

30/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

✓ (DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A/T.A No..... 36/01.....
R.A/C.P No..... 24/01.....
E.P/M.A No.....

✓ 1. Orders Sheet..... Pg..... 01..... to..... 03.....
CP 24/01 ← 01

✓ 2. Judgment/Order dtd..... F-3-01..... Pg..... N.1/..... to.....

✓ 3. Judgment & Order dtd.... 14.8.01. Received from ^{att} H.C/Supreme Court ~~2000~~

✓ 4. O.A..... 36/01..... Pg..... 1..... to..... 26.....

✓ 5. E.P/M.P..... Pg..... to.....

✓ 6. R.A/C.P..... Pg..... 1..... to..... 10.....

✓ 7. W.S..... Pg..... to.....

✓ 8. Rejoinder..... Pg..... to.....

✓ 9. Reply..... Pg..... to.....

✓ 10. Any other Papers..... Pg..... to.....

✓ 11. Memo of Appearance.....

✓ 12. Additional Affidavit.....

✓ 13. Written Arguments.....

✓ 14. Amendement Reply by Respondents.....

✓ 15. Amendment Reply filed by the Applicant.....

✓ 16. Counter Reply.....

Benat 12/12
SECTION OFFICER (Judl.)

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH:GUWAHATI.5

ORIGINAL APPLICATION NO. 36/2001

Dr. Madan Mohan Sarkar Applicant.

versus

Union of India & Ors Respondents.

For the Applicant(s) Md. Adil Ahmed

For the Respondents. C.G.S.C.

NOTES OF THE REGISTRAR

DATE

ORDER

This application is in form
but not in time. Consideration
Petition is filed in this regard
M.P. 30.12.2000
for
IPO/2001/6677/913
Dated.....30.12.2000

7.2.01 Present: Hon'ble Mr. Justice D.N.

Choudhury, Vice-Chairman.
Heard learned counsel for the
parties. Issue notice on the respondents
Returnable by 4 weeks. Endeavour shall
be made to dispose of the application
at the Admission stage. List on 7.3.01
for Admission.

Vice-Chairman

lm

7.3.01

Present: Hon'ble Mr. Justice D.N.

Choudhury, Vice-Chairman.

~~Whether~~ A Government servant continues
to be born on the establishment as
~~contrary to Rule 83(1) of the Central Civil
Services (Pension) Rules 1972 ?~~

The applicant was working as
Scientist Regional Research Laboratory
Jorhat for a constituent Establishment
of CSIR. He attained the age of Super-
annuation as Deputy Director Regional
Research Laboratory with effect from
31.3.98 as sum of Rs. 1,00,000/-
(Rupees one lakh) only was sanctioned
to the applicant as retirement
gratuity, on the basis of the Central
Pay Commission the Government of
India enhanced rate maximum 1.00 lakh
to Rs. 2.50 lakhs in the office Memora-
ndum No. 7/1/95-F & PW(F) dated
14-7-1995. As per notification it was

Requisites filed

9-2-2001

Service of Notice duly
issued to the respondents
Vice D. No. 676-478 dt.

12.9.2001

Par

contd.

7.3.01

in O.A. 459/97 & 460/97
 Venkateswara Raj Gopalan
 and others v Union of India
 and others dispensation
 17.10.1999.

made applicable in the case of Central Government employees who retired or die on or after 1st April, 1995. The applicant had retired on superannuation. Accordingly the applicant claimed before the authority for giving him the retiral benefit at the enhanced rate.

Whether 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 retired from service on superannuation with effect from 31.3.1995 itself?

Whether the Government servant is entitled to the benefit of the order dated 14.7.1995 in the question is raised in the application. The issue is no longer res integra, in view of the pronouncement made by the Full Bench Mumbai, Central Administrative Tribunal in O.A. No. 459 of 97 and 460 of 97 decided on 15.10.99. Since the applicant is similarly situated and relinquished his charge of the office in the afternoon of that day is deemed to have retired from service on superannuation with effect from 31.3.1995. He is also deemed to have been on 2.2.95. The respondents are accordingly directed to provide the benefit of the O.A. No. 7/1/95-P & PW(F) dated 14.7.1995 Government of India, Ministry of Personnel, Public Grievances & Pensions (Department of Pension & Pensioners, Welfare) within a period of three months from the date of receipt of a copy of this order. In the circumstances of the case, we make no order as to costs.

