(2003) 12 KAR CK 0039

In the Karnataka High Court

Case No : Writ Petition No. 18186 of 2003

Union of India (UOI) and Others APPELLANT

Vs

Y.N.R. Rao RESPONDENT

Date of Decision : 08-12-2003

Acts Referred:
Central Civil Services (Pension) Rules, 1972 — Rule 5 (2), 50 (1)

Citation : (2004) 2 KarLJ 193 : (2004) 2 KCCR 117 SN

Hon'ble Judges : R.V. Raveendran, J;H. Billappa, J

Bench : Division Bench

Advocate : Arvind Kumar, for the Appellant; V.S. Manika, for the Respondent

Final Decision : Allowed

Judgement

1. The matter is finally heard by consent and disposed of by this order. Respondent, who was working as Chief Engineer (MES), retired from service on the afternoon of 31-3-1995. His date of birth is 9-3-1937. On his retirement, the respondent was paid a sum of rupees one lakh being the maximum amount of retirement gratuity payable under Rule 50(1) of the Central Civil Services (Pension) Rules. According to respondent he is entitled to payment of Rs. 1,51,210/- as retirement gratuity. He contended that though Rule 50 provided the maximum amount of retirement gratuity as Rs. 1,00,000/-, it was increased to Rs. 2,50,000/- by official memorandum dated 14-7-1995. He contended that the increased limit will apply to his case. He gave representations dated 24-11-2000 and 1-2-2001 contending that the retirement gratuity should not be restricted to Rs. 1,00,000/- and he should be paid the full retirement gratuity calculated as per Rule 50(1). The said contention was rejected by the department by endorsement dated 31 -3-2001.

2. Feeling aggrieved, respondent approached the Central Administrative Tribunal, Bangalore Bench, in O.A. No. 816 of 2001.

2.1 Before the Tribunal, the department relied on the decision of a two members

Bench of the Tribunal in O.N. Razdan v. Union of India. O.A. No. 967 of 1998, DD: 14-12-1998, to contend that as the last working day of the respondent was 31-3-1995, the benefit of amendment with effect from 1-4-1995 will be available to only those who retired on or after 1-4-1995 and not those who retire on or before 31-3-1995.

2.2 On the other hand, the respondent relied on a subsequent Full Bench decision of the Tribunal (Mumbai Bench) in Venkataram Rajagopalan and Anr. v. Union of India 2000(1)ATJ 1 (Bom.), wherein a similar question was considered. It was held that a person cannot be deemed to be in service for one part of a day and out of service for the other part of the day; and therefore an employee who retires from service on the afternoon of the last day of a month is deemed to continue in service till the midnight of that day and for all practical and technical purposes, he is deemed to have retired from service only on the next day of attaining the age of superannuation; that is with effect from the first day of the month following the last day of the month of superannuation. As a consequence of holding that a government servant continues to be borne on the establishment till midnight of the date of superannuation, it was held that the effect of words ''afternoon of 31st March'' and ''forenoon of first April'' is the same and a government servant completing the age of superannuation on 31-3-1995 and relinquishing charge of his office in the afternoon of that day is deemed to have effectively retired from service with effect from 1 -4-1995.

2.3 Having considered the two earlier decisions, in this case, the Tribunal held that it was bound by the later Full Bench decision in Venkataram Rajagopalan''s case, supra, in preference to the earlier Division Bench decision in O.N. Razdan ''s case, supra. Therefore, the Tribunal allowed the application and held that the respondent is entitled to full amount of gratuity by applying the increased limit under official memorandum dated 14-7-1995, which came into effect from 1-4-1995. The order of the Tribunal is challenged in this petition.

3. Rule 50 of the Central Civil Services (Pension) Rules deals with retirement/ death gratuity. Sub-rule (1)(a) of that Rule provides that a government servant, who has completed five years'' qualifying service and has become eligible for service gratuity, shall, on his retirement, be granted retirement gratuity equal to one-fourth of his emoluments for each completed six monthly period of qualifying service, subject to a maximum of 16/2 times the emoluments. The first proviso to Sub-rule (1) which was in force till the end of 31st day of March, 1995 provided that the amount of retirement gratuity payable under the said Rule shall in no case shall exceed rupees one lakh. The said limit was increased to Rs. 2,50,000/- by official memorandum dated 14-7-1995, with retrospective effect from 1-4-1995. Therefore, if a government servant retired with effect from 1-4-1995 he will be entitled to the benefit of the increased ceiling limit. On the other hand, if a government servant retired on 31-3-1995, he will not be entitled to the benefit of such increased limit. Therefore, the question is whether a person retiring on the afternoon of 31-3-1995 can be said to retire with effect

from 1-4-1995 as contended by the respondent.

4. Rule 56 of the Fundamental Rules deals with retirement, Clause (a) of Rule 56 of the Fundamental Rules provides that except as otherwise provided in the said 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 superannuation. The proviso to Clause (a) of Rule 56 of the Fundamental Rules provides that a government servant whose date of birth is the first of a month shall however retire from service on the afternoon of the last day of the preceding month on attaining the age of retirement, Having regard to Rule 56 of the Fundamental Rules, the retirement of a government servant is always from the afternoon of the last day of the month and not at the end of the last day of the month.

5. But for the provisions of Rule 56 of the Fundamental Rules, 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 Rule 56 of the Fundamental Rules was introduced in the year 1973-74 for accounting and administrative convenience. What is significant is the proviso to Clause (a) of Rule 56 of the Fundamental Rules 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 Central Administrative Tribunal, 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 Central Administrative Tribunal that a government servant retiring on the afternoon of 31 st 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 day of April, is not good law.

6. Rule 5(2) of the Central Civil Services (Pension) Rules provides that the day on which a government servant retires from service shall be treated as his last working day. Rule 3(o) defines ''pension'' as including gratuity except where the term ''pension'' is used in contradistinction to gratuity. Rule 5(1) provides that any claim for pension (or gratuity) shall be regulated by the provisions of Central Civil Services (Pension) Rules in force at the time when a government servant retires from service. A combined reading of these clauses makes it clear that the date of retirement is the last date of the month in which the government servant retires and the retirement gratuity is to be calculated as per Rules in force on

that date. As the respondent retired on 31-3-1995, his entitlement to gratuity will be governed by the Pension Rules as on 31-3-1995. As per Rule 50 as it stood on 31-3-1995, the maximum amount payable as retirement gratuity of Rs. 1,00,000/- and therefore the Department was justified in paying only Rs. 1,00,000/- to the respondent.

7. We therefore, allow this petition and set aside the order passed by the Central Administrative Tribunal, Bangalore Bench in O.A. No. 816 of 2001 filed by the respondent. The said O.A. No. 816 of 2001 shall stand dismissed. Parties to bear their respective costs.