

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL - HYDERABAD BENCH : HYDERABAD

OA / TA / RA / CP / MA / PT 1235 of 1991

..... R. Subba Rao Applicant(s)

Versus

..... The Secretary, Dept. of P.W.D., Respondent(s)
New order # 287-

INDEX SUMMARY

Serial No.	Description of Documents	Pages
Docket Orders	—	1
Interim Orders	—	—
Orders in MA (s)	—	—
Orders in (Final Orders)	24-9-97	40-44
one more		

Signature of
Dealing Hand
(In Record Section)

Certified that the file is complete
in all respects.

Signature of S.O.

Manoj Kumar
Deputy Secretary
16/5/07

Central Administrative Tribunal Hyderabad Bench: Hyderabad.

O.A.No. 1235 of 1997.

R Subba Rao Applicants(s).

V E R S U S.

The Secretary, Dept. of Posts, New Delhi 110 011

(Respondents).

Date

Office Note

ORDER

22-9-97.

Heard Mr. T.V.V.S. Murthy,
learned Counsel for the applicant.

Post it day after tomorrow
24.9.97.

S.
HHRP
M(A)

MSM

24.9.97

Judgement delivered. The
OA is disposed of at the
admission stage. order vide
separate sheets.

S.
HHRP
M(A)

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH : HYDERABAD

ORIGINAL APPLICATION NO. 1235 OF 1997.

R. Subba Rao

(Applicants(s))

VERSUS,

Union of India, Repd. by.

The Secretary, Dept of Posts,

New Delhi & 2 others

Respondent(s).

The application has been submitted to the Tribunal by
Shri T. V. S. Murthy Advocate/party-in-
person Under Section 19 of the Administrative Tribunal
Act, 1985 and the same has been scrutinised with reference
to the points mentioned in the check list in the light of
the provisions in the administrative Tribunal (procedure)
Rules 1987.

The application is in order and may be listed for
Admission on 9.9.97

15/9/97
Scrutiny Asst.

Amthar
DEPUTY REGISTRAR (JUDL)

The application has been submitted to the Tribunal by
Shri T. V. S. Murthy Advocate/party-in-
person Under Section 19 of the Administrative Tribunal
Act, 1985 and the same has been scrutinised with reference
to the points mentioned in the check list in the light of
the provisions in the administrative Tribunal (procedure)
Rules 1987.

The application is in order and may be listed for
Admission on 9.9.97

11. Have legible copies of the annexure duly attested been filed. yes
12. Has the applicant exhausted all available remedies. yes
13. Has the Index of documents been filed and pagination done properly. yes
14. Has the declaration as required by item No. 7 of form. I been made. yes
15. Have required number of envelopes (file size) bearing full addresses of the respondents been filed. yes
16. (a) Whether the relief sought for, arise out of single cause of action. -
- (b) Whether any interim relief is prayed for, yes
17. (c) In case an MA for condonation of delay is filed, is it supported by an affidavit of the applicant. -
18. Whether this cause be heard by single Bench. yes
19. Any other points. -
20. Result of the Scrutiny with initial of the scrutiny clerk. may be filed

15/11/12
Scrutiny Assistant.

Section Officer.

Deputy Registrar.

Registrar.

....

CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH: HYDERABAD.

Cairy No. 2961/92

Report in the Scrutiny of Application.

Presented by Mr. T.V.V.S. Murthy Date of Presentation. 12/9/92

Applicant(s) R. Subba Rao

Respondent(s) The Secretary, Dept of Posts, N. Delhi and 200.

Nature of grievance Denial of enhanced Retirement gratuity

No. of Applicants 1 No. of Respondents 3.....

CLASSIFICATION.

Subject.....No Department Postal.....(No)

1. Is the application in the proper form, (three complete sets in paper books form in two compilations). Yes
2. Whether name description and address of all the parties been furnished in the cause title. Yes
3. (a) Has the application been fully signed and verified. Yes
(b) Has the copies been duly signed.
(c) Have sufficient number of copies of the application been filed. Yes
4. Whether all the necessary parties are impleaded. -
5. Whether English translation of documents in a language other than English or Hindi been filed. Yes
6. Is the application on time, (See Section 21). Yes
7. Has the Vakalatnama/Memo of Appearance/Authorisation been filed. Yes
8. Is the application maintainability. Yes
(U/S 2, 14, 18, or U/R. 8 Etc.,)
9. Is the application accompanied IPO/DD, for Rs.50/- Yes
10. Has the impugned orders original, duly attested legible copy been filed. Yes

P.T.O.,

I N D E X

O.A. NO. 1235 of 1997.

CAUSE TITLE R Subba Rao

V E R S U S

The Secretary, D/o. Post, New Delhi & 2nd

SL.NO.	Description of documents	Page No.
1.	Original Application	1 to 10
2.	Material Papers	11 to 35
3.	Vakalat	1
4.	Objection Sheet	—
5.	Spere Copies 3 (Thru).	
6.	Covers 3. A	

Reg:- To direct the respondents to pay the balance of retirement gratuity 1/2 Rs. 24,140 admissible to the applicant as per the O.M. dt 14.7.1995

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
HYDERABAD BENCH AT HYDERABAD - 4

O.A. No. 1235 of 1997

Denial of enhanced
retirement gratuity
Postal (c)

S.M. Chakraborty

CHRONOLOGICAL STATEMENT OF EVENTS

Sl. No.	Date	Events
A-1	1-1-95	Applicant applies for voluntary retirement from 31-3-95 a/n.
A-2	1-2-95	Applicant requests for alteration in date of voluntary retirement from 5-4-95 f/n.
A-3	3-2-95	SP, Machilipatnam (R-2) asks him to revise his date of voluntary retirement as 1-4-95 f/n.
A-4	4-2-95	Applicant accordingly alters his date of voluntary retirement as 1-4-95 f/n.
A-5	17-2-95	PMG, Vijayawada (R-3) permits him to retire voluntarily on 1-4-95 f/n.
A-6	1-4-95	Applicant retires from service voluntarily on 1-4-95 f/n. (R-2)
A-7	22-5-95	SP, Machilipatnam (R-2) sanctions him provisional DCRG.
A-8	22-11-95	R-2 sanctions him final DCRG.
A-9	14-7-95	OM. of Ministry of Personnel Public Grievances & Pensions enhancing DCRG amount for those who retire on or after 1-4-95.
A-10	11-6-96	Applicants representation for sanction of enhanced DCRG.
A-11	25-7-96	Interim Reply of the DAP, Hyderabad
A-12	9-2-97	Detailed representation of applicant to the PMG, Vijayawada (R-3)
A-13	24-10-89	Judgment of Supreme Court in S. Banerjee Vs. U.O.I. (1991) 17 ATC 197 (SC)
A-14	5-8-96	Judgment of the Hon'ble CAT, Hyderabad Bench in O.A. No. 647/96 in an identical case.

Hyderabad
Dt 11-9-97

Recd
12/9/97
R.N.R. Dey



S. M. Chakraborty
Counsel for the Applicant.

3

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
HYDERABAD BENCH AT HYDERABAD-4.

O. A. No. 1235 of 1997

Title of the Case : R. Subbarao Vs. U.O.I. & 2 others.

INDEX OF MATERIAL PAPERS

Sl. No.	Description of documents	Annex- ure No.	P.No.	
			From	To
1	2	3	4	
1.	Application		1 to	10
	<u>Material Papers</u>			
2.	Applicants application dt 1.1.95 to the PMG, Vijayawada (R-3) for voluntary retirement from 31.3.95 a/n	A-1	11	
3.	Applicants representation dt. 1.2.95 to change his date of voluntary retirement as 5-4-95 f/n.	A-2	12	
4.	SP, Machilipatnam (R-2) lr.No. B1/3/VR dt.3.2.95, asking him to revise his date of volunatry retirement as 1.4.95 f/n	A-3	13	
5.	Applicant's representation dt. 4/2/95 changing his date of volunatry retirement as 1.4.95 f/n.	A-4	14	
6.	PMG, Vijayawada (R-2) lr.No. ST. 1/21-5/C35/KW dt. 17.2.95 permitting him to retire on 1.4.95 f/n	A-5	15	
7.	Charge report dt 1-4-95 showing relieving of applicant on retirement	A-6	16 & 17	
8.	Memo No. C/Pen/RSR dt.22.5.95 of SP, Machilipatnam (R-2) sanctioning Provisional DCRG to applicant	A-7	18	

X *[Signature]*

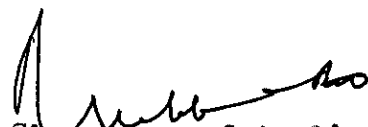
Contd/.....