The application this day is

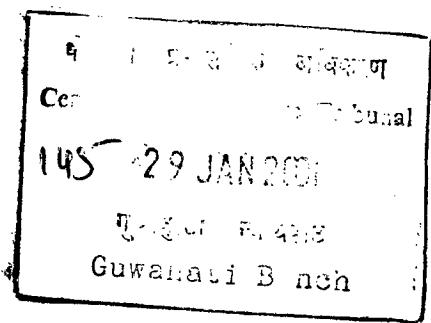
followed.

Vice-Chairman

lm

Notes of the Registry	Date	Order of the Tribunal
	7.3.01	<p>Present: Hon'ble Mr. Justice D.N. Choudhury, Vice-Chairman.</p> <p>Whether a Government servant continues to be born on the establishment as contemplated in Rule 83(1) of the Central Civil Services(Pension) Rules 1972.</p> <p>The applicant was working as Scientist Regional Research Laboratory, Jorhat for a constituent Establishment of CSIR. He attained the age of superannuation as Deputy Director Regional Research Laboratory with effect from 31.3.95 as sum of Rs. 1,00,000/- (Rupees one lakh) only was sanctioned to the applicant as retirement gratuity, on the basis of the Central Pay Commission the Government of India enhanced rate maximum 1,00 lakh to Rs. 2.50 lakhs in the office Memorandum No. 7/1/95-F & PW(F) dated 14.7.1995. As per notification it was made applicable in the case of Central Government employees who retired or dieon or after 1st April, 1995. The applicant had retired on 31.3.1993. Accordingly, the applicant claimed before the authority for giving him the retiral benefit at the enhanced rate.</p> <p>Whether 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 retired from service on superannuation with effect from 31.3.1995 itself?</p> <p>Whether a Government servant is entitled to the benefit of the Notification dated 14.7.95 ^{In question} is involved in this proceeding. The Full of the C.A.T. Mumbai Bench in O.A. 459/97 and 460/97 Venkatram RajGopalam and another Vs. Union of India and Others disposed on 15.10.1999. The Full Bench Mumbai accordingly answered the question in th</p> <p style="text-align: right;">contd/-</p>

Notes of the Registry	Date	Order of the Tribunal
	7.3.01	<p>following words :-</p> <p>"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 01-04-1995."</p> <p>Since the applicant is similarly situated and relinquished his charge of the office in the afternoon of the 31st of the March 1995, is deemed to have effectively retired from service on superannuation with effect from 1.4.1995. The respondents are accordingly directed to provide the benefit of the O.M.No. 7/1/95-F & PW(F) dated 14.7.1995 Government of India, Ministry of Personnel, Public Grievances & Pensions (Welfare) Department of Pension & Pensioners, to the applicant also within a period of three months from the date of receipt of a copy of this order. In the circumstances of the case, there shall be no order as to costs.</p> <p>The application thus stands allowed.</p> <p style="text-align: right;">h</p> <p>Vice-Chairman</p>



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.

(AN APPLICATION UNDER SECTION 19 OF THE CENTRAL
ADMINISTRATIVE TRIBUNAL ACT, 1985)

ORIGINAL APPLICATION NO. 36 OF 2001.

Dr. Madan Mohan Saikia -Applicant.

-Versus-

Union of India & Others.

-Respondents.

S.I.NO.	I N D E X	Page No.
	Particulars	
1]	Application	1 to 10
2]	Verification	--- 11
3]	Annexure-A	--- 12
4]	Annexure-B	--- 13
5]	Annexure-C	--- 14 to 16
6]	Annexure-D	--- 17 to 24
7]	Annexure-E	--- 25
8]	Annexure-F	--- 26
9]	Annexure-G	

Filed by
Advocate. (Adil AHMED)

filed by
 Dr. Madan Mohan Saikia
 (Applicant)
 Advocate
 H. N. Saikia
 (Advocate)
 2

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
 GAUHATI BENCH AT GAUHATI.

