

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/217/2000

Order Reserved on 13.07.2020

DATE OF ORDER: 20.07.2020

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Dr. Balwant Singh S/o Sardar Moola Singh, Roplioa,
Opp. Electricity Board, Post Office Jyoti Nagar, Jaipur –
302005 (Raj.)

....Applicant

Ms. Anubha Singh, counsel for applicant.

VERSUS

1. The Union of India through Secretary to the Govt. of India, Ministry of Personnel, Pub. Grievances & Pension, Department of Personnel & Training, North Block, New Delhi.
2. The State Govt. of Rajasthan through Chief Secretary, Rajasthan Secretariat, Jaipur.

....Respondents

Shri V.D. Sharma, counsel for respondents.

ORDER

Per: Hina P. Shah, Judicial Member

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking for the following reliefs:

"8.1. The applicant be declared entitled to enhanced gratuity in terms of Annexure A-1 with 18% interest w.e.f. 1.4.95.

8.2 Hon'ble Tribunal may declare that the applicant having handed over charge on 31st of March, 1995 be deemed to have effectively retired on 1st April, 1995.

8.3 Cost be awarded in favour of the applicant. Any other appropriate order which may be deemed just and proper in the facts of the case may be passed in favour of the applicant."

2. Brief facts of the case as stated by the applicant are as under: -

The applicant is an Ex-I.P.S. Officer and was retired while working as Director General of Police, Civil Defence and Home Guards posted at Jaipur (Rajasthan) in the afternoon of 31.03.1995. As per the letter dated 14.09.1995 issued by the Government of India, the upper limit of gratuity for All India Service Officers was enhanced from Rs. 1.00 lac to Rs. 2.50 lacs w.e.f. 01st April, 1995. He has effectively retired w.e.f. 01.04.1995 and, therefore, he is entitled to gratuity at the enhanced limit. Therefore, the applicant has filed present Original Application for grant of enhanced gratuity as per letter dated 14.09.1995 (Annexure A/1) issued by the Government of India as he has effectively retired on 01st April 1995.

3. After issue of notices, the respondents have filed their separate replies.

The respondent No. 1 has stated that the applicant has retired in the afternoon of 31.03.1995. As per the order dated 14.09.1995 issued by the Government of India, gratuity was enhanced from Rs. 1.00 lac to Rs. 2.50 lacs w.e.f. 01.04.1995. It is clear that the applicant has effectively retired on 31.03.1995 and, therefore, he is not entitled to get the gratuity at the enhanced limit. It is also made clear that the applicant has not retired on 01st April, 1995. The Rules of the Central Government for enhancement limit of gratuity are very clear that the said benefit is applicable only to those persons who retired on 01.04.1995 or after 01.04.1995. As the applicant has retired on 31.03.1995 in the afternoon, the applicant is not entitled to get the benefit of the said enhanced limit of gratuity.

The respondent No. 2 has denied that the applicant had been effectively retired from 01.04.1995 and, therefore, is entitled to get gratuity at the enhanced rate of Rs. 2.50 lacs as the applicant retired on 31.03.1995. It is stated that the applicant is not entitled to the enhanced gratuity of Rs. 2.50 lac, which

has been made effective from 01.04.1995. The Government of India, Department of Personnel & Administrative Reforms vide letter dated 14.09.1995 had, inter-alia, issued instructions for enhancing the amount of gratuity from the existing rate of Rs. 1 lac to Rs. 2.50 lac w.e.f. 01.04.1995 and the said enhanced amount of gratuity was payable to the officers retiring on 01.04.1995 and thereafter. Since the applicant had retired on 31st March, 1995 (A.N.), he was not entitled to the said enhanced amount of gratuity, which was payable only to those officers, who had retired on or after 01.04.1995.

4. Heard learned counsels appearing for the applicant and respondents.

5. Besides, reiterating the facts, the applicant has relied on the order dated 15.10.1999 passed by Full Bench of Central Administrative Tribunal, Mumbai Bench in O.A. No. 459/1997 and OA No. 460/29917 – Venkatram Rajagopalan and Mukund Anant Paranjpa, respectively, vs. Union of India & Others. As per the said order passed by the Full Bench of the Tribunal, it is clear that the Officers, who retired on 31st of March in the afternoon are deemed to have effectively retired on 01st April, 1995. The applicant states that he is fully

covered by the said order and, therefore, he is entitled for the said benefit. He also relied on the order passed by Hyderabad Bench of this Tribunal in the case of T. Krishnamurti vs. Secretary, Department of Posts and Ors., (1997) 35 A.T.C. 353. In the said order, the Hyderabad Bench of this Tribunal has also supported the findings given by the Full Bench of Mumbai Bench of this Tribunal. It is the submission of the applicant that the provisions of law, which are applicable in this matter are Central Civil Service (Pension) Rules and Rule 83 states that : -

83. Date from which Pension becomes Payable –

(1) Except in the case of a Government Servant to whom the provisions of Rule 37 apply and subject to the provisions of Rule 9 and 69, a pension other than family pension shall become payable from the date on which a Government Servant ceases to be borne on the establishment.