Sl.No.	Description of documents	Annex- ure N o.	P.No.	
			From	To
1	2	3	4	
9.	Memo No. C/Pen/RSR dt.22.11.96 of R-2 sanctioning final DCRG	A-8	19	
10.	O.M.No.7/1/96 - P & PW (F) of the Ministry of Personnel, Public Grievances & Pensions	A-9	20	21
11.	Representation dt.11.6.96 of applicant to the DAP, Hyderabad for Payment of enhanced DCRG	A-10	22	23
12.	Lr.No.2844/Pen.IV/C.No.21/95-96 dt. 25/7/96 of the DAP, Hyderabad	A-11	24	
13.	Representation dt. 9.2.97 of applicant to the PMG, Vijayawada (R-3)	A-12	25	27
14.	Extract of Judgment in S.Banerjee Vs. U.O.I. (1991) 17 ATC 197 (SC)	A-13	28	
15.	Copy of Judgment dt. 5.8.96 in O.A. No. 647/96 of the Hon'ble CAT, Hyderabad Bench	A-14	29	35

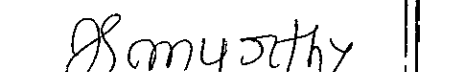
Hyderabad

11-9-1997

X



Signature of Applicant


Signature of the Counsel
for the applicant

For use in Tribunals' Office

Date of filing :

Registration No. :

for Registrar.

5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD
BENCH AT HYDERABAD _ 4.

(Under Section 19 of the A.T. Act, 1985)

Q.A. No. 1235 of 1997.

B E T W E E N :

R. Subbarao, S/o Late R. Potharaju,
Aged 49 years, Retired Subpostmaster (BCR),
Kuchipudi centre S.O. Machilipatnam,
Postal Division at Gudur (Krishna) S.O. 521149.
..... Applicant

A N D :

- 1) The Union of India represented by the Secretary, Department of Posts, Dak Bhavan, New Delhi - 110 001.
- 2) The Superintendent of Post Offices, Machilipatnam Division, Machilipatnam - 521001.
- 3) The Postmaster-General, Vijayawada Region, Vijayawada, 520 002.
..... Respondents.

Address for service of notices on the applicant :--

T.V.V.S. Murthy, M.A. L.L.B.,
Advocate

H.No. B-361, Phase-II Ind, LIG
Residential Complex, Vanasthalipulam,
Opp : Community Hall,
HYDERABAD - 500 070.

(contd. 2)

X *[Signature]*

DETAILS OF APPLICATION :

1 a) PARTICULARS OF THE ORDERS AGAINST WHICH THE APPLICATION IS MADE :--

1) O.M. No. 7/1/95 - R & PW (P) Dt. 14-07-1995 issued by the Ministry of Personnel, Public Grievances & Pensions, (Department of Pension & Pensioners' Welfare), New Delhi as communicated in the P.M.G. Vijayawada (R-3) in his office letter No. Ac. I / Pen / Rigs / Vol. V Dt. 3-8-95 (Annexure - A9 at P.Nos 20 & 21).

Deleted Summary
 (i) Representation dt. 11/6/96 of the applicant to the Director of Accounts (Postal) (DAP - for short), Hyderabad - 1 (Annexure - A10 at P.Nos. 22 & 23)

2
 (ii) Reply letter No. 2844/Pen.IV/C.No.21/95-96 dt. 25-7-96 of the DAP, Hyderabad (Annexure - A11 at P.No. 24)

Deleted Summary
 (iv) Representation dt. 9-2-97 of the applicant to the Postmaster - General (PMG - for short) Vijayawada Region, Vijayawada - 2 (R-3) (Annexure - A12 At P.Nos. 25 to 27)

b) SUBJECT IN BRIEF :-

Denial of enhanced gratuity admissible to the applicant as per the O.M.No. 7/1/95-R&PW(P) dt. 14-7-1995 of the Govt. of India. (Annexure - A9 at P.Nos. 20 & 21) by extending the benefit of Judgments of the Apex Court in (1991) 17 ATC 197 (SC) and the Hon'ble CAT, Hyderabad Bench in O.A. 647/96 dt. 5-8-96 (Annexures A 13 & A 14 at P.Nos 28 to 35)

2. JURISDICTION :

The applicant declares that the subject matter of the orders for which he wants redressal is within the jurisdiction of this Hon'ble Tribunal as per Section 14 (1) of the A.T. Act, 1985, as the applicant

X *[Signature]*

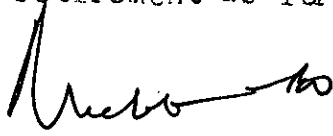
is a retired postal pensioner residing in Andhra Pradesh.

3. LIMITATION :

The applicant submits and declares that the application is within the limitation prescribed in Section 21 of the A.T. Act, 1985 as no final reply is received with reference to his representation dt. 11/6/96 (Annexure-A10 at P.Nos. 22823) from the D.A.P., Hyderabad and no reply is received with reference to his representation dt. 9-2-97 (Annexure - A 12 at P.Nos. 25425) from the P.M.G., Vijayavada (R - 3).

4. FACTS OF THE CASE :-

- 4.1. The applicant submits that he joined the Postal Department on 24-10-1996 as a postal assistant. He was promoted to the L.S.G. Cadre with effect from 30-11-1993 and to HSG-II Cadre (BCR) with effect from 1-1-1993. After putting in about 28 years service, while working as Subpostmaster Kuchipudi Centre S.O., he applied for permission for voluntary retirement under the provisions of Rule 48-A of the C.C.S. (Pension) Rules, 1972 with effect from the afternoon of 31-3-1995 vide his letter dt. 1-1-1995 (Annexure-A1 at P.No. 11) addressed to the Postmaster-General, Vijayawada (R-3). Later in his letter dt. 1.2.95 (Annexure A2 at P.No. 12), he requested that he may be permitted to retire voluntarily from the forenoon of 5-4-1995 instead of afternoon of 31-3-1995 as requested in his earlier letter dt. 1-1-1995. The Superintendent of Post Offices, Machilipatnam (R-2) vide his office letter No. B1/VR^{3/} dt. 3.2.95 (Annexure A3 at P.No. 13) asked him to revise his date of voluntary retirement as forenoon of

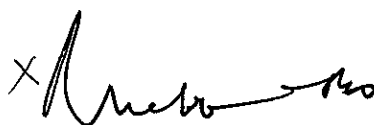
X 

1-4-1995. Accordingly he requested for voluntary retirement from the forenoon of 1-4-1995 in supersession of his earlier letters dt. 1.1.95 and 1.2.95 vide his letter dt. 4.2.95 (Annexure A4 at P.No. 14).

Accordingly he was permitted to retire voluntarily on the forenoon of 1.4.1995 vide the PMG, Vijayavada (R-3) Memo No. ST. 1/21-5/35/KW dt. 17.2.95 (Annexure A5 at P.No. 15). He was accordingly relieved from the Post of the SPM, Kuchipudi centre on the forenoon of 1.4.1995 vide charge report dt. 1.4.95 (Annexure A-6 at P.Nos. 16 & 17) on voluntary retirement.

4.2. The applicant submits that he was paid Rs. 36,620/- on 25-5-95 as provisional D.C.R.G. vide the S.P., Machilipatnam (R-2) Memo No. C/Pen/RSR dt. 22.5.95 Annexure - A7 at P.No. 18). The balance of DCRG - viz Rs. 1000/- was paid on 24-11-95 vide the S.P. Machilipatnam (R-2) Memo No. C/Pen/RSR dt. 22.11.95 (Annexure A 8 at P.No. 19). The total amount of DCRG thus paid to him was Rs. 37,620/-.

4.3. The applicant submits that the Govt. of India, Ministry of Personnel, Public Grievances & Pensions (Department of Pension & Pensioners' Welfare) vide their O.M. No. 7/1/95 P & PW (F) dt. 14.7.1995 as communicated in the PMG., Vijayawada (R-3) letter No. AC. 1/Pen/Rlgs/Vol.V dt. 3.8.95 (Annexure A 9 at P.No. 20 & 21) have issued orders for treating 97% of pay as dearness pay for reckoning emoluments for the purpose of retirement gratuity and for SUO MOTU recomputation and payment of consequential arrears of retirement gratuity in respect of persons who have already retired on or after 1-4-1995.

