

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.488/2003

...Tuesday, ...this the 4th day of January, 2005

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P.DAS, ADMINISTRATIVE MEMBER

Anagur Bhaskar,
S/o B.Dasappa,
aged 71 years
Retired Station Master,
"Saraswathi Sadana"
Kulyangad PO, Ramdasnagar,
Kasargod District. ...Applicant

(By Advocate Mrs. N.Shobha)

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1. Union of India, represented by its Secretary, Ministry of Personnel Public Grievances and Pensions, Department of Personnel and Training, New Delhi.
2. Railway Board represented by its Secretary, Railbhavan, New Delhi.
3. The General Manager, Southern Railway, Chennai.
4. The Divisional Railway Manager, (Personnel) Southen Railway, Palghat. ...Respondents

(By Advocate Mr.C.Rajendran, SCGSC for R.1.
Advocate Mrs.Sumati Dandapani for R.2 to 4)

The application having been heard on 17.9.2004, the Tribunal on 4.1.2005 delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The moot point that has arisen for decision in this Original Application is whether the applicant who retired on superannuation on 28.2.1990 is entitled to have his pay

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refixed reckoning the increment which would fall due on 1.3.1990. The facts of the case lie in a narrow compass and can be stated thus.

2. The applicant who was a Station Master in the pay scale Rs. 2000-3200 retired on superannuation in the afternoon of 28.2.1990. The date of his next increment was 1.3.90. Since he was not in service on 1.3.1990 his pension and terminal benefits were settled without reckoning the increment which he would have earned for his service of one full year ending 28.2.90 but for his retiring on that day. After retirement the applicant made serval representations including his representation dated 19.7.2002 (Annexure.A.4) and 1.2.2003 (Annexure.A.6) made to the Hon'ble Minister for Railways as also Annexure.A.5 representation dated 19.1.2003 to the first respondent. The applicant was served with Annexure.A3 reply dated 5.12.2002 stating that there was no provision for grant of increment after retirement as also Annexure A.1 and A2 stating that the matter had been forwarded to the implementation cell for disposal. However, as the applicant's claim having not been allowed so far the applicant has filed this Original Application seeking to set aside Annexures.A.1 to A3 orders and for a direction to the respondents to refix the applicant's pay reckoning the increment due on 1.3.1990, to revise his pay, leave salary and pensionary benefits accordingly and to make available to him the arrears with interest at 18% per annum. It is alleged in the application that in view of the ruling of the

Full Bench of the Tribunal in OA 459/97 of the Mumbai Bench that an employee who retired on superannuation on the afternoon of 31.3.93 should be deemed to have been effectively retired on the forenoon of 1.4.1995 and in view of the ruling of the Apex Court in AIR 1990 SC 285 that an employee voluntarily retiring on the FN of 1.1.86 is entitled to revised pension in terms of the recommendation of the IVth Central Pay Commission the action on the part of the respondents not to grant the legitimate claim of the applicant is illegal and unjustified.

3. The respondents contend that the O.A. filed for refixattion of pay after 13 years of the applicant's retirement is hopelessly barred by limitation. On merits they contend that as the applicant was not on duty on 1.3.90 and he was drawing no pay but pension w.e.f.1.3.90 in terms of Rule 1320 of the Indian Railway Establishment Code and sub paragraph 606(11)(a) of the Indian Railway Establishment Manual the applicant was not entitled to increment after his retirement on 28.2.1990 and therefore, there is no merit in the claim. The Full Bench ruling of the Tribunal has no relevance and the ruling of the Apex Court was an entirely different fact situation, contend the respondents.

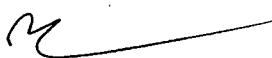
4. Mrs. Shobha the learned counsel of the applicant argued that in view of the ruling of the Full Bench of the Tribunal in Venkataram Rajagopalan and another Vs. Union of India and others 2000(1) ATJ 1 that a government servant

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retiring on superannuation on 31.3.1995 is deemed to have retired effectively from 1.4.1995 the applicant in this case has to be deemed to have retired on 1.3.1990. Relying on the ruling of the Apex Court in S.Banerjee Vs. Union of India and others (AIR 1990 SC 285) wherein it was held that Sri Banerjee who voluntarily retired on the forenoon of 1.1.1986 was entitled to the benefit of the recommendation contained in para 17.3 of the IVth Pay Commission Report the learned counsel argued that the fact situation being similar the applicant is entitled to the relief sought. She also brought to our attention the ruling of the Honb'ble High Court of Andhra Pradesh in Union of India and others Vs. Malakondiah and others, Writ Petition numbers 1219 and 1409 of 1998 in which placing reliance on the ruling of the Apex Court in S.Banerjee's case the order of the Hyderabad Bench of the Tribunal allowing OA 518/97 and OA 862/97 challenging the denial of annual increments to the applicants in those cases on the ground that they retired from service on 1.7.1996 and 1.7.1995 respectively on which dates alone the annual increments became due. The counsel also relied on a ruling of a Division Bench of the Central Administrative Tribunal, Ernakulam Bench in V.Ouseph Vs. The Postmaster General and others (OA 36 of 2004) in which under identical circumstances as in this case the Bench following the ruling of the High Court of Andhra Pradesh in W.P.No.1219 and 1409 of 1998 and also referring to the ruling of the Apex Court in S.Banerjee's case held that the applicant in that case who retired on 31.3.1997 was entitled

