

THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH : JAIPUR.

ORIGINAL APPLICATION NO. 217/2000

May 2004 sel
In
30/4

30/4/2004

Date of Decision : _____

Dr. Balwant Singh : Applicant.

Mr. Ishwar Jain : Advocate for the applicant.

Versus

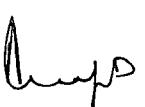
Union of India & Ors. : Respondent.

Mr.L.N.Boss for R-1 and : Advocate for the Respondents
Mr.U.D.Sharma for R-2 :

CORAM

The Hon'ble Mr.Justice G.L.Gupta, Vice-Chairman,
The Hon'ble Mr. A.P.Nagrath, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordship wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?


(A. P. NAGRATH)
MEMBER (A)


(G.L.GUPTA)
VICE-CHAIRMAN

THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Date of Decision : 05.05.03

ORIGINAL APPLICATION NO.217/2000

Dr.Balwant Singh s/o Sardar Moola Singh Roplioa, Opp.
Electricity Board, Post Office Jyoti Nagar,Jaipur – 302 005 (Raj.).

...Applicant.

Versus

1. The Union of India through Secretary to the Govt. of India, Ministry of Personnel, Pub. Grievances & Pension, Department of Personnel & Training, North Block, New Delhi.
2. The State Govt. of Rajasthan through Chief Secretary, Rajasthan Secretariat, Jaipur.

...Respondents.

Mr.Ishwar Jain counsel for applicant,
Mr.L.N.Boss counsel for Respondent No.1,
Mr.U.D.Sharma counsel for Respondent No.2.

CORAM

Hon'ble Mr.Justice G.L.Gupta, Vice-Chairman,
Hon'ble Mr.A.P.Nagrath, Administrative Member.

: O R D E R :

(Per Hon'ble Mr.Justice G.L.Gupta)

Applicant who was a Member of Indian Police Service, Civil Defence & Home Guards retired as Director General of Police, Home Guards Rajasthan, Jaipur in the afternoon of 31.3.1995 and was paid Gratuity of Rs.1,00,000/- in terms of the extant Rules. His case is that he is entitled to the enhanced Gratuity of Rs.2.5 lacs which was made payable to the persons who retired on or after 1.4.1995.

2. It is averred that a Full Bench of this Tribunal sitting at Mumbai while deciding O.A. Nos.459/97 and 460/97 -



Venkataram Rajagopalan and Mukund Anant Paranjpe Vs. Union of India & Ors, has held on 15.10.1999 that the persons retiring in the afternoon of 31.3.1995 are entitled to the enhanced Gratuity as their retirement, in fact, takes effect from 1.4.1995. It is prayed that the respondents be directed to give enhanced Gratuity amount to the applicant along with interest.

3. In the counter, the Respondents have come out with the case that the applicant had retired on 31.3.1995 and his retirement cannot be considered to have taken effect from 1.4.1995 and therefore, he is not entitled to the enhanced Gratuity. It is stated that the decision rendered by the Full Bench in Venkataram Rajagopalan & Anr. (supra) has been stayed by the High Court of Judicature at Mumbai. It is the further objection of the Respondents that this application has been filed after the expiry of period of limitation prescribed for filing the O.As, and hence liable to be dismissed on this ground alone.

3.1 In the additional reply, it is averred that under F.R. 56 a Government Servant retires on the last day of the month in which he attains the age of 60 years and since the applicant had attained the age of 60 years and had retired on 31.3.1995 he cannot have the benefit of the enhanced Gratuity.

4. We have heard learned counsel for the parties and perused the documents placed on record.

5. Mr. M.K.Sharma, learned counsel for the applicant relying on the decision in the case of Venkataram Rajagopalan & Anr. (supra) decided on 15.10.1999 contended that the applicant is



entitled to the Gratuity amount of Rs. 2.5 lacs in terms of the Government of India order dt. 14.9.1995 read with order dt. 14.7.1975.

6. On the other hand, Mr. U.D.Sharma, learned counsel for Respondent No.2 contended that the Full Bench decision of the Mumbai Bench of the Tribunal ha been stayed by the High Court of Judicature at Mumbai and therefore, the decision is not binding on this Bench. Relying on the case of S.Banerjee Vs. Union of India & Ors. (1990 (1) SLR SC 855), he canvassed that the applicant having retired on 31.3.1995 cannot have enhanced Gratuity.

