

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 290 of 2000.

Date of Decision : 31.07.2006

Shri P. Y. Krishnan, Applicant.

Shri Babu Rajan, Advocate for the applicant.

VERSUS

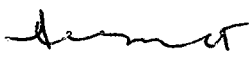
Union of India & Others, Respondents.

Shri V. D. Vadhavkar, Advocate for Respondents

CORAM :

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

- ✓ 1. To be referred to the reporter or not ?
- ✓ 2. Whether it needs to be circulated to other Benches of the Tribunal ?
- + 3. Library.


(Anand Kumar Bhatt)
Member (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 290 of 2000.

Dated this Monday the 31 day of July, 2006.

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

Shri P. Y. Krishnan,
 ARD/Dy. A.O.,
 130/4604, New Tilak Nagar,
 Chembur, Mumbai 400 089. ... Applicant.

(By Advocate Shri Babu Rajan)

VERSUS

1. Union of India through
 The Secretary,
 Ministry of Labour,
 New Delhi.
2. The Director General,
 Employees State Insurance
 Corporation (Pension Section),
 Panchdeep Bhavan,
 Kotla Road,
 New Delhi - 110 001.
3. The Joint Director,
 (Finance & Accounts),
 Employees State Insurance
 Corporation, Panchdeep Bhavan,
 N.M. Joshi Marg, Lower Parel,
 Mumbai - 400 013. ... Respondents.

(By Advocate Shri V.D. Vadhavkar)

O R D E R

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

The following relief has been sought by the
 applicant in the present case :

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"(i) This Hon'ble Tribunal be pleased to pass an order directing the respondents to pay the applicant an amount of Rs. 44,138/- (Rupees : Forty Four Thousand, one hundred thirty eight only) as being tabulated in para no. 5 hereinabove for the reasons stated in para 4 and 5 hereinabove, within a stipulated short period.

(ii) The Hon'ble Tribunal be further pleased to pass an order directing the respondents to pay interest computed at the rate of 18% per annum or at any other rate as felt proper and reasonable by this Hon'ble Tribunal on the above said amount of Rs. 44,138/- (Rupees : Forty Four Thousand One Hundred Thirty Eight only) along with the said amount.

(iii) The Hon'ble Tribunal be further pleased to order exemplary costs and or damages in favour of the applicant particularly for the reasons set out at para 5 (iii, iv and vii) herein."

2. Facts in brief are that the applicant retired from the Ministry of Labour (ESIC) on 31.03.1995. He has been paid the retirement benefits calculated on the basis of rates prevailing then. Later the Government of India, Department of Pension & Pensioners' Welfare vide their O.M. dated 14.07.1995 treated a part of the Dearness Allowance as Dearness Pay and treated as dearness pay for calculation of DCRG at 97% of the basic pay up to Rs. 3500/-. However, the Government also decided the cut off date of 01.04.1995 and said that this will be available to the Central Government employees who retired or died on or after 01.04.1995. The applicant is relying heavily on the Full Bench Judgement in 2000 (1) ATJ page 1 [Venkatram Rajagopalan & Another Vs. Union of India & Others] where it

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has been held that a Government servant completing the age of superannuation on 31.03.1995 and relinquishing charge of his office in the Afternoon of that day is deemed to have effectively retired from 01.04.1995 and therefore they will be entitled to the benefits which have been made available by O.M. dated 14.07.1995. Against this order of the Tribunal the respondents had gone to the High Court of Bombay (Nagpur Bench) in Writ Petition No. 138/2000 and the High Court had granted an interim stay against the order dated 15.10.1999 of the Tribunal. ~~This~~ ^{the present} case was kept in sine-die vide order dated 18.11.2003. When the matter came up before me on 26.07.2006 it was thought appropriate to consider the present case in the light of the Apex Court judgement in State of Punjab & Others Vs. Amar Nath Goyal & Others [2005 (2) SC SLJ 177] in which order has been passed by the Apex Court on 11.08.2005. Accordingly, we heard Shri Babu Rajan, Counsel for the applicant and Shri V.D. Vadhavkar, Counsel for the Respondents and considered the case. Shri Babu Rajan contended that as the applicant retired on superannuation on 31.03.1995, ~~he~~ ^{there} is fully covered by the judgement of the Full Bench of the Tribunal in Venkatram Rajagopalan's case. He stated that so far as this point of retiring on 31.03.1995 deemed to have been