(AN APPLICATION UNDER SECTION 19 OF THE
 CENTRAL ADMINISTRATIVE TRIBUNAL ACT, 1985.)

ORIGINAL APPLICATION NO. 36 OF 2001.

B E T W E E N

Dr. Madan Mohan Saikia,
 S/o Late Jibeswar Saikia,
 Retd. Deputy Director,
 Regional Research Laboratory,
 Jorhat,
 Resident of Dwaraka Nagar,
 Udayan Path,
 P.O.-Khanapara,
 Guwahati-22.

- Applicant.

-AND-

1. The Union Of India,
 represented by the Secretary
 to the Government of India,
 Ministry of Science and
 Technology, New Delhi.

2. The Director General of
 Council of Scientific &
 Industrial Research, Rafi
 Marg, New Delhi.



3, The Director Regional Research
Laboratory, Jorhat,
P.O.-Regional Research Labora-
tory Jorhat-785006, Assam.

-Respondents.

DETAILS OF THE APPLICATION:

1. PARTICULARS OF THE ORDER AGAINST WHICH
THE APPLICATION IS MADE:

This instant application is made against non-raising the maximum limit of Gratuity amount from Rs. 1,00,000/- to Rs. 2.5 lakhs in case of the applicant as per Office Memorandum No. 7/1/95-P&PW (F) dated 14-07-1995 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Pension & Pensioners' Welfare).

2. JURISDICTION OF THE TRIBUNAL

The applicant declares that the subject matter of the instant application is within the jurisdiction of the Hon'ble Tribunal.

3. LIMITATION

The applicant further declares that the application is within limitation period prescribed under Section 21 of the Adminis-
trative Tribunal Act, 1985.

Amrit Sardar

4 FACTS OF THE CASE

Facts of the case in brief are given below:

4.1 That your humble applicant is a citizen of India and permanent Resident of Vill- Dwaraka Nagar, Udayan Path, P.O.- Khanapara, Guwahati-22, District-Kamrup, Assam. and as such, he is entitled to all the rights and privileges and protection granted by the Constitution of India.

4.2. That your applicant begs to state that he joined as Scientist-B on 3rd August 1966 at Regional Research Laboratory, Jorhat, Assam and he retired from his service as Deputy Director Regional Research Laboratory vide O.M. No. RLJ-12(50)-Estt/66 dated 01-06-1995 w.e.f. 31-03-1995. A sum of Rs. 1,00,000/- (Rupees One Lakh) only was sanctioned to the applicant as retirement gratuity amount vide O.M. No. RRLJ/Pen Case/66/95 dated 5th April, 1995.

Annexure-A is the photocopy of O.M. No. RLJ-12(50)-Estt/66 dated 01-06-1995.

Annexure-B is the photocopy No. RRLJ/Pen Case/66/95 dated 5th April, 1995.

4.3 That your applicant begs to state that he is entitled for payment of maximum limit of gratuity from Rs. 1,00,000/- (Rupees One Lakh)

monSardar

to Rs. 2.5 Lakhs (Rupees Two Lakh Fifty thousand) as per O.M. No. 771/95-P&PW(F) dated 14-07-95 issued by the Govt. of India, Ministry of Personnel, Public Grievances & Pensions (Department of Pensions and Pensioners' Welfare). The said increase of the ceiling on the maximum amount of retirement gratuity/death gratuity was raised from amount Rs. 1,00,000/- (Rupees One Lakh) to Rs. 2.5 Lakhs (Rupees Two Lakh Fifty thousand) w.e.f 1st April, 1995.

Annexure-C is the Type Copy of the O.M. No. 771/95-P&PW(F) dated 14-07-1995 issued by the Govt. of India, Ministry of Personnel, Public Grievances and Pensions, (Department of Pension and Pensioners' Welfare).

