Central Administrative Tribunal
Madras Bench

OA/310/00368/2019 to OA/310/00371/2019

Dated 27th March Two Thousand Nineteen

P R E S E N T

Hon'ble Mr. R.Ramanujam, Member(A)
&
Hon'ble Mr.P.Madhavan, Member(J)

1. N.Jayakanthan .. Applicant in OA 368/2019
2. Shri Padmanabhan G.D. .. Applicant in OA 369/2019
3. Shri Anbazhagan K.N. .. Applicant in OA 370/2019
4. Mr.Paranjothi.R .. Applicant in OA 371/2019

By Advocate **M/s.G.Devi**

Vs.

1. Union of India, rep by
   The Senior Superintendent of Post,
   Department of Postal,
   Tambaram Division,
   Tambaram, Chennai 600 045. .. Respondents

By Advocate **Mr.SU.Srinivasan**

ORDER

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

The applicants have filed these OAs seeking a direction to the respondent to extend the benefits of the order dated 15.9.2017 passed by Hon'ble High Court, Madras in W.P.No.15732/2017 to the applicants and to grant them annual increment for the year 2013 and consequently re-fix their pension with all attendant benefits and pass such further or other order or direction which this Tribunal may deem fit and proper in the interest of justice.

2. Since the relief sought and the issues raised therein are of a similar nature, these OAs are taken up together and disposed of by this common order.

3. According to the applicants, they retired from service on 30th June of their respective years of superannuation and since they will be completing an year of service on 1st of July they are entitled to one more increment and it has to be counted for pensionary benefits.

4. Mr.SU.Srinivasan takes notice for the respondents and produces a copy of the order of this Tribunal in OA Nos. 1710/2018 to 1714/2018 and submits that a similar issue has been dealt with and this Tribunal dismissed the same following the ratio of 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.*** Since the instant matters are identical, these OAs be dismissed in similar lines.

5. A perusal of the order of this Tribunal in OA Nos. 1710/2018 to 1714/2018 would show that the very same issue had been dealt with and the claim raised by the applicants therein was rejected on the basis of the law laid down by the Hon'ble Apex Court. The Hon'ble Supreme Court in ***Chief General Manager v. U.V.George & Others (2008) 14 SCC 699*** had laid down the law relating to the retirement of a Central Government employee under FR 56. It was held that a person is considered as retired on his attaining 60 years and they are permitted to continue till 30.6.18 only for the purpose of pay and allowances only. ***"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 03.12.95 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 03.12.95 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."***

6. The same principle was followed by the Hon'ble Madras High Court in ***A.V.Thiyagarajan vs. The Secretary to Government (W.P.No.20732/2012 dated 27.11.2012)*** and by Hon'ble Karnataka High Court in ***Union of India & 3 Others v. YNR Rao (WP 18186/2003).*** In YNR Rao's case it is observed in Para-5 that -

> "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."

The grace period so given cannot be tagged with his substantive service for counting further increments.

7. Further, Rule 10 of CCS (Pension) Rules does not permit to take into consideration emoluments which fell due after retirement.

8. From the above, it can be seen that an employee legally retires on attaining superannuation (60 years) and as per the decision, the relationship of employer employee is terminated. They continue thereafter as a grace period given to the employee under FR 56. There is no provision to consider this grace period alongwith his service prior to his retirement. So, we are of the view that the applicants had failed to make out a prima facie case. We are bound to follow the law laid down by the Hon'ble Supreme Court and there is no merit in the contentions raised by the applicants.

9. Since the OA on hand is identical to the one cited supra, the present OA is also dismissed at the admission stage.

(P.Madhavan)
Member(J)

(R.Ramanujam)
Member(A)

27.03.2019

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