

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

RA 165/2015 in
OA 2165/2011
With
RA 172/2015 in
OA 1165/2011

Order reserved on: 13.01.2016
Order pronounced on:22.01.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

RA 165/2015

1. K.R. Srinivasan (Dr.)
Flat No.II, Floor III
Swathi Court
43, Vijaya Raghwan Road
T. Nagar, Chennai-600017
2. Josyalu Venkat Sastry
Flat No. 510,
Gharuna Seshasayee Appts.,
Vijaypuri Colony, Tarnaka,
Hyderabad (A.P.)-500017
3. N. Venkateshwarlu
A-203, Sharda Nivas
6th Main, 15th Cross
Indira Nagar-II
Bangalore-560038
4. KVR Chaitanya Swamy
13606, Sand Mountain Lane
Houston, TX, 7704 (USA)
5. MV Ramarao
11-1-16, Prakasham Street
Ramaraopeth, Kakinada-533004
6. V.Veerendra Kumar
Vadavathi House
Near old Road
P.O.Kuthuparamba
Distt. Kannaur, Kerala-670643

7. Madhumeet Cheema (Mrs.)
J-10/28
DLF, City-II
Gurgaon (Haryana) – 122002Applicants

(Through Shri S.K. Malik, Advocate)

VERSUS

Union of India through

1. Secretary,
Ministry of Personnel, P.G. & Pensions,
Deptt. of Pensions & Pensioners Welfare
Lok Nayak Bhawan,
New Delhi-110003
2. Secretary
Deptt. of Expenditure
Ministry of Finance,
Central Secretariat
North Block, New Delhi-110001 ... Respondents

(Through Sh.Rajesh Katyal and Sh. D.S. Mahendru,
Advocates)

with

RA 172/2015

1. Pratap Narayan
Executive Director (Retired)
FICC, Min. of Fertilizers
R/o C-47, Friends Colony East
New Delhi-110065
2. Ambrish Agarwal
General Manager (Retd). DOT
R/o 184 New Gandhi Nagar
Ghaziabad-201001
3. A. Rajagopalan
Dy. DG (Retd.), GSI
R/o A 17, Indiradevi Apts.,
18, Gopala Krishna Street,
T. Nagar, Chennai-600017
4. R.S. Bindra
General Manager (Retd.),
Ordnance Factory
R/o House No.2595, Sector-61,
S.A.S. Nagar,

Chandigarh-160062

5. C.A. Krishnamurthi
Controller of Stores (Retd.),
Rail Wheel Factory
R/o B-1/23, 4-B Cross Road,
New Town, Yelahanka,
Bangalore-560106
6. M.P. Singhal
Chief Engineer Bridges (Retd.),
Northern Railway
R/o D-7411, Vasant Kunj,
New Delhi-110070
7. K.K. Taneja
Dy. Director General (TD)
R/o G-238, Sarita Vihar
New Delhi-110076
8. P.S. Gopalakrishnan
Scientist G, NAL
R/o 964, 3rd Cross, I Main
HAL, 3rd Stage,
Bangalore-560075
9. B.R. Kulkarni
Chief Engineer (Retd.),
Central Railway
R/o F6/2, Sector-3,
CBD Belapur,
Navi Mumbai-400614
10. B.M. Misra
Scientific Officer (Retd.), DAE
R/o 501, Emerald Heights,
32 Union Park, Chembur
11. S.C. Pandian
Chief Engineer (Retd.),
Central Railway
R/o 403 Indraprastha Tower,
Plots 11-12, Sector-29
Vashi, Navi Mumbai-400703
12. L.D. Prabhakar
Chairman, RRB (Retd.),
R/o 183, West Park Road,
Malleswaram West,
Bangalore-560055
13. M.R. Narsimchar
R/o 92, 9th Cross Road,
RMV Extension,

Bangalore-560080

14. D. Nagarajan
Chief Rolling Stock Engineer,
Southern Railway
R/o 10-2-365, Royal Villa-301,
West Marco Pally,
Secunderabad-500026
15. S. Kasy Aiyer
Chief Rolling Stock Engineer, Southern Railway
R/o No.5, Fourth Cross Street,
Jayaramnagar Teachers Colony,
Thiruvanmiyur,
Chennai-600041
16. N. Sundararajan
Stenographer (Retd), DAE
R/o D-7/6, KAPS Township,
P.O. Anumala-394651,
Tapi Distt., Gujarat
17. D.N. Seshagiri
Director (Retd), GSI
R/o 4/47, 3rd Main Road,
Swaminatha Nagar,
Kottivakam,
Chennai-600041
18. S.K. Gupta
Addl. CSTE (Retd), Central Railway
R/o 2, Shanti Apts.,
810 Wright Town,
Jabalpur-482002
19. V. Rengamannar
Director (Retd), GSI
R/o 5/61, Illathar Street
Viswanathperi, Sivagiri
Tirunelveli-627763
20. P.G. Narayanan
Senior Professor (Retd) IRISSET
R/o 23 Heritage Homes, Thaltej
Ahmedabad-380059
21. Siddheswar Banerjee
Director, SG, (Retd), GSI
R/o Preyasi Apartments,
331, Garia Station Road,
Kolkata-700084
22. J.S. Chhabra
General Managar (Retd), DAE