Amar Nath Goyal & Others and the counsel for the applicant is not correct in saying that the matter of retiree of 31.03.1995 deemed to have retired on 01.04.1995 has not been considered, in the said judgement. He drew my attention to para 13, 18 and 26 of the said judgement which will be discussed by me later and Shri Vadhavkar stated that in view of this the present O.A. fails both on limitation and on merits. In rebuttal, Shri Babu^{Rajan} stated that the point of limitation in the present case is covered by the Apex Court judgement in M.R. Gupta's case. In addition, it is the mandatory duty on the Government to implement the order issued on 14.07.1995 and no limitation will apply to that. He stated that the applicant did not retire on 30.03.1995 and therefore he cannot be deemed to have retired on 31.03.1995.

4. I considered the case. The point to be decided is in a narrow compass which is whether the order of the Apex Court in the case of State of Punjab & Others Vs. Amar Nath Goyal & Others covers the Full Bench judgement in V. Rajagopalan's case or not? If the matter relating to those who retired on 31.03.1995 is covered by the said judgement, the judgement of Full Bench in V. Rajagopalan's case gets automatically overruled. By the Apex Court judgement

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a large number of civil appeals have been decided. Civil Appeal No. 129/2003 was in relation to the employees of the Government of Punjab who retired during the period 31.07.1993 to 31.03.1995. The Punjab & Haryana Court gave partial relief to those who retired on or after 01.07.1993. This was considered in the said judgement of the Apex Court. T.C. No. 58/2004 related to the employees of the Central Government in the Postal Department in the Maharashtra Circle who retired between 01.07.1993 and 31.03.1995. They claimed the benefit of the Central Government order dated 27.09.1993 read with the order dated 14.07.1995 seeking higher benefits of DCRG pursuant to the merger of a portion of dearness allowance with basic pay and the consequential raising of the ceiling of the death cum retirement gratuity amount. This was decided in favour of the applicants by a Full Bench of the Tribunal on 21.09.2001 in the case of B.S. Dhuri & Others. The department had gone in Writ Petition to the Bombay High Court and as identical issue was being agitated before the Apex Court, by order dated 27.07.2004 this writ petition was ordered to be transferred to the Apex Court to be heard along with the connected matters. Both these cases i.e. ^{High Court order of 27} those relating to Government of Punjab who retired during the period

31.07.1993 to 31.03.1995 and those who were covered by the C.A.T., Bombay Bench order dated 21.09.2001 were set aside by the Apex Court as mentioned in para 39 and 40 of the said judgement. Therefore, the Apex Court judgement covers the case of those employees who retire up to 31.03.1995. The applicant is relying on the Full Bench judgement in the case of V. Rajagopalan in which it has been held that a Government servant completing the age of superannuation on 31.03.1995 and relinquishing charge of the office in the afternoon of the day is due to have been effectively retired w.e.f. 01.04.1995. Although this judgement of the Full Bench of the Tribunal has not ^{been} taken into account ⁱⁿ this judgement of the Apex Court, I have no doubt in mind that this will cover those who retired on 31.03.1995 in view of the specific setting aside by the Apex Court the Civil Appeal No. 129/2003 of the Government of Punjab in which partial relief was granted by the High Court of Punjab & Haryana to those who retired between 31.07.1993 to 31.03.1995. The Punjab Government officials who retired up to 31.03.1995 therefore are not eligible to get the benefit of the increase in DCRG amount as per the Apex Court judgement. Now whether their deemed date of retirement can be considered as 31.03.1995 or 01.04.1995 is entirely a

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different matter and even if we go by the Full Bench Judgement and say that those who have retired on 31.03.1995 are deemed to have retired from service w.e.f. 01.04.1995 it cannot be said that the judgement of the Apex Court is not covering those officials. Therefore I squarely hold that those who retired on 31.03.1995 are covered by the Apex Court judgement in the case of Amar Nath Goyal & Others whether their deemed date of retirement is 31.03.1995 or 01.04.1995. In view of this we do not think that we need to go into and discuss any other arguments put forth by either counsel.

5. In the result, O.A. is dismissed. No costs.

(MUZAFFAR HUSAIN)
MEMBER (J)

Anand
(ANAND KUMAR BHATT)
MEMBER (A)

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