7. We have given the matter our thoughtful consideration. The question referred to the Full Bench was as follows:-

"Whether a Government servant completing the age of his superannuation on 31.3.1995 and relinquishing charge of his office in the afternoon of that day is deemed to have retired from service on superannuation with effect from 31.3.1995 itself or with effect from 1.4.1995".

7.1. After considering the arguments advanced by both sides, the Full Bench answered the question as follows:-

"A Government servant completing the age of superannuation on 31.3.1995 and relinquishing charge of his office in the afternoon of that day is deemed to have effectively retired from service with effect from 1.4.1995."

8. It is significant to point out that the relief claimed in that O.A. was identical as has been claimed in the instant case. In that case, the applicants were the Chief Accounts Officers and had retired on 31.3.1995 on attaining the age of superannuation. They were granted the Gratuity of Rs.1,00,000/- only because they were not on service on

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1.4.1995. The Tribunal held that the applicants' therein were in service till the mid-night of 31.3.1995 and therefore, retirement took place from 1.4.1995.

9. It has to be accepted that in view of the decision of the Full Bench, the applicant herein is entitled to the benefit of higher Gratuity in terms of the Government of India order dt. 14.7.1995 read with order dt. 14.9.1995.

10. Now the question for consideration is whether the applicant can be denied the benefit on the contentions raised by the respondents counsel viz. 1) the application has been filed after the expiry of period of limitation, 2) the Bombay High Court has granted stay on the order of Full Bench.

11. As to the first contention, it may be stated that the order dt. 14.7.1995 enhancing the amount of Gratuity w.e.f. 1.4.1995 was issued after the retirement of the applicant. The applicant did not have an opportunity to go through the Government orders issued after his retirement. It is not the case for the respondents that the retired Government servants are also sent copies of the orders which are beneficial to the retirees. It is averred by the applicant that he learnt about the decision of the Central Administrative Tribunal, Mumbai through Newspapers and then he wrote letters Annexures - A-3, A-4 and A-5 to the Respondents, but there was no positive response from the Respondents.

11.1. In view of the fact that the applicant had already retired on before the issuance of the Government order enhancing the Gratuity it cannot be accepted that the cause of action arose to

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the applicant when the Government of India order dt. 14.9.1995 was issued. The applicant had no opportunity to see the contents of the order dt. 14.9.1995. The cause of action, as rightly argued on behalf of the applicant, arose to the applicant when he came to know about the decision of the Full Bench by Mumbai Bench of the Tribunal through Newspapers. Thereafter, the applicant made representations and when his representations were not accepted and a reply at Annexure A-6 dt. 14.12.1999 was sent to him that the matter was pending consideration of the Government of India, it is evident that the cause of action arose to him.

11.2. The applicant filed this OA on 17.5.2000 and therefore, it cannot be said that the O.A. was filed after the expiry of period of limitation.

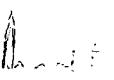
12. As to the second contention, it may be stated that the Bombay High Court has not finally decided the matter. As long as the Judgment of the Full Bench of this Tribunal is not set aside by the High Courts or the Supreme Court it is binding on this Bench of the Tribunal and the applicant cannot be denied the benefit of the order dt. 14.7.1995 read with order dt. 14.9.1995 on the ground of the stay of the Bombay High Court.

13. As to the case of S.Banerjee (supra), it may be stated that it was not the point in issue before their Lordships as to whether the retirement in the afternoon of the last date of the month takes effect from the forenoon of the following day. The question involved in that case was whether the employee retiring voluntarily in the forenoon of the first day of the month was

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entitled to the benefit allowed vide order issued and made effective from that day. Thus, the decision does not assist the respondents.

14. Consequently, the O.A. is allowed. The Respondents are directed to release the remaining amount of Gratuity to the applicant which falls short of Rs.2.5 lacs. The amount is directed to be paid within two months from the date of the communication of this order. In the facts and circumstances of the case, it may not be proper to allow interest to the applicant. Costs shall also be easy.


(A.P.NAGRATH)
MEMBER(A)


(G.L.GUPTA)
VICE-CHAIRMAN

B.