R/o 216, Jai Apartments,
Plot No.35, Sector 9
Rohini, Delhi-110085

23. Abhijit Purkayastha
Dy. DG (Retd), Ordnance Factory Board
R/o B17/262, Kendriya Vihar,
VIP Road,
Kolkata-700052
 24. A.A. Sahay
Chief Electrical Project Engineer (Retd),
Central Railway,
R/o B-1/1291, Vasant Kunj,
New Delhi-110070
 25. G.S. Ahluwalia
Dy. Director General (Retd),
Ordnance Factory Board,
R/o H.No. 344, Sector-44-A,
Chandigarh
 26. G. Balasubrahmanyam
Director (Retd), Central Ground Water Board
R/o Flat B-2, Balaji Towers
74, 10th Avenue, Ashok Nagar,
Chennai
 27. R. Asoka,
Chief Project Manager (Retd.), Rail Wheel Factory
R/o 143, 12th Main, 23rd Cross
3rd Block East, Jaynagar,
Bangalore-560011
 28. M.S. Bhat,
Controller of Stores (Retd), N.F. Railway
R/o "SHRILA", MARIL,
PUTTUR-574202
 29. S.V. Ramana Rao
Scientist (Retd.), Department of Space,
R/o Plot No.6, Sitaram Nagar,
Sikh Village,
Secunderabad-500009
- ... Applicants

(Through Shri S.K. Malik, Advocate)

Versus

Union of India through

1. Secretary,
Ministry of Personnel, P.G. & Pensions,

Deptt. of Pensions & Pensioners Welfare
Lok Nayak Bhawan,
New Delhi-110003

2. Secretary
Deptt. of Expenditure
Ministry of Finance,
Central Secretariat
North Block, New Delhi-110001 ... Respondents

(Through Sh.Rajesh Katyal and Sh. D.S. Mahendru,
Advocates)

ORDER

Mr. P.K. Basu, Member (A)

We dispose of Review Application (RA) 165/2015 in OA 2165/2011 and RA 172/2015 in OA 1165/2011 together as the prayer made is the same.

2. This Tribunal had disposed of three OAs namely OA 1165/2011, OA 2165/2011 and OA 246/2012 vide order dated 21.04.2015. These were disposed of together on the understanding that all the OAs dealt with the same issue.

3. Through these RAs, the applicants have pointed out that while one part of their prayer has been answered in our order dated 21.04.2015, the order is silent on another part. It is stated that in OA 1165/2011, the relief sought was basically to count the qualifying service for earning full pension as 20 years for those who retired/ deemed to have retired from Central Government services on or before 31.12.2005 and were alive on that day at par with post-1.01.2006 retirees. In our order, we had allowed this prayer in para 13.

4. It is pointed out that in OA 2165/2011, the applicants in para 8.6 of the relief clause have prayed as follows:

“8.6 The applicants pray that the U.O.I. be directed that the benefits of due pension as per the qualifying service of 20 years/ 10 years for grant of full pension with effect from 01.01.2006 be given within three months of the judgment along with interest from the dates when the payments were originally due.”

5. In our order dated 21.04.2015, while prayer for earning full pension on 20 years of service was allowed, no order had been passed regarding 10 years of qualifying service in accordance with rule 49 (2) of CCS (Pension) Rules, which relates to superannuation whereas 20 years' clause relates to voluntary retirement. Learned counsel for the applicants has made out a case that this is an error apparent on the face of record and we may rectify the same.

6. Shri Rajesh Katyal, learned counsel for the respondents has raised four objections, namely,

- (i) since the applicants had not made a prayer in OA 1165/2011 regarding 10 year clause, they cannot raise it now in an RA as this is beyond the scope of RA;
- (ii) in OA 655/2010 decided on 1.11.2011, the applicants who were pre-2006 retirees, claimed pension at par with post-2006 retirees. This Tribunal had rejected the prayer for grant of full pension on

completion of 20 years of service at par with post-2006 retirees and, therefore, in view of this order, their claim cannot be considered;

(iii) the respondents have filed a Writ in the Hon'ble High Court and, therefore, the matter being sub judice, the judgment of the High Court should be awaited before passing any order in RAs; and

(iv) In view of Section 11, Explanation V of the Code of Civil Procedure, 1908, in case an order or judgment is silent on one of the prayers, then it should be presumed that that prayer has been rejected. Therefore, since there was no direction regarding 10 year clause, it should be deemed to have been rejected.