X 

- 4.4. The applicant submits that as he retired on 1.4.95, he became eligible for payment of enhanced gratuity in terms of the O.M. dt. 14.7.95 (Annexure A9) cited above, as shown below:-

His Basic Pay : Rs. 1900/-

970/o of Pay : Rs. 1843/-

Total : Rs. 3743/-

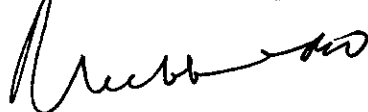
DCRG Payable : Rs. 3743 x 16.5 = Rs. 61,760/-

Amount already paid = Rs. 37,620/-

Balance of DCRG amount Payable = Rs. 24,140/-

- 4.5. The applicant submits that the SP, Machilipatnam (R-2) promptly initiated suo motu recomputation and Payment of consequential arrears of retirement gratuity and sent his case to the Director of Accounts, Postal, (DAP - for short) Hyderabad for necessary audit enforcement to enable him to issue sanction for Payment of the arrears due to him. But as no action was taken by the DAP, Hyderabad, the applicant submitted a representation dt. 11.6.96 (Annexure A10 at P.Nos. ^{228/23}) to issue the sanction early. The DAP, Hyderabad in his reply No. 2844/Pen.IV/C.No.21/95-96 dt. 25-7-96 (Annexure - A 11 at P.No.24) stated that the the PMG, Vijayawada (R-3) in his office letter No. AC-I/Pen/NIR/ Vol.II dt. 4.12.95 referred a similar case for clarification to the Director-General, Department of Posts, New Delhi (R-1) and that action would be taken on receipt of clarification from R-1.

- 4.6. The applicant submits that he submitted a detailed representation dt. 9.2.97 (Annexure - A12 at P.No. ^{25 to 27}) to the P.M.G., Vijayavada (R.3) to give him the benefits of the O.M. dt. 14.7.95 (Annexure A9 at P.Nos. ^{208/21}) by extending the benefits of the Judgment dt. 24.10.89 of the Supreme Court in S.Banerjee Vs. U.O.I. (1991) 17 ATC 197 (SC) = Swamy's case Law Digest/Vol.IV/1991 - P.170. (Annexure A13 at P.No.28) and the judgment x

X 

dt. 5.8.96 in O.A. No. 647/96 of this Hon'ble CAT Hyderabad Bench (Annexure A 14 at P.Nos. ²⁹⁷³⁵). But no reply was received by him from the PMG, Vijayavada (R-3) so far. It is learnt that his case was also referred by R-3 to R-1 for clarification.

4.7. The applicant submits that in the circumstances stated above, he is left with no other alternative except filing this O.A. seeking justice in the matter.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1. It is submitted that denial of enhanced gratuity benefits to the applicant, though he voluntarily retired on the forenoon of 1-4-1995, and though his case was covered by the O.M. dt 14-7-1995 (Annexure A 9 at P.Nos 20/21) is arbitrary, unjust and illegal. It is an unconstitutional discrimination and is violative of Arts. 14 & 16 of the Constitution of India.

5.2. It is submitted that the Hon'ble Supreme Court in S. Banarjee Vs. U.O.I. & others (1991) 17 ATC 197 (SC) held on 24-10-1989 that a person who voluntarily retired on the forenoon of 1.1.86, and not on 31.12.85 and has to be treated as having retired on ¹⁻¹⁻1.1.86 and not on 31.12.85 and that his Pensionary benefits have to be paid as per the recommendations of the CPC ~~AS CONTAINED IN PARA NO. 2~~ as contained in para 17.3, which were given effect to from 1.1.1986. In the instant case, the applicant is entitled to enhanced gratuity amount, as he retired on 1.4.1995.

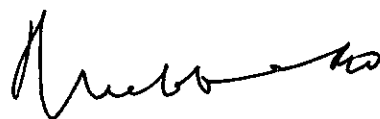
X. *[Signature]*

5.3. It is submitted that the choice of cut-off date, which has to be introduced to effectuate some benefits is open to scrutiny and must be in consonance with Art. 14 of Constitution as held in N.C. Saxena (Dr) V.U.O.I. (1993) 23 ATC 268 (Del) = (1992) 3 SLJ (CAT) 496. The stand taken by R-2 and R-3 in the instant case is in violation of Art. 14 of the Constitution.

5.4. It is submitted that all persons who retired on 1.4.95, whether on premature/voluntary retirement or on superannuation, whether they retired in the forenoon or afternoon belong to a homogeneous class. The adoption of discriminatory treatment by R-2 and R-3 to the applicant is constitutionally invalid as it amounts dividing a homogeneous class, as held in B.S. Rohilla Vs. U.O.I. (1992) 22 ATC 321 (Delhi) = (1991) 3 SLJ (CAT) 472. Denial of retiral benefits to the applicant in the instant case is an unconstitutional discrimination and is violative of Arts. 14 & 16 of the Constitution.

5.5. It is submitted that the Hon'ble Full Bench of the CAT Ernakulam in its decision dt. 13-3-90 observed in para 20 thereof in the case of B. Ravindran & others Vs. D.G. Posts (1989 - 91) FBJ 240 at page 248 as follows :

" While interpreting such a beneficial provision like the one embodied in the Administrative instructions issued in 1964, 1978 and 1983, we are inclined to lean

X 

on the interpretation which is more advantageous to the employees concerned in respect of whom they have been issued rather than on a narrow construction of said provisions canvassed before us by the respondents".

6. DETAILS OF REMEDIES EXHAUSTED :-

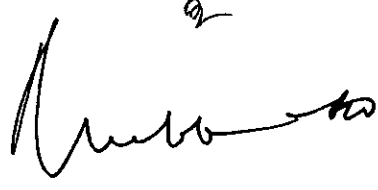
The applicant submits that to his representation dt. 11.6.96 (Annexure A10 at P.No. ²²⁸²³) to the DAP, Hyderabad in this regard, only an interim reply was ^{received} vide Annexure A 11 at. ~~EX-NO.~~ P.No. 24. His representation dt & 9.2.97 (Annexures A12 at P.No. 25 to 27) to the P.M.G. Vijayawada (R-3) is still pending, and no reply has been received. Hence he filed this O.A.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER COURT :

The applicant submits that he has not filed any application, writ petition, or suit regarding the subject matter for which this application is made before any court or any other authority or any other Bench of this tribunal nor any other application writ petition or suit is pending before any of them.

8. RELIEF SOUGHT :

In view of the facts mentioned in para 4 above and the grounds mentioned in para 5 above, the applicant herein prays that this Hon'ble Tribunal may be pleased i) to call for the relevant records; ii) to direct the Respondents herein to pay the balance of Retirement Gratuity viz., Rs. 24, ¹⁴⁰~~410~~/- admissible to

X 

- 9 -

the applicant as per the Q.M. No. 7/1/95 - P & PW (F) dt. 14-7-1995 of the G.O.I. Ministry of Personnel, Public Grievances & Pensions (Department of Pensions & Pensioners' Welfare) at Annexure - A9 at P.No. 208/21 with interest @ 18 [%] ~~per~~ per annum from 14.7.1995 till date of payment, due to delay in payment of the amount legally due to him: and

iii) to pass such other order or orders as deemed fit and proper in the circumstances of the case.

9. INTERIM RELIEF SOUGHT :-

The applicant herein further prays that as he ~~x~~ had already retired from service, and as the case is covered by the Judgments of the ~~KKXX~~ Apex Court at Annexure - A 13 at P.No. 28 and of this Hon'ble Tribunal at Annexure - A 14 at P.Nos. 29 to 35, it may be disposed of early

10. APPLICATION IS SUBMITTED THROUGH HIS COUNSEL :-

T.V.V.S. Murthy, Advocate, B-361,
Phase II, Residential complex,
Vanasthalipuram, HYDERABAD - 500 070.

11. PARTICULARS OF INDIAN POSTAL ORDER FILED IN RESPECT OF

APPLICATION FEE :-

Number of I.P.O. : 8/12/679667 for Rs. 50/-

Date of issue of I.P.O. : 25/6/97

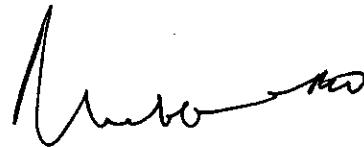
Name of issuing Post Office : Vidhan Sabha S.O. (Hyd)

Office at which Payable : Hyderabad G.P.O. 50/-

12. LIST OF ENCLOSURES :

- | | |
|--|---------------------------------|
| 1) Application | 2) Material papers as per index |
| 3) Vakalat | 4) Crossed IPO as stated above |
| 5) Addressed envelopes with acknowledgments. | |

X

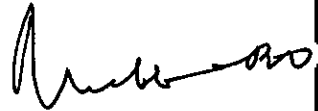


V E R I F I C A T I O N

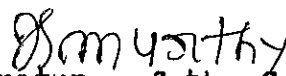
I, R. Subbarao, S/o late R. Potharaju, Aged 54 years Retires Sub-Postmaster (BCR), Kuchipudi Centre S.O. and resident of Gudur (Krishna District), having temporarily come down to Hyderabad, do hereby verify that the contents of paras 1 to 4 and 6 to 12 are true to my personal knowledge and those of para 5 are believed to be true on legal advice and I have not suppressed any material facts.

