

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.583/2017

Date of Decision: 20th December, 2018

CORAM:HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)

Shri Om Prakash Pathak
 aged 61 years, working was
 Ex. Executive Engineer,
 Office of Dy. CE/Construction,
 Central Railway, Panvel,
 Mumbai - 410 201.
 And presently Residing at
 Flat No.202, B 1, Venus Park,
 Titwala (E), Thane-421 605 ... **Applicant**
(By Advocate Shri Ulhas Shinde)

VERSUS

1. The Union of India, through
 The Secretary, Ministry of Railways,
 New Delhi - 110 011.
2. The Joint Secretary,
 Govt. of India,
 Ministry of Pesonnel,
 PG & Pension-DOP&PW,
 3rd Floor, Loknaya Bhawan,
 Khan Market,
 New Delhi - 110 003.
3. The General Manager,
 Central Railway,
 Mumbai CST,
 Mumbai - 400 001.
4. The Chief Administrative Officer
 (Construction)
 New Administrative Building,
 Central Railway,
 Mumbai CST, Mumbai - 400 001.
5. Dy. CE(C), Panvel
 Central Railway, Panvel,
 Mumbai - 410 201. ... **Respondents**

(By Advocate Ms. Shalaka A. Gujar-Karande)

ORDER (ORAL)

This application has been filed on 10.08.2017 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“8.a The applicant therefore prays that this Honorable Tribunal be pleased to call for the records of the case and after examining the same quash and set aside the impugned orders dated 28.12.2016 (Annexure A-1) and be pleased to direct the respondents to retire the applicant w.e.f 31.01.2016 instead of 31.12.2015.

b. Respondents be directed to revise the all retirement dues, DA, Gratuity and Pension payable to the applicant as per corresponding pay scale of the post according to and 7th Central Pay Commission with all consequential benefits.

c. That this Honorable Tribunal be pleased to pass such further order or orders as it may deem appropriate in the fact of the case.

d. That the costs of this Application be provided for.”

2. The applicant was born on 1st January, 1986 and superannuated in the normal course on 31.12.2015. If he had retired on a subsequent date, he would have obtained the benefits of 7th Pay Commission for the purposes of pay fixation and pension. The

provisions of FR 56 clearly lay down that a person whose date of birth is the first of particular month, he/she would superannuate in the normal course on the 31st of the preceding month and not later. The provisions of this FR have not been challenged and being rules issued under Article 309 of the Constitution, are not subject to judicial review unless challenged on the basis that they are arbitrary or are issued malafide or bear discrimination, which has not been averred in this matter.

3. Learned counsel for the applicant relies on various orders of different Tribunals and judgment of the Hon'ble High Court and of the Hon'ble Apex Court. Although these comprise a number of references and extract decisions of the Tribunals and Hon'ble High Courts, they all refer back to the decision of the Hon'ble Apex Court in S.

Banerjee Vs. Union of India, 1989 Supp (2) SCC 486.

Learned counsel also refers to a decision of the Hon'ble Madras High Court in P. Ayyamperumal V. The Registrar (CAT) and Ors. in W.P. No.15732/2017 which went up to the Hon'ble

Supreme Court and SLP was dismissed as follows:-

“Heard Mr. N.K.Kaul, learned ASG along with Mr. C.D. Singh, learned counsel for the petitioners.

Regard being had to the special features of case, we are not inclined to interfere.

The special leave petition is dismissed. However, question of law is kept open.”

4. Learned counsel for the applicant also relies on the orders of the Principal Bench of this Tribunal in OA No.571/2017 dated 17.04.2018, by a Single Bench, in the case of a applicant who had retired under circumstances identical to the present applicant. The Tribunal had referred to various judgments of the Courts and orders of this Tribunal and by reference to the decision of the Hon'ble Apex Court in S. Banerjee (*supra*), held that the applicant would be deemed to have been in service from 01.01.2016.

5. Learned counsel for the respondents has filed submissions in rebuttal and at the time of hearing, produces an order of the Hon'ble High Court of Delhi dated 23.10.2018 in W.P.(C) No.9062/2018 & C.M. No.34892/2018

(Union of India & Ors. Vs. G.C. Yadav) which was filed against the orders of the Principal Bench of this Tribunal as aforesaid. The judgment notes that in the case of S. Banerjee (supra), the office orders specifically stated that he was permitted to retire w.e.f. the forenoon of January 1st, 1986. It was on this basis that the Hon'ble Apex Court held that the individual had not actually retired on 31.12.1985 and held him entitled to the consequent benefits.

6. In the case of the decision of the Hon'ble High Court of Madras in P. Ayyamperumal (supra), the claim was with regard to increment accrued to the Petitioner on the conclusion of one year of service. The Court held that the claim in that case was that the increment had accrued by the end of the month because of past service over the last year and although the decision could have some persuasive value, the ratio was not directly applicable to the present case. Further, as extracted in the orders of the Hon'ble Apex Court in SLP against these orders, the legal principles had not been

considered by the Hon'ble Apex Court and therefore this could not be considered law on the subject.

7. The Hon'ble High Court of Delhi in the abovesaid Writ Petition held that the individual, who was the applicant in the case decided by the Principal Bench, was not entitled to receive any pay on or from 01.01.2016 and therefore, the question of applying the benefits of the 7th Pay Commission applicable from that date could not be claimed by him. Accordingly, the Hon'ble High Court quashed the orders of the Tribunal.

8. Considering the ratio and analysis contained in the judgment of the Hon'ble High Court of Delhi and its directly applicability to the present case, I consider it a binding precedent on this Tribunal and hold that the present applicant is not entitled to any benefits as claimed in the application.

9. Accordingly, the Original Application is dismissed as devoid of any merits and without any order as to costs.

ma. **(R. Vijaykumar)**
Member (A)