7. We have heard the learned counsel for the parties and gone through the pleadings available on record.

8. We have examined the law as expounded by the Hon'ble Supreme Court in the following two cases:

(i) **Kamlesh Verma Vs. Mayawati and others**, (2013) 8 SCC 320

(ii) **State of West Bengal and others Vs. Kamal Sengupta and another**, (2008) 2 SCC (L&S) 735.

9. While the contention of the learned counsel for the respondents is that in OA 1165/2011, the prayer regarding 10 year clause was not there, it was indeed included in para 8.6 of OA 2165/2011. However, we had disposed of all the three OAs under the impression that they deal with the same legal issue i.e. whether a distinction can be made between pre and post-1.01.2006 retirees. This legal principle had been decided that no distinction can be made but in the specific relief clause, only reference was made to 20 years clause and not the 10 years clause. In our opinion, in view of the law expounded by the Hon'ble Supreme Court as quoted above, this clearly is well within the scope of review as the relief sought was primarily on the question of government instructions distinguishing benefits being granted to pre and post-2006 retirees being violative of law laid down by the Hon'ble Supreme Court. This would be clear from para 8.1 of the relief clause in OA 2165/2011, which is as follows:

"8.1 Quashing the impugned clarification/modification given in Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Dept. of Pensioners Welfare Office memorandum F.No.38/37/08-P&PW (A) dt. 03 Oct. 2008 (Annex. A-1) to para 4.2 of the Office memorandum F.No.38/37/08-P&PW (A) dt. 1.09.2008 (Annex. A-4) as violative of law laid down by the Supreme Court and directing that the qualifying service for earning full pension shall be same for pre 2006 and post 1.01.2006 retirees/ pensioners."

Similarly, para 8.1 of the relief clause in OA 1165/2011 also refers to same government instructions being violative of the law laid down by the Hon'ble Supreme Court. We had, therefore,

examined this issue in depth in our order dated 21.04.2015 and come to the conclusion that in view of the law laid down by the Hon'ble Supreme Court in **D.S. Nakara Vs. Union of India**, 1983 SCC (L&S) 145, **V. Kasturi Vs. Managing Director, State Bank of India, Bombay and another**, (1998) 8 SCC 30, **T.S. Thiruvengadam Vs. Secretary to Government of India, Ministry of Finance, Department of Expenditure, New Delhi and others**, (1993) 2 SCC 174 and order of the Full Bench of this Tribunal in OA 937/2010 decided along with OA 2101/2010, no distinction can be made between pre and post-2006 retirees. The prayer in the OA was, therefore, allowed.

10. The error that has crept in is that while we have specifically mentioned about the qualifying service for earning full pension to be treated as 20 years also for those who retired from the Central Government service on or before 31.12.2005 and were alive on that date, the order does not specifically state that the qualifying service for pre and post-1.01.2006 retirees of 10 years will be the same in case of superannuation or on absorption in government bodies or government undertakings. To this extent, the order needs to be modified.

11. Regarding the objections raised by the learned counsel for the respondents, we are of the opinion that:

- i) The main relief sought in the OAs was parity between pre and post-1.01.2006 retirees. Benefits of 20 years/ 10 years clause was the consequence flowing from it. Thus, since the main prayer was

allowed, the latter would come under error apparent on the face of the record;

- ii) Our order in OA 1165/2011 was decided on the basis of our order in OA 937/2010 along with OA 2101/2010. In the latter order we had considered in depth respondents arguments based on OA 655/2010 decided on 1.11.2011. Therefore, raising the same issue again is not admissible;
- iii) The fact of a Writ Petition having been filed in the Hon'ble High Court does not prevent us from disposing of these RAs as the respondents have not produced any stay order of the High Court; and
- iv) Res judicata will not apply in this case as this is a case of 'error apparent on the face of the record'.

12. Thus, we allow the RAs directing that in para 13, after the words "would apply both as regards pension and family pension" and before the last sentence, the following sentence shall be added:

"For parity of reasons, the qualifying service for earning pension in case of superannuation and retirement on absorption in government body/ government undertaking will be treated as 10 years also for those who retire from the Central Government service on or before 31.12.2005 and

were alive on that date.”

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

/dkm/