

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.576/2000.

Dated: 30.7.04

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

1. Laxman Abaji Bagade,
Gova Galli,
Daund,
Dist. Pune.
2. Ramesh Yashwant Sontale,
Plot No.28,
Near Railway Station,
Daund,
Dist. Pune.
3. Syyed Mohd. Sayyed Mehboob,
RBI 337, Near Ghanta Chawl,
Railway Colony,
Daund,
Dist. Pune.
4. Sayyed Ibrahim Abdullah,
Nataraj Colony,
Tukai Mandir,
Daund,
Dist. Pune.
5. W.E. Michel,
Savalee,
Near Pardeshi Niwas,
W.N. 23,
Daund,
Dist. Pune.

(By Advocate Shri D.V.Gangal)

...Applicants.

Vs.

1. The Union of India,
Through
The General Manager,
Central Railway,
Headquarters Office,
Mumbai CST,
2. The Divisional
Railway Manager,
Central Railway,
Solapur Division,
Solapur.

(By Advocate Shri V.S.Masurkar)

...Respondents.

: O R D E R :

{Anand Kumar Bhatt, Member (A)}

The applicants in the present case are Railway employees
who have retired on 31.12.1995. The Ministry of Railways vide

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Notification dt. 5.11.1997 implemented the decision of the Government on the recommendation of the Vth Central Pay Commission (for short, CPC) regulating Pension, DCRG and Family Pension under the Railway Service (Pension) Rules, 1993 (for short, Pension Rules) and Commutation of Pension under Railway Servants (Commutation of Pension) Rules, 1993. It was provided that the revised provisions shall apply to Railway Servants who retired or died in harness on or after 1.1.1996. It has also been mentioned in the said order ^{that} ~~why~~ separate orders are being issued in respect of employees who retired/died before 1.1.1996. However, none of the counsel have pointed out any further orders, so it seems that the matter is still under consideration of the Railway Board.

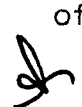
2. The applicants are relying on a Full Bench Judgment of the Tribunal (Bombay) in the case of Venkatram Rajagopalan and Anr. Vs. Union of India & Ors. {2001 (1) ATJ 1} .

3. In the reply filed by the Respondents it has been stated that the action of the Respondents is strictly in accordance with the Rules and instructions issued by the Railway Board from time to time. Admittedly, the applicants retired from Railway Service on 31.12.1995 and the instructions issued by the Railway Board dt. 5.11.1997 are applicable only w.e.f. 1.1.1996. ^Prescribing the cut off date for any service benefits under the Pay Commission is a policy matter of the Government and therefore, the challenge of the applicant is based on presumptions and assumptions. ^As the instructions dt. 5.11.1997 are applicable to those who retired on or after 1.1.1996, it has no retrospective effect.

4. In the oral submissions Shri D.V.Gangal for the
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applicants stated that the Full Bench Judgment in the case of Venkatram Rajagopalan (supra) is squarely applicable in the present case. It has been decided by the Full Bench that a Government servant completing the age of superannuation on 31.3.1995 and relinquishing the charge of office in the afternoon of that day is deemed to have effectively retired from service w.e.f. 1.4.1995. He has further added that in para 8 of the reply submitted by the respondents it has been stated that the Railway Board Circular dt. 5.11.1997 is applicable to those who retired on 1.1.1996 and after and therefore, the said circular read with Full Bench Judgment is applicable to those employees also who have retired on 31.12.1995.

5. For the Respondents Shri V.S.Masurkar stated that all the retiral dues of the employees have been settled and accepted by the applicants. The order of the Railway Board is dt. 5.11.1997, the employees retired on 31.12.1995 and the OA has been filed in the year 2000. It is purely a policy matter to decide on the cut off date. He has cited Judgment of the Division Bench of the Tribunal in OA No.580/99 dt. 16.7.2003. The said Judgment of the Tribunal relied on 2 Judgments of the Apex Court case in the case of Krishna Kumar Vs. Union of India {AIR 1990 SC 1782} and the Indian Ex-Services League's Vs. Union of India {AIR 1991 SC 1182}. Relying on the two Apex Court judgments the claim for equality of Pension of the Pensioners irrespective of the date of retirement after the recommendations of the CPC was not agreed to. Shri Masurkar has also pointed out that the Nagpur Bench of the Bombay High Court in a similar case has given a stay in favour of Union of India against a judgment of the Tribunal in favour of a retired postal employee. Thus the matter decided by the Full Bench on which the applicant is relying is seized by the High Court and there is a stay in favour of the Department of Posts (WP No.516/2000, Nagpur).



6. I considered the case. Relevant portion of the Railway Board Circular dt. 5.11.1997 is as follows :

In Pursuance of Governments decision on the recommendation's of the Fifth Central Pay Commission the President is pleased introduced the following modification in the rules regulating pension DCRG and Family Pension under the Railway Service (Pension) Rules, 1993. (hereafter referred to as Pension Rules) and commutation of Pension under Railway Service (Commutation of Pension) Rules, 1993.