(2) Pension including family pension shall be payable for the day on which its recipient dies."

It is the further submission of the applicant that aforesaid Rule 83 is very clear that pension shall become payable from the date on which a Government servant ceases to be borne on the establishment. This clearly means that a Government servant gets the status of the pensioner from the next day after the date

of retirement i.e. the last day of the month on which he is retired.

The applicant also relies on the Full Bench of the Hon'ble High Court of Andhra Pradesh at Hyderabad in Writ Petition Nos. 2419, 22042, 24308, 24324 and 24325 of 2003 in Principal Accountant General and Ors. vs. C. Subba Rao. As per the said judgment, the applicant states that it is very clear that if a person retires on 31.03.1995, it means that the said date continues in the night of 31.03.1995 and, thereafter, the date changes to 01.04.1995 and, therefore, as per the same, the petitioner becomes entitle to pension only on 01.04.1995. The petitioner cannot get retirement pension for the last day of superannuation. The term afternoon means whole time from noon till dark and as per rules fraction of day is counted as whole day and also according to pension rules, pension becomes payable from the date on which Government servant ceases to be borne on the establishment. Therefore, the applicant states that he has effectively retired on 01.04.1995 and, therefore, is entitled to get the benefit of enhanced gratuity in terms of letter dated 14.09.1995.

6. The respondents state that Full Bench's order dated 15.10.1999 passed by Mumbai Bench of this Tribunal, Camp at Nagpur in OA No. 459/1997 and 460/1997 (Venkatram Rajagopalan and Mukund Anant Paranjpe, respectively vs. Union of India & Ors.) was challenged by the respondent-department before the Hon'ble High Court of Bombay and the said High Court had granted stay on the aforesaid order of the Tribunal vide order dated 18.04.2000 in W.P. No. 138/2000 & W.P. No. 516/2000. It is the contention that the Full Bench's order of the Tribunal is no longer operative as the matter has been finally decided by the Hon'ble High Court of Bombay, Nagpur Bench, Nagpur vide judgment dated 29.08.2012 in W.P. No. 138/2000 and 516/2000 whereby the Hon'ble High Court has allowed both the writ petitions filed by the respondent-department and set aside the order dated 15.10.1999 passed by C.A.T., Mumbai Bench, Camp at Nagpur in O.A. No. 459/1997 and 460/1997 and, accordingly, dismissed the said Original Applications. Therefore, it is clear that the Full Bench's order of the Tribunal referred to by the applicant cannot be helpful to him.

The respondents also have relied on the judgment dated 08.12.2003 passed by the Hon'ble High Court of

Karnataka at Bangalore in Writ Petition No. 18186/2003 (S-CAT) (Union of India & Ors. vs. Sri Y N R Rao wherein a similarly controversy arose and the said Writ Petition was allowed and the order passed by C.A.T., Bangalore Bench in OA No. 816/2001 was set aside.

The respondents have also relied on the judgment dated 02nd November, 1999 passed by the Rajasthan High Court in case of State of Rajasthan and Anr. Vs. Ram Prasad [D.B. Civil Special Appeal (Writ) No. 539 & 715 of 1999] – reported in [2000] 1 RLW (Raj) 532 wherein the Hon'ble High Court has allowed the Special Appeal and also stated that the person is entitled to pension with effect from the crucial date of retirement. A person acquires the status of a retired Government servant on the date of retirement itself.

The respondents have further relied on the judgment of the Hon'ble Apex Court in case of Union of India vs. All India Services Pensioners Association and another (Civil Appeal No. 897/1987 - decided on 14.01.1988) reported in [1988] 2 SCC 580 wherein the Hon'ble Apex Court in a similar controversy has allowed the appeal and has clearly declared that the members of the All India Services, who have retired prior to 01.01.1973

are not entitled to claim gratuity on the basis of the notification referred to therein.

7. Considered the rival submissions made by learned counsels for both the parties and perused the material available on record.

8. It is noted that this Bench of the Tribunal has already allowed the present Original Application vide its order dated 05.05.2003. The relevant paras 12 and 14 of the order dated 05.05.2003 are reproduced here as under:

"12. As to the second contention, it may be stated that the Bombay High Court has not finally decided the matter. As long as the Judgment of the Full Bench of this Tribunal is not set aside by the High Courts or the Supreme Court it is binding on this Bench of the Tribunal and the applicant cannot be denied the benefit of the order dt. 14.7.1995 read with order dt. 14.9.1995 on the ground of the stay of the Bombay High Court.

