

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.545/2001

Thursday, this the 5th day of February, 2004.

CORAM;

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

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

1. M.A.George,
Malayattil House,
Pudukkad,
Trichur District.
2. V.Chandrachoodan,
Korappath House,
Chiyyaram.P.O.
Trichur District.
3. Smt.Mary Isac,
"Merry Dale",
Nellenkara,
P.O.Nettissery,
Trichur Disitric. - Applicants

By Advocate Mr VN Ramesan Nambiar

Vs

1. Union of India
represented by the Secretary,
Ministry of Personnel, Public
Grievances & Penions,
New Delhi.
2. The Deputy Chief Accounts Officer,
Employees State Insurance Corporation,
Panchadeep Bhavan, Kotla Road,
New Delhi.
3. The Regional Director
(Administration Branch),
ESI Corporation,
Regional Office,
Panchadeep Bhavan,
Thrissur-20.
4. The Deputy Director(Administration),
ESI Corporation,
Regional Office,
Thrissur-20. - Respondents

By Advocate Mr TV Ajayakumar(for R.2 to 4)

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicants, three in number, retired on superannuation on 31.3.95 from the service of the ESI Corporation. Their grievance is against A-5, A-6 and A-7 orders dated 23.11.2000, 4.9.2000 and 23.11.2000 respectively, rejecting their claim that since they demitted office on 31.3.95 on account of retirement on superannuation, they would become pensioners only with effect from 1.4.95 and that they therefore entitled to enhanced retirement gratuity provided as per A-1 O.M. dated 14.7.95 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions which took effect from 1.4.95. Paragraph 1 of A-1 dated 14.7.95 in so far as it is relevant to the applicants' case is reproduced hereunder:

"OFFICE MEMORANDUM

Sub: Treatment of dearness allowance as dearness pay for the purpose of death gratuity and retirement gratuity and raising the maximum limit of gratuity from Rs.1 lakh to Rs.2.50 lakhs.

The Fifth Central Pay Commission in its interim report, has recommended that dearness allowance as linked to the average. All India Consumer Price Index (AICPI) 1201.66 may be treated as dearness pay for reckoning emoluments for the purpose of retirement gratuity and death gratuity under the Central Civil Services (Pension) Rules, 1972 and the ceiling on gratuity be enhanced to Rs.2.50 lakhs. Accordingly, the President is pleased to decide that dearness allowance linked to AICPI 1201.66 as indicated below shall be treated as dearness pay for reckoning emoluments for the purpose of retirement gratuity/death gratuity under the Central Civil Services (Pension) Rules, 1972 in the case of Central Government employees who retire or die on or after 1st April, 1995.

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Pay Range	Dearness allowance to be added to pay for calculating gratuity
1. Basic pay upto Rs.3,500/- p.m.	97% of pay
2. Basic pay above Rs.3,500/- p.m. and upto Rs.6,000/-p.m.	73% of pay subject to a minimum of Rs.3395/-
3. Basic pay above Rs.6000/- p.m.	63% of pay subject to a minimum of Rs.4380/-

The above rates are inclusive of the dearness allowance equivalent to 20% of basic pay already treated as dearness pay for the purpose of retirement gratuity/death gratuity with effect from 16th September, 1993 in terms of this Department's OM No.7/2/93-P&PW(F) dated 19th October, 1993.,"

2. The applicants sought the benefit of enhanced gratuity on account of merger of 97% DA as dearness pay. Their representations, A-2, A-3 and A-4 dated 20.7.2000, 14.7.2000 and 24.7.2000 respectively have been rejected by the impugned orders referred to above. Placing reliance on the Full Bench decision of the C.A.T., Mumbai Bench reported in 2000(1) ATJ, 1 and a decision of the C.A.T., Hyderabad Bench reported in (1997) 35 ATC, 353, the applicants seek this Tribunal's intervention by quashing the impugned A-5, A-6 and A-7 orders and issuing directions to the respondents to give the benefit of retirement gratuity as per A-1 O.M.

