

**OA/310/00205/2019, MA/310/00075/2019 (in)(&) OA/310/00175/2019**

# PRESENT

1. D.Selvaraju .. Applicant in OA 205/2019
2. S.Jayakumar
3. C.Prabakaran
4. P.Ramamoorthy
5. S.Prathaban
6. S.Karthikeyan
7. P.Mohan
8. G.Meganathan .. Applicants in OA 175/2019

**Vs.**

1. Union of India rep by the  
Chief Postmaster General,  
Tamil Nadu Circle,  
Anna Salai, Chennai 600 002.
2. The Postmaster General,  
Western Region (TN),  
Coimbatore 641 002.
3. The Senior Superintendent of Post Offices,  
Salem East Division,  
Salem 636 001. .. Respondents in OAs 205/2019 & 175/2019
4. The Superintendent of Post Offices,  
Tirupattur Division,  
Tirupattur 635 601. .. Respondent in OA 175/2019

By Advocate **Mr.C.Kulandaivel, Mr.M.Kishore Kumar-SPC**

**ORDER**

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

MA 75/2019 filed by the applicants in OA 175/2019 for joining the applicants together and filing a single application is allowed.

2. The above OAs are filed seeking the following relief:-

OA 205/2019:

“To call for the records of the 3<sup>rd</sup> respondent pertaining to his orders which is made in No.BGT/SBK/dlgs dated 25.10.2018 and the order of the 2<sup>nd</sup> respondent which is made in No.BGT/SBK/dlgs dated 16.11.2018 and set aside the same; consequent to

to direct the respondents to grant one increment for the service rendered by the applicant for the last spell of 12 months before his retirement and further direct to revise and re-fix the retirement service benefits including pension of the applicant and to pay the arrears of pension to him; and

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

OA 175/2019:

“To call for the records of the 3<sup>rd</sup> respondent pertaining to his orders which is made in Annexure 6, 8 and 10 and set aside the same; consequent to

to direct the respondents to grant one increment for the service rendered by the applicants for the last spell of 12 months before their retirements and further direct to revise and re-fix the retirement service benefits including pension of the applicants and to pay the arrears of pension to them; and

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

3. 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.
4. This Tribunal had considered the very same question in a batch of cases in OA 1710/2018 to OA 1714/2018 on 06.3.2019. However, we heard the applicant and respondents. According to the respondents, they had submitted their points of view in the earlier cases cited above and the same can be taken as their arguments in these case also.
5. 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.
6. The counsel for the applicant mainly rely on a decision of the Hon'ble Madras High Court in "**Ayyanperumal v. Union of India (W.P. 15732/2017)**". The standing counsel for the respondent appeared and would content that the applicants had continued till 30.6.18 only on the basis of FR 56 and the Hon'ble Supreme Court in "**Chief General Manager v. U.V.George & Others (2008) 14 SCC 699**" had 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. He also submits that R-10 of CCS (Pension) Rules does not permit to take into consideration emoluments which fell due after his retirement.

7. He also invited our attention to the Hon'ble Apex Court decision in ***Achhaibar Maurya v. State of U.P. & Others (2008) 2 SCC 639*** wherein it was held as follows:-

“10. A benefit of getting an extended period of service must be conferred by a statute. The legislature is entitled to fix a cut-off date. A cut-off date fixed by a statute may not be struck down unless it is held to be arbitrary. What would, therefore, be an employees last working date would depend on the wordings of the Rules. It may seem unfortunate as some people may miss the extended period of service by a day, but therefor a valid provision may not be held to be invalid on the touchstone of Articles 14 or 16 of the Constitution of India. A statute cannot be declared unconstitutional for conferring benefit to a section of the people.”

The Standing Counsel also invited our attention to the decisions of 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 ***Union of India v. R.Sundara Rajan (WP 28433/05)*** and the decision of Hon'ble Karnataka High Court in ***Union of India & 3 Others v. YNR Rao (WP 18186/2003)*** where it was held 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.”

8. We had anxiously perused the pleadings and heard the submissions made from both sides. The Hon'ble Supreme Court in ***Chief General Manager, Telecom, BSNL & Another v. K.V.George reported in (2008) 14 SCC 699*** has clearly laid down what will be the actual date of retirement of an employee under the Central Government as per FR 56. We are bound to follow the decision of Apex Court as to the actual date of retirement and as to the nature of employment of the employee till the last date of the month. The Hon'ble Supreme Court held that “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 3.12.95 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 on 3.12.95 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.”

9. 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.

10. Hence we dismiss the OA accordingly. No costs.

(T.Jacob)  
Member(A)

14.03.2019

(P.Madhavan)  
Member(J)

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