

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.36/2004

Friday this the 18th day of June, 2004.

C O R A M

**HON'BLE MR S.K.HAJRA, ADMINISTRATIVE MEMBER
HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER**

V.Ouseph,
Retired Deputy Postmaster Perumbavoor H.O.
Residing at :
Kaniyamkudiyil House,
Valayanchirangara P.O
Pin - 683 556

: Applicant

[By Advocate Mr.P.C.Sebastian]

Vs.

1. The Postmaster General
Central Region
Kochi - 682 016.
 2. The Senior Superintendent of Post Offices
Aluva Division
Aluva
 3. The Deputy Director Postal Accounts
Sasthamangalam
Thiruvananthapuram
 - 4.. The Union of India represented by its
Secretary to Government of India,
Ministry of Communications
Department of Posts
New Delhi
- : Respondents

[By Advocate Mr.C.Rajendran, SCGSC]

The application having been heard on 15.06.2004 the Tribunal on 18.06.2004 delivered the following :

O R D E R

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

The applicant is a retired employee on superannuation with effect from 01.04.1997 while working as Deputy Postmaster, Perumbavoor drawing Rs.6650/- as basic pay in the scale of pay of Rs.5000-150-8000. He claims that he was drawing annual increment on the first day of April every year and is entitled

..2/-

to draw an increment at the rate of Rs.150/per month with effect from 01.04.1997, since the applicant had worked continuously for the period from 01.04.1996 to 31.03.1997. As per Rule 26 of Fundamental Rules, all duty in a past on a time scale counts for increments in that time scale and as per Rule 24 of the said rules an increment shall ordinarily be drawn as a matter of course unless it is withheld. Applicant is entitled to draw the said increment. It was not drawn and paid to the applicant for the reason that the applicant was not in service on 01.04.1997. Retiral benefit was granted to the applicant without taking into account the annual increment which was due to him as on 01.04.1997. Applicant submitted a representation on 16.08.2003 (Annexure A-2). He received a reply informing that there was no order for granting of annual increment due on the 1st of the month following the date of retirement.(Annexure A-3). Aggrieved by the said inaction on the part of the respondents, he has filed this Original Application seeking the following reliefs:-

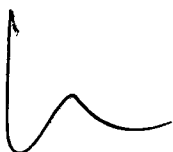
- (i) to call the files leading to the issue of Annexure A-3 and quash the same;
- (ii) to declare that the applicant is entitled to draw the benefit of the annual increment earned by him rendering unblemished service during the period from 01.04.1996 to 31.03.1997 which was denied to him on the plea that he was not in service on 01.04.1997;
- (iii) to direct the respondents to effect payment of the annual increment due to the applicant as on 01.04.1997 with all consequential benefits including revision of his pensionary benefits counting the said annual increment for the purpose of emoluments for pension and DCRG;
- (iv) to grant such other relief which may be prayed for and which the Hon'ble Tribunal may deem fit and proper to grant in the facts and circumstances of the case.
- (v) to award costs in favour of the applicant.

..3/-



2. Respondents have filed a detailed reply contending that there is no provision for grant of annual increment due on the 1st day of the month following the date of retirement. Applicant retired from service on superannuation on 31.03.1997 while working as Deputy Postmaster, Perumbavoor drawing Rs.6650/- as basic pay. The applicant was drawing annual increment on the first day of April every year and he had worked continuously for the period from 01.04.1996 to 31.03.1997. The increment due on 01.04.1997 was not drawn and paid to him as he was not in service on 01.04.1997. The retirement benefits was granted to the applicant without taking into account the annual increment accrued on 01.04.1997. The applicant's next increment to the stage of Rs. 6800/- will become due on 02.04.1997 only, on which date he was not in service. The applicant is not entitled for the reliefs sought in the Original Application and the same is liable to be dismissed.

3. We have heard P.C.Sebastian, Learned Counsel for applicant and Shri C.Rajendran, SCGSC for the respondents. It is an admitted fact that ~~the~~ the applicant had worked continuously from 01.04.1996 to 31.03.1997 meritoriously and has retired on 31.03.1997. The reason for not granting the annual increment which was due on 01.04.1997 is that he was not in service on that date. None of his increment was withheld nor any punishment intervenes this period. He has continuous period of service during the said period. Learned Counsel for applicant argued that as per Rule 26 of Fundamental Rules the increment should have been granted to the applicant, whereas the Learned counsel for respondents argued that since the applicant was not in service as on 01.04.1997, he is not entitled for the same.



