

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. NO.2504 of 2018

Orders reserved on 27.08.2019

Orders pronounced on : 30.08.2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Dogar Ram, Age-81
Group 'B', Ex Section Officer
S/o Late Shri Biru Ram
Flat No. 169,
Sector-13, Subash Apartment, PH-I,
Dwarka, New Delhi-110078

....Applicant

(By Advocate : Shri Rakesh Kumar Singh)

VERSUS

1. Ministry of Science and Technology,
Department of Science and Technology,
Technology Bhawan,
Through Secretary,
New Mehrauli Road,
New Delhi
2. Ministry of Personnel, Public Grievances and Pensions,
Department of Pension a Pensioners Welfare,
Lok Nayak Bhawan,
3rd Floor, Khan Market,
New Delhi-110003
The Secretary

.....Respondents

(By Advocate : Shri Ranjan Tyagi)

ORDER

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

- (a) Allow this O.A. of this applicant, declaring and holding
that the applicant has effectively retired from his Govt.

service w.e.f. 01.01.1996 as claimed and pressed in his representation dated 29.06.2018 (Annexure A-1 Colly).

- (b) Order and direct the Respondents to treat this applicant as retired w.e.f. 01.01.1996 and consequently pay him all the benefits as accrued w.e.f. 01.01.1996 as claimed and pressed/mentioned in his representation dated 29.06.2018.
- (c) Pass any such other/further consequential or otherwise, favourable order(s)/direction(s) which this Learned Tribunal deems fit and proper in the facts and circumstances of the present case of this applicant.

2. Briefly the grievance of the applicant is that he born on 1.1.1938 and vide notification dated 29.12.1995 (AN), he has been treated to be retired as Section Officer from the Govt. service on attaining the age of superannuation/retirement on 31.12.2015 (AN). From 1.1.1996 till 28.6.2018, the applicant has been paid on month to month basis by treating him to be retired on 31.12.2015 (AN). However, according to the applicant, despite attention of respondents drawn orally several times by the applicant that in fact he is entitled for the retirement benefits on 1.1.1996 but respondents authority did not consider nor communicated anything in writing.

2.1 Applicant further stated that after learning recently about the judgment rendered in OA No.459/1997 and OA 460/1997 and also about Mrs. Kamla Gupta's case, he submitted his representation on 29.6.2018 to the respondents by hand/post.

2.2 Applicant further submitted that he learned later that even on the same issue before this Tribunal other three OAs being OAs 3091/2015, 1011/2017 and 446/2017 are pending.

2.3 Therefore, he has filed this OA on 6.7.2018 seeking the reliefs as quoted above.

3. Pursuant to notice issued to the respondents, they have filed their reply in which they stated that applicant was an employee of Department of Science and Technology (DST). He retired for the said post after attaining the age of superannuation on 31.12.1995 vide respondents' notification dated 29.12.1995 as his date of birth is 1.1.1938 and at that time, the age of retirement for the Section Officer was 58 years. His retirement was made in terms of the provisions of FR 56, which provides as under:-

“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”

They further stated that the age of retirement as per the rule at that time was 58 years and not 60 years. At the time of retirement of applicant, the age of retirement as per the applicable rule was 58 years.

3.1 They also stated that Rule 5(2) of the CCS (Pension) Rules clearly provides that the day on which a Government servant retires from service shall be treated as his last working day. Further Rule 5(1) of the Rules *ibid* provides that any claim for pension (or gratuity) shall be regulated by the provisions of CCS (Pension) Rules in force at the time when a Government servant retires from service. Since the applicant retired on 31.12.1995, his entitlement for retiral benefits will be governed by the Pension Rules as in force on 31.12.1995 and not on 1.1.1996 when the benefits of 5th Pay Commission came into force. Therefore, the claim of the applicant for release of his retiral benefits treating his date of retirement on 1.1.1996 does not arise according to existing rules, as by no stretch of imagination, the applicant can be said to be entitled to seek the pensionary benefits at par with those who retired on 1.1.1996 or thereafter.

3.2 They also stated that legal position in OA 457/1997 and OA 460/1997 and several other cases relied upon by the applicant in support of his contention are not exactly or remotely on the point under consideration.

3.3 They further stated that the applicant's aforesaid representation dated 28.6.2018 was replied to him by the respondents vide letter dated 2.8.2018.

3.4 They further stated that judgment delivered by the Mumbai Bench of this Tribunal in OA Nos.459/1997 and OA 460/1997 relied upon by the applicant in this case has been challenged by the Govt. before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench by filing Writ Petition Nos.138/2000 and 516/2000. This aspect has already been informed to the applicant vide letter dated 13.6.2003 passed on the applicant's representation dated 13.1.2002 and the said order of the Mumbai Bench of this Tribunal was stayed by the Hon'ble High Court vide order dated 18.4.2000 in the said Writ Petition.

