

Today when this matter is taken up for consideration, nobody appeared for the applicant. From the previous Ordersheets, it is apparent that nobody had appeared for the

applicant even on 23.4.2019, 26.4.2019, 24.5.2019, 12.7.2019 and 20.8.2019. Applicant has also not filed his rejoinder despite the last opportunity granted to him to file reply vide Order dated 12.7.2019 and as such his right to file rejoinder was forfeited as recorded in the Order dated 20.8.2019. In the foresaid circumstances, as the matter relates to retiral benefits of the senior citizen, this Court deems it appropriate to adjudicate this matter and decide the same by invoking the provisions of Rule 15 of the CAT (Procedure) Rules, 1987. Accordingly, we perused the OA and heard learned counsel for the respondents.

2. By filing this OA, the applicant is seeking the following reliefs:-

- “i) An Order or Direction whereby declaring Fundamental Rule-56 ultra vires of the Constitution of India, including a quashing and setting aside the FR-56; and/or
- ii) An Order or Direction of calculation of retiral benefits of the Applicant after granting annual increment, pay and allowances on increased amounts (in terms of 7 Pay Commission recommendations) which apply from 01.07.2017; and/or
- iii) To pass such other and further order(s) as this Hon’ble Tribunal deem fit and proper in the circumstance of the present matter.”

3. Counsel for the respondents submitted that no discriminatory treatment was given in the case of the applicant and the decision to retire him on 30.6.2017 was

taken in view of the existing Policy of the Government of India which has got the sanction of the President of India under Article 309 and 148(5) of the Constitution of India. Counsel further reiterated that decision was taken to retire the applicant on 30.6.2017 as per the existing policy of the Government as prescribed under FR 56(a), which is universally applicable and not only to the applicant. As such no anomalous situation has been created in this case. Hence, there is no violation of Articles 14 and 21 of the Constitution of India.

4. Counsel for the respondents further placed reliance on the decision on a similar issue decided by the Hon'ble Karnataka High Court in Writ Appeal No.3897 of 2005(S) in the matter of ***Union of India by its Secretary, Ministry of Defence and others vs. Col. Bhupinder Singh (Retd.) Major*** decided on 11.9.2009 as also of the decision of the Hon'ble Delhi High Court in ***Union of India and others vs. G.C. Yadav*** in Writ Petition (Civil) No.9062/2018 decided on 23.10.2018 and fairly submitted that against the aforesaid decision of the Hon'ble Delhi High Court, an SLP was preferred by G.C. Yadav and the said SLP is pending consideration before the Apex Court but no stay has been granted in the said case. As such the claim of the applicant in this case is squarely covered by the aforesaid decision and the same is liable to be dismissed by this Tribunal.

5. Having heard learned counsel for the parties and perusing the material placed on record, this Tribunal after carefully going through the aforesaid judgments as relied upon by the respondents is of the considered view that the issue raised in this case is squarely covered by the said decision of the Hon'ble Delhi High Court in ***Union of India and others vs. G.C. Yadav*** in Writ Petition (Civil) No.9062/2018 decided on 23.10.2018 in which the High Court held as under:-

“10. Having heard the learned counsel for the petitioner, Mr. Bhardwaj; perused the record and the relevant rules, and; having considered the submissions advanced by the respondent and the decisions relied upon by him, we are of the considered view that the respondent could not be considered to have superannuated/ retired on 01.01.2016, and he could not be treated as post 2016 pensioner. We are of the view that the impugned order passed by the Tribunal cannot be sustained and is liable to be set aside.

11. Firstly, we may observe that since the date of birth of the respondent is 01.01.1956, he attained the age of 60 years i.e. the age of superannuation on 31.12.2015. The respondent appears to be reeling under the impression that he attained the age of 60 years only on 01.01.2016, which is not correct. On 01.01.2016, the respondent entered into the 61st year of his life, having completed his 60 years on 31.12.2015.