Hyderabad

11-9-1997

X 

Signature of Applicant.


Signature of the Counsel
for the Applicant.

To

The Registrar,
Central Administrative Tribunal,
Hyderabad Bench at
HYDERABAD - 4.

Annexure - A 1

P. 11

KUCHIPUDI,

Dt. 1-1-1995.

To,
The Post Master General,
VIJAYAWADA-520 002.

Through Proper Channel

Subj: - VOLUNTARY RETIREMENT.

Honoured Sir,

I beg to submit that, due to certain domestic reasons, I am compelled to go on VOLUNTARY RETIREMENT and I therefore request your good offices kindly to arrange to relieve me of my Official duties on V/R on ^{the} 1/1 of 31-3-1995.

I also request the authorities kindly to cause early necessary action for the sanction of my pension and payment of the sums due on account of RETIREMENT.

Thanking you Sir,

Yours faithfully,

From:

R. SUBBARAO (BCR),
SUB POST MASTER,
KUCHIPUDI CIRCLE,
KUCHIPUDI-521 136.

(R. SUBBARAO)

Copy direct to:

1. The Post Master General,
Vijayawada.
2. The Superintendent of Post Office,
Machilipatnam.

to save delay.

Sanjay
Counsellor

From Annexure-A2

Kuchipudi 1.2.55 (16)

R. SUBBA (B.C.P.)

P. (12)

SPN
Kuchipudi Centre

521106

KRISHNA DV

70

The Postmaster General

Vijayanagara 520002
Through the S.P.O. Madhukuta

Subj: Voluntary Retirement

Ref: - My application dt 1.1.1995

Respected Sir,

In continuation of my application dt 1.1.95 I submit that I am compelled to go on Voluntary Retirement due to certain domestic reasons and to meet some liabilities on account of my daughter's marriage.

I request you graciously to kindly arrange to relieve me on Voluntary Retirement on the 5.4.1995 instead of 31.3.95 as requested in my previous letter.

Thanking you for your
Yours faithfully

Ramachandra
Counsel

Kuchipudi
(R. SUBBA)

Sec-1/Corr-7

Annexure - A 3

P.

13

पोस्टल विभाग/Department of Posts, India
कार्यालय/Office of the SP, Machilipatnam

To

Sr R. Subba Rao

SBM / K.P. Centre (So.

no. 37-VR dtd 1.4.95 at MEM-1 to 3.2.95

Sub. Voluntary retirement case of
yourself - beg

Ref. your no dtd 1.2.95

SP & Review remains attached

" Let him revise the dtd 1.4.95

V/R as 1.4.95 F/n

Ganapathy
Counsel.

SP
Machilipatnam

प्रभासमु तम - MGP (F.U) Sant. 52 Postal/CO (SFS, S-1/5-3 Pt. III 9-3-90)-9-10-90-8,00,000 Pads.

A3

T. Rom. Annexure-A4

K. U. Ch. P. Centre (18)
4/12/85

A. SUBBARAO.
(23-12)

P. (14)

S.D.M.

K. U. Ch. P. Centre

(KRISHNA) 521186

<10

The Postmaster General

Vijayawada-2

Through proper channel.

Encl: - Voluntary Retirement.

Ref: - My ltr. dt. 1.1.85 & 1.2.85

Sir,

I request, I may kindly be

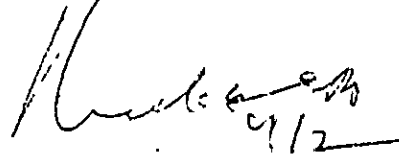
relieved on Voluntary Retirement on

the 1/1/85 as per 1.1.85 in the order

3.1.85 as applied to in my ltr. dt. 1.1.85

Sincerely
Counsel.

Yours faithfully


4/12

Office of the Postmaster General, Vijayawada Region,
A.S. Circle, Vijayawada-520 002.

Ref. No. of 1/21-5/4/33/KW dt 1. 12. 92, the 17.2.95.

Under the provisions of Rule 48 (1) of CCS (Pension) Rules, 1972 Sri A. Subbarao (IAA), SMT, Machilipatnam, who has given a notice dated 1-1-95 for voluntary retirement is permitted by the Director of Postal Services, Vijayawada to retire voluntarily on 1-4-95 A.M.

1 copy of this memo is issued to:-

1. ✓ Sri A. Subbarao, SMT, Machilipatnam Centre P.O.,
Machilipatnam - 521 135.
2. The Super. of Post Offices, Machilipatnam Division
P.O. No. 81/9 dated 30-1-95 (Spate copies
to 33/34/95 files).
3. The Postmaster, Machilipatnam.
4. The Chief Postmaster, A.S. Circle,
Vijayawada - 520 001.
5. The Director of Accounts (Postal), Hyderabad-1.
6. 10. Office copy & spare.

Re
Assistant Director (SAV)
o/o the Postmaster General
Vijayawada Region, AS Circle
Vijayawada-520 002.

Sanjay
Counsel.

A-6

17

*प्रमाणित किया जाता है कि बाज के दिन इस कार्यालय में मुद्रा पुस्तकों के बकाया (स्टॉक पुस्तक और रजिस्ट्रों समेत) और लेखाओं की जांच की और उन्हें ठीक पाया।

*Certified that the balances of this date of the several books (including Stock book and Registers) and accounts of the office have been checked and found correct.

*प्रमाणित किया जाता है कि निम्नलिखित बकाया मुझे भारमुक्त अधिकारी ने सौंप दिया और मैं इसके लिए जिम्मेदार हूँ।

*Certified that the balances as detailed below were handed over to me by the Relieved Officer and I accept the responsibility for the same.

- (क) नकदी/Cash
(ख) बप्रदाय टिकट/Stamp Imprest

जिनमें से शामिल है :-

Made up of :-

- (1) टिकट/Stamps
(2) नकदी/Cash

भारमुक्त अधिकारी
Relieved Officer

रु०
Rs.

पै०
P.

111702-20

3745-55

भारप्राप्ति अधिकारी
Relieving Officer

तारीख
Dated the

19

1987

Forwarded to

श्री C.R.S. Rao को भेजा गया

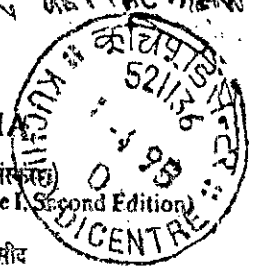
*जब प्रमाण पत्र की आवश्यकता न हो तो इसे काट दिया जाए।

*The certificate when not actually required may be scored.

Someswara, VJA. Fig. / 1-8 / 96-97 / VJ. / Dt. 23-7-98

Somusathy
Cundel

R. S. SUBBARAO, Voluntary Retirement
Annexure A-1
A.C.G. No. 61
DEPARTMENT OF POSTS INDIA
(See Rule 267, Posts and Telegraphs Financial Handbook, Volume I, Second Edition)



चार्ज की बदली पर चार्ज रिपोर्ट और नकदी और स्टिकटों की रसीद
Charge Report and Receipt for cash and stamps on transfer of charge

प्रमाणित किया जाता है कि
Certified that the charge of the office of **SUB-POSTMASTER**

चार्ज (नाम) ने **KUCHIPUDI CENTRE-521 130**

was made over by (name) **R. S. SUBBARAO**

(नाम) को
to (name) **L. N. S. MURALI** स्थान
at (place)

तारीख को पूर्वाह्न से **KUCHIPUDI CENTRE**
अपराह्न

on the (date) **1-4-35** fore noon in accordance with **Memo**

म.स.प. 121-5/1/35
No. तारीख
Dated

के अनुसार दे दिया।
from **5/1/35**

Relieved Officer

Relieving Officer

[कृ०पृ०३०]
[P.T.O.]

26

DEPARTMENT OF POST - INDIA

Office of the Supdt. of Post Offices, Machilipatnam Division
Memo NO: C/Pen/RSR dated at Machilipatnam-521 001 the 22-5-95

In accordance with the instructions contained in Rule 66 of CCS Pension Rules 1972 a sanction of the undersigned is hereby accorded for payment of ~~Final~~ DCRG Rs. 36,620/- (Rupees thirty six thousand six hundred and twenty only) to Sri. R.Subba Rao SPM K.P.Centre (SO) ~~file~~

The payment should be made after proper identification and the disbursing officer will be held personally responsible for proper identification.

The expenditure is debitable to abstract B1(40) DCRG Voted.

(P.VEERA REDDY)

Supdt. of Post Offices,
Machilipatnam Division,
Machilipatnam 521 001.

