

(15)

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO. 702/2004

New Delhi, this the ^{May 6} 2nd day of April, 2005

**HON'BLE MR. JUSTICE M.A. KHAN, VICE CHAIRMAN(J)
HON'BLE MR. S.K. NAIK, MEMBER (A)**

Shri K.B.Dubey S/o Shri B.N. Dubey,
R/o H.No. 1053, Sector C-1,
Vasant Kunj, New Delhi – 110 070.

...Applicant

(By Advocate: Sh. Vibhu Shankar)

-versus-

1. Air Officer Commanding,
AMSE,
Air Force Palam,
New Delhi.
2. Principal CDA (Pension),
Comptroller of Defence Accounts (Pension),
Draupadi Ghat,
Allahabad.
3. Union of India
Director Pension & Pensioners Welfare,
Ministry of Personnel, Public Grievances & Pensions,
Lok Nayak Bhawan,
New Delhi.

...Respondents

(Sh. M.K. Sharma, UDC, depts. rep.)

ORDER

By Hon'ble Mr. Justice M.A. Khan, Vice Chairman (J)

The short question, which arises for determination in this case, is whether the pension and other retrial dues of the applicant are liable to be revised in accordance with OM No.45/86/97P&PW (A) Part I dated 27.10.1997 and "Civilians in Defence Services (Revised Pay) Rules, 1997 applicable to the civilians in Defence Services, who had retired on or after 01.01.1996.

2. Shortly stated the facts are that the applicant was working as Civilian Gazetted Officer (E). On attaining the age of superannuation, he retired from service on 31.12.95. His pension and other retirement dues were fixed on the basis of the pay and allowances, which he was drawing at that time. The contention of the applicant is that he was entitled to the grant of pension and other retrial benefit like DCRG, normal and enhanced family pension etc. in accordance with OM No.45/86/97-P&PW(A)-Pt. I dated 27.10.97
- [Signature]*

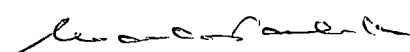
(Annexure-3) (hereinafter OM-1) which was applicable to those civilians in Defence Services who retired on or after 01.1.1996 and not in accordance with Office Memo bearing No. 45/86/97-P&PW (A) Pt.II dated 27.11.1997 (Annexure A-4) (hereinafter OM-2) which is applicable to the pensioners/family pensioners who are drawing pension/family pension on 1.1.1996. According to the applicant, his total pension has been fixed by the respondent at Rs.4710/-; family pension and enhanced family pension and normal family pension at Rs.1200/600 to Rs. 3988/2176 respectively whereas if the pension is revised as detailed by him he was entitled to the total pension of Rs.9500/- p.m.

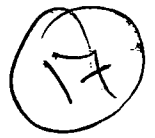
3. The respondents contesting the OA pleaded that the applicant had retired from service on 31.12.1995 and not on 01.1.1996. His case was examined in the light of OM No. 45/86/97 P&PW (A) Pt.II dated 27.10.97 which stipulated that the order applied to the pensioners who were drawing pension from 1.1.1996 and onward and the pension case was treated as pre-1.1.96 pensioners. It was stated that as per para 3.1 of the above OM, the word "Existing Pensioner" has been defined as "existing pensioner or an existing family pensioner means a pensioner who was drawing/entitled to pension/family pension on 31.12.1995. The applicant became entitled to the pension on 31.12.1995 due to his retirement on that day. Applicant's case was covered under para 2.1 and 3.1. of the above OM dated 27.10.1997.

4. In the rejoinder applicant has affirmed his own case.

5. We have heard the learned counsel for the parties and perused the relevant record.

6. The question arises whether retirement pension of the applicant has to be computed in accordance with OM-I or in accordance with OM-II, as claimed by the applicant. To put it differently the question is whether the date of retirement of the applicant is 31.12.1995 or 1.1.1996. Learned counsel for applicant in support of his argument stated that the pension of the applicant was computable as on 1.1.96 and not as on 31.12.1995 and referred to a Full Bench decision of Mumbai Bench, Camp Nagpur of this Tribunal dated 15.10.1999 (which is at page 14 of the counter) which has held as under:-





"The Government servant completing the age of superannuation on 31.3.1995 and relinquishing the charge of his office in the afternoon of that day is deemed to have effectively retired from service w.e.f. 1.4.1995."

