A4 Copy of the order of Central Administrative Tribunal, Madras Bench judgment dated 13.03.2019 in OA No. 170/2019

Annexures referred in the short reply

Annexure R1 Copy of the judgment in Civil Appeal No. 7484/1993
Annexure R2 Copy of the judgment in Civil Appeal No. 2333/2007
Annexure R3 Copy of the judgment of Principal Bench in OA No. 3168/2013 dated 05.01.2015

Annexures referred in the reply

Annexure R1 Copy of the complaint dated 06.06.2019
Annexure R2 Copy of the Railway Board letter dated 25.04.2019
Annexure R3 Copy of the judgment in Civil Appeal No. 7484/1993
Annexure R4 Copy of the judgment in Civil Appeal No. 2333/2007
Annexure R5 Copy of the Rule 1801 of IREC
Annexure R6 Copy of the Rule No. 51 of Railway Service (Pension) Rules 1993 and FR 56
Annexure R7 Copy of the Para 615 of IRVM

* * * * *