A Copy of this memo is issued to:-

1. Sri. R.Subba Rao Retd. SPM K.P.Centre (S.O) now at Guduru(K)
- 2-3. The Postmaster/ Avanigadda H.O with a spare copy to DA(P) Hyderabad-1.
4. Pension file
5. Spare copy

(P.VEERA REDDY)

Supdt. of Post Offices,
Machilipatnam Division,
Machilipatnam 521 001.

Samudra
Council.

Annexure - A 8 P. (19)

DEPARTMENT OF POST- INDIA
Office of the Supdt. of Post offices, Machilipatnam Div. RPM
Memo No. C/Pen/RSR dated at Machilipatnam-1 the 22-11-95.

In accordance with the instructions contained in Rule 64 (4) (a) (ii) of CCS & Pension Rules 1972, sanction of the undersigned is hereby accorded for payment of final DENG Rs. 1000/- Rs. One thousand only) to Sri R. Subba Rao; Retired SPM K.P. Centre. SC.

The payment should be made after proper identification and the disbursing officer will be held personally responsible for proper identification.

The expenditure is debitable to abstract 01 (10)
CC-C Voted.

(S. VELMA REDDY)
Supdt. of Post offices,
Machilipatnam division,
Machilipatnam- 521 001.

Copy of this memo is issued to:-

1. The official Sri R. Subba Rao. Retired SPM Now residing at Goduru (K) SC.
- 2-3. The Postmaster, Avanigadda St with a spare copy to DAP Hyderabad.
4. The Pension file.

Sanmurti
Counsel.

pjr/-

Supdt. of Post offices,
Machilipatnam division,
Machilipatnam- 521 001.

A-9
A-6

page

(25)
17
21

(Pension) Rules, 1972 in the case of Central Government employees retiring on or after 1st April, 1995:-

Pay Range	Dearness allowance to be added to pay for calculating gratuity
1. Basic pay upto Rs.3,500/- p.m.	97% of pay
2. Basic pay above Rs.3,500/-p.m. and upto Rs.6,000/- p.m.	73% of pay subject to a minimum of Rs.3,395/-.
3. Basic pay above Rs.6,000/-p.m.	63% of pay subject to a minimum of Rs.4,380/-

The above rates are inclusive of the dearness allowance equivalent to 20% of basic pay already treated as dearness pay for the purpose of retirement gratuity/death gratuity w.e.f. 16th September, 1993 in terms of this Department's OM No. 7/2/93-P&PW(F) dated 19th October, 1993.

2. The President has also been pleased to decide that the ceiling on the maximum amount of retirement gratuity/death gratuity may be raised from Rs.1.00 lakh to Rs.2.50 lakhs w.e.f. 1st April, 1995.

3. In the case of persons who have already retired/died on or after 1st April, 1995, the retirement gratuity/death gratuity may be recomputed suo motu on the basis of these orders by the Pension Sanctioning Authorities and arrears, if any, paid.

4. These orders shall apply to all Central Government employees who are governed by CCS (Pension) Rules, 1972. Separate orders will be issued by the respective administrative authorities in respect of members of the Armed Forces and All India Services Railway employees.

5. In so far as persons working in Indian Audit and Accounts Department are concerned, these orders have been issued in consultation with the Comptroller & Auditor General of India.

6. Formal amendment of Rule 33 of the CCS (Pension) Rules, 1972 will be issued separately.

Sd/-
(KASHMIRI LAL)
Deputy Secretary to Government of India.

Banurthy
Counhel

240

A-9
Annexure - A page #6 (20)

DEPARTMENT OF POST - INDIA
Office of the Postmaster General, Vijayawada Region
A.P. Circle, Vijayawada-520 002.

To
All SSPs/SPs in Vijayawada Region.

No. AC I/Pen/Rlgs/Vol.V dated at Vijayawada-2, the 3-8-1995.

Sub:- Treatment of dearness allowances as dearness pay
the purpose of death gratuity and retirement
gratuity and raising the maximum limit of gratuity
from 1.00 lakh to Rs.2.50 lakhs.

A copy of Directorate letter No. 4-18/95-Pen dtd.28-7-95
is forwarded herewith for information and necessary action.

Sd/-
Sr. Accounts Officer (IFA)
O/o the Postmaster General
VIJAYAWADA-520 002.

Copy of the Dte. ltr. referred to above:-

Sub:- As above.

Sir,

I am directed to forward herewith 2 copies of O.M. No.7
1/95-P&PW(F) dated 14-7-1995 received from Ministry of Personnel,
Public Grievances & Pensions Department of Pension and Pensioners
Welfare on the above mentioned subject for information and necessary
action.

Yours faithfully,
Sd/-

(B.D. BAWEJA)
ASSTT. DIRECTOR GENERAL (PEN)

O.M. No.7/1/95-P&PW(F)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Pension & Pensioners' Welfare)

New Delhi, dtd. the 14th
July, 1995.

OFFICE MEMORANDUM

Subject:- Treatment of dearness allowance as dearness pay for the
purpose of death gratuity and retirement gratuity and
raising the maximum limit of gratuity from Rs.1.00 lakh
to Rs.2.50 lakhs.

The Fifth Central Pay Commission, in its interim report
has recommended that dearness allowance as linked to the average
All India Consumer Price Index (AICPI) 1201.66 may be treated as
dearness pay for reckoning emoluments for the purpose of retirement
gratuity and death gratuity under the Central Civil Services (Pension)
Rules, 1972 and the ceiling on gratuity be enhanced to Rs.2.50
lakhs. Accordingly, the President is pleased to decide that dearness
allowance linked to AICPI 1201.66 as indicated below shall be
treated as dearness pay for reckoning emoluments for the purpose
retirement gratuity/death gratuity under the Central Civil Services

....2.

K.T.C

H-6-11

A-10

P:

(23)

(27)

As per the your orders, officials who are retired on or after 1.4.1985 are paid enhanced D.P.G. consequent on the merger of 95% of the D. Pay on 1.7.1993 into ~~D.P.G.~~ Basic for the purpose of D.C.G. But I was not given the above benefit though I was voluntarily retired on 1.4.95.

It is learnt that a Proposal for payment of arrears of enhanced D.P.G. to me was sent to the Audit by the S.P. & Machipatnam on 1.9.95 and Audit Approval / sanction is still awaited.

I therefore request you to please kindly consider my case with sympathy and arrange to expedite sanction for the payment of the amount at the earliest.

Yours truly
Ganesh

Thanking you for
yours faithfully

11/10/95

From Annexure-1+4
P. S. UMBARRA A10

G. V. D. U. R. (KRISHNA) (26)
11.6.1996

RTO - S. P. M. (B&R)

P. R. O. NO. 1239/L&R

P. 22

of G. V. D. U. R. (KRISHNA)

521149

9/N 1-4-95

To

The Director of Accounts (S. & T)

D. P. Circle

Hyderabad 500001.

Through proper channel

Subj: Sanction of Enhanced D.A.R.

Sir,

I am to bring to your kind notice that I was retired from service on the 14.4.1995 voluntarily while working as S. P. M. (B&R) at Kuchipudi - Centre (KRISHNA) & under Avamigadda W.D.O in Machilipatnam D. U. R.

2. I was on duty on 14.1.1995 engaged in handing over the full charge of the office to my successor and also attended to some other official duties till I vacated the seat.

Annexure - A II P. 24

सं-7/95-96-7

भारतीय डाक विभाग/ DEPARTMENT OF POSTS-INDIA

कर्मचारी, निदेशक, डाक विभाग (डाक)

Office of the

Director of Accounts (Postal)

आंध्र प्रदेश, आंध्र प्रदेश (ऑफिस),

हैदराबाद, हैदराबाद-500 001.

To,

Sri R.Subba Rao,

Retd.SPM (BGR),

GUDUR, (Krishna)-521 149.

No.2844/Per.IV/C.No.21/95-96

Dtd. 15/7/1996

Sub : Sanction of enhanced DCRG.

Ref : Your representation Dt.11/6/96

With reference to your representation cited above, it is to inform that a similar case has been referred to Directorate office for clarifietory orders vide PMG, Vijayawada Ir. No.ACI/Pen/NIR/Vol-II/ Dt. 4/12/95. Action will be taken on receipt of clarifietory orders from Directorate office.

Accounts Officer,
Pension Sn.

Community
Council

17/7/96

A II

पत्र संख्या/ MPP. PDS. P.O. No. 2 /91-92.5/7300 Pao
P.S. PDS. PFD/ 4-2/PPP/91-92 Dt 23-2-96

Annexure - A12

25

From
R. Subba Rao,
Rete, SPM, Kuchipudi Centre,
Kuchipudi (K), - 521 149.

CHANDUR KRISHNA

To

The Postmaster General,
Vijayawada Region, A.P. Circle,
Vijayawada - 520 002.