7. The Tribunal accordingly directed the respondent i.e. Postal Department to give benefit of OM No.7.1.1995-P&PW/F dated 14.7.1995 which was applicable to the Government servants who were in position on 1.4.1995. Learned counsel, however, fairly conceded that the operation of the said order has been stayed by the Hon'ble Bombay High Court (Nagpur Bench) in writ petition No.516/2000 entitled Union of India and others vs. Mukud. He conceded that it is not a binding precedent. But he has referred to a judgment of Hon'ble Andhra Pradesh High Court in writ petition No. 1219 & 1409/98 which was delivered, relying upon the judgment of Hon'ble Supreme Court given in the case of S. Banerjee vs. Union of India, AIR 1990 SC 285.

8. Under FR 56 (a), it is provided that "every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years". Rule 35 of CCS (Pension) Rules, 1972 also provided that "a superannuation pension shall be granted to a Government servant who has retired on attaining the age of compulsory retirement". Rule 33 of the said Rules defined emoluments as under:-

"The expression 'emoluments' means basic pay as defined in Rule 9 (21)(a)(i) of the Fundamental Rules which a Government servant was receiving immediately before his retirement or on the date of his death; and will also include non-practising allowance granted to medical officer in lieu of private practice."

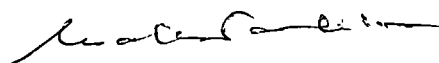
9. Rule 83 of Pension Rules specify the date from which pension becomes payable, which is stated as under:

"(1) Except in the case of a Government servant to whom the provisions of Rule 37 apply and subject to the provisions of Rules 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."

10. Reading the aforesaid rules conjointly, it is abundantly clear that a Government servant would retire in the afternoon of the last day of the month in which he had completed superannuation age of 60 years and that the pension would be fixed on the basis of the emolument which he was receiving immediately before his retirement. His entitlement to receive the pension is from a date on which he ceases to be borne on the Establishment of the Government. Applicant attained the age of superannuation of 60

years in the month of December 1995 and in accordance with FR 56 he would retire from Government service on the afternoon of the last day of the month, i.e. 31.12.1995.

11. Under the service jurisprudence, a Government servant though is required to perform the duties for a specific number of hours and is paid for it in the form of salary, remuneration or wages but he retains his character as a Government servant for the whole day i.e. all 24 hours of the day. For the convenience of counting of pay and allowance and leave etc. and to subserve the purpose of the Rules, the day is divided into two halves, namely, forenoon and afternoon. The period before 12 O'clock at noon is the forenoon period and the period post noon is afternoon period. The words, "on the afternoon" used in FR 56 are not to be construed literally and given narrow or pedantic connotation. As a result, the word "afternoon" cannot be interpreted and should not be interpreted to mean a period between the 12 O'clock and the sunset. Ordinarily, Government offices function between 9.30 a.m. and 6 p.m. In the narrow meaning of expression "on the afternoon" the Government servant would be deemed to have retired before the sunset. But such a narrow construction could not be placed in this expression. During peak of winter season, the sun sets at about 5 p.m. or even before that while the Government offices function up to 6 O'clock in the evening. It means that the last working day of a Government servant would be curtailed up to at most 5 O'clock and he would not be able to attend the duties up to 6 O'clock when the offices close for the day and for which he has been paid his full salary. The expression "on the afternoon" therefore will have to be given an extended meaning and same will apply to the expression "forenoon". As per rule 5 (2) of Pension Rules the day on which the Government servant retired is treated as a working day for him. The retiring Government servant is entitled to receive full emoluments for the last working day of his service. He is paid the emoluments at full rate for the full day. It is possible that an office functions even beyond 6 O'clock or the retiring Government servant may have to perform his official duties even beyond that period. If the word 'afternoon' is given literal and narrow meaning he cannot be deemed to have worked, discharged official duties and exercised his administrative powers after the sun set authorisedly. Therefore, the expression "on the afternoon of the last day of the month", used in FR 56 connotes the period from 12 O'clock at noon to the closing duty hour of the retiring government

