
(2020) 09 AFT CK 0007

In the Armed Forces Tribunal

Case No : Original Application No. 1180 Of 2020, Miscellaneous Application 1361 Of 2020

Shyam Kishore Pandey

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 09-09-2020

Acts Referred:

Citation : (2020) 09 AFT CK 0007

Hon'ble Judges : Rajendra Menon, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : Baljeet Singh, Anil Gautam

Final Decision : Dismissed

Judgement

1. Apart from the fact that there is inordinate delay in invoking the jurisdiction of this Tribunal, the applicant, who had retired from service on 31q

December, 2015, prays that the benefits of re-fixation of pension and pay in the light of the VW"" Central Pay Commission, which came in force on

01.01.2016, be granted to him. The reliefs sought in Para 8 of the O.A read as under:

(a) Set aside the impugned order Air HQ/99797/15NE/DAV dated 21.01.2020 (Annexure A-1).

(b) Direct the respondents to treat the applicant's retirement mei: 01.01.2016 and re-fix pension and all other NE benefits of the applicant as per 7111 Central Pay Commission.

(c) Direct the respondents to pay the due arrears thereof with interest @,12% p.a. with effect from the date of retirement till actual payment.

2. Mr. Anil Gautam, learned counsel for the respondents invites our attention to

an order passed on 19th July, 2019 by a Coordinate Bench of this Tribunal in GpCapt P.K. Singh and another v. Union of India and others (O.A No. 873 of 2016), wherein a similar prayer made had been rejected and

after taking note of various aspects of the matter, the Bench made the following observations:

13. We have given careful consideration to the arguments from both sides and find that the primary issue before us is whether the

applicants, who retired on 31.12.2015, can be granted retiral and pensionary benefits as per recommendations of 7th CPC, which are

effective w.e.f 01.01.2016, by accepting the applicants' contention that they be deemed to have retired on 01.01.2016 (instead of

31.12.2015).

14. The applicants have cited certain orders/judgments where entitlements of salaries/pension were granted in some cases by the Courts by

interpreting policy in a manner that the petitioners were deemed to have retired on the following day, i.e. the first day of the next month. On

the other hand, the respondents have cited the Govt. of India policy which lays down that military officers will retire on the last day of the

month in which they attain the age of superannuation. We are in agreement with the respondents that the applicants' case is distinguishable

from the facts of the judgments/orders that have been cited, and thus, the applicants cannot derive any benefit from these.

15. Thus, we are in agreement with the respondents who have stipulated that 7th CPC benefits would be applicable only to those who are in

service on or after 01.01.2016. As the applicants retired on 31.12.2015, they cannot be entitled to retiral and pensionary benefits of the 7th

CPC, which took effect only on 01.01.2016. Ordered accordingly.

Learned counsel for the respondents submits that in view of the above, now nothing survives for consideration and this application is liable to be

dismissed. However, learned counsel for the applicant, inviting our attention to the decision of the Hon'ble Supreme Court in the case of S. Banerjee v.

Union of India and others (1989 SCR SuppL (1) 562), contends that when the petitioner therein had retired on 31.12.1985, the Hon'ble Supreme Court

considered his date of retirement as 01.01.1986 to grant him benefit of certain pay fixation. We find that in Para 5 of the order passed the case of Gp

Capt P. K Singh (supra), this issue has been considered and it has been clearly indicated that in the case of S. Banerjee (supra), in fact, the date of retirement was considered as 01.01.2016 and not 31.12.2015 for reasons indicated in the case of Gp Capt P.K. Singh (supra). The judgment in the case of S. Banerjee (supra) has been distinguished and held to be not applicable. Considering the fact that the grounds taken and the grievance of the applicant stand concluded by a Coordinate Bench of this Tribunal in the case of Gp Capt P.K. Singh (supra), we see no reason to take a different view. Accordingly, the application stands dismissed.