

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No. 68 / 2003

Wednesday, this the 31st day of August, 2005.

CORAM :

**HON'BLE Mr.K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE Mr.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

P.Bhaskaran
Retired Post Master
Melattur, Manjeri
Residign at : Geetham, Vaniyamblam,
Malappuram - 679339 : **Applicant**

(By Advocate Mr. M.R.Hariraj)

Versus

1. The Post Master General
Northern Region
Kozhikode
2. The Chief Post Master General
Kerala Circle, Thiruvananthapuram – 33
3. The Director General of Post,
Dak Bhawan, New Delhi.
4. Union of India represented by the Secretary
Ministry of Communications, New Delhi : **Respondents**

(By Advocate Mr. T.P.M.Ibrahim Khan, SCGSC)

The application having been heard on 31.08.2005, the Tribunal on the same day delivered the following :

OR D E R (Oral)

HON'BLE Mr. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant commenced his service as Post man in 1970 and was promoted as Postal Assistant in 1975. He was granted TBOP in 1991 and the applicant has completed 26 years of service on 03.07.2001. He retired from service on 31.12.2001. The applicant's claim for BCR promotion was rejected Aggrieved, the applicant has filed this O.A seeking the following reliefs:-



- i, Quash Annexure A-1 and the letter No. Staff/57-6/88 dated 24.01.2002 issued by the 1st respondent, referred to in A-1.
- ii, To declare that the applicant was in service on 01.01.2002.
- iii, To declare that the applicant is eligible to be considered for promotion to Postal Assistant Grade III on the date on which the applicant completed 26 years of satisfactory service.
- iv, To direct the respondent to consider the applicant's claim for promotion to Postal Assistant Grade III with effect from the date on which the applicant completed 26 years of satisfactory service and to promote him accordingly with consequent benefits.
- v, Grant such other relief as may be prayed for and the Tribunal may deem fit to grant, and
- vi, Grant the costs of this Original Application.

2. The respondents have filed a detailed reply statement contending that BCR promotions are ordered with effect from 1st January and 1st July every year in case of officials who have completed 26 years of service as on above dates. In other words, officials in service as on above crucial dates having 26 completed years on 1st January and 1st July are considered for the above promotions. The applicant retired from service on 31.12.2001 and relinquished the charge of SPM at 1700 hours on 31.12.2001. With effect from 01.01.2002 he was not in service. Therefore, his claim was not considered for promotion which was ordered on 01.01.2002. Similarly on 01.07.2001 he had completed 26 years of qualifying service as PA/TBOP and his case was not included in the promotion list dated 01.07.2001. He was granted TBOP on completion of 16 years of service in PA cadre. There were dies non for 37 days in his service which cannot be counted as qualifying service. Therefore, he has not completed 26 years of qualifying service which is the eligibility for considering for BCR promotion. The representation of the applicant was considered and rejected for the reasons as stated under :-

- a, As on 01.07.2001, the applicant has not completed 26 years of qualifying service
- b, As on 01.01.2002, the applicant was not in service as he retired from service on superannuation in the afternoon of 31.12.2001.

3. This was informed to the applicant vide Annexure A-1



communication. It is also averred in the reply statement that the dies non awarded to the applicant cannot be condoned without specific justified reasons, in the interest of service. Otherwise this will be an act of misuse of rules/instructions for personal gains of an individual.

4. We have heard Mr. M.R.Hariraj, learned counsel for applicant and Mr.T.P.M. Ibrahim Khan, SCGSC for the respondents.

5. The learned counsel for applicant argued that a government servant continues to be borne on the establishment till midnight on the date of superannuation. He has also argued that for all practical and technical purposes applicant must be deemed to have ceased from service or retired from service on or from the next day of superannuation i.e., with effect from the 1st day of the month of superannuation. Hence the applicant may be considered to be in service on 01.01.2002 and is eligible to be considered for promotion to Postal Assistant. The counsel for respondents on the other hand persuasively argued that promotions are ordered with effect from 1st January and 1st July of every year who have completed 26 years of qualifying service as on above dates.

6. We have given due consideration to the pleadings, arguments and material placed on record. The point to be considered is though the applicant has retired on 31.12.2001, whether he can be treated to have retired as on 01.01.2002. In case, the date of consideration is 1st January and 1st July of every year, he is eligible for consideration as he had completed 26 years. As on 01.01.2002. The learned counsel for applicant has brought to our notice one of the decisions of the Hyderabad Bench of C.A.T., T.Krishna Moorthy Vs. Secretary, Department of Post and Others (1997) 35 ATC 353 and also (UOI Vs. George) 2004 (1) AT 151 of Hon'ble Kerala High Court and argued that the dictum laid down in these decisions are to the effect that it is to be construed that the employee is retired and to be counted from the midnight from the date of superannuation. However, in another occasion, the Full Bench of the A.P. High Court in Writ Petition No.22042 of 2003 decided on 27.01.2005 (Principal Accountant General, Andhra Pradesh, Hyderabad& anr. Vs. C.Subba Rao and others) has elaborately dealt with the George's case



and identical matters (Union of India Vs. R. Malakondaiah – 2002 (4) ALT 550) and Full Bench came to the conclusion that the view taken by the Division Bench was not correct and accordingly overruled the same. The observation of the A.P High Court is quoted as under:-

“ In State of Punjab V.J.L.Gupta, 2002(2)SCC 736, the respondents had retired on 31.03.1985 and their pensionary benefits were calculated as per the Rules in force at the time of their retirement. On 9.7.1985, Government of Punjab issued a notification ordering that the dearness allowance and adhoc dearness allowance sanctioned upto Consumer Price level index No.568 will be treated as dearness pay for the purpose of calculating pension and gratuity in respect of employees retired on or after 31.03.1985. The respondents were not given the benefit. They filed the writ petition in Punjab and Haryana High Court . The High Court allowed the writ petition directing the State of Punjab to pay all the dues. The Supreme Court relying on its earlier decision in State of Punjab v. Boota Singh, 2000 (3) SCC 733 held that the respondents are not entitled to claim benefits, which became available at a later date. Applying the same, it must be held that Government servant who retired from service would not be entitled to any benefits except the pension according to the Rules.