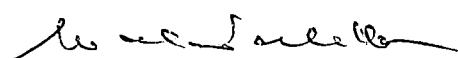


13. In accordance with rule 5 (2) of Pension rules the day on which a government servant retires on superannuation is a working day. It is not so in respect of a government servant who retires voluntarily. The day on which he voluntarily retires is not a working day. As a result former employee shall receive full salary for his last day in the office, the latter government servant shall not be getting pay and allowances for the day on which he voluntarily retired. But the date of retirement of these two categories of employees shall remain the same, i.e., the last day of the month, i.e., in case he is retiring on attaining the age of superannuation 60 years, and the date on which he has put down his papers in case of voluntary retirement. If it is so the applicant has retired from service on 31.12.1995 and not on 1.1.1996. A government servant retiring voluntarily will be receiving pension and not salary for the day on which he retires since the day on which he has retired is not a working day for him. But the emolument which shall form the basis of calculation of his pension will be the emolument which he would have notionally received on the day on which he has retired in the forenoon or the afternoon since the pension is to be paid on the basis of emolument which he received immediately before his retirement on that day.

14. Now we advert to the question as to which of the two OMs i.e. OM-1 or OM-2, will be applied for fixing the pension of the applicant. Since the applicant was not borne on the Establishment of the Government on 1.1.1996, he would not be receiving his pay and allowances as in service for 1.1.1996. Para 3.1 of the OM-1 (Annexure-3) reads as under:-

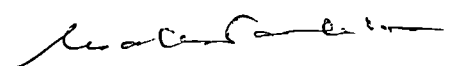
“ The revised provisions as per these orders shall apply to Government servants who retire/die in harness on or after 1.1.1996 separate orders will be issued in respect of employees who retired/died before 1.1.1996.

15. The above para clearly spelt out that this OM would apply to Government servants who retire “on or after 1.1.1996”. We have already held that the applicant had not retired on 1.1.1996 but had retired on the afternoon of 31.12.1995. Similarly, Annexure A-4, which is OM-II, has stated “these orders apply to all pensioners/family pensioners who were drawing pension/family pension on 1.1.1996 under the Civil Services Pension rules 1976, CCS Extra Ordinary Pension Rules and the corresponding Rules applicable to Railway pensioner and pensioners of All India services including



years in the month of December 1995 and in accordance with FR 56 he would retire from Government service on the afternoon of the last day of the month, i.e. 31.12.1995.

11. Under the service jurisprudence, a Government servant though is required to perform the duties for a specific number of hours and is paid for it in the form of salary, remuneration or wages but he retains his character as a Government servant for the whole day i.e. all 24 hours of the day. For the convenience of counting of pay and allowance and leave etc. and to subserve the purpose of the Rules, the day is divided into two halves, namely, forenoon and afternoon. The period before 12 O'clock at noon is the forenoon period and the period post noon is afternoon period. The words, "on the afternoon" used in FR 56 are not to be construed literally and given narrow or pedantic connotation. As a result, the word "afternoon" cannot be interpreted and should not be interpreted to mean a period between the 12 O'clock and the sunset. Ordinarily, Government offices function between 9.30 a.m. and 6 p.m. In the narrow meaning of expression "on the afternoon" the Government servant would be deemed to have retired before the sunset. But such a narrow construction could not be placed in this expression. During peak of winter season, the sun sets at about 5 p.m. or even before that while the Government offices function up to 6 O'clock in the evening. It means that the last working day of a Government servant would be curtailed up to at most 5 O'clock and he would not be able to attend the duties up to 6 O'clock when the offices close for the day and for which he has been paid his full salary. The expression "on the afternoon" therefore will have to be given an extended meaning and same will apply to the expression "forenoon". As per rule 5 (2) of Pension Rules the day on which the Government servant retired is treated as a working day for him. The retiring Government servant is entitled to receive full emoluments for the last working day of his service. He is paid the emoluments at full rate for the full day. It is possible that an office functions even beyond 6 O'clock or the retiring Government servant may have to perform his official duties even beyond that period. If the word 'afternoon' is given literal and narrow meaning he cannot be deemed to have worked, discharged official duties and exercised his administrative powers after the sun set authorisedly. Therefore, the expression "on the afternoon of the last day of the month", used in FR 56 connotes the period from 12 O'clock at noon to the closing duty hour of the retiring government