14. Consequently, the O.A. is allowed. The Respondents are directed to release the remaining amount of Gratuity to the applicant which falls short of Rs. 2.5 lacs. The amount is directed to be paid within two months from the date of the communication of this order. In the facts and circumstances of the case, it may not be proper to allow interest to the applicant. Costs shall also be easy."

9. Thereafter, challenging the aforesaid order of the Tribunal dated 05.05.2003, State of Rajasthan filed D.B. Civil Writ Petition No. 5541/2003 and Union of

India also filed D.B. Civil Writ Petition No. 5829/2003 and the Hon'ble High Court of Rajasthan, Jaipur Bench vide its order dated 05th April, 2018 has remitted the matter back to the Tribunal to hear the same on merits. The relevant part of the order dated 05th April, 2018 passed by the Hon'ble High Court is reproduced here as under:-

"The judgment of the Full Bench has been reversed. In our considered opinion, no other reasoning has been given by the Tribunal.

In view of the above, the order of the Tribunal is quashed and set aside and the matter is remitted back to the Tribunal to hear the matter on merits.

Both the petitions stand allowed."

Thereafter, vide order dated 12.07.2018 passed by this Bench of the Tribunal, this Original Application was restored at its original number.

10. The main controversy involved in the present case is 'whether the applicant is entitled to the benefit of enhanced gratuity as per the Government of India's letter dated 14.09.1995 or not? It is clear that the applicant has retired on 31.03.1995 and not on 01.04.1995. It is also clear that after his retirement on 31.03.1995, Government of India had issued an OM dated 14.09.1995 giving benefit to those employees,

who retired on 01.04.1995 or afterwards. As per the said OM, it is very clear that the said benefit is to be given only to those persons, who retired on 01.04.1995 and not prior to that. It is the contention of the applicant that he has not retired effectively on 31.03.1995 but has retired on 01.04.1995. It is clear from the record that he has retired in the afternoon of 31.03.1995 while working as Director General of Police, Civil Defence & Home Guards. Therefore, it is very clear that he is not entitled to enhanced rate of gratuity of Rs. 2.50 lacs as the said benefits are allowed only to those employees, who retired on 01.04.1995 or afterwards as per the Government of India's letter dated 14.09.1995. Also, the foundation on which he was granted the relief i.e. as per the Full Bench's order of Central Administrative Tribunal, Mumbai Bench, Camp at Nagpur was dismissed by Hon'ble High Court of Bombay, Nagpur Bench, Nagpur vide order dated 29.08.2012.

11. The Hon'ble High Court of Bombay, Nagpur Bench, Nagpur vide its judgment dated 29.08.2012 in WP No. 138/2000 with WP No. 516/2000, has observed in paras 11, 13 and 14, which are reproduced here as under:

11. In our view, the interpretative exercise is called for only when the provisions of law are not clear. Assistance of settled principles for the said purpose including that of external aids like dictionary is then resorted to. F.R. 56 unambiguously stipulates that a Government Servant retires from service on afternoon of last date of month in which he had attained the age of 58 years. Rule 5(2) of Pension Rules treats the day on which the employee retires as his last working day. There is proviso to this sub-rule & Rule 83(1) also includes some exceptions but then, we are not called upon by the parties to consider the logic behind the same. As per Rule 5(1) Pension Rules in force on such last day regulate the pension. As seen from the notice of retirement dated 31.3.1995, Respondent namely V. Rajagopalan was born on 10.3.1937 while Respondent Mukund in W.P. No. 516 of 2005 was born on 29.3.1937. Both of them have retired on 31.3.1995. Thus, law clearly lays down that their date of retirement & last working day has to be the same. Thus, due to F.R. 56 & Rule 5(2) of Pension Rules, they could continue till 31.3.1995; which day in reality was beyond their actual completion of the age of superannuation. It follows, therefore, that, only by fiction, that date or day of retirement has been constituted as their last working day. Legally, respondents retired on the last working day. Entire exercise by the Full Bench of CAT militates against this legal position and wipes out it by artificially making distinction between the last working day & date of retirement. Rule 83(1) of Pension Rules is positioned in Chapter XI dealing with payment of pensions and prescribes the date from which pension becomes payable or is to be computed. Rule 5 is located in Chapter II which lays down General Conditions and determines law/scheme relevant to determine the entitlement of an employee to pension with reference to the date of retirement. In our view, the CAT erred in importing the date which is relevant under Rule 83(1) for the purposes of Rule 5(2) by overlooking the absence of need to invoke any interpretative exercise.

