

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.571/2017

Order Reserved on: 13.02.2018

Pronounced on:17.04.2018

Hon'ble Mr. K.N. Shrivastava, Member (A)

G.C. Yadav,
S/o late Kamal Singh Yadav,
(aged about 61 years)
(retired as Deputy Secretary)
R/o H.No.1627/3, Lane No.6,
Rajiv Nagar, Mata Road,
Gurugram-122001.

- Applicant

(By Advocate Shri L.R. Khatana)

-Versus-

1. Union of India
Through Secretary to the Govt. of India,
Ministry of Home Affairs,
North Block, New Delhi-110001.
2. Secretary to the Govt. of India,
Department of Pension & Pensioners' Welfare,
Ministry of Personnel, Public Grievances & Pensions,
North Block, New Delhi-110001.
3. Secretary to the Govt. of India,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances & Pensions,
North Block, New Delhi-110001.

-Respondents

(By Advocate Shri N.D. Kaushik)

ORDER

The applicant retired from the post of Deputy Secretary in the Ministry of Home Affairs, Government of India with effect from the afternoon of 31.12.2015 on attaining the age of superannuation. His date of birth is 01.01.1956. He has been deprived of the benefits of 7th Central Pay Commission's recommendations, which came into effect w.e.f. 01.01.2016 on the ground that he retired prior to that date i.e. 31.12.2015.

2. The applicant submitted his representation dated 14.12.2015 (Annexure A-4 colly.) to the Secretary, Department of Personnel & Training (DoP&T) (respondent no.3) stating therein that he would cease to be a Government servant in the midnight of 31.12.2016 and thus acquired the status of a pensioner in the forenoon of 1st January, 2016. Hence, he is entitled to all the pensionary benefits viz. gratuity, fixation of pay/pension as per 7th Central Pay Commission's recommendations. The representation dated 14.12.2015 of the applicant was forwarded by the Additional Secretary (S&V), DoPT to the Joint Secretary, Pension, Department of Pension and Pensioner's Welfare (DoP&PW) vide letter dated 29.02.2016. The relevant portion of the said letter is extracted below:

"2. In his representation, Shri Yadav has contended that the pensionary benefits accrue to a person when he acquires the status of Pensioner. As per the judgment of the Hon'ble Supreme Court in the case of S. Banerjee, the persons born on 1st January, 2015 were in Government service upto

midnight of 31st December, 2015 and acquired the status of pensioner only in the forenoon of 1st January, 2016. Applying the law laid down by the Hon'ble Supreme Court in the case of S. Banerjee, the persons born on 1st January, 1956 acquired the status of pensioner only in the forenoon of 1st January, 2016. The recommendations of the 7th Pay Commission are likely to be implemented with effect from 1st January, 2016."

3. Pursuant to the implementation of the 7th Central Pay Commission's recommendations, DoP&PW (respondent No.2) issued Annexure A-2 Om dated 04.08.2016 revising the pension of pre-2016 pensioners/family pensioners. The grievance of the applicant is that his retiral benefits have been fixed in terms of Annexure A-2 OM, treating him as a pre-2016 retiree whereas he should be treated as a retiree w.e.f. 1.1.2016 and thus the 7th Central Pay Commission's benefits should accrue to him.

4. Respondent No.2 considered the representation dated 14.12.2015 of the applicant, which was duly forwarded by the DoPT vide aforementioned letter dated 29.02.2016 and vide impugned Annexure A-1 OM dated 03.01.2018 has declined the request of the applicant. The relevant portions of this OM are reproduced below:

"4. In the case of Shri Yadav, he actually retired on 31.12.2015 and was not in service on 1.1.16. Judgment of Hon'ble Supreme Court in the case of Shri S. Benerjee has no relevance in his case. In fact Rule 5 (2) of CCS (Pension) Rules, has already been amended and as per the amended rule date of voluntary retirement is treated as the last working day. Therefore, those who retired voluntarily on 1.1.2016 would be eligible for pay and pension benefits of 7th CPC as a post 1.1.2016 retiree.

5. Since Shri Yadav retired on superannuation on 31.12.2015, he is to be treated as a pre-2016 pensioner and is accordingly entitled to the benefit in revision of pension under the OM No.38/37/46-P&PW(A)(ii), dated 4.8.16."