servant or till his duty hours ended on that date. In any event a government servants retires from service 'before' the first day of the next month began.

12. Now the crucial question is that how the pension and other pensionary benefits like family pension, gratuity and other retirement dues should be computed of a Government servant who had retired on the afternoon of 31.12.1995. Rule 83 (1) of the Pension Rules, to which we have referred to above, is clear. The pension would become payable from the date on which the Government servant ceased to be borne on the Establishment of the Government. The Government servant does not cease to be borne on the Establishment of the Government on 31.12.1995. He ceases to be borne on the Establishment of the Government w.e.f. 1.1.1996, i.e. he will be paid pension for 1.1.1996. But the question still remains as to how the amount of pension is to be computed. Rule 33 of the Pension Rules, which has also been quoted above, has provided that the emoluments means basic pay which a Government servant was receiving before his retirement, i.e., since the applicant retired on the afternoon of 31.12.1995 his pension shall be fixed taking into account the emolument which he was receiving immediately before his retirement in other words on the basis of the basic pay which he was receiving on 31.12.1995. The pension, as such, has to be fixed on the basis of his emoluments, which he was getting on 31.12.1995. His date of retirement is 31.12.1995 and not the next day of his retirement, i.e., 1.1.1996. The FR and the Pension Rules both are clear on this point. The Government servant would retire on the last day of the month in which he had completed the age of superannuation, which at present is 60 years for the Central Government employee. If the government servant retires from service before the first day of the next month commenced how can his pension ~~is to be~~ fixed on the basis of notional emoluments which he might have received on first day of next month when it is not a working day for him. Pension is to be fixed on the basis of emolument which he was receiving immediately before his retirement. He retired, as observed, on the last day of the month before the day ended. The emolument which should count for fixing pension must be one which he was receiving before that. It is emolument which he received for the last working day. Any other interpretation would not be in consonance with the FR and Pension Rules quoted above.



13. In accordance with rule 5 (2) of Pension rules the day on which a government servant retires on superannuation is a working day. It is not so in respect of a government servant who retires voluntarily. The day on which he voluntarily retires is not a working day. As a result former employee shall receive full salary for his last day in the office, the latter government servant shall not be getting pay and allowances for the day on which he voluntarily retired. But the date of retirement of these two categories of employees shall remain the same, i.e., the last day of the month, i.e., in case he is retiring on attaining the age of superannuation 60 years, and the date on which he has put down his papers in case of voluntary retirement. If it is so the applicant has retired from service on 31.12.1995 and not on 1.1.1996. A government servant retiring voluntarily will be receiving pension and not salary for the day on which he retires since the day on which he has retired is not a working day for him. But the emolument which shall form the basis of calculation of his pension will be the emolument which he would have notionally received on the day on which he has retired in the forenoon or the afternoon since the pension is to be paid on the basis of emolument which he received immediately before his retirement on that day.

14. Now we advert to the question as to which of the two OMs i.e. OM-1 or OM-2, will be applied for fixing the pension of the applicant. Since the applicant was not borne on the Establishment of the Government on 1.1.1996, he would not be receiving his pay and allowances as in service for 1.1.1996. Para 3.1 of the OM-1 (Annexure-3) reads as under:-

“ The revised provisions as per these orders shall apply to Government servants who retire/die in harness on or after 1.1.1996 separate orders will be issued in respect of employees who retired/died before 1.1.1996.

