

**Central Administrative Tribunal
Madras Bench**

OA/310/01661/2013

Dated 27th February Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

V.R.Janakiraman
Retd. Transportation Inspector/Projects,
Tiruchchirappalli Division,
Southern Railway. .. Applicant
By Advocate **M/s.Ratio Legis**

Vs.

1. Union of India, rep by
The General Manager,
Southern Railway,
Park Town, Chennai-3.
2. The Divisional Personnel Officer,
Tiruchchirappalli Division,
Southern Railway, Trichy. .. Respondents

By Adovacte **Mr.P.Srinivasan**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

This is an OA filed seeking the following relief:-

“to call for the records related to the impugned order dated 05.11.2013 and thereby to direct the 3rd respondent to revise the average emoluments as fix the pay as Rs.23100 plus grade of Rs.4800/- instead of 22280 plus Grade of pay of Rs.4800/- and further to re-fix the pension and other retirement benefits effective from 01.7.2013 with all the attendant benefits and to pass such other order/orders as this Tribunal may deem fit and proper and thus to render justice.”

2. The applicant in this case was a Station Master and he retired from service on 30.6.13. According to the applicant, the government as per the VIth Central Pay Commission (CPC) report had changed the date of increment of Central Government employees to 1st July every year. According to the applicant, he had completed one year of service on 30.6.13 and he is entitled to get one more increment which will fall due on 01.7.13. Eventhough the applicant has given a representation for adding one more increment, the respondents had denied the same to him as per Annexure A2.

3. The respondents admitted the retirement of the applicant on 30.6.13 and had also admitted the refixation of increment date of all employees to 1st July every year as per recommendation of 6th CPC. They opposed the application stating that the applicant was not in service on 01.7.13 and there is no employer employee relationship. The granting of increment and other financial benefits is based purely on government policy and Tribunals are not expected to intervene in the matter. The actual date of birth of the applicant is on 08.6.1953 and the applicant had attained the

age of superannuation on 07.6.13 and he continued to work till 30.6.13 on the basis of FR 56. The applicant can get increment only if he is in service and hence he cannot claim any further increment. It was also contended that this Tribunal had passed order in a similar issue in OA 634/2013 and batch and disallowed the claim of the applicants therein.

4. We had heard the rival counsels. The counsel for the applicant mainly relies on a judgment of the Hon'ble Madras High Court in *Ayyanperumal v. Registrar, CAT & Others in WP No.15732/2017* wherein the High Court held that since the applicant therein had completed one year of service on 30.6.13, he is entitled to the increment due on 1.7.13. But the counsel for the respondents would content that the above decision was based on a decision rendered in *State of Tamil Nadu rep by its Secretary to Government, Finance Department and Others v. M.Balasubramonian (CDJ 2012 MHC 6225)* wherein employees similarly placed in State service was granted increment which fell on the next day of their retirement. According to the counsel for the respondents there exist clear rules regarding superannuation for central government employees under Fundamental Rules(FR). The Tamilnadu government had issued an order G.O.(MS) 311/Finance(CMPC) department dated 31.12.2014 granting increment in similar circumstances. The said government order has no application to central government employees as they are governed by the rules framed by the Central Government. The counsel for the respondents had invited our attention to the various Supreme Court rulings wherein the Apex Court has taken a different view. The counsel invited our attention to the

decision of the Hon'ble Supreme Court in ***Chief General Manager, Telecom, BSNL & Another v. K.V. George reported in (2008) 14 SCC 699 and Achhaibar Maurya v. State of U.P. And Others reported in (2008) 2 SCC 639*** wherein clear principles were laid down regarding superannuation by the Supreme Court.

5. We have anxiously considered the pleadings and contention raised by both sides.

The points for consideration are -

(a) What is the actual date of retirement of the applicant.

(b) Whether the applicant is entitled to get one more increment as claimed by him.

6. FR 56 states as follows:-

“[(a) Except as otherwise provided in this rule, 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:

Provided that a Government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years.]”

