

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, MUMBAI.

R.P. NO.: 96/2004 IN O.A. NO.: 576/2000.

Dated this Wednesday, the 9th day of February, 2005.

Laxman Abaji Bagade & Others ... Petitioners  
(Ori. Applicants)

VERSUS

Union of India & Others ... Respondents.

CORAM : Hon'ble Shri Anand Kumar Bhatt, Member (A).

O R D E R

Per : Shri Anand Kumar Bhatt, Member (A).

O.A. No. 576/2000 was decided by me on 30.07.2004. The applicants are railway employees who retired on 31.12.1995. By Ministry of Railways notification dated 05.11.1997 the pensionary benefits were revised on the basis of the recommendations of the Fifth Central Pay Commission (for short 5<sup>th</sup> CPC). The applicants came to the Tribunal relying on a Full Bench judgement of the Tribunal in the case of Venkatram Rajagopalan and Another V/s. Union of India & Others [2001 (1) ATJ 1]. The Counsel for the applicant had argued that the Full Bench had decided that the Government servant who completes the age of superannuation on 31.03.1995 and relinquishes the charge of office in the afternoon of that day is deemed to have effectively retired from service w.e.f. 1.4.1995. The O.A. 576/2000 was dismissed <sup>mainly</sup> <sup>1/2</sup> relying on the judgement by the Apex Court

given in Union of India V/s. P. N. Menon [AIR 1994 SC 2221], the Apex Court had held that whenever the revision takes place, a cut off date becomes imperative because the benefit is to be allowed within the financial source available with the <sup>Government. In my order</sup> ~~the~~. It was also noted that the case of Venkatram Rajagopalan relied on by the applicants is misplaced as that was in a matter relating to making available the benefit of merger of part of D.A. in the basic pay for postal employees. It was also noted that this matter has been taken by the respondents to the High Court of Bombay (Nagpur Bench) and there is a stay in favour of the department.

2. The applicant has now come in Review Petition No. 96/2004 on the ground that there are patent errors on the face of record. The Learned Counsel for the applicant has cited the Full Bench decision of the Tribunal in Gangaram V/s. Union of India that if a particular order in another case is stayed, the stay order will not be applicable in respect of another proceedings. The Counsel has also stated that there is no challenge <sup>by the applicant</sup> to the cut off date and as per the Full Bench decision, retiring on superannuation on 31.12.1995 would mean that they have retired on 01.01.1996.

3. There is a delay of about 85 days in approaching the Tribunal for review of the order dated 30.07.2004. M.P. has been filed for condonation of ~~delay~~. The grounds taken are that the order dated 30.07.2004 was received by the Counsel

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or about 16.08.2004. After that the review petition has been filed after seeking instructions from the applicants. The Counsel has cited the decision of the Apex Court in Collector, Land Acquisition Anantnag V/s. Katiji [AIR 1987 SC 1353] in which it was held that the Court cases should not be dismissed on the ground of limitation when there is merit.

4. I considered the Review Petition as well as M.P. In circulation. Rule 17 of the C.A.T. (Procedure) Rules, 1987 says that no application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed. The applicants have admitted that the copy was received on or about 16.08.2004 and, therefore, it should have been filed within a month of that date. However, the Review Petition has been filed on 10.12.2004. Therefore, even if we go by the averment made by the applicants that it was received by them on or about 16.08.2004, the present review petition is delayed. There is no satisfactory reason which could be considered sufficient to condone the delay.

5. Even on merits, we do not find the review petition to have any force. Applicants relied on the Full Bench judgement in Venkatram Rajagopalan. Their entire case rests on this decision by which it has been held that a Government servant completing the age of superannuation on 31.03.1994

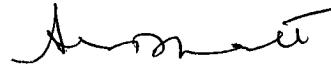
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and relinquishing the charge of his office in the afternoon of that day is deemed to have effectively retired from service on 01.04.1995. This order of the Tribunal has been stayed by the High Court (Nagpur Bench). The Applicant cannot now turn around and say just because the decision in Venkatram Rajagopal has been stayed by the High Court of Nagpur, this should not have any effect in view of another Full Bench judgement given in the case of Gangaram & another in which it was held that the stay given by the Apex Court in Rasilaram's case would not apply in any other case. As the applicants are heavily relying on the Full Bench judgement in Venkatram Rajgopal's case, if that judgement is stayed by the High Court, effectively the matter cannot be decided unless and until the Hon'ble High Court gives a decision in this regard. The reasoning put forward by the Counsel for the applicants is misconceived and like demolishing the very foundation on which the entire O.A. is based. Review Petition can be entertained on the basis of new evidence, mistake or error apparent on the face of record or any other sufficient reason. There is no new evidence and the applicant is in a way trying to have a rehearing on the case, which is not permissible under the scope of a review petition. What the applicant is stating is that the decision is erroneous and he wants the case to be reheard and corrected, which is not permissible as has been held by the Apex Court in Tungabhadra Industries Limited V/s. Government of Andhra Pradesh [AIR 1964 SC

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1372]. In Meera Bhanja V/s. Nirmala Kumari Choudhry [AIR 1995 SC 455] it has been held that 'Error apparent on the face of record' means an error which strikes one on mere looking at record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions.

6. Therefore, both on the point of limitation and on merits the present review petition has no force and is accordingly rejected in circulation.

  
(ANAND KUMAR BHATT)  
MEMBER (A).

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