

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

O.A. NO.1417 of 2004

New Delhi, this the 1<sup>st</sup> day *February 2005.*

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

Shri H.K. Bhatnagar,  
R/o 9/288, Raj Nagar,  
Ghaziabad-201002.

.....applicant.

(By Advocate : Shri Gopal Aggarwal)

Versus

Union of India through,

1. Secretary, Ministry of Finance,  
North Block, New Delhi.

2. The Commissioner of Income Tax,  
I.P. Estate,  
New Delhi.

3. Principal Chief Controller of Accounts,  
C.B.D.T., Khan Market, New Delhi.

4. The Executive Engineer Auto-III,  
Municipal Automobile Workshop,  
Jhandeqlan, Karol Bagh,  
New Delhi-110005.

.....Respondents.

(By Advocate : Shri V.P. Uppal)

**O R D E R**

**HON'BLE SHRI SHANKER RAJU, MEMBER (J) :**

Learned counsel heard.

Applicant who retired on superannuation on 31.12.1995 has sought the following reliefs:-

- "i) revise and re-calculate the Pension amount by compounding the benefits of past service four yrs. And eight months rendered in the M.C.D., Delhi.
- ii) Pay the arrears of pension on account of compounding of past service along with interest @ 18% p.a. as discussed above.
- iii) Pay the difference of commutation amount by treating commutation of pension @ 40% as per the recommendations of 5<sup>th</sup> Pay Commission which have been implemented by the Govt. w.e.f. 1-1-1996.

- iv) Pay the difference of Gratuity which became payable as per the recommendations of the 5<sup>th</sup> Pay Commission Report along with interest @ 18% p.a. thereon.
- v) Pay the difference of amount on account of 'encashment of earned leave' subject to maximum leave due to the Applicant's credit on the date of retirement as per the 5<sup>th</sup> pay commission report.
- vi) Allow the cost of the application.
- vii) Pass any other order which this Hon'ble Tribunal may deem fit, proper and equitable.

2. Preliminary objections raised by the learned counsel of the respondents are with regard to limitation and multiple reliefs. It has been contended that counting of service rendered in Municipal Corporation of Delhi and benefit of revision of pay scale for the purpose of pension w.e.f. 1.1.1996 having been filed without any miscellaneous application for condonation of delay, the present OA is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985 and as multiple reliefs are sought, the same is not maintainable in the light of the Rule 10 of the CAT (Procedure) Rules, 1987.

3. On the other hand, learned counsel for the applicant contends that in so far as limitation is concerned, as the cause of action is for grant of pay and allowances and pensionary benefits being recurring cause of action, no limitation is attracted. In this regard, reliance is placed on the decisions of the Apex Court in the cases of *S.R. Bhanrale Vs. Union of India and others*, (1996) 10 SCC 172 and *M.R. Gupta Vs. Union of India and others*, 1995 SCC (L&S 1273. Learned counsel further stated that his claim was rejected vide order dated 28.8.2003 and this brings the OA within the limitation as envisaged under Section 21 of the Administrative Tribunals Act, 1985.

4. We have given a careful thought on preliminary objections. Insofar as multiple reliefs is concerned, applicant, who is a retiree and surviving on pension, recalculation of pension by counting past service and also arrears of pension on revision w.e.f. 1.1.1996 with consequential benefits come within the head of retiral benefits and cannot be treated as different reliefs but these reliefs are consequent to each other. As such the objection of multiple reliefs is over ruled.

5. As regards limitation, in **S.R. Bhanrale's** case (supra), the Apex Court has clearly ruled that where retiral benefits are withheld, plea of limitation raised by the Government improper. In **M.R. Gupta's** case (supra), the Apex Court held that the payment of pay and allowances has been treated to be of continuing cause of action.

6. Moreover, as held by the Apex Court in **Ratan Singh Vs. Vijay Singh and others**, 2001 (1) SCC 469, a liberal and broad base consideration is necessary by the judicial authorities in dealing with limitation.

7. Apex Court also held in **Madras Port Trust Vs. Himanshu International** 1979 (4) SCC 176 that the deprecated technical plea of limitation raised by the Government to be avoided. In **S.M. Munawalli vs. State of Karnataka**, 2002 (10) SCC 264, limitation in accord of pension has been condoned.

