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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.287/90.

Date of Judgement : 20.9.93

H.K.Rangaswamy

.. Applicant

Vs.

1. The Collector of
Central Excise,
L.B.Stadium,
Hyderabad-29.
 2. The Chairman,
Central Board of
Excise & Customs,
North Block,
Lok Sabha Marg,
New Delhi.
 3. The Secretary,
Dept. of Personnel &
Pensions, Min. of
Home Affairs,
New Delhi.
 4. The Controller &
Auditor General of India,
Bahadur Shah Zafar Marg,
New Delhi.
- .. Respondents

Counsel for the Applicant :: Shri Y.G.Ramamurty

Counsel for the Respondents:: Shri N.R.Devaraj, Sr. CGSC

CORAM:

Hon'ble Shri A.B.Gorthi : Member(A)

Hon'ble Shri T.Chandrasekhara Reddy : Member(J)

J u d g e m e n t

{ As per Hon'ble Shri A.B.Gorthi : Member(A) }

The prayer of the Applicant is that he should be deemed to have retired on 1.1.86 and that the decision of the Respondents to retire him w.e.f. 31.12.85 is contrary to the letter and spirit of F.R.56(a).

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2. The Applicant who was holding the Group-B (Gazetted) post of Superintendent under the Controller & Auditor General of India was retired from service w.e.f. 31.12.85 on the ground that he attained the age of superannuation. The Applicant's date of birth is 1.1.28 and according to the Respondents he had completed 58 years of age on 31.12.85. The short contention of the Applicant is that the correct date on which he should have retired from service is 1.1.86. If his contention is accepted, he would be eligible for the benefits of revised pay and pension which came into effect from 1.1.86 on the recommendation of the IV Pay Commission. He would also become entitled to one more increment which would have fallen due on 1.1.86.

3. The Respondents clarified that the Applicant retired from service in accordance with Note 6 to F.R.56. For easy reference, F.R.56(a) and Note 6 are reproduced below:-

F.R.56. *(a) Except as otherwise provided in this rule, every Govt. servant shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years.

**Note 6.-A Govt. servant whose date of birth is the first day of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of /or sixty fifty-eight/years, as the case may be.

*Substituted by G.I., M.F., Notification No.7(7)-E.V(A)/74 dated the 7th February, 1975. This takes effect from the 5th April, 1975.

As per G.I., C.S. (Dept. of Personnel) O.M.No.33/12/73-Ests(A) dated the 2nd May, 1974 and 24th November, 1973, effect of the order of "retirement from service with effect from the afternoon of the last day of the month" was given effect from 1st April, 1974 in respect of Group 'A' and from 1st November, 1973 in respect of Group 'B', 'C' and 'D' service or posts, respectively.

**Inserted by G.I., M.F., Notification No.7(7)-E.V(A)/74 dated the 7th February, 1975. This takes effect from the 5th April, 1975.

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4. Shri Y.G.Ramamurty, learned counsel for the Applicant assailed the validity of Note 6 on the ground that it is not in accord with F.R.56(a). His contention is that the Applicant can be said to have attained the age of superannuation i.e., completed 58 years on the midnight of 31.12.85/1.1.86. In support of this contention he has drawn our attention to a passage from the Halsbury's Laws of England 3rd Edn. Vol.37, Para 178 which reads as under:-

"In computing a period of time, at any rate, when counted in years or months, no regard is generally paid to fractions of a day, in the sense that the period is regarded as complete although it is short to the extent of a fraction of a day.....

Similarly, in calculating a person's age, the day of his birth counts as a whole day; and he attains a specified age on the day next before the anniversary of his birth day."

5. The contention of the Applicant's counsel is that the day should be counted from 00.01 hrs. to 24.00 hrs. Consequently, the Applicant can be said to have completed the age of 58 years only at 24.00 hrs. on 31.12.85 which automatically makes it obligatory on the part of the Responden to retire him only at or after 00.01 hrs. on 1.1.86. That being the legal position, according to the learned counsel for the Applicant, Note 6 to F.R.56 runs counter to the statutory content of F.R.56(a) which categorically lays down that every Govt. servant shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years. Shri Y.G.Ramamurty placed reliance on the judgement of the Hon'ble Supreme Court in the case of S.Banerjee Vs. Union of India & others, AIR 1990 SC 285. The petitioner therein was the Addl. Registrar of the Supreme Court. His normal date of retirement was 31.3.1987. He sought for voluntary retirement and an order was passed permitting him to retire with effect from forenoon of 1.1.1986

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The petitioner claimed the benefit of the recommendation of the Pay Commission as contained in paragraph 17.3, but it was not allowed on the ground that he did not, as he was not entitled to, draw salary for January 1, 1986 in view of the proviso to rule 5(2) of the Rules of 1972. The argument of the authorities was that as in view of the proviso to rule 5(2) of the Rules, the date of retirement of the petitioner should be treated as a non-working day or, in other words, as the petitioner was not entitled to the salary for the day of his retirement, he was not entitled to the benefit of the recommendation of the Pay Commission as contained in paragraph 17.3 of the Report. It was, however held that the petitioner had retired with effect from January 1, 1986 and that was also the order of the Supreme Court. The facts of the said case are altogether different in that, the order passed in respect of S. Banerjee was to the effect that he would retire from the forenoon on 1.1.86. So far as the Applicant before us is concerned, the order of superannuation clearly indicates that he was to retire w.e.f. 31.12.85.