7. On going through the pleadings it can be seen that the applicant had attained the age of superannuation on 07.6.13. A central Government servant has to superannuate at the age of 60 years. But FR 56 provides for retirement on the last day of month if the date of retirement falls after 1st day of the month. If the date of retirement falls on 1st of the month, such a person has to retire on the last date of the preceding month. In this case, since the applicant attains age of 60 on 07.6.13, he was permitted to continue till 30.6.13 ie., the last day of the month under FR 56.

8. The Hon'ble Apex Court had an occasion to consider whether the benefits given by the Vth CPC report to those who retired on 31.12.95 in ***Chief General Manager v. K.V. George & Others (2008) 14 SCC 699.*** The Vth CPC report was implemented w.e.f. 01.1.96. The respondents therein retired from service on 31.12.95. The contention of the respondents was that the respondents were in service till midnight of 31.12.95 and, therefore, entitled for the retiral benefits which were granted from 1.1.96. The Hon'ble Supreme Court held that *"we are unable to countenance with the decision of the Tribunal and the High Court. As already noticed, they were retired w.e.f. 16.12.95 and 3.12.95 respectively but because of the provision under FR 56(a), they were allowed to retire on the last date of the month; the grace period of which was granted to them for the purpose of pay and allowances only. Legally they were retired on 16.12.95 and on 3.12.95 respectively and, therefore, by no stretch of imagination can it be held that their pensionary benefits can be reckoned from 1.1.96. The relationship of employer and employee was terminated in the afternoon of 16.12.95 and 3.12.95 respectively."* Accordingly, the Hon'ble Supreme Court set aside the order of the Tribunal and High Court and appeal was allowed.

9. In one of the above appeals (Civil Appeal 789/05) the respondents who actually retired on 1.1.96 (voluntary), the Supreme Court has granted the retirement benefits as per Vth CPC. From the above, it can be seen that the Supreme Court has clearly laid down how date of superannuation has to be reckoned and when the employer employee relationship comes to an end. So, the contention of the applicant that he

had retired on 30.6.13 and completed one year service on 30.6.13 cannot be accepted. The applicant had actually retired reaching superannuation on 7.6.13 and he was permitted to continue till 30.6.13 on the basis of FR 56(a). The grace period was granted to them was only for the purpose of accounting of pay and allowances only. So, the employer employee relationship between applicant and respondent ended on 7.6.13.

10. So, we find that the applicant has legally retired from service w.e.f. 7.6.13. The point No.(a) is answered accordingly.

11. The next point to be considered is whether applicant is entitled to get increment for one completed year for calculating his retirement benefits. The above claim of the applicant is based on the premises that he continued in service till the midnight of 30.6.13. From the discussion under point No.1 we have come to a conclusion that the applicant has actually retired on 7.6.13, the remaining days till 30.6.13 was only a grace period granted to him only for the purposes of administrative convenience and accounting of pay and allowances.

12. The applicant mainly relies on a recent decision of the Hon'ble Madras High Court in P.Ayyamperumal v. Registrar, Central Administrative Tribunal and 3 Others (WP 15732/17) in support of his argument that he has completed one year of service by the midnight of 30.6.13. On going through the said judgment, it can be seen that the decision of the Hon'ble Apex Court in Chief General Manager, Telecom, BSNL & Another v. K.V.George (cited supra) is not referred to and it is clear that the decision of the Hon'ble Supreme Court was not brought to the notice of the Judges when the

matter was decided. Legally the applicant had superannuated on 7.6.13 itself and he had only the status of a re-employed person. He continued to do his duty till 31.6.13 as a grace period granted under FR 56. The regular employment has actually ended and there cannot be any employer employee relationship. The Supreme Court has stated that the grace period granted is only for the purpose of administrative convenience and accounting of salary and allowances. In *Achhaibar Maurya*'s case (reported *supra*) the court held that "a person retires automatically on the day when he completes the age of superannuation. Principles of natural justice thereon cannot be said to have any application in a case of this nature. A person attains a specified age on the day next before the anniversary of his birth day or in other words on the day preceding that anniversary. This decision also supports the ruling of the Supreme Court in *Chief General Manager, Telecom, BSNL & Another* case.

