

**SIN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 21/177/2018

Date of Order: 08.03.2019

Between:

1. P. Prem Prasad, S/o. P.V. Jagannadha Rao,
Aged about 64 years, Occ: Retired Scientific Officer/E, Gr. B,
Nuclear Fuel Complex, Hyderabad,
R/o. Plot No.132-A, H.No.1-4-200/132-A,
Iswaripuri Colony, Sainikpuri, Secunderabad.
2. K. Sreenivasa Rao, S/o. Bhaskar Rao,
Aged about 63 years, Occ: Retired Tradesman/H, Gr. B,
Nuclear Fuel Complex, Hyderabad,
R/o. Flat No. 102, Sri Shirdi Sai Sadan,
Gayathri Nagar, St. No. 8, Moula Ali,
Hyderabad.
3. K. Lakshmipathi Raju, S/o. Krishnam Raju,
Aged about 64 years, Occ: Retired Tradesman/H, Gr. B,
Nuclear Fuel Complex, Hyderabad,
R/o. 2-4-669/12, Kachiguda,
Sunder Nagar, Hyderabad – 500 027.
4. A. Pardha Saradhi, S/o. Late A. Ramaiah,
Aged about 63 years, Occ: Retired Private Secretary, Gr. B,
Nuclear Fuel Complex, Hyderabad,
R/o. D-504, Sree Keerthi Towers,
Lalapet, Secunderabad – 500 017.

... Applicants

And

1. Union of India, Rep. by Secretary,
Department of Atomic Energy,
CSM Marg, Mumbai – 400 001.
2. The Nuclear Fuel Complex,
Rep. by its Chief Executive,
ECIL PO, Hyderabad – 500 062.
3. The Secretary,
Department of Personnel and Training,
Government of India, New Delhi.

... Respondents

Counsel for the Applicant ... Dr. A. Raghu Kumar

Counsel for the Respondents ... Mr. V. Vinod Kumar, Sr. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***

ORAL ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

2. Original Application is filed challenging the order dt. 5.12.2017 regarding payment of DA (Dearness Allowance) on the eve of retirement.
3. Brief facts are that the applicants who retired from the respondents organisation, on approaching this Tribunal in OA 837/2015, direction was issued to the respondents vide order dt. 10.4.2017 to consider grant of enhanced DA to the applicants as on the first day of the July of the year in which they have retired and to release the consequential arrears, if any. Instead respondents have issued the impugned order dt 5.12.2017 stating that Dearness relief as is eligible has been released for the applicants thereby complying with the orders of the Tribunal. The order of the Tribunal was to consider grant of DA that would be accruing on 1st July for fixing pension and pensionary benefits. As the respondents have not complied with this direction the OA is filed.
4. The contentions of the applicant are that the respondents ought to have filed a clarificatory petition if they were not clear about the order of this Tribunal. The Tribunal order was based on the Orders of the full bench of the Hon'ble High Court of Andhra Pradesh to take into considerations the enhanced DA as on 1st July of the said year for calculating pension and other pensionary benefits. Respondents are not empowered to interpret orders of the Tribunal. Pension has to be first fixed with the prevailing Dearness Allowance and thereafter Dearness Relief drawn at the end of the month ie 31st July in the instant case.

5. Respondents contest the claim of the applicants by affirming that an employee has to hold the post on the due date to draw DA. As per Fundamental Rules/ Supplementary Rules, etc applicants are ineligible to draw enhanced DA. Govt. servant retiring on the last day of the month would cease to be a Govt. Servant by midnight of that day and he would acquire the status of a pensioner. Once an employee retires he is eligible for dearness relief and not dearness allowance. The grounds on which the Tribunal did not consider grant of annual increment the same would apply for non grant of DA as well.

6. Heard both the counsel. Documents and material papers submitted have been gone through in detail.

7. I) The issue in question has been a subject matter dealt by the Hon'ble High Court for the State of Telangana and the State of A.P wherein an interim stay was granted. Being aware of this fact it would be proper for this Tribunal to deal with the issue keeping in view the order of the Hon'ble High Court. Accordingly the matter has been dealt in the succeeding paras with details of the orders of the Hon'ble High Court and the further course of action to be taken in the present OA.