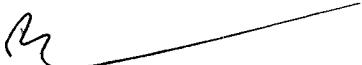


to the benefit of the increment which fell due on 1.4.97 though he was not actually in service on that date. The learned counsel submitted that the facts of this case being exactly similar to the facts of the case before the Andhra Pradesh High Court and in OA 36 of 2004 the Tribunal may take the same view and allow the application. On the plea of limitation the counsel argued that the cause of action is a recurring one and that since the respondents did not raise the point of limitation in the impugned orders the plea cannot be seriously considered. Smt. Sumati Dandapani appearing for respondents submitted that as the prayers in the application are for refixation of pay reckoning increment which fell due on 1.3.1990 and accordingly to refix the pension and for disbursement of arrears, the claim has become barred after expiry of the period from the date of the pay fixation including increment fell due and therefore no relief can be granted to the applicant in this case. Since the applicant after retirement in 1990 put forth the claim only in 2002 after it became hopelessly barred the repeated unsuccessful representations would not revive the time bound cause of action, argued the learned counsel. Meeting the arguments of the applicant's counsel on the merit of the case Mrs. Dandapani argued that the facts of the case in S. Banerjee Vs. Union of India and others (AIR 1990 SC 285) were entirely different from the facts of the case on hand because in Banerjee's case the Apex Court had no occasion to consider whether a person who retired on superannuation on the end of a month could be entitled to



have his pay fixed reckoning increment that would become due on the 1st of the succeeding month and that what was considered was whether the petitioner in that case who voluntarily retired on 1.1.1996 would be entitled to the benefits available to employees retiring between 1.1.1986 and 30.9.1996. She argued that the decision of the Hyderabad Bench of the Tribunal upheld by the Hon'ble High Court of Andhra Pradesh in W.P.No.1219 and 1409 iof 1998 and the decision of the Ernakulam Bench of the Central Administrative Tribunal in OA 36 of 2004 were rendered per incuriam without properly adverting to the spirit of the ruling of the Apex Court in S.Banerjee's case and inadvertent to the facts that increment is an addition to the pay and that an employee would not get pay after retirement.

5. We have very carefully considered the arguments of the learned counsel in the conspectus of the facts and circumstances and in the light of the decisions relied on. The contention on behalf of the respondents that the claim in the O.A. for refixation of pay reckoning an increment which fell due on 1.3.1990 for arrears and consequent refixation of pension is barred by limitation and therefore the prayer cannot be granted is well taken because although wrong fixation of pay may give rise to fresh cause of action every month when less pay is paid it ceases to be recurring the moment the employee retires from service and ceases to receive pay every month. Since the applicant in this case



retired on 28.2.1990 he did not receive any pay thereafter and therefore he did not get any fresh cause of action for claiming refixation of pay adding increment thereafter. Since the applicant did not seek relief within a year of 1.3.1990 in view of Section 21 of the Administrative Tribunals Act, 1985 his claim for refixation of pay got barred. That the applicant more than a decade thereafter made claim which was rejected without referring to plea of limitation would not revive his cause of action which had been barred already. The learned counsel of the applicant argued that on account of not reckoning the increment the applicant is suffering a recurring loss in pension and therefore that is a recurring cause of action. We find no force in this argument. The pension is to be calculated in the case of a Railway Servant on the basis of average emoluments drawn during the last ten months of service and as the pension was correctly fixed reckoning the emoluments drawn as per rule there is no cause of action for refixation of pension in this case because his relief for refixing the pay reckoning increment had already become barred.

6. We have held that the claim in this O.A. has become barred and no relief therefore can be granted. However since the O.A. had already been admitted and kept pending for a fairly long period, we shall consider the claim on merits also. The Full Bench of this Tribunal sitting in Mumbai in the case of Venkataram Rajagopal and another has declared the law that "A government servant completing the

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age of superannuation on 31.3.1995 and relinquishing charge of his office on the afternoon of that day is deemed to have effectively retired from service with effect from 1.4.1995". Therefore in this case since the applicant retired on superannuation on 28.2.90 he has to be deemed to have effectively retired from service on 1.3.1990. It is a fact born out of pleadings that the date of accrual of the increment of the applicant was 1st of March. Before the benefit of enhanced pay on account of the increment which would have fallen due on 1.3.1990 could be availed of by the applicant he retired on superannuation on 28.2.1990 and he was to receive not pay but pension only from 1.3.1990. Increment is an increase in pay earned on account of continuous service on duty in a pay scale both in accordance with the provisions of Rule 26 of the Fundamental Rules as also as per Rule 1320 of the Indian Railway Establishment Code. It is inconceivable that one would continue in the time scale of pay after retirement on superannuation in that service . On retirement one becomes a pensioner if the service is pensionable and what he would get thereafter would be pension and not pay. Therefore to hold that a pensioner who retired before the date of drawal of increment on account of superannuation should be granted the benefit of that increment would be against the statutory provisions contained in FR 26 and Rule 1320 of Indian Railway Establishment Code. Increment accrues only when pay accrues, and therefore there can be no increment without the right to pay pre-existing the incidence of increment.



