

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 21.10.03

1. Original Application No. 197/2001.

Chandanmal Devnani, aged 64 years, s/o Shri Nathirmal Devnani, resident of 1/9, Saket Nagar, Beawar (Raj.), Ajmer District.

... Applicant.

V e r s u s

1. Union of India through the Director General of Posts, Ministry of Communications, Dak Bhawan, Sansad Marg, New Delhi 110 001.
2. Secretary, Department of Posts, M/o communication, New Delhi.
3. Superintendent of Post Offices, Beawar Division, Beawar (Raj.-Ajmer Distt).

... Respondents.

2. Original Application No. 198/2001.

Badrilal Sharma, aged 64 years, S/o Mr. Nathmalji, Plot No. 14, Basant Vihar Colony, Delwara Road, Beawar (Rajasthan).

... Applicant.

V e r s u s

1. Union of India through the Chairman, Ministry of Railways, Railway Board, Rail Bhawan, New Delhi.
2. The General Manager, Western Railway, Churchgate, Mumbai.
3. Dy. Chief Accounts Officer, (Traffic Accounts) Western Railway, Ajmer.

... Respondents.

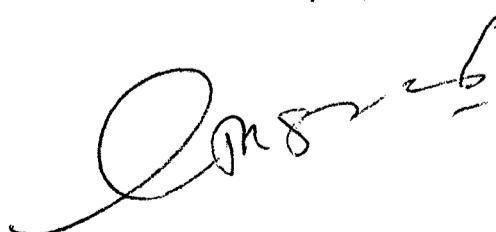
Mr. P. V. Calla counsel for the applicants in both the OAs.

Mr. Arun Chaturvedi counsel for the respondents in OA No. 197/2001.

Mr. U. D. Sharma counsel for the respondents in OA No. 198/2001.

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Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.

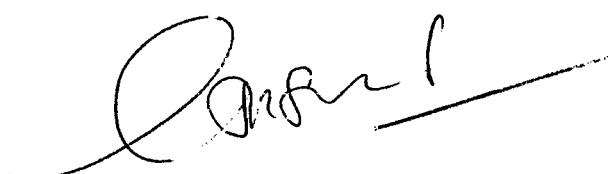


: O R D E R :
(per Hon'ble Mr. G. L. Gupta)

Identical question of law is involved in both the above mentioned cases and, therefore, they have been heard together and are being disposed of by this common order.

2. Applicant Chandanmal Devnani was a Senior Post Master and he retired from service on 31.03.1995 on attaining the age of 58 years. Applicant Badri Lal Sharma, was a Senior Sectional Officer in the Railways and retired on 31.03.1995 on attaining the age of 58 years. Though both the applicants had attained the age of 58 years earlier to March 31,1995, yet they continued to serve upto 31.03.1995 in terms of FR 56 (a). they were paid retirement gratuity in terms of Office Memorandum dated 19.10.1993 and RBE No. 167/1993 dated 25.11.1995. After their retirement, the Government of India issued Office Memorandum dated 14.07.1995 and the Railway Board also issued orders vide letter dated 08.08.1995 in terms of Government of India OM dated 14.07.1995. The said OM/Letter provided that the ceiling of gratuity was enhanced to Rs.2.5 Lakhs and that the Dearness Allowance, to be added to the pay for calculating DCRG, would be 97% of pay for the persons drawing pay upto Rs.3,500/-. It may be pointed out that under the 1993 orders, the Dearness Allowance to be added was only 20%. The applicants, therefore, represented to the authorities to grant the remaining amount of gratuity i.e. 77% of their pay. Since their request was turned down, they have approached this Tribunal by filing the instant OAs. It has been prayed that the respondents be directed to treat the effective date of retirement of the applicant as forenoon of 01.04.1995 and allow them the benefit of 97% Dearness Allowance in terms of Government of India OM dated 14.07.1995 and the Railway Board's letter dated 08.08.1995.

3. The respondents have resisted the claims of the applicants mainly on the ground that the applications are barred by limitation, as they have been filed in the year 2001, whereas the alleged cause of action arose in the year 1995. It is averred that the applicants stood retired on 31.03.1995 and, therefore, they were not entitled to the benefit of the Government of India Memorandum dated 14.07.1995/Railway Board's Letter dated 08.08.1995. It is further stated that



though the Bombay Bench of this Tribunal in similar cases has held in favour of retired persons but that judgement has been stayed by the Nagpur Bench of the Bombay High Court.

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

5. Mr. Calla, learned counsel for the applicants, pointing out that the Bombay Bench of this Tribunal in the cases of Venkatram Rajagopalan and Mukund Anant Paranjpe vs. Union of India and Others (O.A. No.s. 459/97 and 460/97 – decided on 15.10.1999), has held that persons retiring on attaining the age of superannuation, in the afternoon of 31.03.1995 shall be deemed to have retired from service in the forenoon of 01.04.1995, contended that the reliefs claimed in the instant OAs should be allowed. His further contention was that the Government of India Memorandum dated 14.07.1995 and the Railway Board's letter dated 03.08.1995 had been issued after the date of retirement of the applicants and, therefore, they could not have the knowledge of the orders stated therein and they could come to know about them only after some decisions were rendered by the Benches of this Tribunal.