15. The above para clearly spelt out that this OM would apply to Government servants who retire “on or after 1.1.1996”. We have already held that the applicant had not retired on 1.1.1996 but had retired on the afternoon of 31.12.1995. Similarly, Annexure A-4, which is OM-II, has stated “these orders apply to all pensioners/family pensioners who were drawing pension/family pension on 1.1.1996 under the Civil Services Pension rules 1976, CCS Extra Ordinary Pension Rules and the corresponding Rules applicable to Railway pensioner and pensioners of All India services including

officers of the Indian Civil Services retired from service on or after 1.1.1973. Para 3.1

of this OM, which is relevant, states as under:-

"In these orders:-

- (a) 'Existing pensioner' or Existing Family pensioner' means a pensioner who was drawing/entitled to pension/family pension on 31.12.1995.
- (b) 'Existing pension' means the basic pension inclusive of commuted portion, if any, due on 31.12.1995. It covers all classes of pension under the CCS (Pension) Rules, 1972 as also Disability pension under the CCS (Extraordinary pension) Rules and the corresponding rules applicable to Railway employees and Members of All India Services.
- (c) 'Existing family pension' means the basic family pension drawn on 31.12.1995 under the CCS (Pension) Rules and the corresponding rules applicable to Railway and Members of All India Services.
- (d) 'Existing Dearness Relief' means the relief due to pensioners/family pensioners upto average CPI 1510."

16. The word, "pensioner" means a pensioner who was drawing/entitled to pension/family pension on 31.12.1995'. The expression "entitled to pension" would clearly apply to persons who had retired on the afternoon of 31.12.1995 since he would become entitled to pension immediately on his retirement but he will received the pension from 1.1.1996 when he will be no longer borne on the establishment of the government. Applicant had retired on the forenoon of 31.12.1995. He is entitled to receive the pension on the basis of the emoluments he was getting on that day as defined by Rule 33 of the Pension Rules i.e. the basic pay he was receiving immediately before his retirement. Applicant retired on the afternoon of 31.12.1995 and immediately before that whatever emoluments he was getting would be the basis of determination of his pension. In accordance with para 3.1 (b) of OM-2 the expression 'existing pension' means the basic pension inclusive of commuted portion, if any, due on 31.12.1995.

17. The contention of the counsel for applicant to the contrary to our considered view, is not in consonance with Rules, so not tenable. Applicant cannot be held to have retired on 1.1.1996 for the purposes of computing his pension and family pension including other retrial dues. He had retired on the afternoon of 31.12.1995 and his pension, gratuity, family pension and other retrial dues are to be computed and determined as on that day.



18. We were fortified in this view by the judgment of the Hon'ble Supreme Court in S.S. Banerjee (supra). The petitioner of this case, who was an Additional Registrar of the Supreme Court, was due for retirement on 31.3.1986. He sought for voluntary retirement and by an order he was permitted to retire w.e.f. the "forenoon of 1.1.1986". The petitioner claimed the benefit of the recommendation of 4th Central Pay Commission as contained in para 17.3. But it was not allowed on the ground that as he was not entitled to draw salary for January 1, 1986 in view of the proviso to Rule 5 (2) of the CCS Pension Rules, 1972. Rule 5 (2) of Pension Rules, inter alia, provided that the day on which the Government servant retires shall be treated as his last working day and a Government servant who retires voluntarily, the date of retirement shall be treated as a non-working day. Therefore, it was contended that the date of retirement of the petitioner who retired voluntarily would be a non-working day and he would not be paid salary for that day. The Hon'ble Supreme Court held as under:-