12. The issue of retirement in respect of Central Government servants is covered by FR 56. We have already quoted the relevant extract from the said rule. The first proviso to FR 56 (a) is clearly attracted in the facts of the present case, since the date of birth of the respondent falls on the first day of the month i.e. on 01.01.1956. Consequently, by virtue of the first proviso to Rule 56 (a), respondent retired from service on the afternoon of the last day of the preceding month on attaining the age of 60 years. In the case of the respondent, that was the afternoon of 31.12.2015. Even if the expression “afternoon” is construed broadly, it could only extend to midnight of 31.12.2015 and the same would not cross the said deadline. As at the

beginning of 01.01.2016 i.e. from 00.00 hrs of 01.01.2016, the respondent ceased to be a serving employee, having superannuated on 31.12.2015. At no point of time on 01.01.2016, the respondent could be said to be in active service. At no point of time, in the year 2016 the respondent worked in a post, the pay or emoluments of which were fixed on the basis of the recommendations of the Seventh Central Pay Commission. He was not entitled to receive any pay on or from 01.01.2016. Thus, the question of revision of his pay, premised on the recommendations of the Seventh Central Pay Commission did not arise. The said recommendations became effective from 01.01.2016 in respect of employees who were in service on 01.01.2016 – which the respondent was not.

13. We agree with the submission of Mr. Bhardwaj that the Tribunal has erred in placing reliance on the judgment in *S. Banerjee (supra)* in the facts of the present case. The material difference in the facts of *S. Banerjee (supra)* and the facts of the present case is that in *S. Banerjee (supra)*, the petitioner - *S. Banerjee* sought voluntary retirement from a particular date i.e. 01.01.1986. It is open to an employee seeking voluntary retirement to choose the date of his voluntary retirement, unlike in the case of a superannuating Government servant whose date of retirement is determined by FR 56.

14. The Supreme Court took note of the fact in *S. Banerjee (supra)* that the petitioner was permitted to voluntarily retire from service from the forenoon of January 1, 1986. Thus, it could not be said that *S. Banerjee* had retired at any point of time on 31.12.1985. He continued to remain in service till the forenoon of 1st January, 1986. Before his retirement on the forenoon of 01.01.1986, the Fourth Central Pay Commission recommendations were implemented with effect from 01.01.1986. Thus, there was an overlap and before *S. Banerjee* retired, the revised pay scales under the Fourth Central Pay Commission Report came into effect. This is not the position in the present case.

15. The Supreme Court referred to Rule 5(2) of the Central Civil Service (Pension) Rules, 1972 which, *inter alia* provides that the day on which the Government Servant retires, or is retired or discharged, or is allowed to resign from service, shall be treated as his last working day and that in the case of a Government Servant who retires prematurely or voluntarily under clauses (j) to (m) of Rule 56 or Rule 48, or Rule 48 (a) of

the Fundamental Rules, the date of retirement shall be treated as a non working day. The Supreme Court observed that even in the case of the petitioner S. Banerjee, the date of retirement was January 1, 1986 and he was not entitled to pay for January 1, 1986 – since the same was to be treated as a non working day. However, that had no bearing on the question as to the date of retirement.

