

**Central Administrative Tribunal  
Madras Bench**

**OA/310/00332/2018**

**Dated 29<sup>th</sup> 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. V.Jayaprakash
2. M.Panneerselvam
3. K.Selvaraj .. Applicants

By Advocate **M/s.P.Balasubramanian**

**Vs.**

1. The Government of India, rep by Secretary,  
M/o Finance,  
Department of Expenditure,  
North Block, New Delhi 110 001.
2. The Secretary,  
Department of Personnel & Training (DOPT),  
M/o Personnel, Public Grievances & Pensions,  
North Block, New Delhi 110 001.
3. The Deputy Comptroller & Auditor General of India,  
(Administration and Staff),  
O/o Comptroller & Audit General of India,  
No.9, Deenadayal Upadyaya Marg,  
New Delhi 110 124.
4. The Principal Accountant General (G&SSA),  
No.361, Anna Salai, Teynampet,  
Chennai 600 018.
5. The Accountant General (E&RSA),  
No.361, Anna Salai, Teynampet,  
Chennai 600 018. .. Respondents

By Advocate **Mr.T.Ravikumar**

**ORDER**

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

The applicants have filed this OA seeking the following relief:-

“(1) to call for the records of the respondents and set aside the order passed in Order Letter No.PAG (G&SSA)/PC1/Unit II/2017-18/122 dated 24.11.2017 of the 4<sup>th</sup> respondent and AG(E&RSA)/claims/Pay Cell/2017-18-125 dated 17.10.2017 of the 5<sup>th</sup> respondent, and order for all consequential benefits.

(2) To Pass such further or other orders as this Tribunal may deem fit and proper in the circumstances of the case.”

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

3. The respondents in their reply statement contest the claim of the applicants on the ground that the applicants had retired on 30<sup>th</sup> June and were not in service on 1<sup>st</sup> July and hence their request to grant one notional increment on 1<sup>st</sup> July viz., the day after retirement is not supported by any Rules in force and, therefore, the request of the applicants is contrary to the extent Rules in force and lacks merit for consideration. Hence they pray for dismissal of the OA.

4. Heard the learned counsel for the applicants and the respondents. They

reiterated their respective positions in the pleadings and the reply statement. However, when the matter is taken up, learned counsel for the applicants submits that the matter is similar to the cases on which orders had been passed by this Tribunal recently and similar order could be passed in this case also.

5. On a perusal, it is seen that this Tribunal had dealt with similar issues in various OAs and 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*** wherein the Hon'ble Supreme Court 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 31<sup>st</sup> 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. Since the OA on hand is identical to the one cited supra, following the same ratio, the present OA is also dismissed. No costs.

(P.Madhavan)  
Member(J)

29.03.2019

(R.Ramanujam)  
Member(A)

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