4. In the rejoinder filed by the applicant, he after quoting the FR 56 (a), Rule 5(1) and 5(2) and Rule 81(1) of the CCS (Pension) Rules, the applicant himself stated that Rule 5(2) declares the day of a Govt. servant's retirement, discharge, resignation as **his last working day**. The date of death shall also be a working day. Thus Rule 5(2) declares last day of retirement as working day. Further stated that Rule 83(1) of the CCS (Pension) Rules provides that a pension other than family pension shall payable from the date on which a Government servant ceases to be borne on the establishment. According to the applicant, as per Rule 83(1) of the Rules *ibid*, he ceases to be borne on establishment only w.e.f. 1.1.1996 and accordingly the applicant effectively will be deemed to be retired from service only w.e.f. 1.1.1996. In support of his

contention, learned counsel for the applicant placed reliance on the decision of this Tribunal in ***Mrs. Kamal Gupta vs. Commission, KVS*** vide order dated 2.1.2001.

5. Heard learned counsel for the parties and perused the pleadings available on record.

6. It is observed that although the applicant has not mentioned in his OA about a representation dated 13.1.2002 in which he has raised the similar grievance as raised in this OA but the respondents have annexed a copy of letter dated 13.6.2003 addressed to the applicant on his representation dated 13.1.2002 in which they clearly stated that the matter was taken up with the Department of Pension and Pensioners Welfare and that Department has advised that the Govt. has filed Writ Petitions No.138/2000 & 516/2000 in the High Court challenging the order passed on 15.10.1999 by CAT, Mumbai Bench, Nagpur in OA Nos.459/1997 and 460/1997. The said Writ Petitions have been admitted by the High Court and stay granted on 18.4.2000, on the effect and operation of the impugned order dated 15.10.1999 till the outcome of the Writ Petitions. DP&P have further indicated that Writ Petitions are still pending before the Hon'ble High Court and as such the matter is sub-judice. It is further stated in the said letter, in view of the facts mentioned above, you will appreciate that the issues as contained in your representation

dated 13.1.2003 can be considered after the judgment of Hon'ble Court is received.

7. It is to be noted that the said Writ Petitions No.138/2000 and 516/2000 were finally adjudicated and decided by the Hon'ble High Court of Judicature at Bombay, Nagpur Bench, Nagpur vide Order dated 29.8.2012, the relevant portion of the said Order is reproduced as under:-

“11. In our view, the interpretative exercise is called for only when the provisions of law are not clear. Assistance of settled principles for the said purpose including that of external aids like dictionary is then resorted to. F.R. 56 unambiguously stipulates that a Government Servant retires from service on afternoon of last date of month in which he had attained the age of 58 years. Rule 5(2) of Pension Rules treats the day on which the employee retires as his last working day. There is proviso to this sub-rule & Rule 83(1) also includes some exceptions but then, we are not called upon by the parties to consider the logic behind the same. As per Rule 5(1) Pension Rules in force on such last day regulate the pension. As seen from the notice of retirement dated 31.3.1995, Respondent namely V. Rajagopalan was born on 10.3.1937 while Respondent Mukund in W.P. No. 516 of 2005 was born on 29.3.1937. Both of them have retired on 31.3.1995. Thus, law clearly lays down that their date of retirement & last working day has to be the same. Thus, due to F.R. 56 & Rule 5(2) of Pension Rules, they could continue till 31.3.1995; which day in reality was beyond their actual completion of the age of superannuation. It follows, therefore, that, only by fiction, that date or day of retirement has been constituted as their last working day. Legally, respondents retired on the last working day. Entire exercise by the Full Bench of CAT militates against this legal position and wipes out it by artificially making distinction between the last working day & date of retirement. Rule 83(1) of Pension Rules is positioned in Chapter XI dealing with payment of pensions and prescribes the date from which pension becomes payable or is to be computed. Rule 5 is located in Chapter II which lays down General Conditions and determines law/scheme relevant to determine the

entitlement of an employee to pension with reference to the date of retirement.

In our view, the CAT erred in importing the date which is relevant under Rule 83(1) for the purposes of Rule 5(2) by overlooking the absence of need to invoke any interpretative exercise.

12. Hon'ble Apex Court in AIR 1986 SC 1948 - Prabhu Dayal Sesma vs. State Of Rajasthan & another, considers the meaning of "day" in all together different context of deciding the issue of age-limit for recruitment & hence, that meaning or interpretation is not relevant here. The Division Bench judgment of Hon'ble Kerala High Court in Union of India vs. George reported at 2004(1) ATJ 150 has considered the scheme which applied to all those who were drawing pension on 1.1.1996.

Logic as applied by the Full Bench of CAT also has been used by the Hon'ble Kerala High High Court Bench. For reasons, already noted above, we are not in position to subscribe to it.