THROUGH THE SUPDT. OF POST OFFICES,
MACHILIPATNAM DN. MACHILIPATNAM.

sub:- Representation against denial of enhanced
Retirement gratuity by the Director of Accounts
(Postal) Hyderabad.

Ref:- DA(P) Hyderabad Letter No. 2444/Pen.IV/C.21/95-96
dated at Hyderabad the 25-7-96.

Respected Sir,

I am compelled to encroach upon your precious time
to bring the following lines to your kind notice, by way of humble
representation, for favour of sympathetic consideration and judicious
orders.

I retired voluntarily from service as SDO Postmaster
Kuchipudi Centre SU on the fore noon of 1-4-95 after putting in a
service of 28 years and 5 months, vide PMG Vijayawada Memo No.
ST-1/21-5/C/36/KW dated 17-2-95, I was paid Rs. 37620/- towards
Retirement gratuity (provisional Rs. 36620/- paid on 25-5-95 +
+ final Rs. 1000/- paid on 24-11-95) vide SPOs Machilipatnam Memo
No. C3/Pen/RBR dated 22-5-95 and No. C3/Pen/RSR dated 22-11-95
as per the then existing formula (Pay Rs. 1900/- + Dearness pay
a 20% of pay Rs. 380/- = 2280 x 16.5 = Rs. 37620/-).

The Government of India, Ministry of personnel,
Public Grievances and Pensions, vide OM No. 7/1/95-P&PW(F) dt
dated 11th July '95 have issued orders for ~~xxx~~ treating 97% of pay
as Dearness pay for reckoning the emoluments for the exclusive
purpose of retirement gratuity and for SDO MATU recomputation and
payment of consequential arrears of Retirement gratuity in respect
of persons who have already retired on or after 1-4-95 (para 3
ibid).

Since I retired on 1-4-95 and having thus become
eligible for payment of arrears of enhanced gratuity of Rs. 24,140/-
(Pay = Rs. 1900/- + DA Pay a 20% of pay = Rs. 1843/- = Rs. 3743/-
x 16.5 = 61760/- less already paid Rs. 37620/- = Rs. 24,140/-) as
per the above cited orders of the government my pension sanctioning
authority viz. the SPOs, Machilipatnam has rightly and promptly
initiated SDO MATU action, recomputed the revised retirement
gratuity and sent the papers to the DA(P) Hyderabad for obtaining
necessary audit endorsement to enable the Divl. Office to sanction
the arrears in my case.

Contemplated in para 3 of the O.M. dt
(Contd...2)

:- 2 :-

dated 14-7-95.

But the Director of Accounts (Postal) Hyderabad, in his letter No. 2844/Pen IV/C. No. 21/95-96 dated 25-7-95 communicated to me that the orders contained in the O.M. No. 14-7-95, as such, cannot be applied in my case in the absence of specific clarification stated to have been sought from the Directorate by the PMG Vijayawada in a similar case.

In this connection, I am to submit Sir, that the O.M. dated 14-7-95 issued by the Government of India leaves no scope for any doubt regarding its applicability to the retirements occurring on or after 1-4-95, it does not make any distinction between premature/voluntary retirement and superannuation retirement and covers all types of retirements that fell on 1-4-95. Since superannuation retirement always falls on the afternoon of the last day of the month in which the Government servant attains the age of superannuation (the only exception to this rule being that the day of retirement of a Government servant whose date of birth falls on the first of a month, shall be on the last day of the previous month) the connotation of "Retirement on 1-4-95" occurring in the O.M. dated 14-7-95, should, therefore, necessarily be construed as premature/voluntary retirement which always falls on the first day of the month immediately falling the notice period of three months, the time of actual relinquishment of the charge of the office, whether it fell on the forenoon or afternoon of 1-4-95 thus, has no bearing at all on the ~~xxx~~ entitlement of a Government servant who retired on 1-4-95. Moreover, the date of effect of the O.M. i.e., 1-4-95 is a cut off date recommended by the Central pay commission which was accepted and given effect to by the Government of India, purely on considerations of financial feasibility, and has no connection what soever with the subtleties/intricacies of the basic rules governing the retirement of Civil servants as enunciated in CCS (Pension) Rules 1972. This being the position, the fact that I was relieved on the forenoon of 1-4-95, drew pension for 1-4-95 and not pay and allowances, does not constitute a bar on my entitlement for any pensionary benefit including gratuity accruing as a result of upward revision which took effect from the same date i.e., 1-4-95.

In this connection, it may not be out of place to mention Sir, that the above view was ~~upheld~~ upheld by the apex court also while deciding a case of analogous nature (S. Benerjee versus Union of India and others). The honourable Supreme Court of India, in their landmark judgement delivered on 24-10-89 held that the petitioner who voluntarily retired from service on the

~~Retirement on 1-4-95~~

Believed to be Review (Contd...3)

For a noon of 1-1-86 was entitled to the revised pensionary benefits as recommended by the IV Central Pay Commission and were given effect to from the same date i.e., 1-1-86. A Copy of the Supreme Court Judgement in the above case is enclosed for your kind perusal.

In an yet another and strikingly similar case, the Central Administrative Tribunal, Hyderabad, while disposing of the CA No. 647/96 filed by one Sri T. Krishna Murthy who also voluntarily retired from service on the fore noon of 1-4-95, took into cognizance the judgement of the Supreme Court referred to in the foregoing paragraph and ordered payment of arrears of enhanced gratuity mainly relying on the Supreme Courts observation that a Government Servant who demitted office on the first day of a month cannot be stated to have severed all his connections with his employer on the proceeding day (that day being his last working day not withstanding). A Copy of the judgement delivered by the CAT Hyderabad is also enclosed for your examination.

In view of my above submission, I humbly pray the PMG, to kindly examine my case in an analytical manner in the light of the observations made by the Supreme Court and also the CAT Hyderabad and do justice to me by extending benefits of the D.M dated 14-7-95.

Awaiting your kind and pragmatic decision.

Yours faithfully,

Guduru(Krishna)

9-2-1997.

(R. SUBBA RAO) 7/2/97

~~Copy to Mr. D. V. R. Rao for information and any favourable action.~~

AW LETTER NO. 2844/DEM-IV/C.M.21/95-96.
Dtd. 25.2.96 recd.

C/Sr.

Shri. Vithay
Counsel.

T. V. R. Sathyanarayana

Murthy Murthy: Advocate

Hyd. P.O. information. Sh. J. will be
contacting you soon to seek further
in the matter.

7/2/97

Annexure - A 13 P. 28

Extract of Judgment of the Supreme Court. - from Swamy's CL Digest. Vol. IV/1991 P. 170

4. Employee voluntarily retired with effect from forenoon of January 1, 1986, entitled to benefit of IV CPC recommendations.— The petitioner was permitted to retire voluntarily from the service of the Registry of the Supreme Court with effect from the forenoon of January 1, 1986. After his retirement the Fourth Central Pay Commission gave its report recommending the revision of salaries and pension of the Government employees. Under para. 17.3 of the report, the benefits recommended were available to the employees who retired during the period, January 1, 1986 to September 30, 1986. The petitioner claimed the benefit of the recommendations as contained in para. 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 Central Civil Service (Pension) Rules, 1972, and hence he must be deemed not to have retired on January 1, 1986, to claim the benefit of the Fourth Pay Commission recommendations. Aggrieved by this order he filed the present writ petition under Article 32 of the Constitution before the Supreme Court.

Held: The question that arises for consideration is whether the petitioner has retired on January 1, 1986. It is clear from the order of the Chief Justice, dated December 6, 1985, that the petitioner was allowed to retire voluntarily from the service of the Registry of the Supreme Court with effect from the forenoon of January 1, 1986. It is true that in view of the proviso to Rule 5 (2) of the CCS (Pension) Rules, 1972, the petitioner will not be entitled to any salary for the day on which he actually retired. But that has no bearing on the question as to the date of retirement. Can it be said that the petitioner retired on December 31, 1985? The answer must be in the negative. Indeed, learned counsel for the respondents frankly conceded that the petitioner could not be said to have retired on December 31, 1985. It is also not the case of the respondents that the petitioner had retired from the service of this Court on December 31, 1985. Then it must be held that the petitioner had retired with effect from January 1, 1986. It may be that the petitioner had retired with effect from the forenoon of January 1, 1986; that is to say, as January 1, 1986 had commenced the petitioner had retired. But, nevertheless, it has to be said that the petitioner had retired on January 1, 1986 and not on December 31, 1985. In the circumstances, the petitioner comes within the purview of para. 17.3 of the recommendations of the Fourth Pay Commission.

In the circumstances, the writ petition was allowed and the respondents are directed to calculate and pay to the petitioner his pension in accordance with the recommendation of the Pay Commission as contained in para. 17.3.

