

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 354 of 2000

Friday, this the 3rd day of November, 2000

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. K. Ravindran,
S/o. Krishnan Kutty Nair,
Retired Senior Section Supervisor,
(maharashtra Telecom Circle),
Residing at: Kunnam bath House,
PO Minalur, (via) Mulankunnathu Kav,
Trichur District, Pin - 680 581 ...Applicant

[By Advocate Mr. T.C. Govindaswamy]

Versus

1. Union of India, represented by the
Secretary to the Government of India,
Ministry of Communications
(Department of Telecommunication), New Delhi.

2. The Chief General Manager,
Maharashtra Telecom Circle, Mumbai.

3. The Chief General Manager,
Mahanagar Telephone Nigam Ltd., Mumbai.

4. The Accounts Officer (Telecom Accounts),
Maharashtra Telecom Circle, Mumbai.

5. The Chief Accounts Officer,
Mahanagar Telephone Nigam Ltd., Mumbai. ...Respondents

[By Advocate Ms. P. Vani, ACGSC]

The application having been heard on 3rd November, 2000,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks the following reliefs:

[a] Call for the records leading to the issue of Annexure A5 and A7 and quash the same;

[b] Declare that the applicant is entitled (i) to be treated as one who retired from the service of the respondents on 1-4-95, and (ii) to have 97% of his pay treated as Dearness Pay while reckoning emoluments for the purpose of his retirement gratuity as indicated in Annexure A3 and direct the respondents accordingly; and

[c] Direct the respondents to grant and pay the arrears of Retirement Gratuity as per the declaration in para [b] above, with 18% interest to be calculated from 1-10-1995 (to be compounded annually) till the date of full and final settlement of the same.

2. The applicant belonged to the cadre of Senior Section Supervisors. He voluntarily retired from service with effect from the forenoon of the 1st of April, 1995. As per A1, his retirement was accepted. He was relieved of his duties with effect from the forenoon of the 1st of April, 1995, as per A2. He submitted a representation. The same was rejected, as per A5. Against A5 he submitted another representation and the same was rejected as per A7. A5 and A7 are arbitrary and contrary to law, says the applicant.

3. Respondents resist the OA contending that the applicant is not entitled for revision of DCRG taking into account 97% of DA. As the applicant retired on the forenoon of 1-4-1995, as per Rule 48-A of the CCS (Pension) Rules, 1972, he is deemed to have retired on the afternoon of 31-3-1995.

4. There is no dispute as to the fact that the applicant retired on the forenoon of 1-4-1995. It is also not under dispute that the applicant sought voluntary retirement. The applicant represented to the authorities concerned for granting him enhanced gratuity treating 97% of his pay as Dearness Pay while reckoning emoluments for the said purpose. That was turned down as per A5 and A7.

5. A5(a), one of the impugned orders, says that the applicant retired voluntarily with effect from 1-4-1995 and so the last day of the retirement in such case will not be treated as working day and thus the last day will also not be taken into account for reckoning his pensionary benefits. A7 says that the applicant is not entitled for the revision of

DCRG taking into account 97% DA as Dearness Pay and the judgment of the Central Administrative Tribunal is limited to the official who approached the Tribunal and it cannot be extended to all cases.

6. Respondents are relying on Rule 48-A of the CCS (Pension) Rules, 1972. Rule 48-A deals with retirement on completion of 20 years' qualifying service. We have carefully gone through the Rule 48-A of CCS (Pension) Rules, 1972 and we do not find even a syllable therein to the effect that when a person retires on the 1st of April, he will be deemed to have retired on the afternoon of the 31st of March. It is not known on what basis the respondents have stated in the reply statement that:

"As the petitioner retired on F/N of 1.4.95, as per rule 48A of CCS Pensioners Rule 1972 is, deemed to be retired on A/N of 31.3.95."

Respondents are quoting some imaginary rule.

7. Respondents have also stated that the date of retirement is a non-working day with regard to voluntary retirement cases and the applicant was a pensioner on 1-4-1995 and for calculation of pension pay drawn by the retired official upto 31-3-1995 was taken. It has been clarified as per D.G, P&T letter No. 135/53/75-SPB-II dated 16th October, 1975 that orders regarding retirement on the last day of the month will not apply to the cases of premature retirement. So, the stand taken by the respondents is directly in conflict with what is contained in the said letter. It cannot be a case that the respondents can ignore the said letter and state whatever they feel like.

8. The learned counsel appearing for the respondents relying on Appendix 10 contained in Swamy's Pension Compilation submitted that while computing the notice period of not less than three months, the date of service of the notice and the date of its expiry shall be excluded and the date of premature retirement of the Government employee should be on the forenoon of the day which should be treated as a non-working day following the day of expiry of the notice. For two reasons this cannot be applied. First of all, what is relied on by the learned counsel for respondents contained in page 374 of Swamy's Pension Compilation, 1998 edition, clearly says that is is in respect of Rule 48 of the CCS (Pension) Rules, 1972. Here, it is not a case of retirement under Rule 48 of the CCS (Pension) Rules, but under Rule 48-A of the CCS (Pension) Rules. That apart, it clearly says that the premature retirement of Government employee should be on the forenoon of the day following the day of expiry of the notice period. So, it cannot be deemed to be on the afternoon of the previous day.

9. A2 specifically says that the applicant was relieved of his duties on his voluntary retirement with effect from the forenoon of 1st of April, 1995. A2 was issued by the Accounts Officer, Mahanagar Telephone Nigam Ltd., Bombay. A1, which deals with voluntary retirement, says that the applicant was allowed to retire voluntarily under Rule 48-A of the CCS (Pension) Rules 1972 with effect from the forenoon of 1-4-1995 and his name is struck off from the departmental rolls from the F/N of 1-4-1995.