4.4 That your applicant begs to state that at he is entitle to get the maximum gratuity amount of Rs. 2.5 Lakhs instead of 1 lakh as per above said O.M. dated 14-07-1995. In this regard a judgment passed by the Mumbai full Bench, Central Administrative Tribunal in Venkataram Rajagopalan ^{459/97/460/97} versus Union of India and others in O.A. No. ^{459/97/460/97} 64/2000 dated 15-10-99 it was held by the full bench that '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 w.e.f. 01-04-1995. The applicant with his best effort could not collect the certified copy of the above judgment. But he procured the

M. S. S. S. S. S.

Type copy of the Judgment published in Swamysnews June 2000.

Annexure-D is the type copy of the judgement dated 15-10-1999 passed in O.A. No. 457460/97 ~~656000~~ Venkataram Rajagopalan Versus Union of India and others (Mumbai Full Bench) CAT.

4.4 That your applicant begs to state that after getting the said copy of the judgment dated 15-10-1999 the applicant approached before the Respondents for enhancement of his gratuity amount from Rs. Rs. 1,00,000/- (Rupees One Lakh) to Rs. 2.5 Lakhs (Rupees Two Lakh Fifty thousand) as per judgment passed by the Mumbai Full Bench, Central Administrative Tribunal in similar cases. The applicant submitted his representation on June 26, 2000, August 21, 2000 and also on 31st August 2000 before the Respondents. But the Respondents did not enhance his pension gratuity amount or disposed of the representations of the applicant. Hence, finding no other alternative the applicant approached this Hon'ble Tribunal for seeking justice.

Annexures-E, F & ~~G~~ are the photocopies of representations submitted by the applicant.

4.5 That your applicant begs to state that he is legally entitle for enhancement of the gratuity amount from Rs. 1,00,000/- (Rupees One Lakh) to Rs. 2.5 Lakhs (Rupees Two Lakh Fifty



thousand) as per judgment passed by the full Bench of Hon'ble Central Administrative Tribunal, Mumbai. The Respondents can not deprive the applicant without any reasons or causes.

4.8 That your applicant submits that he is running from pillar to post for getting enhancement of his gratuity pension amount. But till today the Respondents have not taken any action in this matter nor the Respondents have replied the Representations submitted by the applicant.

4.9 That in view of the facts and circumstances it is a fit case for interference by the Hon'ble Tribunal for getting justice to a retired Central Government employee.

4.10 That this application is filed bona fide and for the interest of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISION:

5.1 For that, the action of the Respondents for not paying the enhanced gratuity amount to the applicant is illegal, arbitrary, mala fide and violative of the principles of natural justice.

5.2 For that, the Respondents have deprived the applicant his legitimate claim of his enhancement of gratuity amount and as such

M. S. Sardar

the act of the Respondents is not maintainable in the eye of law.

5.3 For that, the Respondent have violated the fundamental rights of the applicant and as such the action of the Respondents is illegal, mala fide with a motive behind.

5.4 For that, in a similar case it was decided by the Full Bench of the Hon'ble Tribunal that a Government servant who have retired from service on 31-03-1995 shall be deemed to have effectively retired from service w.e.f. 01-04-1995 and as such, the Respondents can not deny the benefits of O.M. No. 7/1/95-P&PW(F) dated 14-07-95 issued by the Govt. of India to the applicant.

5.5 For the, in any view of the matter the action of the respondents are not sustainable in the eye of law.

The applicant craves leave of this Hon'ble Tribunal to advance further grounds at the time of hearing of this instant application.

6. DETAILS OF REMEDIES EXHAUSTED:

That there is no other alternative and efficacious remedy available to the applicant except invoking the jurisdiction of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

Mani Sadhu

14

9

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

That the applicant further declares that she has not filed any application, writ petition or suit in respect of the subject matter of the instant application before any other Court, authority, nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above the applicant most respectfully prayed that your Lordship may be pleased to admit this petition and may call for records of the case, issue rule calling upon the Respondents to show cause as to why the relief should not be given to the applicant and after hearing the parties on the cause or causes that may be shown and on perusal of records your Lordships may be pleased to grant the following relief to the applicant.

8.1 To direct the Respondents to grant the enhanced amount of gratuity pension amount from Rs. 1,00,000/- (Rupees One Lakh) to Rs. 2.5 Lakhs (Rupees Two Lakh Fifty thousand) to the applicant as per O.M. No. 7/1/95-P&PW(F) dated 14-07-1995 issued by the Govt. of India, Ministry of Personnel, Public Grievance and Pensions (Department of Pension and Pensioners' Welfare).

