

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.165/2002

Tuesday this the 22nd day of July, 2003.

C O R A M

**HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER**

K.Radhakrishnan,
Retired Goods Driver,
Southern Railway,
Shornur, Palghat Division,
Residing at :
Kripa Nivas,
Ganeshagiri,
Shornur

Applicant

[By Advocate Mr.T.C.Govindaswamy]

Vs.

1. The Union of India represented by the
Secretary to Government of India,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. The General Manager,
Southern Railway,
Headquarters Office,
Park Town P.O.,
Chennai - 3.
3. The Senior Divisional Personnel Officer,
Southern Railway,
Palghat Division,
Palghat

Respondents

[By Advocate Mr.Thomas Mathew Nellimoottil]

The application having been heard on 22.07.2003, the
Tribunal on the same day delivered the following :

O R D E R

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

The applicant, a retired Goods Driver, seeks the benefit of Annexure A-1 O.M dated 14.07.1995 of the Ministry of Personnel, Public Grievances and Pension (Department of Pension and Pensioner's Welfare) duly adopted by the respondent department, the Railways, as per Annexure A-2 order

9/

..2/-

dated 08.08.1995. The applicant retired from service on superannuation on 31.03.1995 as Goods Driver, Shornur, Palghat Division of the Southern Railway. The applicant's case is that he is entitled to the enhanced rate of gratuity with effect from 01.04.1995 and that the stipulation that the entitlement of such enhanced rate is applicable to government employees who actually retired on or after 01.04.1995 is arbitrary and contrary to law. Relying on the Full Bench decision of the Mumbai Bench of the Central Administrative Tribunal in O.A Nos. 542, 942 and 943 of 1997 dated 21.09.2001 (Annexure A-3) the applicant seeks the following main reliefs :-

- (a) Declare that the applicant is entitled to the extension of the benefit of Annexure A - 3 and the payment of retirement gratuity, to be calculated on the basic pay plus 97 % of the basic pay treated as Dearness Pay.
- (b) Direct the respondents to pay the applicant the difference of retirement gratuity paid and payable as per declaration in para 8(a) above with 18% interest from such date as may be found just and proper by the Hon'ble Tribunal.

2. In their reply statement the respondents have resisted the applicant's claim stating that since the applicant retired on 31.03.1995, he could not be considered to have the benefit of enhanced gratuity as per Annexures A-1 and A-2 which would be available only to those government servants who retired from service on or after 01.04.1995 and not on any date prior to 01.04.1995.

21

3. We have heard Mr.K.M.Anthru, learned counsel for applicant and Mr.Thomas Mathew Nellimoottil, learned counsel for respondents. According to Mr.Anthru, the applicant retired with effect from 01.04.1995. The pay and allowances for the purpose of calculating the enhanced gratuity certainly should be the last pay drawn by the applicant on 31.03.1995. The contention of the learned counsel for applicant, in short, is that the applicant is a retiree only as on 01.04.1995 for purpose of pension and other retiral benefits. Therefore, the enhanced gratuity effective from 01.04.1995 should be available to the applicant. Reliance is placed on the Full Bench decision of the Central Administrative Tribunal, Mumbai Bench (Annexure A-3).

4. Mr.Thomas Mathew Nellimoottil, learned counsel for respondents, on the other hand, would rely on the reply statement and forcefully contend that the applicant having retired only on 31.03.1995 cannot be construed to have retired on a subsequent date in order to gain the benefit of enhanced gratuity. It is also pointed out by the learned counsel for respondents that A-3 decision of the Full Bench of the Mumbai Bench of the Central Administrative Tribunal cited and relied on by the applicant, is applicable only to the applicants therein and could not be called in aid in all cases.

5. On a consideration of the relevant facts and having regard to the legal position, we find that though the applicant actually superannuated with effect from 31.03.1995,

9.

he would be deriving the pension and pensionary benefits only with effect from 01.04.1995. The government servant who superannuates on 31.03.1995, becomes a retired government employee or a pensioner entitled to retiral benefits only with effect from the very next day i.e., 01.04.1995. It is this position that has been accepted after detailed discussion of the facts and law by the Full Bench when on identical facts and circumstances, the Full Bench observed as under :-

" In the present case, it cannot be ignored that all factors being equal the applicants have been discriminated against on the ground that they had retired earlier than the cut off date. We, therefore, hold that the applicants who retired between 01.07.1993 to 31.03.1995 are entitled to the benefits of the scheme of merger of 97% DA in the pay for purposes of emoluments for calculating death/retirement gratuities ".

The Full Bench of the Tribunal answered the question referred to it in the following words:-

" We do not find that there is any nexus or rational consideration in fixing the cut off date of first April, 1995 vide o.M.No.7/1/95-P&PW(F) dated 14th June, 1995 issued by the Ministry of Personnel, Public Grievances and Pension (Department of Pension & Pensioner's Welfare), New Delhi ".

6. As already observed, the applicant's claim in this Original Application is also based on the very same O.M dated 14.06.1995 considered by the Full Bench of the Mumbai Bench in the case cited above.

9.

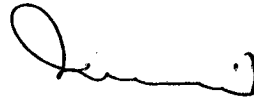
7. In view of the clear answer to the question referred to the Full Bench of the Central Administrative Tribunal, Mumbai Bench, we find no force in the arguments advanced by the learned counsel for respondents that the order of the Full Bench of Central Administrative Tribunal, Mumbai Bench would be applicable to the applicants therein and not to the applicant in this case. The principle laid down by the Full Bench is equally applicable to the applicant in this case also.

In view of what is stated above, we declare that the applicant is entitled to the benefit of Annexure A - 3 decision of the Full Bench and to payment of retirement gratuity to be calculated on the basic pay plus 97% of the basic pay treated as Dearness Pay. On the facts and circumstances, we do not consider it a fit case to make any order on interest. The consequential benefits including monetary benefits arising out of the above declaration shall be calculated and disbursed to the applicant within a period of three months from the date of receipt of a copy of this order. No order as to costs.

Dated, the 22nd July, 2003.



K.V.SACHIDANANDAN
JUDICIAL MEMBER



T.N.T.NAYAR
ADMINISTRATIVE MEMBER

vs