[S. Banerjee v. Union of India and others, (1991) 17 ATC 177 (SC), date of judgment 24-10-1989.]

Swamy
Counsel.

3. The applicant submitted that he was retired only on the Forenoon of 1.4.95 and hence his pensionary benefits have to be paid to him on the basis of the rules in existence as on 1.4.95. The 7th Pay Commission enhanced the basic pay adding 95% of the Dearness Allowance on basis of which final settlement dues to its employees who retired from service on or after 1.4.95 has to be paid. In view of the above rule position, he submits that he is entitled for enhanced DCRG fixing his basic pay by adding 95% of the Dearness Pay to his basic pay drawn on that date. He has submitted a calculation slip at Annexure A7 stating that 95% of his Dearness Pay as on 1.4.95 works out to Rs.1940/- and when this is added to his basic pay of gratuity is Rs.3940/- and on that basis he is entitled to DCRG amount of Rs.65,010/-. But his dearness pay was taken only as Rs.400/- which was in force on 31.3.95 and on that basis his DCRG was calculated and he was paid Rs.39,600/-. Hence he is entitled for arrears of Rs.25,410/- as DCRG payable to him as he retired on the Forenoon of 1.4.95 and on that date the enhancement of DCRG as recommended by the 7th Pay Commission has been accepted by the Govt. of India in terms of OM No.7/1/95-P&PW (P) dated 14.7.95 (Annexure A6).

4. The applicant relies on the judgement of the Apex Court annexed at Annexure A12 to state that he was in service on the Forenoon of 1.4.95 and hence the accepted recommendation of the 7th Pay Commission in regard to payment of higher gratuity is applicable to him. He also relies on Note 3 under FR 66 (page 266 of Swamy's Compilation of FRs Part-IX, 1993 Edition) to state that he actually retired on 1.4.95 and hence the accepted recommendation of the 7th Pay Commission in regard to the gratuity as indicated above is applicable to him. He submitted representation for paying him arrears of gratuity as indicated above. But those representations were rejected stating that he retired on 31.3.95 and hence he is not entitled for getting DCRG as recommended by the 7th Pay Commission and accepted by the Government which came into force from 1.4.95.

contdd...

33

Annexure-A14 P. (29)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD
D.A.NO.647/96

Between:

T.Krishna Murthy

Date of Order: 5th Aug, 96.

And :

...Applicant

1. The Secretary, Dept. of Posts,
Oak Bhawan, New Delhi - 110 001.
2. The Senior Superintendent of Post Offices,
Nellore Division, Nellore 524 001.
3. The Postmaster General,
Vijayawada Region,
Vijayawada - 520 002.
4. The Secretary, Min. of Personnel,
Public Grievances & Pensions,
Dept. of Pension & Pensioner's Welfare)
III Floor, Lakshyak Bhawan,
Khan Market, New Delhi.

...Respondents.

Counsel for the Applicant : Mr. J.V.V.S. Murthy

Counsel for the Respondents : Mr. N.V. Raghava Reddy, Addl. CGSC.

CORAM:

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (A)

THE TRIBUNAL MADE THE FOLLOWING ORDER:

(AS PER SHRI R. RANGARAJAN : MEMBER (A)).

1. Heard Shri T.V.V.S. Murthy, learned counsel for the applicant and Shri N.V. Raghava Reddy, learned standing counsel for the respondents.

2. The applicant who was working as Assistant Post Master (Accounts) in the Kanchi Post Office submitted a notice for voluntarily retiring him from service dated his notice dated 1.1.95 (Annexure I). He was permitted to retire voluntarily on the Forenoon of 1.4.95 vide PMG letter No. ST 1/21-5/C/52 dated 31.1.95 (Annexure-II). His pension and pensionary benefits were settled on the basis of the rules in existence as on 31.3.95 stating that date as his last day of working in service.

contd...

services. On that basis only R-3 has issued the memo dated 31.1.95 (Annexure A2) permitting him to retire voluntarily on 1.4.95 F/M. If he had severed his connection with the Govt. on 31.3.95, he could have been allowed to retire voluntarily on the afternoon of 31.3.95. But the order is very clear that the applicant was permitted to retire voluntarily on 1.4.95 forenoon thereby meaning that he severed his relationship with the Government on 1.4.95. In that view, the applicant is eligible to get DCRG with effect from the forenoon of the nominated date, the orders for higher payment of DCRG have already come into force from 1.4.95 F/M and as on 1.4.95 the applicant was in service he is entitled to get higher DCRG as the orders of Govt. of India.

8. The applicant relies on the judgement of the Supreme Court annexed as Annexure A 12 to the OA. In that Writ Petition also the petitioner therein was permitted to retire voluntarily from the Registry of the Supreme Court with effect from the forenoon of January 1, 1986 (emphasis added). The petitioner in that Writ Petition requested for payment of salaries and pension as per the accepted recommendations of the 10th Pay Commission incorporated in para 17.3 of the 10th Pay Commission's report. But that he had retired on 31.12.85 and not on 1.1.86 and hence he was not entitled to the benefits recommended by the 10th Pay Commission in para 17.3 of the report and accepted by the Govt. of India. But the Supreme Court had held that the petitioner had retired from service from 1.1.86 and hence he is entitled for higher benefits of the 10th Pay Commission's report. The direction of the Supreme Court in that WP is reproduced below:

"The question that arises for consideration is whether the petitioner has retired on January 1, 1985. It is clear from the order of the Chief Justice, dated December 6, 1985, that the petitioner was allowed to retire voluntarily from the service of the Registry of the Supreme Court with effect from the forenoon of January 1, 1986. It is true that in

contd...

5. Apprised by the above reply, he filed this 3. For availing an amount of Rs.25,410/- as the balance of retirement gratuity admissible to him in terms of the Govt. of India memo quoted above with interest @ 10% per annum.

6. The main contentions of the respondents are as follows:--

(i) The applicant retired on 31.3.95 and he was not in service on 1.4.95. Hence he is entitled for payment of gratuity as per the rules that were in force on 31.3.95.

The recommendation of the 6th Pay Commission which was accepted by the Govt. of India in terms of the Memo quoted above came into force on 1.4.95 and as on that date the applicant was not in service and hence he cannot claim extra DCRS as per the above Govt. of India orders.

(ii) Relying on RR 56 (4), the learned counsel for the respondents submitted that the applicant was retired from service on the afternoon of the last day of the month in which he attained the age of 50 years. He submits further that the applicant's service existed only on the last day of the superannuation or last day of the notice period expiring for voluntary retirement.

7. The first point to be considered in this case is whether the applicant was in service as on 1.4.95 or not. The applicant did his full service on 31.3.95 and this had been admitted by the learned standing counsel for the respondents also. But the learned standing counsel for the respondents submitted that the applicant was not in service after the closure of the office hours on 31.3.95. When the applicant had worked fully on that day on 31.3.95, whether he could have severed his connection on that date or not is to be considered in view of the above submission of the respondents. When he has worked fully on that day, it cannot be said that he severed his connection with the Government on that day. The applicant will sever his connection with the Government only from the beginning of the next day when he is no more in

contd...

38

A-14 P. (34)

...6...

"Except as otherwise provided in this rule, every Government 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."

11. From the above rule it is evident that the employees have to be retired on the last working day. But this rule does not indicate that the employer-employee relationship is severed on that day. As observed earlier, the applicant worked for the full day on 31.3.95 and discharged his duty on that day. Hence if the employer-employee relationship did exist on 31.3.95 he could have deemed to have demitted the office only on the F/M of 1.4.95 and hence the relationship was broken and severed from 1.4.95. Whenever relationship is severed as above, it can be taken as severance of the connection on the forenoon of that day i.e., on the forenoon of 1.4.95 in this case. On that service on the forenoon of 1.4.95, FR 56(a) indicates only the date of retirement from service and not the severance of relationship on the last working day. There is no rule to show that the last working day has to be deemed to be the day of breaking of employer-employee relationship. This interpretation is in consonance with the FR 56. The interpretation as submitted by the learned standing counsel in para 6(iii) supra cannot be upheld in view of what is stated above.

12. The learned counsel for the applicant submitted that in terms of Note 3 under FR 56 the three months' notice period starts from 2.1.95 only as he had submitted his notice of voluntary retirement on 1.1.95. As per this note, three months' period should be calculated from 2.1.95 ignoring the date on which he submitted his notice of voluntary retirement. This note reads as follows:-

"In computing the notice period of three months referred to in clauses (j) to (m), date of service of the notice and the date of its expiry shall be excluded."

contd...