Monica Sardana

8.2 Cost of the application.

8.3 Any other relief/ reliefs to which the applicant is entitled under the facts and circumstances of the case and this Hon'ble Tribunal may deem fit and proper.

9. INTERIM ORDER PRAYED FOR:

Pending disposal of the Original Application the applicant most respectfully prays for an interim order directing the Respondents to pay 50% (Fifty percent) of enhanced gratuity pension amount to the applicant.

10. Application Is Filed Through Advocate.

11 Particulars of I.P.O.:

I.P.O. NO. 6G771913

Date Of Issue 30.12.2000

Issued from Guwahati

Payable at Guwahati.

12. LIST OF ENCLOSURES:

As stated above.

.. Verification.

M. S. Adhikari

VERIFICATION

I, Dr. Madan Mohan Saikia, S/o Late Jibeswar Saikia, Retd. Deputy Director, Regional Research Laboratory, Jorhat, Resident of Dwaraka Nagar, Udayan Path, P.O.-Khanapara, Guwahati-22 do hereby solemnly verify that the statements made in paragraphs 4.1, 4.4, 4.7 are true to my knowledge those made in paragraphs 4.2, 4.3, 4.4 are being matters of records are true to my information derived therefrom which I believe to be true and those made in paragraph 5 are true to my legal advice and I have not suppressed any material facts.

And I sign this verification today on this the 29th day of January, 2001.


Dr. Madan Mohan Saikia
Declarant

-12-

No. RLJ-12(50)-Estt./66

ANNEXURE-A
Fax : 0376 321158
Telex : 287204
Gram : RESEARCH
Phone : 320353, 320005, 320317

सेत्रीय अनुसन्धान प्रयोगशाला, जोरहाट (आसाम)
REGIONAL RESEARCH LABORATORY
(A CONSTITUENT ESTABLISHMENT OF CSIR)

Jorhat-785 006 (Assam)

Dated : 01.6.95

ANNEXURE-A

TO WHOM IT MAY CONCERN

It is certified that Dr. M.M. Saikia, Scientist 'F'
of this Laboratory retired after attaining the age of
superannuation w.e.f. 31.3.95. It is also certified
that Dr. Saikia has not been re-employed in this Laboratory.

(P.P. Bhattacharjee)

Deputy Director of Administration
Regional Research Laboratory
Jorhat-785 006 (Assam)

Attested
Advocate

A.R. (Pn) 10

REGIONAL RESEARCH LABORATORY JORHAT (ASSAM)

(COUNCIL OF SCIENTIFIC & INDUSTRIAL RESEARCH)
NEW DELHI

14

No. R.R.L./Pen Case / 66/95

Dated the 5th April, 1995.

To

The Controller of Administration,
Regional Research Laboratory,
JorhatPlease arrange for payment from the Consolidated fund of India,xx the sum of Rs. 1,00,000/- (Rupees One lakh only)to ~~Ex-Scientist~~ Dr. M. M. Saikia, Ex-Scientist 'F', RRL, Jorhatbeing the amount of ~~xxxxx~~ RetirementGratuity sanctioned to him **xx**

The particulars regarding his/her Identification are stated below:

Date of Birth	Father's Husband's Name	Personal Marks of Identification	HEIGHT		Race	Residence showing Village & District
			Feet Meter	In Cms		
1.4.1935	Late Jibeswar Saikia	Black mole on the right cheek	5ft.4 inch		Hindu	Dwaraka Nagar, Udayan Path, Beltola, Gauhati

2. The Gratuity is debitable to the major head, i.e. Superannuation, Allowances and Pension.

3. The acquittance of the gratuitant should be taken on the reverse of this Order with a Revenue Stamp affixed, if necessary.

4. He/She is being informed of the issue of this Order.

5. Slips bearing attested specimen signature and left/right hand thumb and finger impressions of the gratuitant and an attested copy of the photograph are enclosed.

6. The provisional payments made/outstanding dues, if any, may be adjusted at your end.

7. Please acknowledge receipt of this Order.

14/4/95

Finance & Accounts Officer

Finance & Accounts Officer, Regional Laboratory

Copy forwarded to:

(1) ~~xxxxxx~~ Dr. M. M. Saikia, Ex-Scientist 'F', RRL, JorhatHe/she should appear before the Finance & Accounts Officer, RRL, Jorhat to receive payment.

(2) E. E. E. III Section (Central Officer, for information.)

The following outstanding dues to be recovered:-

- 1) H.B. Adv. (Principal) Rs. 40,000/-
- 2) H.B. Adv. Interest Rs. 1x 19,819/-
- 3) Licence fees in respect of Qr. No. E-10

Attoled
Advocate

- 14 -

22

Annexure-C

Copy of O. M. No. 7/1/95-P &PW(F), dated 14-07-1995, Government of India, Ministry of Personnel, Public Grievances & Pensions (Department of Pension & Pensioners' Welfare).

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 of retirement gratuity/death gratuity under the Central Civil Services (Pension) Rules, 1972, in the case of Central Government employees who retire or die on or after 1st April, 1995:

A.H.T.
P.S.
Admmt

Pay Range	Dearness allowance to be added to pay for calculating gratuity.
1) Basic pay upto 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 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 O.M. No. 7/2/93-(&PW(F) dated 19th October, 1993. (Published in Services Law Journal of January, 1994 as Sr. No.5).

2. The President has also been pleased to decide that the ceiling on the maximum amount of retirement gratuity/death may be raised from 1.00 lakh to 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

(S) *[Signature]*
A. A. Devaraj

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 and Railway employees.

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

10/12
B. J. Advocate

Annexure-D

CENTRAL ADMINISTRATIVE TRIBUNAL,

(FULL BENCH MUMBAI)

CAMP AT NAGPUR

Original Application Nos. 459/97 and 460/97

Decided on 15-10-1999.

Venkatram Rajagopalan and Anr. •Applicants

-Versus-

Union of India & Ors. -Respondents

PRESENT

The Hon'ble Mr. Justice K.M. Agarwal, Chairman

The Hon'ble Mr. B.N. Bahadur, Member(A)

The Hon'ble Mr. S.L. Jain, Member(J)

Superannuation- Retirement Benefits-Date of Retirement- 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 w.e.f. 1-4-1995-Applicants entitled to the benefits of O.M. dated 14-7-1995 which provides enhancement of maximum limit of gratuity from 1.00 Lakh to Rs. 2.50 Lakh to those Govt. employees who retire or die on or after 1-4-1995.

ORDER

K.M. Agarwala, Chairman:- In both these O.As., this Full Bench has to consider the following common question of law:

*After
S.L.
Agarwal*

20. Whether 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 retired from service on superannuation with effect from 31-03-1995 itself or with effect from 01-4-1995 ?

21. The applicants in the two O.As. were employees of the Postal Department and retired from service on completion of their age of superannuation on 31-03-1995. They also started getting their pensions with effect from 01-04-1995. O.M. No. 7/1/95-pt pw(F) dated 14-07-1995 was, thereafter, issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions (Department of Pension & Pensioners' welfare), regarding "treatment of dearness allowance as dearness pay for the purpose of death gratuity and retirement gratuity from Rs. 1.00 Lakh to Rs. 2.50 Lakh" in the case of "Central Government employees who retire or die on or after 1st April, 1995". The applicants applied for the benefit arising out of this O.M. dated 14-07-1995, which was rejected on the ground that they had retired on superannuation on 31-03-1995 and not on or after 01-04-1995. These O.As. have, therefore, been filed for directing the respondents to give them the benefit of the said O.. after treating them to have retired from 01-04-1995. As the question raised in these O.As. was considered to be of general importance, it was

(1)
 (2)
 Annexure

~~12~~

recommended to be referred to the Full Bench and accordingly the matter has come up before this Full Bench.

3] The Learned Counsel for the applicants submitted that the applicants continued to be in service till the mid night of 31-03-1995 and must, therefore, be deemed to have retired from service with effect from 01-04-1995. Reliance was placed in the statutory rules and in a decision of Hyderabad Bench of this Tribunal in T. Krishna Murthy Vs- Secretary, Department of Posts and others, (1997) 35 A.T.C. 353.

4] While opposing the contention of the Learned Counsel for the applicants, the Learned Counsel for the respondents also relied on the statutory rules relied on by the Learned Counsel for the applicants and put his own interpretation. T Krishna Murthy's (Supra) was tried to be distinguished on two grounds: One, it was a case of voluntary retirement, whereas the present cases are of retirement on superannuation; and two, the time and date of retirement in the reported case were fore-noon of 01-04-1995: whereas in the present cases, they were mentioned as after-noon of 31-03-1995. The Learned Counsel also cited several cases before us, but he fairly conceded that none of them indicated that in a case of the present nature, the date of retirement would be deemed to be 31-03-1995 or 01-04-1995. However, in his multi-focussed arguments, the Learned Counsel for the respondents tried to impress

*(Attd)
S. J. M.
Amrit*

upon us that the applicants must be deemed to have retired or ceased from service after the working hours of the Office on 31-03-1995.

51. At the relevant time, F.R. 56 provided that every Government servant would retire from service "on afternoon of the last day of the month" in which he attained the age of 58 years. Rules 35 of the Central Civil Services(Pension) Rules 1972 (in short "Pension Rules")".

"A superannuation pension shall be granted to a Government servant who is retired on his attaining the age of compulsory retirement".

Rules 83(i) of the Pension Rules says:

"Except in the case of a Government servant to whom the provisions of Rule 37 apply and subject to the provisions of Rule 9 and 69, a pension other than family pension shall become payable from the date on which Government servant ceases to be borne on the establishment".

According to the Learned Counsel for the respondents, retirement from service "on the afternoon of the last day of the month" would mean severance of relationship of master and servant after office hours of the last day of the month itself. That means a person remains

28
Smt
Advocate

in Government service for about 17 hours (i.e. from 1.00 a.m. to 5.00 p.m.) on the date of his superannuation and ceases to be in such service for the remaining 7 hours of the day. Why then such an employee does not get retirement pension for the last day of superannuation, the Learned Counsel says, because he was paid salary for that day. The reasoning appears to be fallacious. A person cannot be deemed to be in service for one part of a day and out of service for the other part of the day. In other words, we are of the view that such an employee retiring from service "on the afternoon of the last day of the month" is deemed to be continuing in service till the midnight of that day and accordingly for all practical and technical purposes, he must be deemed to have ceased from service or to have actually retired from service on and from the next date of attaining his age of superannuation, i.e., with effect from 1st of the month following the last day of the month of superannuation.

63 Meaning of the word "afternoon" given on page 109 in Prem's Judicial Dictionary Vol. 1, 1992 Edition, published by Bharat Law Publications, Jaipur is as follows:

"Afternoon-This word has two senses. It may mean the whole time from noon to midnight; or it may mean the earlier part of the time, as distinguished from the event. When

*Sh. Atul
Advocate*

used in a statute its meaning must be determined by the context and the circumstances of the subject matter (Reg. V. Knapp. 2 El. & B1 451) (1853)

2 B 447 (451). In 9 Geo. 4c. 61, sch.C., the expression 'afternoon divine service' means, the earlier part of the time from noon to midnight as distinguished from the evening'.

7) According to Rule 83(1) of the Pension Rules, Pension becomes payable from the date on which Government servant ceases to be born on the establishment (emphasis given). A Government servant continues to be born on the establishment till midnight of the date of superannuation. The decision of the Hyderabad Bench of this Tribunal in T. Krishna Murthy's case (Supra) cannot be brushed aside out by the Learned Counsel for the respondents. Retirement may be voluntary or on superannuation. The principles for payment of pension will not vary on the basis of these distinctions. According to us, "afternoon of 31st of March" or "forenoon of 1st of April" means one and the same thing and on this basis also we see no reason to hold that the said case is not applicable to the present cases. In short, we are of the view that in the present cases the effective date of retirement would be 01-04-1995.

8) The decision of the Supreme Court in Union of India V/s. P.N. Memon & others, Civil

Attal
J. Adv.