10. Hyderabad Bench of this Tribunal had occasion to consider a similar matter in T. Krishna Murthy Vs. Secretary, Department of Posts & Others, [1997] 35 ATC 353, wherein it has been stated thus:

"8. The applicant relies on the judgment of the Supreme Court annexed as Annexure A-12 to the OA. In that writ petition also the petitioner therein was permitted to retire voluntarily from the Registry of Supreme Court with effect from the forenoon of 1-1-1986 (emphasis added). The petitioner in that writ petition requested for payment of salaries and pension as per the accepted recommendations of the IVth Pay Commission incorporated in Para 17.3 of the IVth Pay Commission's report. But that he had retired on 31-12-1985 and not on 1-1-1986 and hence he was not entitled to the benefit as recommended by the IVth Pay Commission in Para 17.3 of the report and accepted by the Government of India. But the Supreme Court had held that the petitioner had retired from service from 1-1-1986 and hence he is entitled for higher benefits of the IVth Pay Commission's report. The direction of the Supreme Court in that Writ Petition is reproduced below:

"The question that arises for consideration is whether the petitioner has retired on 1-1-1986.

It is clear from the order of the Chief Justice, dated 6-12-1985, that the petitioner was allowed to retire voluntarily from the service of the Registry of the Supreme Court with effect from the forenoon of 1-1-1986. It is true that in view of the proviso to Rule 5(2) of the CCS (Pension) Rules, 1972, the petitioner will not be entitled to any salary for the day on which he actually retired. But that has no bearing on the question as to the date of retirement. Can it be said that the petitioner retired on 31-12-1985? The answer must be in the negative. Indeed, learned counsel for the respondents frankly conceded that the petitioner could not be said to have retired on 31-12-1985. It is also not the case of the respondents that the petitioner had retired from the service of this Court on 31-12-1985. Then it must be held that the petitioner had retired with effect from 1-1-1986. It may be that the petitioner had retired with effect from 1-1-1986. It may be that the petitioner had retired with effect from the forenoon of 1-1-1986; that is to say as 1-1-1986, had commanded the petitioner had retired. But, nevertheless, it has to be said that the petitioner had retired on 1-1-1986 and not on 31-12-1985. In the circumstances, the petitioner comes within the purview of para 17.3 of the recommendations of the Fourth Pay Commission."

9. In the present case also, the prayer of the applicant is similar to the prayer of the petitioner in the writ petition referred to above. Here also the applicant retired on the forenoon of 1-4-1996 and hence for the reasons given by the Apex Court, the applicant herein also is entitled for the benefits as per the recommendations of the Vth Pay Commission in regard to the payment of gratuity. The views expressed by me as above in Para 7 is in consonance with the directions given by the Supreme Court in the writ petition referred to above."

..6..

So, what the Supreme Court has stated and was followed by the Hyderabad Bench of this Tribunal squarely applies to the facts of the case at hand. In the light of the said rulings, the stand taken by the respondents cannot be accepted.

11. A3 which deals with 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.1.00 lakh to Rs.2.50 lakhs says that the same is applicable in cases of Central Government employees who retire or die on or after 1st of April, 1995. Here, as already stated, it is a case of voluntary retirement on 1-4-1995.

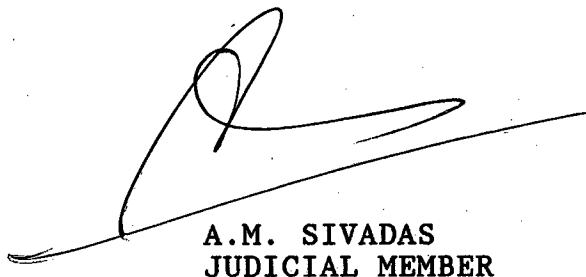
12. Accordingly, A5 and A7 are quashed. It is declared that the applicant is entitled to be treated as one who retired from the service of the respondents on 1-4-1995 and to have 97% of his pay treated as Dearness Pay while reckoning emoluments for the purpose of retirement gratuity. Respondents are directed to pay the arrears of retirement gratuity as per the above declaration within six weeks from the date of receipt of a copy of this order.

13. The Original Application is disposed of as above. The applicant is entitled to costs which we quantify as Rs.750/- (Rupees Seven Hundred and Fifty only).

Friday, this the 3rd day of November, 2000



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

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List of Annexures referred to in this Order:

1. A1 True copy of the Order No. HQ/ST/PF/9870 (Part-IV) (MTNL) Left No.8377 dated 16-2-95 issued by the Deputy General Manager (CCF), Mumbai-28
2. A2 True copy of the Order No. AOCHA/PF/9870 dated 3-4-95 issued by the Accounts Officer (CHQ), Mahanagar Telephone Nigam Ltd., Mumbai-1
3. A3 True copy of the O.M. No. 7/1/95-P&PW(F) dated 14-7-95 issued by the Government of India, Department of Pension and Pensioner's Welfare, New Delhi.
4. A5 True copy of the Letter No. TA/MHTC/BTC/KR/1264 dated 29-12-99 issued by the 4th respondent.
5. A5(a) True copy of the I.R.No. 696/Pen-T/96 dated 12-6-96 issued by the Assistant Director General (STP).
6. A7 True copy of the letter No. TCA IV/MTNL/PEN-CORR/HQ dated 4-2-2000 issued by the 5th respondent.