8. In this view of the matter, as it was legitimately expected by the applicant from the Government to accord the benefit of counting of past service towards pension and also accord of pensionary benefits, having rejected the claim in 2003, the objection is misconceived and is accordingly overruled by placing reliance on the decision of the Apex Court in **Apangshu Mohan Lodh and others vs. State of Tripura and others**, 2004 SCC (L&S) 10 wherein it has been held that though the power to deal with limitation is discretionary, it is to be liberally construed.

9. Applicant had joined Municipal Corporation of Delhi as Assistant Foreman, Municipal Automobile Workshop and had worked upto 24.3.1970. On demitting the office, he joined Airborne Mineral Surveys & Exploration and other departments and ultimately retired on superannuation on 31.12.1995. Respondents with a view to accord retiral benefits fixed the pension w.e.f. 1.1.1996 vide PPO dated 19.12.1996 and took effective date of applicant's retirement w.e.f. 31.12.1995, which deprived the benefits of the recommendations of the Vth Central Pay Commission and consequently revision in retiral benefits. Though

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this matter is taken up with the respondents but ultimately on rejection, the applicant approached this Court.

10. Applicant also seeks counting of temporary service rendered in Municipal Corporation of Delhi towards qualifying service for pensionary purposes.

11. Learned counsel for the applicant by referring to the decision of the Full Bench of this Tribunal in the case of *Venkatram Rajagopalan and Anr. Vs. Union of India and others*, A.T. Full Bench Judgements 1997-2001 50 contended that if one completes the age of superannuation on 31<sup>st</sup> day of the month and relinquished the charge of his office in the afternoon of that day is deemed to have been effectively retired from service with effect from the 1<sup>st</sup> day of the next month. Learned counsel also relied upon the decision of the Division Bench of the Hon'ble Kerala High Court in the case of Union of India vs. George, 2004 (1) ATJ 150 to contend that a person who retires on 31.12.1995 is deemed to be in service till midnight become pensioner on 1.1.1996 and accordingly, that person is entitled to the benefit of revision of pay scales.

12. As regards, temporary service rendered in MCD to be counted as qualifying service for pensionary purposes, reliance is placed by the learned counsel for the applicant on the decision of the Apex Court in the case of R.L. Marwaha Vs. Union of India and others, 4 JT 1987 (3) S.C. 292 to contend that as per Para 7 of the Govt. order dated 29.8.1984 irrespective that one is temporary servant if joined Central Govt. would be allowed to count his past service rendered by him in autonomous body towards pensionary benefits irrespective of his status.

13. In the above view of the matter, it is contended that decision of the respondents not to accord the benefits of counting of his past service cannot be countenanced.

14. Respondents on the other hand, represented through Shri V.P. Uppal on merit denied the contentions raised by the applicant and stated that as the applicant had retired from service on 31.12.1995, his pension was to be

determined on 31.12.1995. On the ground of treatment of parity towards temporary service, it is contended that as per Rule 14 instruction No.6 of the CCS (Pension) Rules, 1972, the temporary service under the State or Autonomous Body would not be counted towards qualifying service for pensionary purposes.

15. We have carefully considered the rival contentions of the parties and perused the material placed on record.

16. As regards plea of extension of benefit of recommendations of Vth Central Pay Commission for revision of pensionary benefits of the applicant from 1.1.1996 deeming the applicant retired on 1.1.1996 in *Union of India vs. George* (supra), the following observations has been made:-

“14. Mr. Vijaya Kumar has placed reliance on the decision of their Lordship of the Supreme Court in *S. Banerjee v. Union of India* (AIR 1990 SC 285). This was a case where the officer was working in the Supreme Court. He was entitled to continue in service till March 31, 1987. He had sought premature retirement. His request was accepted. He was allowed to retire from the forenoon of January 1, 1986. Having allowed him to retire, the benefit of the revised rate of pension as admissible with effect from January 1, 1986 was sought to be denied. The claim of the officer was accepted by their Lordships.

15. Mr. Vijaya Kumar Contends that the claim was accepted for the sole reason that the officer had been retired from January 1, 1986. As against this, the two respondents had retired on December 31, 1995.

16. We are unable to accept this contention. The two officials had actually continued in service till the midnight of December 31, 1995. It is only from January 1, 1996 that they had ceased to be in service and acquired the status of pensioners. Resultantly, the claim to pension had to be determined at the rate prevalent on the date. This is precisely what the Tribunal has given them. The case is in no way different from that of Banerjee. In both cases, the pay had been paid till December 31.”