In Malakondaiah case (supra), the respondent employees moved Central Administrative Tribunal Hyderababd Bench, for a direction of Principal Accountant General (Audit-1), Andhra Pradesh, to sanction annual increment for the year on the last day on which they retired in accordance with Rule 5(2) of the Pension Rules and whose pay was regulated under proviso to Note 1 below Rule 34 of the Pension Rules. The Tribunal following its earlier judgment allowed the O.As. The Union of India and others filed Writ Petitions before this Court. The two Writ Petitions were heard by a Division Bench. It was contended by Union of India that when an employee retires on the last day on which increment fell due, such employee is not entitled for increment because he ceased to be in service. Reliance was placed on Rule 33 of the Pension Rules and Article 151 of CS Regulations. The Division Bench repelled the said contention with the following observations:

“The fact that the emoluments of a Government servant have to be taken as the basic pay, which he was receiving immediately before his retirement, is not at all in controversy. Similarly, the proposition that an increment accrues from the following that on which it is earned is also not in dispute. Increment in pay is a condition of service. In a way, it is a reward for the unblemished service rendered by an employee, which gets transformed into a right. Once an employee renders the service for the period which takes with it an increment, the same cannot be denied to him/her. It is not in dispute that both the respondents rendered unblemished service for one year before the respective



dates of their retirement. The periodicity of increment in the service is one year. On account of rendering the unblemished service, they became entitled for increment in their emoluments..... The only ground on which the respondents are denied the increment is they were not in service to receive or to be paid the same. Strictly speaking, such a hyper – technical plea cannot be accepted. As observed earlier, with the completion of the years service, an employee becomes entitled for increment, which is otherwise not withheld. After completion of the one year service, the right accrues and what remains thereafter is only its enforcement in the form of payment. Therefore, the benefit of the year-long service cannot be denied on the plea that the employee ceased to be in service on the day on which he was to have been paid the increment. There is no rule, which stipulates that an employee must continue in service for being extended the benefit for the service already rendered by him.” (emphasis supplied).

In support of the above observations, the Division Bench also placed reliance on Banerjee case (supra). We are afraid, the Division Bench was not correct in coming to the conclusion that being a reward for unblemished past service. Government servant retiring on the last day of the month would also be entitled for increment even after such increment is due after retirement. We have already made reference to all Rules governing the situation. There is no warrant to come to such conclusion. Increment is given (see Article 43 of CS Regulations) as a periodical rise to a Government employee for the good behaviour in the service. Such increment is possible only when the appointment is “Progressive Appointment” and it is not a universal rule. Further, as per Rule 14 of the Pension Rules, a person is entitled for pay, increment and other allowances only when he is entitled to receive pay from out of Consolidated Fund of India and continues to be Government servant. A person who retires on the last working day would not be entitled for any increment falling due on the next day and payable next day thereafter (see Article 151 of CS Regulations), because he would not answer the tests in these Rules. Reliance placed on Banerjee case (supra) is also in our considered opinion not correct because, as observed by us, Banerjee case (supra) does not deal with increment, but deals with enhancement of DA by the Central Government to pensioners. Therefore, we are not able to accept the view taken by the Division Bench. We accordingly overrule the judgment in Malakondaiah case (supra).

In Re Point No.(II)

Whether a retired Government servant is entitled for revised rate of D.A. Which comes into force after such Government servant retires from service on attaining the age of superannuation ? “

7. The final decision that the annual increment in recognition of past



one year service - benefit of such increment will not accrue in the past and present time but the benefit would accrue only at a point of time in future. An employee who retires on the last working day of the month ceases to be a Government servant and thus would not get any benefit of such increment.

8. We are of the view that the decision canvassed by the counsel for applicant that the applicant is construed to have retired on 01.01.2002 cannot be accepted. Therefore, the argument of the learned counsel on that point has to be dismissed and we do so. However, the specific plea that has been taken by the counsel for applicant is that if the dies non period had been condoned, the applicant would have been entitled for the benefit. The respondents have stated in Para 3 of the reply statement that "there were dies non for 37 days in his service which cannot be counted as qualifying service and further submitted that the dies non awarded cannot be condoned without specific justified reasons in the interest of service." The counsel for applicant took us to Rule 28 of the CCS(Pension) Rules and D.G.P & T's letter No.14/12/82-Vig III dated 23.09.1982 for canvassing a position that the question of condonation of break in service for the purpose of Pension Rules may be considered suo motu without waiting for a representation from the affected officials and orders issued so that the retired employees are not put to financial hardship. However, since the applicant has brought this fact to the notice of the respondents, in the interest of justice, we are of the view that the applicant be given a chance for making a representation within a period of one month and respondents shall consider and dispose of the representation, if made within a time frame of three months.

9. The O.A is disposed of as above. No order as to costs.

Dated, the 31st August, 2005.


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER


K.V.SACHIDANANDAN
JUDICIAL MEMBER