3. The respondents 2 to 4 have filed a reply statement maintaining that the applicants who retired from service with effect from 31.12.1995(A.N) are not entitled to the enhanced retirement benefit available to persons retiring on or after 1.4.95. According to the respondents, the applicants retired on superannuation on 31.3.95. There was no question of their deemed retirement on or after 1.4.95 and, accordingly, no

benefit as prayed for could be given. It is also contended by the respondents that the decision of the Hyderabad Bench of the C.A.T. reported in (1997) 35 ATC 353 involve a case of voluntary retirement and therefore it is obvious that that decision is not applicable to the applicants' case. The C.A.T. Mumbai Bench(F.B)'s decision also does not turn on determination of date of retirement of the ESI employees but of Central Government employees. The respondents have filed a copy of the certificate of relinquishment of charge by the applicants to show that they relinquished their charge on 31.3.95 and that they became retirees on 31.3.95 afternoon itself. Respondents also have relied on R2(2) which is a true copy of the relevant extracts of Regulation 7(2) of the ESIC (Staff Conditions of Service) Regulations, 1959 governing pay, leave, gratuity, provident fund and age of retirement of the employees of the respondent organisation and making it clear that for the purpose of determining age of retirement, the provisions of Rule 56 of the Fundamental Rules would be applicable to the employees of the ESI Corporation as well. As per Rule 56(a) of the Fundamental Rules, except as otherwise provided in the rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years. The respondents would maintain that the applicants retired on superannuation on the afternoon of 31.3.95 and hence they could not ask for retiral benefits at the enhanced rate effective from 1.4.95.

4. We have heard Shri V.N.Ramesan Nambisan, learned counsel for the applicant and Shri T.V.Ajayakumar, learned

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counsel for respondents 2 to 4.

5. Shri V.N.Ramesan Nambisan, learned counsel for the applicant would contend that these applicants who retired on superannuation with effect from 31.3.95 would become entitled to pension and retiral benefits only with effect from 1.4.95 and not with effect from 31.3.95. Therefore they become effective retirees only on 1.4.95. They are not asking for computations of pension and pensionary benefits on the basis of any increase in pay and allowances which took effect from 1.4.95. They are claiming gratuity and other retiral benefits on the basis of their last drawn pay and allowances as on 31.3.95 but at the rate or rates which are made applicable with effect from 1.4.95. According to the learned counsel for the applicant, it is this concept of effective retirement that is explained by the Mumbai Full Bench of this Tribunal in the case reported in 2000(1) ATJ, 1. Learned counsel also would draw support from the CAT, Mumbai Bench(F.B)'s order dated 21.9.2001 in O.A.542, 942 and 943 of 1997. Learned counsel therefore would submit that the applicants who started getting their pension and pensionary benefits with effect from 1.4.95 were entitled to such benefits at the rates admissible as per A-1. Shri Ajayakumar, learned counsel for the respondents 2 to 4, on the other hand, would maintain that the decisions relied on by the applicants were without reference to the rules and to that extent, the finding that a person who retires on superannuation from a particular date is deemed to have retired effectively on the next day is per incuriam. Learned counsel for the respondents would draw our attention

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to the Hon'ble Supreme Court's decisions reported in Nelson Motis Vs Union of India [ATR 1992 SC 1981], Gurudevadatta VKSSS Maryadit Vs. State of Maharashtra [(2001) 4 SCC 534], Dental Council of India and another Vs Hari Prakash and others [(2001) 8 SCC 61] and S.Banerjee Vs Union of India [AIR 1990 SC 285] and would contend that when words of a statute are free from vagueness or ambiguity, such words should be understood in their natural, ordinary and popular sense and construed according to their grammatical meaning on the basis of what has been said or what has not been said. In this case, what is said in FR 56(a) is retirement would take effect on the afternoon of the last day of the month in which the Government servant attains the age of sixty. In this case, the applicant retired before 1.4.95, and would therefore be not entitled to the benefit of enhanced DCRG, the learned counsel would urge.

6. We have considered the facts and contentions. We have also gone through the orders and decisions cited by the rival counsel. We find that the rule position relied on by the respondents 2 to 4 in this case had been duly considered by the CAT, Full Bench, Mumbai in Venkatram Rajagopalan and another Vs Union of India and others [2000(1) ATJ 1] while on being called upon to answer the question of law as to:

"Whether a Government servant completing the age of his superannuation on 31.3.1995 and relinquishing charge of his office in the afternoon of that day is deemed to have retired from service on superannuation with effect from 31.3.1995 itself or with effect from 01.04.1995?."