II) Respondents have taken the stand that fundamental rules are of paramount importance and as per the said rules applicants are not eligible for enhanced DA. However, they have quoted only FR 17(1) but for comprehensively dealing with the issue other relevant fundamental rules along with the legal interpretation is taken up to resolve the issue log stock and barrel.

III) As we are dealing with pensioners the important fundamental rule associated with retirement is FR 56 (a).

A. Fundamental Rule (FR) 56 (a) :

As per Fundamental Rule, FR 56 (a), every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years [a Government servant whose date of birth is the first of the month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years]. Therefore he ceases to be a serving employee and becomes a pensioner on the afternoon of the retirement day.

The answer lies in understanding as to how a day is defined in law. As per common law principles, a day commences with one mid night and ends with the next midnight and denotes a period of 24 hours. The Hon'ble Supreme Court in *S. Bannerji vs Union of India*, reported in AIR 1990 SC 285 was considering a case where, an officer of the Supreme Court sought voluntary retirement from the forenoon of 01-01-1986 and that was the day when higher DA was made available to the employees of the Supreme Court. Rules provided that in the case of voluntary retirement, the date of retirement would be considered as a non-working day. The Court has held that the rule should be construed to mean that person retiring voluntarily under Rule 56 J to 56 M were disentitled to receive the pay on the date of retirement but the fact that they become entitled to any concession available as on that day and accordingly held that the retired person was entitled to DA for the purpose of working out the terminal benefits. Rule 5(2) of the Pension Rules which deals with regulation of claims to pension or family pension also states that the day on which a Government servant retires or is retired or is discharged or is allowed to resign from service, as the case may be, shall be treated as his last working day. In other words the employee would become a pensioner only the next day since the last day of retirement is a

working day enjoining upon the employee to discharge the duties assigned to the post he holds.

B. Fundamental Rule (FR) 17.

Respondents have quoted that F.R. 17(1), which states that subject to any exceptions specifically made in these rules an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties.

The contention of the respondents is that as per F.R.17 (1) the applicant is ineligible to draw the pay and allowances attached to a post, the moment he ceases to discharge the duties of that post. By implication the argument of the respondents is that since the applicant has retired on the afternoon of the last day of the month when he attained the age of 60 years, he would not hold any post and therefore would not be eligible to draw pay and allowances. The Tribunal is in agreement to the extent that the applicant is not eligible for pay once he retires, but he is eligible for pension and from when he is eligible has been clearly laid down by the Hon'ble Supreme Court Judgment in the case of S. Bannerji.

IV) On telescoping the judgment of the Hon'ble Supreme Court to the case of the applicants, the day they become pensioner they are eligible for pension with enhanced DA. The date of retirement of the pensioners in the instant case is 1st July. On this day they are thus eligible for enhanced DA.

V) The same issue fell for consideration before the full bench of the Hon'ble High Court of A.P, when the decisions of this Tribunal in OAs

553/2003 & 555/2003 were challenged. The Hon'ble High Court has held therein as under:

"The question would arise only in Writ Petition No 22042 of 2003 as the respondent therein also claimed DA instalments at 49%. As held by us supra, a Government servant who would be retiring on the last day of the month would cease to be the Government Servant by mid-night of that day and he would acquire status of pensioner and therefore he would be entitled for all the benefits given to a pensioner with effect from first day of the succeeding month. In Banerjee case (supra), the Supreme Court laid down that as soon as first day of the succeeding month commenced, petitioner retired and gave the benefit of enhanced DA. The same view has been consistently followed in subsequent decisions as well. To that extent it must be held that the learned Tribunal has taken correct view."

VI) It was on the basis of the aforesaid judgment that this Tribunal in OA 837/2015 has directed the respondents to work out pension and other pensionary benefits by taking into consideration enhanced DA. Nevertheless, to make it lucid that the action of the respondents is not legally valid a further exposition of the issue is attempted in the following paras so that the issue is clarified without any iota of doubt for implementation.