17. If one has regard to the above, having regard to the decision in *S. Banerjee v. Union of India* (AIR 1990 SC 285) and in the light of the our Full Bench decision though it has been set aside but neither modified nor overturned by the High Court of Judicature at Mumbai, the same is binding precedent and we follow the same to hold that the applicant is to be deemed retired on 1.1.1996 and

would be entitled to the benefits of revision of his pensionary benefits in the wake of recommendations of Vth Central Pay Commission.

18. As regards counting of service rendered in MCD, though as per Rule 14 (6) of the rules ibid, the same is admissible to a person who retired servant earlier to the Govt. in autonomous body, yet having confirmed status of retirement on superannuation. The decision of the Apex Court in the case of *R.L. Marwaha* (supra) wherein the petitioner was a temporary Government servant when, following observations of the Apex Court to substantiate the plea of the applicant:-

“4. In the meanwhile Central autonomous/statutory bodies had also introduced pension schemes for their employees on the lines of the pension scheme available to the Central Government employees. Therefore, such autonomous/statutory bodies also started urging that the service rendered by their employees under the Central Government or other autonomous bodies before joining any autonomous body may be allowed to be counted in combination with service in the autonomous body concerned for the purpose of pension subject to certain conditions. There was also a demand for making similar provisions for employees of autonomous bodies going over to the Central Government. In other words, the demand was that the benefit of pension based on the combined service should be introduced. After a careful consideration of all relevant matters the Central Government passed an order being No.O.M. No.28/10/84-Pension Unit dated 20th August, 1984 Ministry of Home Affairs, Department of Personnel and Administrative Reforms and issued it on 29.8.1984. That part of the Government order which is relevant for purposes of this case is set out in Paragraph 3 (A) (i) thereof and it is as follows:-

“No.28/10/84-Pension Unit  
Government of India/Bharat Sarkar  
Ministry of Home Affairs/Grih  
Mantralaya Department of Personnel  
Ad Administrative Reforms  
(Karmik Aur Prashasnik Sudhar Vibhag)

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New Delhi, the 29<sup>th</sup> August, 1984.

OFFICE MEMORANDUM

Sub: Mobility of personnel between Central Government  
Departments and Autonomous Bodies – Counting of  
service for pension.

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3. This matter has been considered carefully and the President has now been pleased to decide that the cases of Central Government employees going over to a Central autonomous body or vice versa and

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employees of the Central autonomous body moving to another central autonomous body may be regulated as per the following provisions:-

(A) In case of Autonomous bodies where pension scheme is in operation.

(i) Where a Central Government employee borne on pensionable establishment is allowed to be absorbed in an autonomous body, the service rendered by him under the Government shall be allowed to be counted towards pension under the autonomous body irrespective of whether the employee was temporary or permanent in Government. The pensionary benefits will, however, be followed by confirmation. If he retired as a temporary employee in the autonomous body, he will get terminal benefits as are normally available to temporary employees under the Government. The same procedure will apply in the case of employees of the autonomous bodies who are permanently absorbed under the Central Government.

The Government/autonomous body will discharge its pension liability by paying in lump sum as a one-time payment, the pro-rata pension/service gratuity/terminal gratuity and DCRG for the service upto the date of absorption in the autonomous body/Government, as the case may be. Lump sum amount of the pro-rata pension will be determined with reference to commutation table laid down in CCS (Commutation of Pension) Rules, 1981, as amended from time to time."'''

19. If one has regard to the above, the decision in all four covers the case of the applicant and is binding on us.

20. In the result, for the foregoing reasons, we allow the present OA. Respondents are directed to revise the pensionary benefits of the applicant deeming him retired on 1.1.1996 and recalculate the retiral benefits, including, pension, gratuity, leave encashment and arrears , etc. by counting service rendered in MCD as qualifying service and the same may be paid to the applicant with a simple interest of 12 % per annum within three months from the date of receipt of a copy of this order. No costs.

*S. Raju*  
(Shanker Raju)

Member (J)

/ravi/

*12/05*

*V.K. Majotra*  
(V.K. Majotra) 1/2/05  
Vice Chairman (A)