We find that the ruling of the Hyderabad Bench of the Tribunal in OAs 518/97 and 862/97 granting that payer for award of increment which would fall due on 1.7.96 and 1.7.97 to the applicants in those cases who retired on 1.7.96 and 1.7.95 respectively was upheld by the Hon'ble High Court of Andhra Pradesh in Writ Petition Nos.1219 and 1409 of 1998 placing reliance of the ruling of the Apex Court in S.Banerjee V.Union of India and others (AIR 1990 SC 285). We also find that the Ernakulam Bench of the Tribunal also has in its order in OA 36 of 2004 (V.Ouseph Vs. The Postmaster General and others) relying on the ruling of the Andhra Pradesh High Court and also referring to the judgment of the Hon'ble Supreme Court in S.Banerjee's case (supra) allowed the O.A. and directed the respondents to effect payment of annual increment due on 1.4.1997 to the applicant who retired on 31.3.1997. [We are afraid that the decision of the Hyderabad Bench of the Central Administrative Tribunal which was upheld by the Hon'ble High Court of Andhra Pradesh and the decision of the Ernakulam Bench in Ouseph's case do not reflect the correct legal position and that these decisions were rendered per incuriam inadvertant to the fact that increment is an increase in pay and a pensioner would not receive pay as also not adverting to the true spirit of the decision of the Apex Court in S.Banerjee's case which was relied on in both the decisions.] The facts and the issue involved in S.Banerjee's case were entirely different from those in the case before the Hyderabad Bench and Ernakulam Bench of the Central



Administrative Tribunal under citation. The IVth Central Pay Commission had in paragraph 17.3 of Chapter 17 of Part II at page 93 of its report made the following recommendations:

17.3. In the case of employees retiring during the period January 1, 1986 to September 30, 1986 government may consider treating the entire dearness allowance drawn by them upto December 31, 1985 as pay for pensionary benefits."

S.Banerjee, the petitioner before the Apex Court was permitted to retire voluntarily from service under Rule 43(A) of the Civil Service (Pension) Rules, 1972 with effect from the forenoon of January, 1, 1986. The claim of Mr.Banerjee for the benefit of the recommendation contained in para 17.3 of the Pay Commission Report was rejected on the ground that as he did not draw salary on 1st January, 1986 in view of the proviso to Rule 5(2) of the Central Civil Services (Pension) Rules. Rule 5(2) read as follows:

"Rule 5(2): The day on which a government servant retired or is retired or is discharged is allowed to resign from service as the case may be shall be treated as his last working day. The date of death shall also be treated as a working day:

provided that in the case of a government servant who is retired prematurely or who retires voluntarily under clauses (i) to (m) of Rule 56 of Fundamental Rules or Rule 48 (or Rule 48A) as the case may be the date of retirement shall be treated as a non-working day".

7. The respondents relying on the proviso argued that as the 1st of January, 1986 on which the petitioner voluntarily retired being a non-working day on which date the petitioner did not get salary he was not entitled to the

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benefit of the recommendations of the IVth Pay Commission in paragraph 17.3 of its Report. Rejecting the contention the Hon'ble Supreme Court observed"

"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? 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 is 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 circumstances, the petitioner comes within the purview of paragraph 17.3 of the recommendations of the Pay Commission."

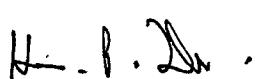
A careful reading of the above quoted observation of the Hon'ble Supreme Court would make it clear that what was considered by the court in that case was whether the petitioner S.Banerjee retired on 1.1.86 or not and not whether the petitioner was entitled to fixation of pay

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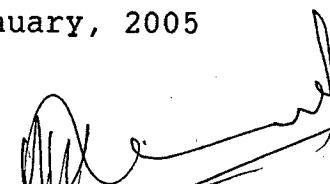
reckoning the increment which would fall due on 1.1.1986. It appears that the Division Bench of the Ernakulam Bench and the Hyderabad Bench of the Tribunal and the Hon'ble High Court of Andhra Pradesh were misled to hold that the Apex Court in S.Banerjee's case held that a pensioner who retired on superannuation on the last day of a month would be entitled to fixation of pay reckoning the increment of pay due on 1st of the succeeding month which he might have drawn had he not retired. Hence the decision of the Hon'ble Andhra Pradesh High Court and the Ernakulam Bench are not binding precedents.

8. In the result, in the light of the legal position as discussed above, we find that the applicant is not entitled to any of the reliefs sought and therefore, we dismiss the application without any order as to costs.

Dated this the 4th day of January, 2005


H.P.DAS
ADMINISTRATIVE MEMBER

(s)


A.V. HARIDASAN
VICE CHAIRMAN