13. It was as per Rule 10 of CCS (RP) Rules a uniform date of annual increment as 1st July every year was fixed. The applicant herein was legally superannuated on 7.6.13 and he has not completed one year of service contemplated under the law. The CCS (Pension) Rules does not permit to take into consideration emoluments which fell due after retirement. Rule 33 of CCS (Pension) Rules defines "emoluments" as the basic pay as defined in R9(21)(a)(I) of the FR which a central government employee receives immediately before his retirement. So, any amount which may become due after 7.6.13 cannot be considered for 'emoluments' for the purpose of pension. In *Achhaibar Maurya v. State U.P. And Others* (referred *supra*) had observed as follows:-

“A benefit of getting an extended period of service must be conferred by a statute. The legislature is entitled to fix a cut off date. A cut off date fixed by a statute may not be struck down unless it is held to be arbitrary. What would, therefore, be an employees last working date would depend on the wordings of the rules. It may seem unfortunate as some people may miss the extended period of service by a day; but therefore a valid provision may not be held to be invalid on the touchstone of Article 14 or 16 of the Constitution of India. A statute cannot be declared unconstitutional for conferring a benefit to a section of people.”

In view of all the above aspects and in view of the specific rules regarding how 'emoluments' has to be calculated, the Tribunal will not be justified to include future increments also for calculation of “emoluments” for pension. The principles of natural justice has no application in these matters. In *A.V.Thiyagarajan vs. The Secretary to Government (W.P.No.20732/2012 dated 27.11.2012)* the Hon'ble High Court of Madras following the decision of High Court of Karnataka in *Union of India & 3 Others v. YNR Rao (WP 18186/2003)* has held as follows:-

“5. But for the provisions of FR 56, which provides that a Government Servant shall retire from service on the afternoon of last date of the month in which he had attained the age of 58 years, the respondent, who was born on 9.3.1937 would have retired on 8.3.1995. The provision for retirement from service on the afternoon of the last date of the month in which the Government Servant attains the age of retirement instead of on the actual completion of the age of retirement in FR 56 was introduced in the year 1973-74 for accounting and administrative convenience. What is significant is the proviso to clause (a) of FR 56 which provides that an employee whose date of birth is first of a month, shall retire from service on the afternoon of the last date of the preceding month on attaining the age of 58 years. Therefore, if the date of birth of a government servant is 1.4.1937 he would retire from service not on 30.4.1995, but on 31.3.1995. If a person born on 1.4.1937 shall retire on 31.3.1995, it would be illogical to say a person born on 9.3.1937 would retire with effect from 1.4.1995. That would be the effect, if the decision of the Full Bench of the CAT, Mumbai, is to be accepted. Therefore, a government servant retiring on the afternoon of 31.3.1995 retires on 31.3.1995 and not from 1.4.1995. We hold that the decision of the Full Bench (Mumbai) of the CAT that a government servant retiring on the afternoon of 31st March is to be treated as retiring with effect from the first day of April, that is same as retiring on the forenoon of first of April, is not good law.”

14. The above dictum laid by the Karnataka High Court was followed by Hon'ble Madras High Court in *Union of India v. R.Sundara Rajan (WP 28433/05)* also. The Hon'ble Delhi High Court in *Union of India & Others v. G.C.Yadav decided on 23.10.2018 (W.P.(C) 9062/2018 & CM 34892/18)* had occasion to consider whether a person who retired on 31.12.15 can be considered to get the benefits of Pay Commission Report which was implemented w.e.f. 01.1.2016. It was held that on 01.1.2016 at 00.00 hrs. the respondent ceased to be a serving employee having superannuated on 31.12.15. In *S.Banerjee v. Union of India (1989 Supp(2) SCC 486)* the Hon'ble Apex Court has granted the financial benefits since the petitioner was in service on 01.1.86.

15. The above decisions clearly point to the fact that a person should be in service if he wants to get a financial benefit conferred on him.

16. **Hence, we find that the applicant in this case is not in service on 1.7.13 and he is not entitled to get any increment as claimed by him. We find this point also against the applicant.**

17. **In the result, there is no merit in the OA and it will stand dismissed. No costs.**

(T.Jacob)
Member(A)

27.02.2019

(P.Madhavan)
Member(J)

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