

Central Administrative Tribunal, Principal Bench

Original Application No. 42 of 1998

New Delhi, this the 24th day of October, 2000

(19)

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mrs. Shanta Shastri, Member (A)

Smt. S. Talwar W/o Sh. S.G. Talwar
retired as Coupon Clerk of MTNL Departmental Canteen,
under Chief General Manager, MTNL, New Delhi,
R/o Delhi-31, address for service of notices is
C/o Shri Sant Lal, Advocate,
C-21(B) New Multan Nagar,
Delhi-110 056.

- Applicant

(By Advocate - Shri Sant Lal)

Versus

1. The Union of India, through the Secretary,
Ministry of Communication, Department of
Telecom,
Sanchar Bhawan,
New Delhi-110 001.
2. The Chief General Manager MTNL,
Khurshid Lal Bhawan,
New Delhi-110 050.
3. The Chief General Manager,
Northern Telecom Region,
Kidwai Bhawan,
New Delhi-110 050.

.. Respondents

(By Advocate - ~~MS.~~ Geetanjali Goel)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant has prayed for the following
reliefs:-

(1) To quash the impugned orders of
retirement of the applicant at the age of 58 years
three months and 2 days (Annexures A-1 and A.2).

(2) To declare that the age of retirement of
the applicant is 60 years in view of Rule 11 of
Departmental Canteen Employees (Recruitment &
Conditions of Service) Rules, 1980 (GSR-54) read with

[Signature]

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G.I. Letter dated 10.8.92 and OM dated 5.6.95 and to direct the respondents that the applicant should be deemed to have retired on superannuation on attaining the age of 60 years, with all consequential benefits.

(3) To direct the respondents for payment of monthly pension and other retirement benefits together with arrears due with penal interest at market rates.

(4) To grant such other or further relief as the Hon'ble Tribunal deems fit in the facts and circumstances of this case in the interest of justice.

2. The applicant claims that she had joined service as a Coupon Clerk in Departmental Canteen of Department of Telecommunication with effect from 1.1.1974 and she was governed by the Departmental Canteen Employees (Recruitment and Condition of Service) Rules, 1980. However, she was conferred the status of a Government servant with effect from 1.10.1991 in pursuance of the judgment of the Hon'ble Supreme Court in the case of C.K. Jha Vs. U.O.I. and Others and as such she became entitled to claim all the other benefits as are available to other Central Government employees of comparable status.

3. It is further stated by her that the Manager of the Departmental Canteen issued order vide his letter dated 24.10.94 by which the applicant was retired from service w.e.f. 3.10.1994, i.e., after she had completed 58 years of age as per Annexure A-1.

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However, after about 6 months, the Assistant General Manager in the office of the Chief General Manager (NTR) New Delhi issued another letter dated 3.5.1995 whereby it was directed that the applicant should be retired w.e.f. 30.6.94 when she completed her age of 58 years and not from 3.10.1994. It is further stated that these orders had been issued long back but she has not been paid her monthly pension and other retiral benefits.

4. It is further pleaded that the applicant has now come to know of the Government of India, Ministry of Personnel, P.G. and Pension vide their O.M. dated 5.6.1995 whereby they have clarified that the age of retirement of employees of non-statutory canteens/tiffin rooms located in the Central Government Offices recruited prior to 1.10.1991 is 60 years, so in view of this order of the Government of India, the retirement of the applicant before completion of 60 years of age is contrary to the statutory rules, as defined by the said order of the Government of India.

5. In pursuance of the judgment of the Hon'ble Supreme Court in the case of C.K. Jha (Supra.), the applicant was treated as a Government servant w.e.f. 1.10.1991 in the pay scale of Rs.825-1200. However, a formal order to this effect was issued by the office of the CGM vide Memo dated 4.1.1995. The applicant and other employees were given option for pensionary

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and GPF benefits or to retain the benefits under existing Canteen Rules. The applicant opted for pensionary benefits.

6. The applicant further claims that her order regarding retirement was issued at the age of 58 years as against Rule 11 of the Departmental Canteen Employees (Recruitment and Conditions of Service) Rules, 1980 read with Government of India letter dated 10.8.92 and O.M. dated 5.6.95.

7. The applicant further pleaded that despite being retired from service, the concerned authorities have not paid the monthly pension and she has not been paid DCR Gratuity and other retirement benefits despite several requests made by her to the respondents. As such the applicant claims that she is being discriminated as she has not been paid the pension and other retirement benefits so she is also entitled to claim interest.

8. It is further stated that applicant has not been paid pay and allowances after the period when she retired, had she retired after attaining the age of 60 years.