A.14

P.39

...5...

view of the proviso to rule 5(2) of the CCS (pension) Rules, 1972, the petitioner will not be entitled to any salary for the day on which he actually retired. But that has no bearing on the question as to the date of retirement. Can it be said that the petitioner retired on December 31, 1985? The answer must be in the negative. Indeed, learned counsel for the respondents frankly conceded that the petitioner could not be said to have retired on December 31, 1985. It is also not the case of the respondents that the petitioner had retired from the service of this Court on December 31, 1985. Then it must be held that the petitioner had retired with effect from January 1, 1986. It may be that the petitioner had retired with effect from January 1, 1986. It may be that the petitioner had retired with effect from the forenoon of January 1, 1986; that is to say as January 1, 1986, had commenced the petitioner had retired. But, nevertheless, it has to be said that the petitioner had retired on January 1, 1986 and not on December 31, 1985. In the circumstances, the petitioner comes within the purview of para 17.3 of the recommendations of the Fourth Pay Commission.

9. In the present case also, the prayer of the applicant is similar to the prayer of the petitioner in the writ petition referred to above. Here also the applicant retired on the forenoon of 1.4.96 and hence for the reasons given by the Apex Court, the applicant herein also is entitled for the benefits as per the recommendations of the 4th Pay Commission in regard to the payment of gratuity. The views expressed by me as above in para 7 supra is in consonance with the directions given by the Supreme Court in the writ petition referred to above.

10. The second contention of the respondents is that the applicant had to be retired on 31.3.95 in view of FR 56(4). FR 56(4) is reproduced below for clarification:-

contd...

It is evident from the above note that the date on which he submitted his voluntary retirement notice should not be counted for the purpose of counting three months' notice period. It has to start from 2.1.95. If so, the applicant should be retired on the Afternoon of 1.4.95. Hence, he is entitled for the higher gratuity in accordance with the rule in force on that date.

13. The last contention raised by the respondents' counsel is whether the applicant can be treated as in service on 1.4.95. As the employer-employee relationship was severed on the Forenoon of 1.4.95, it has to be held that he was in service on the Forenoon of 1.4.95 but he is not entitled for pay for the Forenoon of 1.4.95 as he was not affectionately discharged any duty on that date.

14. The learned counsel for the applicant submitted that the applicant is entitled for interest on the arrears of the DCRG to be paid in pursuance of the above direction. I do not consider it a fit case to award any interest in view of the fact that the interpretation of the rule was given only by this order and the interpretation as given by the respondents cannot be treated as wrong and as they were under the genuine impression that the relationship is secured on 31.3.95. In that view the applicant cannot claim any interest on the arrears of DCRG.

15. In the result, the following direction is given:-
The applicant is entitled to

The applicant is entitled for DCRG in accordance with the P.M.NO.7/1/95-P&U(P) dated 14.7.95 (Annexure-A6). The arrears of DCRG have to be paid to him within a period of three months from the date of receipt of a copy of this order.

15. The G. is ordered accordingly. No costs.

Sd/-x x x
D. J. J. REGISTRAR (J)

Donna Murphy
Council

Samudra 4/9/96.
T. V. V. SATYANARAYANA MURTHY
ADVOCATE M.A., LL.B.
No. B-361, Phase II, Residential Complex
VINEETHALIPURAM,
HYDERABAD - 500020.
Phone No. 088.

(40)

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

Original Application No. 1235/97

DATE OF DECISION: 24-9-97

R. Subba Rao-----Petitioner(s)

TVVS Murthy-----Advocate for the
Petitioner(s)

Versus

Union of India, rep. by Secy.,
Dept. of Posts, Dak Sadan, New Delhi & 2 others
-----Respondent(s)

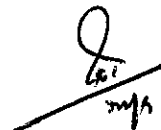
V. Vinodkumar-----Advocate for the
Respondent(s)

THE HON'BLE SHRI H. Rajendra Prasad, Member (Admn.)

THE HON'BLE SHRI

1. Whether Reporters of local papers may be allowed to see the judgement? No.
2. To be referred to the Reporter or not? No.
3. Whether their Lordships wish to see the fair copy of the Judgement? No.
4. Whether the Judgement is to be circulated to the other Banches? No.
av1/

Judgement delivered by Hon'ble Shri H. Rajendra Prasad, M(A)


H.R.P.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA.1235/97

dt.24-9-97

Between

R. Subba Rao

: Applicant

and

1. Union of India, rep. by
Secretary
Dept. of Posts, Dak Sadan
New Delhi 110001

2. The Supdt. of Post Offices
Machilipatnam Division
Machilipatnam 521001

3. Postmaster-General
Viajayawada Region
Viajayawada 520002

: Respondents

Counsel for the applicant

: TVVS Murthy
Advocate

Counsel for the respondents

: V. Vinod Kumar
CGSC

Coram

Hon. Mr. H. Rajendra Prasad, Member (Admn.) *[Signature]*

OA.1235/97

dt.24-9-97

Judgement

Oral order (per Hon. Mr. H. Rajendra Prasad, Member(Admn.))

Heard Sri T.V.V.S. Murthy for the applicant. None was present on behalf of the respondents. The details of the case were gone into on the basis of the record before me.

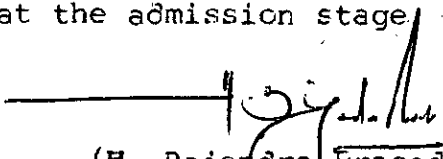
1. It is seen that the facts of this case are covered and identical to the facts in OA.647/96 which was disposed of by this Bench on 5-8-1996.

2. The following direction is therefore issued:

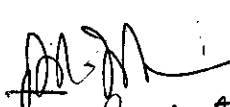
The applicant is entitled for DCRG in accordance with CM 7/1/95-P&W(P) dated 14-7-95 (Annexure-A.9). The arrears of DCRG shall be paid to him within a period of three months from the date of receipt of copy of this order.

3. The above action should infact have been taken by the respondents on receipt of orders in OA.647/96 since the facts in the present case are identical. For some reason the respondents have virtually driven the applicant to approach this Tribunal for a relief which should have been forthcoming without his having to do so in the first instance. It has to be held therefore that there is a needless delay in the settlement of his claim, for which the applicant shall be entitled to receive interest on the arrears due to him. The respondents are therefore directed to add 10% interest on the amount of arrears from the date ~~they~~ became due till the date of actual disbursement.

4. Thus the OA is disposed of at the admission stage.


(H. Rajendra Prasad)
Member(Admn.)

Dated : Sept. 24, 97
Dictated in Open Court


Deputy Registrar

-3-

O.A.1235/97.

To

1. The Secretary, Union of India,
Dept.of Posts, Dak Sadan, New Delhi-1
2. The Supdt.of Post Offices,
Machilipatnam Division,
Machilipatnam-1.
3. The Postmaster General,
Vijayawada Region, Vijayawada-2.
4. One copy to Mr.T.V.V.S.Murthy, Advocate, CAT.Hyd.
5. One copy to Mr.V.Vinod Kumar, Addl.CGSC. CAT.Hyd.
6. One copy to HHRP.M.(M) CAT.Hyd.
7. One copy to D.R.(A) CAT.Hyd.
8. One spare copy.

pvm.

6/10/97

I Court.

TYPED BY:

CHECKED BY:

COMPARED BY:

APPROVED BY:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE.
VICE-CHAIRMAN

And

THE HON'BLE MR. H. RAJENDRA PRASAD : M(A)

DATED:-

24/9/97

~~ORDER~~/JUDGMENT.

M.A../RA../C-A.No..

in

O.A.No.

1235/97

T.A.No.

(W.P.)

Admitted and Interim directions issued,

Allowed

Disposed of with Directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected

No. order as to costs.

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal बेचन/DESPATCH 6 OCT 1997 हैदराबाद न्यायपीठ HYDERABAD BENCH
--

From

T.V.V. S. Murthy, M.A., L.L.B.,
Advocate, B-361, Phase II,
Residential complex,
Vanabhalipuram, Hyderabad - 500070.

To

The Registrar,
Central Administrative Tribunal,
Hyderabad Bench at Hyderabad - 4.

Sir,

Sub: - Request for despatch of the copies
of O.A. No. 1235/97 filed by Sri
R. Subbarao to the Respondents.

O.A. No. 1235/97 filed by Sri R. Subbarao
was disposed of on 24-9-97 at the admission
stage. While despatching the copies of the
order dt 24-9-97, copies of the O.A. were reported
to have been not ~~be~~ sent to the Respondents.
The applicant reports that the Respondents
are not implementing the order. It is
requested that copies of the O.A. may kindly
be arranged to be sent to the Respondents
early.

Yours faithfully,

S. Murthy
(T.V.V. S. Murthy)
Counsel for the Applicant

P.L. supply
copy of order.

Hyderabad
21.11.97

O.A. copies
sent on
21/11/97. by post.
21/11/97.