VII) Having said what has to be said, going a little further, the judgment rendered by this Tribunal in regard to a similar issue in OA 552 of 2003 filed by B.Chandrashekhar Rao and Others was challenged in the Hon'ble High Court of Andhra Pradesh in WP No.26506 of 2012. The Hon'ble High Court upheld the order of this Tribunal in granting enhanced DA sought keeping in view the judgment of the Full Bench of the Hon'ble High Court in W.P No 22042 of 2003 and dismissed the writ petition. Thereafter the respondents carried the matter in appeal and filed SLP (C) No. 16237 of 2013 before the Hon'ble Supreme Court of India against the judgment in W.P No. 26506 of 2012 passed by the Hon'ble High Court of Andhra Pradesh. The SLP no 16237 of 2013 arising out of W.P No. 26506/2012 was dismissed by the Hon'ble Supreme Court on 27.10.2014 by

declining to interfere with the judgment of the Hon'ble High Court keeping the question of law open.

VIII) Keeping in view the order of the Hon'ble Supreme Court cited supra when this Tribunal was dealing with a similar issue in OA 1199 of 2018, respondents in the said case have brought to the notice of the Tribunal that the Hon'ble High Court of the State of Telangana and the State of Andhra Pradesh has ordered interim suspension of the Tribunal verdict in OA 213/2014 dated 24.6.2015 on an identical issue vide orders of the Hon'ble High Court dated 1.4.2016. The ex parte order of suspension does not vitiate the Law declared by the Hon'ble Full Bench of the High Court confirmed by the Hon'ble Supreme Court of India to dispose of the OAs filed, was the fervent plea of the applicants in the cited case

IX) Being on the subject of interim stay, Hon'ble High Court of Andhra Pradesh in Writ Petition No. 8681 of 1982 dated 27.1.1983, 1994 (1) ALT 227 (DB) has held that:

“when a judgment of the High Court is the subject matter of an appeal and the said judgment is suspended, the only effect of such suspension is that the judgment cannot be executed or implemented. But so long as the Full Bench Judgment stands, the dicta laid down therein is binding on all Courts including Single Judges and Division Benches of this Court. The dicta laid down therein cannot be ignored unless the Court after hearing a particular case doubts the correctness of the dicta and thinks it appropriate that it should be reconsidered”

X) In so far as the contention of the respondents therein that when a stay order in an identical case is under currency, the OAs should be dismissed has no merit. For, the Apex Court in the case of ***Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn., (1992) 3 SCC 1***, has explained as under:-

“While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing

of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending.“

The above makes it amply clear that notwithstanding the stay of operation of an order, the order does not cease to exist for, and it continues to subsist till it is either quashed or modified by the higher Court. As such, any order though under stay granted by the High Court, could well be followed as a precedent but with a rider that any order passed would be subject to outcome of the other case.

(XI) Thus, in view of the rule position and keeping in view the various observations of the Superior Judicial forums on the subject, this Tribunal is of the view, that since the observation of the Full bench of the Hon'ble High Court has been upheld by the Supreme Court, keeping the question of law open, relief sought by the applicants in the instant OA requires to be considered favourably. Respondents stand that pensioners are eligible only for dearness relief and not dearness allowance does not hold water. The fundamental base for fixing pension is DA. Thereafter comes the element of Dearness relief. Hon'ble Supreme Court/Hon'ble High Court have answered the lurking doubt in this regard by stating that it will be the enhanced DA. Respondents made one another claim that since increment was not granted on 1st July by the Tribunal and

therefore DA also need not be paid on 1st July. Increment and Dearness allowance are financial elements which have a different footing. Increment is earned for having worked for a year by the employee in a post whereas Dearness allowance is linked to the whole sale index, cost price index etc. It is granted to offset the effect of inflation. Increment is to be earned and whereas DA is granted across the board for all employees and has nothing to do with the performance of the employees. Hence in view of the aforesaid, the respondents are directed to consider as under:

- i) To re-fix the pension of the applicants as per the enhanced eligible D.A from the dates they have become pensioners and pay the arrears along with consequential benefits subject to the outcome of the judgment of the Hon'ble High Court in W.P. No.4742/2016 filed against OA No. 213 of 2014.
- ii) In case verdict of the Hon'ble High Court is in favour of the applicants, respondents to work out the arrears of pension calculated on enhanced D.A from the first day of retirement.
- iii) OA is allowed with the above directions.
- iv) No order to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

Dated, the 8th day of March, 2019

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