"6. Under paragraph 17.3, the benefits recommended will be available to employees retiring during the period, January 1, 1986 to September 30, 1986. So the employees retiring on January 1, 1986 will be entitled to the benefit under paragraph 17.3. The question that arises for our consideration is whether the petitioner has retired on January 1, 1986. We have already extracted the order of this Court dated December 6, 1985 whereby the petitioner was permitted to retire voluntarily from the service of the Registry of the Supreme Court with effect from the forenoon of January 1, 1986. It is true that in view of the proviso to rule 5(2) of the Rules, the petitioner will not be entitled to any salary for the day on which he actually retired. But, in our opinion, that has no bearing on the question as to the date of retirement. Can it be said that the petitioner retired on December, 31, 1985? The answer must be in the negative. Indeed, Mr. Anil Dev Singh, learned Counsel appearing on behalf of the respondents, frankly conceded that the petitioner could not be said to have retired on December, 31, 1985. It is also not the case of the respondents that the petitioner had retired from the service of this Court on December 31, 1985. Then it must be held that the petitioner had retired with effect from January 1, 1986 and that is also the order of this Court dated December 6, 1985. It may be that the petitioner had retired with effect from the forenoon of January 1, 1986 as per the said order of this Court, that is to say, as soon as January 1, 1986 had commenced the petitioner retired. But, nevertheless, it has to be said that the petitioner had retired on January 1, 1986 and not on December 31, 1985. In the circumstance, the petitioner comes within the purview of paragraph 17.3 of the recommendations of the Pay Commission."

19. A bare perusal of this order would show that the Hon'ble Supreme Court held that the petitioner could not be said to have retired on 31.12.1985 and that the petitioner had retired with effect from the forenoon of January 1, 1986, that is to say, as soon as 1st

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January, 1986 had commenced, the petitioner retired. Therefore, the petitioner was covered by paragraph 17.3 of the recommendation of the Pay Commission.

20. One of the questions, which was considered by the Hon'ble Supreme Court in the cited case, was whether in view of the provision of Rule 5 (2) of the Pension Rules i.e. the last day of a Government servant in office, who retires voluntarily, would not be treated as a non-working day, could the petitioner be said to have retired on the preceding day, i.e. 31.12.1985? The answer was given in negative. If the petitioner was to get his pension determined on the basis of his notional emolument which he would have received on 1.1.1986 even if his date of effective retirement was 31.12.1985 the question whether his date of retirement was 1.1.1986 or 31.12.1985 was inconsequential. He would still be getting the benefit of the para 17.3 of the 4th Central Pay Commission in both the situation. But it was not so decided. The petitioner before the Hon'ble Supreme Court had retired on 1.1.1986, therefore, the Hon'ble Supreme Court held that the date of retirement of the petitioner of the case was 1.1.1986 and on that day para 17.3 of the recommendation of the 4th Central Pay Commission had come into force, so he was entitled to this benefit.

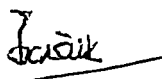
21. The principles of law laid down by the Hon'ble Supreme court may now be applied to the facts of the present case. Applicant retired from Government service on the afternoon of 31.12.1995. He did not retire on 1.1.1996. Therefore, the question of his pension or pensionary benefits or retirement benefits to be fixed on the basis of the OM-1 (Annexure A-3) does not arise. His pension, family pension, gratuity and other retirement dues are to be fixed in accordance with OM-2 (Annexure A-4). In accordance with this OM emoluments for the purpose of calculating various pensionary benefits other than retirement/death, gratuity shall mean basic pay as defined by FR 9 (2)(a)(i) which the Government servant was receiving immediately before his retirement. In this case as per this OM his pension etc., will be fixed on the basis of basic pay he was getting immediately before his retirement on the afternoon, i.e. for 31.12.1995.

22. The case of Union of India and others vs. R. Malokondia before the Hon'ble High Court was for the grant of increment for the preceding year which the government servant had completed on the day of the retirement, i.e., last day of the year and therefore,

24

it was held that the applicant was entitled to the grant of increment for the year, which otherwise would be added to his emoluments on the next day.

23. The judgment of the Hon'ble Supreme Court in S. Banerjee's case fully supports the view, which we have taken in this case. Accordingly, we do not find any merit in the case of the applicant. We dismiss the case leaving the parties to bear their own costs.


(S.K. Naik)
Member (A)

/sd/


(M.A. Khan)
Vice Chairman (J)