6. F.R.56(a) provides that every Govt. servant shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years. The true significance of the words "attains the age" is explained in the case of Prabhu Dayal Sesma Vs. State of Rajasthan & Another, 1986(3) SLR 48. In that case, the Hon'ble Supreme Court had the occasion to examine Rule 11-B of the Rajasthan State & Subordinate Services (Direct Recruitment by Competitive Examination) Rules, 1962 (Rajasthan Rules for short).

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The said Rule 11-B reads as under:-

"11-B Age.-- Notwithstanding anything contained regarding age limit in any of the service Rules governing through the agency of the Commission to the posts in the State Service and in the Subordinate Service mentioned in Schedule I and in Schedule II respectively, a candidate for direct recruitment to the posts to be filled in by combined competitive examinations conducted by the Commission under these Rules must have attained the age of 21 years and must not have attained the age of 28 years on the first day of January next following the last date fixed for receipt of application."

Explaining the above rule, the Hon'ble Supreme Court observed as under:-

"It is plain upon the language of R.11-B that a candidate must have attained the age of 21 years and must not have attained the age of 28 years on the first day of January next following the last date fixed for receipt of application.' Last day fixed for receipt of application in this case, was January 1, 1983. First day of January next following that day would be January 1, 1984. The object and intent in making R.11-B was to prescribe the age limits upon which the eligibility of a candidate for direct recruitment to the Rajasthan Administrative Service and other allied services is governed. At first impression, it may seem that a person born on January 2, 1956 would attain 28 years of age only on January 2, 1984 and not on January 1, 1984. But this is not quite accurate. In calculating a person's age, the day of his birth must be counted as a whole day and he attains the specified age on the day preceding, the anniversary of his birth day. We have to apply well accepted rules for computation of time. One such rule is that fractions of a day will be omitted in computing a period of time in years or months in the sense that a fraction of a day will be treated as a full day. A legal day commences at 12 o'clock midnight and continues until the same hour the following night. There is a popular misconception that a person does not attain a particular age unless and until he has completed a given number of years. In the absence of any express provision, it is well-settled that any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birth day."

Applying the above observations of the Hon'ble Supreme Court we find that the Applicant who was born on 1.1.28 would attain the age of 58 years on 31.12.85 and not on 1.1.86.

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31.12.85 was also the last day of the month in which the Applicant attained the age of 58 years and accordingly the date of retirement of the Applicant in accordance with F.R.56(a) would be 31.12.85 and not 31.1.86. From this point of view, we do not find ^{any} incongruity in Note 6 to F.R.56 which merely clarifies that a Govt. servant whose date of birth is the 1st of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of 58 or 60 years, as the case may be. We, therefore, hold that Note 6 to F.R.56(a) cannot be said to be bad in law. Consequently, we must hold that the Applicant was rightly retired from service w.e.f. 31.12.85.

9. As regards the Applicant's claim that he was due for the annual increment w.e.f. 1.1.86, we find that he having been promoted to the post of Superintendent on 16.1.78, the date of his increment would ordinarily fall on 16th January, but in view of the Min. of Finance O.M. dt. 7.1.74 an employee shall be granted increment on the 1st of the month in which it falls due instead of from the actual date on which it accrues. Thus, it would be clear that the Applicant would be entitled to the next increment (which was due to him in January, 1986) only on 1.1.86 and not from any earlier date. The Applicant having superannuated from service on 31.12.85 cannot claim his next increment due to him on 1.1.86 as he was no longer in service on that date.

10. In the result, we find no merit in the O.A. and it is hereby dismissed without any order as to costs.

(T.Chandrasekhara Reddy)
Member (J).

(A.B.Gorthi)
Member (A).

Dated: 20 Sept., 1993.

br.

Dy. Registrar (Judl.)

724/1993
8.11.93
O.A. 287/90
TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHY : MEMBER (A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR. P. T. EIRUVENGADAM : M(A)

Dated: 20/4/1993

ORDER/JUDGMENT: ✓

M.A./R.A./C.A. No.

in

O.A. No.

287/90

T.A. No.

(W.P.)

Admitted and Interim directions
issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered

No order as to costs.

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