13. We have perused the rulings cited. In Hon'ble Kerala High Court's ruling, the Tribunal's order granting benefit of the revision was affirmed under the peculiar circumstances of that case as the Bench expressed that it was unable to find merit in the Petition. The petition by the Union of India was dismissed as no other point was urged. While, in Prabhu Dayal's Case (cited supra) the Apex Court was considering the concept of legal day commencing from 12 O' clock midnight to the end on the same hour of the following night in order to calculate the Age of the candidate. The rulings afore-stated are not supportive to the case of the respondents, particularly when the controversy before us is fully covered by the decision given by the Division Bench of the Karnataka High Court in W. P. No.18186 of 2003, decided on 08/12/2003 and the decision which considered the impugned Judgment and Order is on all fours of the case in hand and has also attained the finality as there was no challenge in the Apex Court to the validity and legality of the decision of the Hon'ble Division Bench of the Karnataka High Court. It, therefore, follows that the Government Servant retiring on superannuation on the last day of the month i. e. as on 31/03/1995 can claim death gratuity or retirement gratuity as was available and operative on 31/03/1995 i. e. as on the date of retirement and not with effect from

the subsequent date. In other words, when the Office Memorandum was made applicable to the government servants who retire on or after 01/04/1995, the Government Servants who retired on 31/03/1995 were not entitled to the enhanced benefits as they were made available with effect from the subsequent or later date i. e. with effect from 01/04/1995. Such benefits which were available with effect from the later operative date i. e. 01/04/1995, but wrongly granted by the Tribunal to the respondents who retired on and with effect from the previous date i.e. 31/03/1995 in the present case, were not only undeserved and unwarranted, but also were detrimental to the State Exchequer/Revenue. The retired employees, on the basis of their meritless, unreasonable and excessive claim, cannot be allowed to make money and enrich themselves unjustly by causing undue financial loss to the State Exchequer.

14. We, therefore, allow both these petitions and set aside the impugned order dated 15/10/1999 passed by the Central Administrative Tribunal, Mumbai Bench, Camp at Nagpur in O.A. Nos. 459 of 1997 and 460 of 1997 and consequently dismiss the said Original Applications.”

8. Despite the fact that the aforesaid Writ Petitions were decided by the Hon'ble Bombay High Court way back on 29.8.2012, none of the parties has chosen to ascertain the status of the said Writ Petitions and to apprise the same to this Tribunal for proper appreciation of the issue involved in this case. It is also relevant to note that this OA was preferred by the applicant during the pendency of his representation dated 29.6.2018 but without giving a reasonable time to the respondents has filed this OA on 6.7.2018. Pursuant to notice, respondents have filed their reply in which they have also annexed a copy of order dated 2.8.2018 (Annexure-3 of the counter affidavit) passed by them on his representation

dated 29.6.2018. Although the applicant came to know vide the counter affidavit filed by the respondents that his aforesaid representation was rejected by the respondents vide order dated 2.2.2018, but he has chosen not to challenge the same by taking appropriate steps in this matter. In the absence of any challenge to the said order dated 2.2.2018 vide which the respondents have rejected his claim as raised by the applicant in this OA, no relief can be granted to the applicant on this count also.

9. Since the applicant in this OA is making his claim on the basis of the decision of Mumbai Bench of this Tribunal in O.A. Nos. 459 of 1997 and 460 of 1997 and also the decision of this Tribunal in Principal Bench in ***Mrs. Kamal Gupta vs. Commissioner, KVS*** dated 2.1.2001, which was also made to be based on the aforesaid decisions of Mumbai Bench of this Tribunal in OA No.459/1997 and 460/1997 and the said decision of the Mumbai Bench of this Tribunal in OA 459/1997 and 460/1997 was set aside by the Hon'ble High Court of Judicature at Bombay, Nagpur Bench vide order dated 29.8.2012 passed in Writ Petition Nos.138/2000 and 516/2000, the issue involved in this case is no more *res integra* as on today in view of the aforesaid decision of the Hon'ble High Court.

10. It is also to be noted that the Hon'ble Apex Court in ***S.Banerjee v. Union of India***, reported in AIR 1990 SC

285, dealt with a similar and identical situation wherein the petitioner therein sought voluntary retirement and was so retired on 31st December 1985. He claimed the benefit of the IV Pay Commission, which came into force with effect from 01.01.1986. The question was whether the petitioner therein could be said to have been in service on 01.01.1986 or ceased to be in service for all practical purposes on 31.12.1985 itself. Referring to that contention, the Hon'ble Apex Court held as under:

"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 paragraph 17.3 of the recommendations of the Pay Commission."

(emphasis supplied)

11. As such, in view of the above facts and circumstances of this case, and for the reasons stated above, this Tribunal does not find any merit in this case and the same is dismissed. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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