4. We have heard the learned counsel on both sides, and given due consideration to the arguments, materials and evidence placed on record. The Learned counsel for the applicant has brought to our notice a decision of the Andhra Pradesh High Court, Annexure A-1 (W.P.1219 and 1409 of 1998) on an identical case. The question that was considered in that case was that whether an employee who retired from service on the date when the increment becomes due is entitled for payment of the same. In that the Court has observed as follows :-

" 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 year's 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. "

5. In that judgment the High Court of Hyderabad had also quoted S.Banerjee's case. On a similar situation where the petitioner therein claimed benefit of IVth Pay Commission with effect from 01.01.1986 and the person who retired on 31.12.1985, could he claim the benefit? The Hon'ble Supreme Court has held as under and granted relief to them.

" The question that arises for our consideration is whether the petitioner has retired on 01.01.1986. We have already extracted the order of this court dated 06.12.1985 whereby the petitioner was permitted to retire voluntarily from the service of the Registry of the Supreme Court with effect from the forenoon of 01.01.1986. 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 that the petitioner retired on 31.12.1985 ? 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 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 01.01.1986 and that is also the order of this court dated 06.12.1985. It may be that the petitioner had retired with effect from the forenoon of 01.01.1986 as per the said order of this court, that is to say, as soon as 01.01.1986 had commenced the petitioner retired. But nevertheless, it has to be said that the petitioner had retired on 01.01.1986 and not on 31.12.1985. In the circumstances, the petitioner comes within the purview of paragraph 17.3 of the recommendations of the Pay Commission. "

6, Learned Counsel for applicant also brought to our notice Section 26 of FR (Clause 12) which reads as follows :-

FR 26 (12): Regulation of increments on the 1st of month. The sanction of the President is conveyed hereby to the increment of employees being admitted from the first of the month in which it would fall due under the operation of the normal rules and orders regulating increments. These orders shall take effect from 1st November, 1973."

He also argued that irrespective of the fact that whether the applicant has completed one year service, the increment should fall due from 1st of the month. Here the respondents has no case that he has not completed one year. It is also a fact that the increment is being drawn for successful completion of one year period and the employee accrues the right of increment. Therefore, we are not satisfied with the hyper-technical plea that when the increment becomes due, the applicant was not in service. An employee has the right of increment only after completion of one year service. The fact that he has retired on 31.03.1997 does not mean that what was accrued and gained can be denied on technical grounds. When we take the spirit of S. Banerjee's case cited supra, it is clear

that the Hon'ble Supreme Court has granted the benefit to similarly situated applicants therein and granted the benefit of the IVth Central Pay Commission, for all practical purposes. We are of the view that if a person has completed and retired on 31st of the month, it is to be construed that his retirement is on the next first of the month and also Rule 26 (12) will fortify our reason.

7. In the circumstances of the case, we are of the considered view that the applicant is entitled for the increments as claimed in the Original Application which cannot be denied to him as he has retired prior to the 1st of the month. The first day also to be reckoned for such calculation. We also declare that the applicant had deemed to have retired on 1st of the month for all practical purposes including the grant of increment.

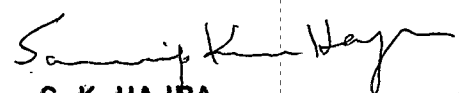
8. In the conspectus of facts, we set aside Annexure A-3 impugned order and declare that the applicant is entitled to the benefit of annual increment earned by him rendering service from 01.04.1996 to 31.03.1997 and direct the respondents to effect payment of the annual increment due to the applicant as on 01.04.1997 with all consequential benefits including revision of pensionary benefits counting the said annual increment for the purpose of emoluments for pension and DCRG etc. The entire exercise shall be completed within four months from the receipt of a copy of this order.

Accordingly, the Original Application is allowed with no order as to costs.

Dated, the 18th June, 2004.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



S.K. HAJRA
ADMINISTRATIVE MEMBER