9.

After carefully examining the relevant provisions of the FRs and CCS(Pension) Rules, the Full Bench of the Tribunal answered the question referred to it in the following manner:

"A Government servant completing the age of superannuation on 31.03.1995 and relinquishing charge of his office in the afternoon of that day is deemed to have effectively retired from service with effect from 01.04.1995."

On going through the reliefs prayed for by the applicants, we notice that essentially the question to be decided is whether the applicants could be denied the benefit of retirement gratuity as per A-1 order on grounds of their retirement 31.3.95. It is clear that the very question considered and answered by the CAT, Full Bench, Mumbai would arise for consideration in this case also. If the applicants are treated as employees having retired before 1.4.95 and the enhanced DCRG with effect from 1.4.95 is allowed only to those employees who would retire on the afternoon of 1.4.95 or on any subsequent date, it would mean denial of justice and fairness to them because they would, as a matter of fact, be entitled to pension and pensionary benefit only with effect from 1.4.95 though for administrative purposes they relinquished their charge or demitted their office in the afternoon on 31.3.95. We notice that the applicants have received their full salary at the relevant rate and scale for the last working day upto the point of their retirement. They do not draw pension or other retiral benefits as on 31.3.95. Their rights as pensioners take effect only from 1.4.95 as they have not drawn even a paisa as pension or

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pensionary benefits as on 31.3.95. It is well settled that when words used are plain and unambiguous and admit of only one meaning, there can be no question of importing any meaning other than the plain and popular meaning to those but it is acclaimed with equal force that if such a construction leads to some absurdity or if there is something in the context or in the object of the statute to the contrary, a proper interpretation would be necessary. The provisions of A-1 O.M. have been subject matter of critical analysis by the CAT, (Mumbai) Full Bench while answering the question in the case reported in 2000(1)ATJ 1, referred to above. The Full Bench considered the provisions of Rule 83(1) of the Pension Rules^{and} observed that pension becomes payable from the date of Government servant ceased to be borne on the establishment. Since the applicants before the tribunal in that case continued as Government servants borne on the establishment till mid night of the day of superannuation, viz, 31.3.95, the Full Bench came to the conclusion that the effective date of the employees' retirement would be 1.4.95 and not 31.3.95. In our considered view, the finding of the CAT (Full Bench) in the above case is applicable to the case on hand.

7. We also take note of the decision of CAT, Full Bench, Mumbai in O.A.No.542, 942 and 943 of 1997 dated 21.9.2001 wherein the Tribunal, while dealing with the question whether there was any nexus or rationale consideration in fixing the cut off date of 1st April 1995 as per O.M. dated 14.7.95 referred to in that O.A. concluded that the applicants in that O.A. who retired between 1.7.93 to 31.3.95 were entitled

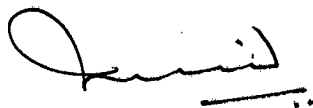
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to the benefit of the scheme of merger of 97% DA in the pay for purposes of emoluments for calculating DCRG. The Tribunal came to the above finding on the ground that since the applicants before it had been getting 97% DA as on 1.7.93, there was no rational nexus between the benefit ordered and the cut off date of 1.4.97 prescribed and hence there was hostile discrimination.

8. In our view, the two decisions of the CAT, Full Bench, Mumbai referred to above fully support the applicants' claim. Thus, though they retired on superannuation in the afternoon of 31.3.95, the applicants should be extended the benefit of the provisions of A-1 O.M. which would take effect from 1.4.95, since that was the date on which they would be entitled to pension and pensionary benefits including DCRG. We respectfully follow the findings of the Full Bench, Mumbai in order dated 15.10.99 reported in 2000(1) ATJ, 1 as well as order dated 21.9.2000 in O.A.542/97 and connected cases, and hold that the impugned orders A-5, A-6 and A-7 are liable to be set aside.

9. In the result, the impugned orders A-5, A-6 and A-7 are set aside. We direct the respondents to give the benefit of retirement gratuity to the applicants in accordance with the provisions contained in A-1 O.M. dated 14.7.95 within a period of three months from the date of receipt of copy of this order. The application is allowed as above, leaving the parties to bear their respective costs.

Dated, the 5th February, 2004.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN