

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,  
JAIPUR

This, the 15<sup>th</sup> day of September, 2005

ORIGINAL APPLICATION No. 418/2004

1. H.C.Shukla s/o Shri Ram Chandra Shukla r/o A-310, Vaishali Nagar, Jaipur.
2. Gaya Lal Gupta s/o Shri Kirori Lal Gupta r/o 2-Ka-8, Housing Board Colony, Shastri Nagar, Jaipur.
3. R.K.Banerjee s/o late Shri D.N.Banerjee, r/o 1-DA-6, Jawahar Nagar, Jaipur.
4. Kailash Chandra Sharma s/o late Shri Nar Singh Dutt Sharma, r/o A-25, Behind Shankar Bhawan, Bais Gudam Circle, Jaipur.
5. Ram Das Goyal r/o Plot No. S-1, Anadpuri, Near Malion Ki Bagichi, Adarsh Nagar, Jaipur.
6. Chiranji Lal Jain r/o C-30 Dev Nagar, Tonk Road, Jaipur.
7. M.C.Jaiswal r/o Plot No.71, Usha Colony, Malviya Nagar, Jaipur.
8. Kanhaya Lal Motwani r/o 3-Ba-10, Jawahar Nagar, Jaipur.
9. Bihari Ranjan Sharan r/o 5/389, Agarwal Farm, Mansarovar, Jaipur.

.. Applicants

(By Advocate: Mr. S.L.Thadani, proxy counsel for Mr. S.K.Vyas)

Versus

1. Union of India through Secretary, Ministry of Personnel, Pension and Public Grievances, Government of India, North Block, New Delhi.
2. The Comptroller and Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi.
3. The Principal Accountant General (Audit), Rajasthan, Jaipur Bhagwandas Road, Jaipur.
4. The Accountant General (Audit-I), Bhagwandas road, Jaipur.
5. The Accountant General (Audit-II), Bhagwandas Road, Jaipur.

.. Respondents

(By Advocate: Mr. R.D.Tripathi, proxy counsel for Mr. Gaurav Jain)

**ORIGINAL APPLICATION NO. 521/2004**

P.C.Garg s/o Shri R.N.Garg retired as Superintendent, Office of the Salt Commissioner, Jhalana Doongri, Jaipur, r/o Plot No.139, 16, Arvind Park, Tonk Phatak, Jaipur.

.. Applicant

(By Advocate: Mr. S.L.Thadani, proxy counsel for Mr. S.K.Vyas)

Versus

1. Union of India through Secretary, Ministry of Personnel, Pension and Public Grievances, Government of India, North Block, New Delhi.
2. The Secretary, Ministry of Industries, Salt Section, Union of India, Udyog Bhawan, New Delhi.
3. The Salt Commissioner, 2-A, Lawan Bhawan, Jhalana Doongri, Jaipur.

.. Respondents

(By Advocate: Mr. S.S.Hasan)

**ORIGINAL APPLICATION No.23/2005**

K.N.Mathur s/o Raghunath Behari Mathur, r/o 53/146, Maruti Path, Veer Tejaji Road, Mansarovar, Jaipur.

.. Applicant

(By Advocate: Mr. S.L.Thadani)

Versus

1. Union of India through Secretary, Ministry of Mines, Department of Mines, Shastri Bhawan, New Delhi.
2. Director General, Geological Survey of India, 27, JLN Road, Kolkata.

3. Deputy Director General, Northern Region, Geological Survey of India Complex, Vasundhra, Sector E, Aliganj, Lucknow.
4. Director, Geological Survey of India, Punjab Himachal Pradesh, Chandigarh Unit, Plot No.3, Sector 338, Chandigarh.

.. Respondents

(By Advocate: Mr. N.C.Goyal)

O R D E R

Per Hon'ble Mr. M.L.Chauhan

By this common order, I propose to dispose of aforesaid 3 Original Applications as the only question involved in these cases is whether the applicants who retired on the last working day of the preceding months and whose annual increment falls due on the first of the succeeding month are entitled for sanction of annual increment for the purpose of pension and gratuity.

2. Briefly stated facts of the case are that in all these cases the applicants retired from service of the respondents on the last date of the month. Their increments were due on the first day of the succeeding month of retirement. The following table gives the dates of retirement and the increment due:-

| Sl.No. | Applicant in<br>OA No. | Retired on | Increment<br>due |
|--------|------------------------|------------|------------------|
|--------|------------------------|------------|------------------|

|     |                               |            |           |
|-----|-------------------------------|------------|-----------|
| 1.  | 521/2004<br>P.C.Garg          | 31.3.1996  | 1.4.1996  |
| 2.  | 418/2004<br>H.C.Shukla        | 31.7.1992  | 1.8.1992  |
| 3.  | 418/2004<br>Gaya Lal<br>Gupta | 30.4.2002  | 1.5.2002  |
| 4.  | 418/2004<br>R.K.Banerjee      | 28.2.1994  | 1.3.1994  |
| 5.  | 418/2004<br>K.L.Sharma        | 30.11.2000 | 1.12.2000 |
| 6.  | 418/2004<br>Ramdas Goyal      | 30.9.1987  | 1.10.1987 |
| 7.  | 418/2004<br>C.L.Jain          | 28.2.1998  | 1.3.1998  |
| 8.  | 418/2004<br>M.C.Jaiswal       | 30.6.1993  | 1.7.1993  |
| 9.  | 418/2004<br>K.L.Motwani       | 28.2.1994  | 1.3.1994  |
| 10. | 418/2004<br>B.R.Sharan        | 28.2.1998  | 1.3.1998  |
| 11. | 23/2005<br>K.N.Mathur         | 31.12.1981 | 1.1.1982  |

3. The respondents placed reliance on the earlier judgment of the Central Administrative Tribunal, Hyderabad Bench in P. Yellamanda vs. Comptroller and Auditor General of India passed in OA No. 401/1992 dated 2.12.1992 which was followed by the Tribunal in subsequent cases and the D.B. judgment of Hon'ble High Court of Andhra Pradesh in CWP No. 1219 of 1998, Union of India vs. R.Malakondaiah thereby it was held that an employee is entitled to get annual increment due to him that fell due on the first date of the month after retiring month.

4. Notices of these applications were given to the respondents. The respondents in OA No.418/2004 and OA No. 521/2004 have filed reply. In the reply the stand

taken by the respondents is that the applicants who have retired from service after attaining the age of superannuation are not entitled to get increment which may fall due after their retirement as the applicants were not in service. According to the respondents, the applicants were not entitled to increment as the day on which a government servant retires cannot be treated as the last working day.

5. I have heard the learned counsel for the parties and gone through the material placed on record.

6. At the outset, it may be stated that the matter is no longer res-integra and the same is covered by the judgment rendered by the Full Bench of the Andhra Pradesh High Court in the case of Principal Accountant General, Andhra Pradesh, Hyderabad and anr. Vs. C.Subba Rao and ors. 2005 (2) ATJ 280 whereby the Hon'ble Judges have considered the judgment rendered by the Central Administrative Tribunal, Hyderabad in the case of P.Yellamanda (supra) and also the D.B. judgment of the same court in Malakondaiah's case (supra) and in para 56 of the judgment it was held by the Full Bench that they are not able to accept the view taken by the D.B. and has over ruled the judgment in the Malakondaiah's case. At this stage, it would be useful to quote para 55 and 56 of the judgment rendered by the Full Bench of the Andhra Pradesh High Court in the case of Principal Accountant General,

Andhra Pradesh (supra) which is in the following terms:-

"55. In Malakondaiah case (supra), the respondent employees moved Central Administrative Tribunal, Hyderabad Bench for a direction of Principal Accountant General (Audit-I), Andhra Pradesh to sanction annual increment for the year on the last day on which they retired in accordance with Rule 5(2) of the Pension rules and whose pay was regulated under proviso to Note 1 below Rule 34 of the Pension Rules. The Tribunal following its earlier judgment allowed the OAs. The Union of India and others filed Writ Petitions before this Court. The two Writ Petitions were heard by a Division Bench, it was contended by the Union of India that when an employee retires on the last day on which increment fell due, such employee is not entitled for increment because he ceased to be in service. Reliance was placed on Rule 33 of the Pension Rules and Article 151 of CS Regulations. The Division Bench repelled the said contention with following observations:


"the fact that the emoluments of a Government servant have to be taken as the basic pay, which he was receiving immediately before his retirement, is not at all in controversy. Similarly, the proposition that an increment accrues from the following that on which it is earned is also not in dispute. Increment in pay is a condition of service. In a way, it is a reward for the unblemished service rendered by an employee which gets transformed into a right. Once an employee renders the service for the period which takes with it in an increment the same cannot be denied to him/her. It is not in dispute that both the respondents rendered unblemished service for one year before the respective dates of their retirement. The periodicity of increment in the service is one year. On account of rendering the unblemished service, they became entitled for increment in their emoluments... The only ground on which the respondents are denied the increment is they were not in service to receive or to be paid the same. Strictly speaking, such a hyper-technical plea cannot be accepted. As observed earlier, with the completion of the years service, an employee becomes entitled for increment, which is otherwise not withheld. After completion of the one-year service, the right accrues and what remains thereafter is only its enforcement in the form of payment. Therefore, the benefit of the year-long service cannot be denied on the plea that the employee ceased to be in service on the day on which he was to have been paid the increment. There is no rule, which stipulates that an employee must continue in service for being extended the benefit for the service already rendered by him."

56. In support of the above observations, the Division Bench also placed reliance on Banerjee case (supra). We are afraid, the Division Bench was not correct in coming to the conclusion that being a reward for unblemished past service, Government servant retiring on the last day of the month would also be entitled for increment even after such increment is due after retirement. We have already made reference to all Rules governing the situation. There is no warrant to come to such conclusion. Increment is given (See Article 43 of CS Regulations) as a periodical rise to a Government employee for the good behaviour in the service. Such increment is possible only when the appointment is "Progressive Appointment" and it is not a universal rule. Further, as per Rule 14 of the Pension Rules, a person is entitled for pay, increment and other allowances only when he

is entitled to receive pay from out of Consolidated Fund of India and continues to be in Government servant. A person who retired on the last working day would not be entitled for any increment falling due on the next day and payable next day thereafter (See Article 151 of CS Regulations), because he would not answer the tests in these Rules. Reliance placed on Banerjee case (supra) is also in our considered opinion not correct because, as observed by us, Banerjee case (supra) does not deal with increment, but deals with enhancement of DA by the Central Government to pensioners. Therefore, we are not able to accept the view taken by the Division Bench. We accordingly, overrule the judgment in Malakondaiah case (supra)."

7. Thus in view of the law laid down by the Full Bench of the Andhra Pradesh High Court in the case of Principal Accountant General, Andhra Pradesh (Supra) the applicants are not entitled to any relief as the decision in the case of P.Yellamanda (supra) and also the DB judgment of the Andhra Pradesh High Court in Malakondaiah's case have been over ruled by the Full Bench and cannot be stated to be a good law.

8. Accordingly, the OAs are dismissed with no order as to costs.

  
(M.L. CHAUHAN)  
Member (J)

R/