5. Aggrieved by the impugned Annexure A-1 OM dated 03.01.2017, the applicant has filed the instant OA praying for the following relief:

“B) That this Hon’ble Tribunal may be pleased to hold and declare that the impugned orders/action of the respondents is illegal, arbitrary, discriminatory, unconstitutional and violative of Articles 14 and 16 of the Constitution of India and quash and set aside the same and be pleased to further hold that since the Applicant superannuated with effect from the afternoon of 31.12.2015 and relinquished the charge of the post of Deputy Secretary in the afternoon of that date, he, as per law, is deemed to have effectively retired on or with effect from 1.1.2016 and therefore, cannot be treated as pre-2016 pensioner and direct the respondents to grant the retiral benefits such as fixation of pension, DCRG, commutation of pension, leave encashment etc. accordingly and pay the arrears thereof with 12% interest within a specified time-frame.”

6. Pursuant to the notices issued, the respondents entered appearance and filed their reply in which they have broadly made the following important averments:

6.1 The applicant retired from Government service on 31.12.2015 and accordingly he has been treated as a pre-2016 pensioner and his pensionary benefits have been fixed in terms of the OM dated 4.8.2016 (Annexure A-2) of the DoP&PW.

6.2 As per the provisions of FR 56(a), a Government servant whose date of birth is first of a month shall retire from service in the afternoon of the last day of the preceding month on attaining the age of 60 years. Hence, the applicant, whose date of birth is 1.1.1956 is deemed to have been retired in the afternoon of 31.12.2015.

6.3 The judgment of Hon'ble Supreme Court in **S. Banerjee v. Union of India**, [AIR 1990 SC 295], relied upon by the applicant in para 4 (d) of the OA, is not relevant in the instant case. It is stated that Shri S. Banerjee had retired voluntarily and his date of retirement was 1.1.1986 whereas in the instant case the applicant retired on attaining the age of superannuation in the afternoon of 31.12.2015 and as such was not in service on 1.1.2016.

7. The applicant has filed rejoinder to the reply, in which no substantial issue has been raised except saying that it is settled position of law by a catena of judgments of Hon'ble Tribunal, Hon'ble High Courts and Hon'ble Supreme Court that a person whose date of birth is 1st of a month is deemed to have retired from service from that date only.

8. On completion of the pleadings the case was taken up for hearing the arguments of the parties on 13.02.2018. Arguments of Shri L.R. Khatana, learned counsel for the applicant and that of Shri N.D. Kaushik, learned counsel for the respondents were heard. Shri Khatana, besides reiterating the averments made in the OA relied on the following judgments to buttress his argument that the applicant is deemed to have retired from service on 1.1.2016 since his date of birth is 1.1.1956:

i) Judgment of the Kerala High Court in **Union of India v. George**, [2004 (1) ATJ 150]; **held:**

“16. We are unable to accept this contention. The two officials had actually continued in service till the midnight of December 31, 1995. It is only from January 1, 1996 that they had ceased to be in service and acquired the status of pensioners. Resultantly their claim to pension had to be determined at the rate prevalent on the date. This is precisely what the Tribunal has given them. The case is in no way different from that of Banerjee. In both cases, the pay had been paid till December 31”

ii) Judgment of Hon’ble Karnataka High Court in **Union of India & others v. Col. Bhupinder Singh (Retd.) Major**, [Writ Appeal No.3897 of 2005, dated 11.09.2009], **held:**

“The decision reported in 1989 Supp. 2 SCC 486 (S. Banerjee v. Union of India & Ors.) has been followed by the learned Single Judge while passing the impugned order. In that case the appellant had filed an application for voluntary retirement which was accepted from the forenoon of 1st January, 1986 and in that view of the matter, he was found to be entitled to the benefit of para 17.3 of the recommendation of the Pay Commission. This decision is not applicable to the case of the respondent in the instant case as per Army Rules, which is applicable to the respondent who retired on 31.12.1995. None of the decision cited by the respondent are applicable to the case on hand. On the other hand, the decision cited by the respondent are applicable to the case on hand. On the other hand, the decision cited by the learned counsel for the appellants are applicable on all the fours to the case on hand and the impugned order calls for interference.”

iii) Judgment of Hon’ble Andhra High Court in **Union of India and Ors. V. P.S.R. Kumar Sinha and Anr.**, [2006 (2) ALT 354:2006 (3) ALD 57]; **held**

“6:17. Supreme Court Ruling In **S. Benerjee v. Union of India** , a definite finding is on record by their Lordships of the Supreme Court of India that when the employee has retired on the last date of the month, his date of retirement has to be treated as 1st date of succeeding month.