Appeal No. 417 of 1987 and several other cases relied on by the learned Counsel for the respondents in support of his contention need no attention, because they are not exactly or remotely on the point under consideration. The O.M. dated 14-07-1995 is not challenged in these cases and, therefore, the argument tried to be made with reference to cut off date or financial implications in these cases, is misplaced.

9) For the foregoing reasons, our answer to the question before this Full Bench is as follows:

With a few faint lines to be struck out

† [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.]

10) After answering the question before the Full Bench, we would have/ordinarily sent back these cases to the Division Bench for further hearing and disposal in accordance with law, but we find that no other point survives in either of these two cases, and therefore, in order to avoid further delay in the disposal of these cases, we finally dispose of both these cases by allowing them and directing the respondents to give them the benefit of the above said O.M. No. 7/1/95-P & PW(F) dated 14-07-1995 of the Government of India, Ministry of

A.M.
Smt. Arun G.

29

- 26 -

Personnel, Public Grievances & Pensions
(Department of Pension & Pensioners' welfare),
within a period of three months from the months
from the date of receipt of a copy of this
order. In the circumstances of the case, we
make no order as to costs in any of these two
cases.

S. S. (Signature)

Dr. M.M.Saikia, M.Sc. Ph.D (Moscow)
....Formerly, Dy. Director (retd)
...Regional Research Laboratory, Jorhat, Assam

- 25 -

DwarakaNagar, Udayan Path
P.O. Khanapara, Guwahati- 22
Ph: 0361- 331237(r)
e-mail : mmsaikia@hotmail.com

To,
Director,
Regional Research Laboratory
Jorhat -785 006
Assam

June 26, 2000

Sub: Enhancement of Gratuity

Sir,

As you are aware, I retired from your esteemed organization after attaining the age of superannuation, ref. OM No.RLJ--12 (50)--Estt. /66 dated 01.6. 95 w.e.f. 31.3.95. Accordingly vide OM. No. RLJ/ Pen Case/65/95 dated April 5th 1995; a sum Rs. 1,00, 000/ (One lakh) only was sanctioned to me as retirement gratuity.

That sir, according to OM., dated 14-7-1995 of the Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Pensions and Pensioner's Welfare) I am entitled to get the benefit of the OM mentioned above. In this connection the decision of the Hyderabad Bench of Tribunal in T. Krishnamurthy (Supra) can be cited. Wherein it is noted that "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. As I have retired on the afternoon of 31-3-1995 1995 in my case also, for that matter the retirement gratuity be calculated afresh to extend the benefit arising from raising the maximum limit of gratuity from Rs, 1 lakh to 2.5 lakhs w.e.f. 1.4. 1995.

I hope you would kindly take necessary action in this regard immediately.

For your kind perusal I enclose herewith the required documents.

Thanking you,

Yours Faithfully,

(Dr. M. M. Saikia)

Encl.: Pension Documents

AT
S/
Anant

Dr. M.M.Saikia, M.Sc. Ph.D (Moscow)
Formerly, Dy. Director (retd)
...Regional Research Laboratory, Jorhat, Assam

26-
ANNEXURE-F
DwarakaNagar, Udayan Path
P.O. Khanapara, Guwahati- 22
Ph: 0361- 331237(r)
e-mail : mmsaikia@hotmail.com

Dated: August 21, 2000

To: The Administrative Officer,
Regional Research Lab. Jorhat,
P.O. RRL Jorhat- 785006
Assam

Sub: Enhancement of gratuity

Dear Sir,

Kindly refer to my previous letter dated 26 th June/2000, on the above subject on enhancement of Gratuity. I would be highly thankful if you kindly let me know the latest position through immediate reply.

Enclosed herewith the copy of the earlier letter for your kind reference.

Thanking you ,

Yours faithfully,

(Dr. M.M.Saikia)

E-mail address : mmsaikia@hotmail.com

Encl.Previous Letter.

26-
ANNEXURE-F
DwarakaNagar, Udayan Path
P.O. Khanapara, Guwahati- 22
Ph: 0361- 331237(r)
e-mail : mmsaikia@hotmail.com