9. The application is being contested. The respondents admit that the applicant was conferred status of Government employee on 1.10.1991 in pursuance of the judgment of the Hon'ble Supreme Court in the case of C.K. Jha (Supra.) but they insisted

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that the age of retirement is 58 years, so the applicant cannot challenge the action of the respondents in retiring her at the age of 58 years.

10. As regards the clarification alleged to have been issued by the Government of India that the retirement of the non-statutory canteens/tiffin rooms located in the Central Government offices prior to 1.10.1991 remains to be 60 years but the respondents submitted that the said instructions are not applicable to the answering respondents, as such those instructions have no relevance since the applicant had been conferred with the status of Government employee and at the relevant time she was to retire only at the age of 58 years.

11. As regards payment of retiral benefits to the applicant is concerned, the same was considered by the Tribunal and directions were given to the respondents by this Tribunal in this regard. The record also shows that vide order dated 24.2.1998 the respondents were directed to pay at least provisional pension in accordance with the rules and instructions.

12. We have heard the learned counsel for the parties and have gone through the records of the case.

13. As regards the question of retirement of the applicant is concerned, the learned counsel for the applicant has relied upon Annexure A-6 dated 5.6.97

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which was Office Memorandum signed by Director of Canteens. The relevant portion of the said OM is reproduced hereinbelow:-

"2. With the declaration of canteen employees as Government employees w.e.f. 1.10.1991 and repealing of GSR-54 from that date, a doubt has been expressed by certain officers as to what would be the retiring age in respect of Group 'C' canteen employees. It is, therefore, clarified that the age of retirement of all employees of non statutory canteens/tiffin rooms registered with Director (Canteens) and located in Central Government officer, recruited prior to 1.10.1991 is 60 years. For the canteen employees recruited after 1.10.1991 the age of retirement would be 58 years in the case of Group 'C' and 60 years in the case of Group 'D' employees (at par with retiring age of other Government employees of comparable status).

emphasis supplied

14. Referring to this Annexure A-6, learned counsel for the applicant submitted that admittedly the applicant was appointed in the canteen prior to 1.10.1991 and as per this annexure, the age of retirement of all employees of the Canteens registered with Director (Canteens) and located in Central Government offices, recruited prior to 1.10.1991 is 60 years and it is only those employees who had been appointed after 1.10.1991 the age of retirement would be 58 years in the case of Group 'C' and 60 years in the case of Group 'D'. Since the applicant had been appointed prior to 1.10.1991 and her case is also covered by the OM dated 5.6.95, as such the age of retirement in her case will be 60 years.

15. In response to this, the learned counsel for the respondents submitted that the applicant became Government employee w.e.f. 1.10.1991, so she was

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covered by the rules applicable to Government servants, as such the applicant will retire at the age of 58 years and she cannot be given the benefit of 60 years. Besides that the counsel for the respondents submitted that her claim for retirement became time barred as she was retired in the year 1994 and the applicant has filed this OA only on 31.12.1997 so she cannot ask for the pay and salary for the period after her retirement.

16. In reply to this, the learned counsel for the applicant submitted that since this is a case for non-payment of retirement benefits which gives a continuous cause of action and she has been processing her case for early settlement of dues, so first of all the limitation does not apply and secondly she has prayed for condonation of delay.

17. As regards the applicant's claim with regard to the age of superannuation at the age of 60 years is concerned, we find that the applicant after her retirement had been agitating her claim with the department only for retiral benefits and interest thereon. It is subsequent in the year 1997 when she claims that she came to know of some circular whereby she should have been retired at the age of 60 years but the fact remains that at the time when she had retired at the age of 58 years, she had not lodged any protest with the department for premature retirement. Even the clarification on which she has relied upon in her OA had been issued on 5.6.95, i.e., much after her actual retirement at the age of 58 years, so for these

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reasons we find that because of the peculiar facts in this case we cannot extend the benefit of age of 60 years of superannuation to the applicant.

18. As far as the retiral benefits are concerned, the applicant has been paid arrears of pension on 4.5.98 (Rs.50,582/-), DCRG on (Rs.7392/-) on 6.8.98 and commuted value of pension (Rs.15,960/-) on 6.8.98, so she is entitled to be paid interest on the same. Since no explanation has come forward from the side of the respondents about the delay, so we direct that the respondents shall pay interest to the applicant on the aforesaid amounts at the rate of 12% from the date applicant retired, i.e., 30.6.94 till the date of payment, i.e., August, 1998. Interest shall be paid within a period of 3 months from the date of receipt of a copy of this order.

19. In view of the above, the OA is partly allowed. No order as to costs.

Shanta S -

(Mrs. Shanta Shastry)
Member (A)

Kuldeep

(Kuldeep Singh)
Member (J)

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