2) These orders apply to all Railway Employees. Governed by the Railway Services (Pension) Rules 1993

DATE OF EFFECT :

3) The revised Provision as per these orders shall apply to all Railway Servants the retired die in harness on or after 01.01.1996. Separate orders are being issued in respect of employees, who retired/died before 01.01.1996."

It is clear from the above that a cut off date has been prescribed and it has been provided that the orders shall apply to all Railway Servants who retired/died in harness on or after 1.1.1996. It has also been specifically mentioned that the matter relating to those employees who retired or died before 1.1.1996 is under consideration of the Ministry. My attention ~~has also been~~ drawn to two decisions of the Apex Court viz. 1) State of Rajasthan Vs. Amrit Lal Gandhi {(1997) 2 SCC 342} in which it has been held that the Financial impact of Pension scheme is a valid and relevant consideration for fixing a cut off date. The relevant portion of the said Judgment is as follows :

"Pursuant to the recommendations of the University Grants Commission, the Syndicate of the University of Jodhpur (not known as Jai Narayan Vyas University) passed resolution in 1986 recommending introduction of pensionary scheme in the University. As the proposed scheme had financial implications, the University had to seek the approval of the Government. On 16.4.1991, the

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Government of Rajasthan wrote to Vice-Chancellors of various Universities of Rajasthan stating that consequent upon the State Legislature having passed the University Pension Rules and General Provident Fund Rules, the State Government had decided to introduce the Pension scheme in the Universities of the State w.e.f. 1.1.1990. This cut off date was challenged before the High Court. The High Court substituted the date of 1.1.1986 for 1.1.1990.

On appeal by the State, the Supreme Court found that the Syndicate and Senate of the Universities while making their recommendations in 1986 had not mentioned a specific date for the applicability of the scheme. The Government had stated in affidavit before the High Court that the justification of the cut off date of 1.1.1990 was "wholly economic". The Court observed that the paying capacity was a relevant or valid consideration while fixing the cut off date. While allowing the appeal, the Court observed :

"Financial impact of making the Regulations retrospective can be the sole consideration while fixing a cut off date. In our opinion, it can be said that this cut off date was fixed arbitrarily or without any reason. The High Court was clearly in error in allowing the writ petitions and substituting the date of 1.1.1986 for 1.1.1990."


Another Apex Court Judgment is Union of India Vs. P.N.Menon {AIR 1994 SC 2221}, where similar view has been taken. The relevant portion of the said Judgment is as follows :

"On the basis of the recommendation of the Third Pay Commission, when the price level reached 272 (1960=100) the Government of India decided to treat a portion of the dearness allowance as pay in respect of government servants who retired on or after 30.9.1977 with reference to different pay ranges. This cut off date was challenged as arbitrary. While allowing the appeals and repelling the challenge to the fixation of the said date, the Supreme Court observed that any revised scheme in respect of post retirement benefits, if implemented with a cut off date, which can be held to be reasonable and rational in the light of Art. 14 of the Constitution need not be held to be invalid. Whenever a revision takes place, a cut off date becomes imperative because the benefit has to be allowed within the financial sources available with the Government."

Thus, the Apex Court has specifically stated that any cut off date prescribed by the Government for implementation of an order giving benefit to serving or retired employees cannot be

questioned. Such cut off date is determined on the basis of capacity to pay. In addition, as is clear from the Railway Board order dt. 5.11.1997 that the matter relating to those employees who have retired or died before 1.1.1996 is being considered separately. The reliance placed by the applicants on the Full Bench Judgment in the case of Venkatram Rajagopalan (supra) is mis-conceived as this was in the matter relating to making available the benefit of merger of part of DA in the basic pay for postal employees. This obviously has a much smaller dimension as compared to the acceptance of the recommendation of the Pay Commission. Moreover, the present claim is under the notification dt. 5.11.1997 of the Railway Board. In any case, now the Bombay High Court (Nagpur Bench) is seized of the matter of implementation of the order in favour of the postal employees, and the Full Bench judgment is effectively stayed.

7. Looking to the specific mention in the Railway Board's letter dt. 5.11.1997 that separate orders are being issued in respect of employees who retired or died before 1.1.1996, relying on the above Judgments of the Apex Court, and in view of the stay by the High Court in case of postal employees, I do not find that there is any force in the present application and is accordingly dismissed. No costs.


(ANAND KUMAR BHATT)
MEMBER (A).

B.

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 5th 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 relinquish^{es} 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 ^{mainly} was dismissed ^{relying} on the judgement by the Apex Court

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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 ^{Government.} It was also noted ^{in my order} 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 ^{by the applicant} 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




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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