6. On the other hand, Mr. U. D. Sharma, the learned counsel for the respondents contended that the claim is barred by limitation and, therefore, it should be rejected on this ground alone. He canvassed that a decision of this Tribunal in a case does not give a fresh cause of action to the Government servants and limitation cannot be counted from the date of knowledge of the decisions. He also contended that gratuity is one time payment and the principle of continuing cause of action cannot be applied. He relied on the following cases in support of his contentions : Union of India and others vs. All India Services Pensioners Association and another [1988 (3) SLJ 1] ; Indian Ex-Services League and Others vs. Union of India [1991 (1) SLR 745] ; State of Karnataka and others vs. S. M. Kotrayya and others [1996 SCC (L&S) 1488] ; Jacob Abraham and others vs. Union of India and another [1994 (4) SLR 806].



7. I have given the matter my thoughtful consideration. The question referred to the Full Bench in the case of Vankataram Rajagopalan (supra) was as follows :-

" Whether a Government servant completing the age of his superannuation on 31.03.1995 and relinquishing charge of his office in the afternoon of that day is deemed to have retired from service on superannuation with effect from 31.03.1995 itself or with effect from 01.04.1995."

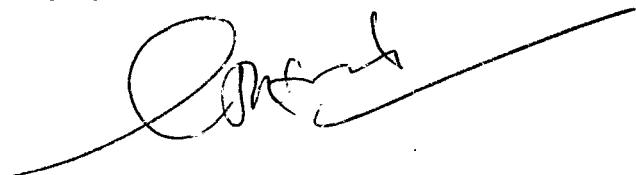
7.1 After hearing the arguments advanced by both the sides, the Full Bench answered the question as follows :-

" A government servant completing the age of superannuation on 31.03.1995 and relinquishing charge of his office in the afternoon of that day is deemed to have effectively retired from service with effect from 01.04.1995."

7.2 In view of the Full Bench decision, it has to be accepted that the effective date of retirement of both the applicants was the forenoon of 01.04.1995 and not 31.03.1995.

7.3 It has to be accepted that in view of the Full Bench decision, both the applicants are entitled to the gratuity in terms of Government of India OM dated 14.07.1995 and Railway Board's letter dated 08.08.1995. A Division Bench of this Tribunal in Dr. Balwant Singh vs. Union of India and another [O.A. No. 217/2000-decided on 05.05.2003, has also held that the benefit of Government of India's OM dated 14.07.1995 is available to all the Government servants who retired in the afternoon of 31.03.1995. There is no cause to take a view different than the one taken by the Full Bench and the Division Bench stated above.

8. Now the question for consideration is whether the applications are liable to be dismissed on the ground that they have been filed beyond the period of limitation.



8.1 It is admitted position that the OM/letter enhancing the gratuity and enhancing the D.A. percentage for calculation of DCRG were issued after the date of retirement of the applicants. The applicants, therefore, did not have an opportunity to go through the orders of the Government of India or the letter of the Railway Board issued in July/august 1995. It is not the case for the respondents that the Government had also sent copies of the OM dated 14.07.1995 or 08.08.1995 to the applicants. When the applicants had no opportunity to know about the Government orders and when it is not the case for the respondents that they had sent copies of the OM/letter issued in July/August 1995 to the applicants, it cannot be said that the cause of action had arisen to the applicants in July/August 1995. The cause of action, would arose only after they came to know about the decisions of the Tribunal based on the OM/Railway Board's letter. In my opinion, when the applicants made representations for the enhanced gratuity after the decision of the Mumbai Bench of this Tribunal, it cannot be said that they had filed belated representations. When the respondents did not accept the representations of the applicants they had to approach this Tribunal. In such circumstances, these OAs cannot be held to be barred by limitation.

9. As to the cases relied on by Mr. Sharma, it may be stated that the fact situation in S.M. Kotrayya's case was very different. In that case, the respondents before the Supreme Court had availed of LTC benefit during the year 1981-1982, but later it was found that they had never utilized the benefit of LTC after drawing the amount. Hence recovery was made in the year 1984-1986. some of them filed applications questioning the recovery in August 1989 by filing applications before the Administrative Tribunal. The Tribunal allowed their applications. Some other Government servants on coming to know about the decision also approached the Tribunal. It is in that fact situation, the Apex Court held that the Tribunal did not have the power to extend the period of limitation. As already stated, the applicants had no opportunity to know about the Government orders issued after their retirement and the respondents have not come out with the case that they had sent copies of the Government orders to the retired persons including the applicants herein. With respects, it has to



be held that the ruling in S.M. Kotrayya's case does not apply to the instant cases.

9.1 The other three cases do not help the respondents, as they were decided on different fact situation. In none of the three cases, it was considered that whether the persons retired in the afternoon of last day of a month can be deemed to have retired in the forenoon of the first day of the next month.

10. Having considered the entire material on record, I am of the opinion that the gratuity of the applicants ought to have been calculated on the basis of the OM/letter dated 14.07.1995/08.08.1995. Hence these OAs deserve to be allowed and they are allowed. The respondents are directed to calculate the gratuity amount payable to the applicants in terms of the Government of India OM dated 14.07.1995 in respect of Chandanmal Devnani and Railway Board's Letter dated 08.08.1995 in respect of Badri Lal Sharma, and make payment of the remaining amount within a period of two months from the date of receipt of a copy of this order. In case the amount is not paid within two months the applicants will be entitled to interest at the rate of 10% per annum from the date of this order till the date of payment.

11. In the circumstances of the cases, the cost is made easy.



(G. L. GUPTA)

VICE CHAIRMAN