16. Paragraph 6 of the judgment in S. Banerjee (supra) reads as follows;

“6. Under para 17.3, the benefits recommended will be available to employees retiring during the period, 1-1-1986 to 30-9-1986. So the employees retiring on 1-1-1986 will be entitled to the benefit under para 17.3. The question that arises for our consideration is whether the petitioner has retired on 1-1-1986. We have already extracted the order of this Court dated 6-12-1985 whereby the petitioner was permitted to retire voluntarily from the service of the Registry of the Supreme Court with effect from the forenoon of 1-1-1986. It is true that in view of the proviso to Rule 5(2) of the Rules, the petitioner will not be entitled to any salary for the day on which he actually retired. But, in our opinion, that has no bearing on the question as to the date of retirement. Can it be said that the petitioner retired on 31- 12-1985 ? The answer must be in the negative. Indeed, Mr Anil Dev Singh, learned counsel appearing on behalf of the respondents, frankly conceded that the petitioner could not be said to have retired on 31-12-1985. It is also not the case of the respondents that the petitioner had retired from the service of this Court on 31-12-1985. Then it must be held that the petitioner had retired with effect from 1-1-1986 and that is also the order of this Court dated 6-12-1985. It may be that the petitioner had retired with effect from the forenoon of 1-1-1986 as per the said order of this Court, that is to say, as soon as 1-1-1986 had commenced the petitioner retired. But, nevertheless, it has to be said that the petitioner had retired on 1-1-1986 and not on 31-12-1985. In the circumstances, the petitioner comes within the purview of para 17.3 of the recommendations of the Pay Commission”

17. As noticed hereinabove, in the present case, by virtue of the 1st proviso to Rule 56 (a) of the FR, the

respondent retired on the afternoon of 31.12.2015. He did not see the light of the day - as a serving Government servant on 01.01.2016. Thus, the decision in S. Banerjee (supra) was clearly not attracted in the facts of the present case.

18. Reliance placed by the respondent on the judgment of the Madras High Court in P. Ayyamperumal (supra) is of no avail. Pertinently, that case did not relate to fixation of the date of retirement – which is the central issue in the present case. A perusal of the order passed in P. Ayyamperumal (supra) shows that the Division Bench accepted the position that the petitioner had completed one full year's service on 30.06.2013. However, the increment fell due on 01.07.2013 – on which date he was not in service. The Division Bench followed its earlier decision in State of Tamil Nadu, rep. by its Secretary to Government, Finance Department and Others v. M. Balasubramaniam CDJ 2012 MHC 6525 wherein the Madras High Court had allowed the petition filed by the employee by observing that the employee had completed one full year of service between 01.04.2002 to 31.03.2003, which entitled him to the benefit of increment. The increment accrued to him for the work done during the preceding period of one year.

19. On that premise, the Division Bench in P. Ayyamperumal (supra) held that the petitioner was entitled to one notional increment for the period 01.07.2012 to 30.06.2013. The said increment was directed to be taken into account on the date of his superannuation i.e. 01.07.2013.

20. Firstly, in our view, the said decision in P. Ayyamperumal (supra) was rendered in a materially different fact situation. The issue determined by the Court was not with regard to the date of retirement/superannuation. In fact, on that aspect, the finding returned by the Madras High Court goes contrary to the submission of the respondent that he retired on 01.01.2016, and not 31.12.2015. Secondly, the relief was granted to the petitioner by the Madras High Court since the increment which fell due on 01.07.2013 had been earned by the petitioner by working for the full year i.e. 01.07.2012 to 30.06.2013. The same cannot be said about the revision of pay upon implementation of the Central Pay Commission recommendations. Thirdly, the decision of the Madras High Court has only persuasive value and in the fact of the present case, we do not think that the ratio of the said decision is attracted.

21. So far as the rejection of the Special Leave Petition filed by the Union of India is concerned, the same was by a summary order, and while dismissing the SLP preferred by the Union of India, the Supreme Court observed that it was not inclined to interfere with the impugned judgment and order passed by the High Court of judicature at Madras on the facts of that case. The Supreme Court did not consider, and did not put its seal of approval on the legal principle involved in P. Ayyamperumal (supra).

22 For all the aforesaid reasons, we allow the present writ petition and set aside the impugned order passed by the Tribunal. We hold that the respondent was not entitled to pay revision with effect from 01.01.2016 under the Seventh Central Pay Commission recommendations since he superannuated on 31.12.2015 and he was not entitled to fixation of his pension on the premise that he retired from service on 01.01.2016. The parties are left to bear their respective costs.”

In view of the above position on this issue, the relief claimed by the applicant in this case cannot be granted to him. Accordingly, the present OA is dismissed. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

/ravi/