13. We have perused the rulings cited. In Hon'ble Kerala High Court's ruling, the Tribunal's order granting benefit of the revision was affirmed under the peculiar circumstances of that case as the Bench expressed that it was unable to find merit in the Petition. The petition by the Union of India was dismissed as no other point was urged. While, in Prabhu Dayal's Case (cited supra) the Apex Court was considering the concept of legal day commencing from 12 O' clock midnight to the end on the same hour of the following night in order to calculate the Age of the candidate. The rulings afore-stated are not supportive to the case of the respondents, particularly when the controversy before us is fully covered by the decision given by the Division Bench of the Karnataka High Court in W. P. No.18186 of 2003, decided on 08/12/2003 and the decision which considered the impugned Judgment and Order is on all fours of the case in hand and has also attained the finality as there was no challenge in the Apex Court to the validity and legality of the decision of the Hon'ble Division Bench of the Karnataka High Court. It, therefore, follows that the Government Servant retiring on superannuation on the last day of the month i. e. as on 31/03/1995 can claim death gratuity or retirement gratuity as was available and operative on 31/03/1995 i. e. as on the date of retirement and not with effect from the subsequent date. In other words, when the Office Memorandum was made applicable to the government servants who retire on or after 01/04/1995, the Government Servants who retired on 31/03/1995 were not entitled to the enhanced benefits as they were made available with effect from the subsequent or later date i. e. with effect from 01/04/1995. Such benefits which were available with effect from the later operative date i. e. 01/04/1995, but wrongly granted by the Tribunal to the respondents who retired on and with effect from the previous date i.e. 31/03/1995 in the present case, were not only undeserved and unwarranted, but also were detrimental to the State Exchequer/Revenue. The retired employees, on the basis of their meritless, unreasonable and excessive claim, cannot be allowed to make money and enrich themselves unjustly by causing undue financial loss to the State Exchequer.

14. We, therefore, allow both these petitions and set aside the impugned order dated 15/10/1999 passed by the Central Administrative Tribunal, Mumbai Bench, Camp at Nagpur in O.A. Nos. 459 of 1997 and 460 of 1997 and consequently dismiss the said Original Applications.

The parties are left to bear their own Costs.

Rule is made absolute in the above terms."

In view of the aforesaid observations made by the Hon'ble High Court of Bombay, Nagpur Bench, Nagpur vide its judgment dated 29.08.2012, it is clear that the Government Servant retiring on superannuation on the last day of the month i.e. as on 31.03.1995 can claim gratuity as was available and operative on 31.03.1995 i.e. as on the date of retirement and not with effect from the subsequent date. In other words, when the Office Memorandum was made applicable to the Government servants, who retire on or after 01.04.1995, the Government servants, who retired on 31.03.1995 were not entitled to the enhanced benefits as they were made available with effect from the subsequent or later date i.e. with effect from 01.04.1995.

12. An identical issue also arose before the Hon'ble High Court of Karnataka at Bangalore in Writ Petition No. 18186/2003 (S-CAT) (Union of India & Ors. vs. Sri

Y N R Rao), wherein the Hon'ble High Court vide its order dated 8th December, 2003 has held 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.

13. The Hon'ble High Court of Rajasthan in the case of State of Rajasthan and Anr. Vs. Ram Prasad [D.B. Civil Special Appeal (Writ) No. 539 & 715 of 1999 – decided on 02nd November, 1999] - [2000] 1 RLW (Raj) 532 has held that the Government servant is entitled to pension with effect from the crucial date of retirement. A person acquires the status of a retired Government servant on the date of retirement itself.

14. The Hon'ble Apex Court in the case of the Union of India vs. All India Services Pensioners Association and another (Civil Appeal No. 897/1987 - decided on 14.01.1988), [1988] 2 SCC 580, has observed that it is not shown that the Government notification in question either expressly or by necessary implication directs that those who had retired prior to 01.01.1973 would be entitled to any additional amount by way of gratuity. It has further been held that the Tribunal was in error in

upholding that gratuity was payable in accordance with the Government Notification dated 24.01.1975 to all those members of the All India Services who had retired prior to 01.01.1973. The Hon'ble Apex Court has also declared that the members of the All India Services, who had retired prior to 01.01.1973 are not entitled to claim gratuity on the basis of the Notification referred to above.

15. As it is clear after going through the facts of the present case as well as the rulings of the various Hon'ble Courts, as discussed above, the applicant has no case and, therefore, he is not entitled for the enhanced rate of gratuity in terms of letter dated 14.09.1995 (Annexure A/1). We, therefore, find no merit in this Original Application and the same deserves to be dismissed.

16. Accordingly, the Original Application is dismissed with no order as to costs.

**(HINA P. SHAH)
JUDICIAL MEMBER**

**(DINESH SHARMA)
ADMINISTRATIVE MEMBER**