6:18. It is a direct decision on the issue before us.

6:19. Full Bench Decision of A.P. High Court **Principal Accountant General A.P. v. C. Subba Rao While** answering Point No. 2 the Full Bench of this Court categorically held as follows:

A Government servant who would be retiring on the last day of the month would cease to be Government servant by mid-night of that day and he would acquire status of pensioner and therefore he

would be entitled for all the benefits given to a pensioner with effect from first day of the succeeding month."

iv) Order of this Tribunal in **Satish Kumar v. Union of Inida &**

Ors., [OA No.792.2004, dated 25.11.2004], **held:**

*"It is trite law that for want of any decision to the contrary of the High Court, under whose jurisdiction the Bench of the Tribunal is situated, a decision of the High Court of another State would be binding as a precedent on the Tribunal and having regard to the decision of the Apex Court in **S. Banerjee vs. Union of India**, AIR 1990 SC 295, relied upon by Kerala High Court, the case of the applicant, in all fours, is covered by the ratio decidendi of the decision of the High Court. Having regard to the fact that he is deemed to have retired on 1.4.2004 special dispensation as mentioned in para 3 of the OM ibid would apply to him."*

8.1 Shri Khatana concluded his arguments by submitting that the case of the applicant is squarely covered by the above judgments and hence the relief claimed may be granted.

9. Leaned counsel for the respondents by and large reiterated the averments made in the reply filed on behalf of the respondents.

10. I have considered the contentions of the learned counsel for the parties and have gone through the pleadings and documents annexed thereto. All the judgments of the Hon'ble High Courts as well as of the Tribunal relied upon by the applicant are primarily based on the judgment of the Hon'ble Apex Court in **S. Banerjee** (supra), wherein it has been held as under:-

"The question that arises for our consideration is whether the petitioner has retired on January 1, 1986. We have already extracted the order of this Court dated December 6, 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 January 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 December 31, 1985? The answer must be in the negative. Indeed, Mr. Anti Dev Singh, learned counsel appearing on behalf of the respondents, frankly conceded that the petitioner could not be said to have retired on December 31, 1985. It is also not the case of the respondents that the petitioner had retired from the service of this Court on December 31, 1985. Then it must be held that the petitioner had retired with effect from January 1, 1986 and that is also the order of this Court dated December 6, 1985. It may be that the petitioner had retired with effect from the forenoon of January 1, 1986 as per the said order of this Court, that is to say, as soon as January 1, 1986 had commenced the petitioner retired. But, nevertheless, it has to be said that the petitioner had retired on January 1, 1986 and not on December 31, 1985. In the circumstances, the petitioner comes within the purview of paragraph 17.3 of the recommendations of the Pay Commission.”

11. This judgment has attained finality and thus holds the field today. It is clearly held by the Hon’ble Apex Court in **S. Banerjee** (supra) that in case of all those Government servants whose date of birth is 1st of a month, they are supposed to have retired from that date only.

12. In the instant case, the applicant’s date of birth is admittedly 1.1.1956 and thus relying on the ratio of law laid down by the Hon’ble Apex Court in **S. Banerjee** (supra), he is deemed to have retired from service on 1.1.2016. Hence, he is entitled for getting all his pensionary benefits in accordance with the 7th Central Pay Commission’s recommendations. Accordingly, this OA is allowed. The impugned Annexure A-1 order is declared illegal and accordingly quashed and set aside. The respondents are directed to fix the retiral benefits of the applicant in accordance with the 7th

Central Pay Commission's recommendations which have been implemented vide O.M. No. 38/37/2016-P&PW(A)(i), (ii) & resolution dated 04.08.2016 in respect of pensioners retiring on or after 1.1.2016. This shall be done within a period of three months from the date of receipt of a certified copy of this order. No costs.

(K.N. Shrivastava)
Member (A)

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