

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**NEW DELHI**

O.A. No. 1798/88  
T.A. No.

199

DATE OF DECISION 01.02.1991.

<u>Shri Karnail Singh</u>	Petitioner
<u>Shri G.D. Bhandari</u>	Advocate for the Petitioner(s)
Versus	
<u>U.O.I. through the Secretary,</u>	Respondent
<u>Min. of Home Affairs, Deptt. of Internal Security (Rehabilitation</u>	
<u>Division) New Delhi &amp; Another</u>	Advocate for the Respondent(s)
<u>Shri M.L. Verma</u>	

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? */no*
4. Whether it needs to be circulated to other Benches of the Tribunal? */no*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,  
Vice Chairman(J))

The applicant has had a chequered career in Government where he has served for about 25 years but was declared only quasi-permanent and not permanent and thereby, he has been deprived of pensionary benefits. He is presently aged 74 years.

2. The applicant has served in the Indian Army for a period of about 5 years from 12.11.1941 to 17.7.1947. There has been a break in service from 17.02.1947 to 8.2.1949 which has been condoned by the Government for the purpose of counting three years service for quasi-permanancy. From

9.2.1949 to 28.2.1968 for a period of about 19 years, he has worked in various capacities in the then office of the Custodian of Evacuee Property, later known as office of the Regional Settlement Commissioner under the Ministry of Rehabilitation. From 9.3.1968 to 31.7.1978, he worked in the Oil and Natural Gas Commission (hereinafter referred to as 'ONGC') and retired from there on attaining the age of superannuation of 58 years.

3. The Government declared the office in which the applicant was working as surplus in 1967-68 and it was also woundup. It was in view of this that he sought employment in the ONGC as Security-cum-Fire Officer. The applicant states that the other employees of his erstwhile office so woundup were accommodated in other Government departments and they were eventually declared permanent and were given pensionary benefits. As he got employment in ONGC, which is a statutory organisation under the Govt. of India, he could not be confirmed in any post in Govt. He was not given any pensionary or retirement benefits whatsoever except that after a period of about 13 years, he was paid a total sum of only Rs.5,108.12 by way of terminal gratuity without any interest thereon. He has made numerous representations for the grant of pensionary benefits but they were of no avail.

4. The Government have issued instructions in September, 1972 to the effect that a permanent Government servant who has been appointed in a Public Sector

Undertaking on the basis of his application shall, on his permanent absorption in such Public Sector Undertaking be entitled to the same retirement benefits in respect of his past service under the Government as are admissible to a permanent Government servant on deputation to the Public Sector Undertakings on his permanent absorption therein (Vide extract from Audit Bulletin September, 1972 reproduced at Annexure A-10, page 24 of the paper book). These instructions do not help the applicant as at the time of his absorption in the ONGC, he had not been declared as a permanent Government servant.

5. On 30.12.1980, the Government issued instructions to the effect that a Government servant who has rendered temporary service of not less than 20 years shall be brought within the purview of CCS (Pension) Rules, 1972 and that the condition of holding a pensionable post in a substantive capacity shall be dispensed with in his case. These instructions also do not help the applicant as they apply only to those who were in service as on 30.12.1980 (Vide OM dated 30.12.1980 issued by the Department of Personnel and AR at Annexure A-21, page 41 of the paper book).

6. The Government have again issued instructions in 1987 to the effect that a temporary Government servant who has rendered service of not less than 10 years

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shall be eligible for grant of superannuation/invalid pension, retirement gratuity and family pension at the same scale as admissible to permanent employees under the CCS(Pension) Rules, 1972. These instructions also do not help the applicant as they apply only to those who are/were in service on 1.1.1986 (Vide OM dated 14.4.1987 at Annexure A-22, page 42 of the paper book).

7. The applicant has prayed for granting him proportionate pension for the service rendered by him in the Government, together with 18% interest thereon.

8. The main plea raised by the respondents in their counter-affidavit is that of limitation, and <sup>that</sup> the claim is not covered by rules in force.

9. We have carefully gone through the records of the case and have heard the learned counsel of both parties. This is a unique case in which an employee who has rendered about 25 years of service with the Government in various capacities has received only a paltry sum of Rs.5,108.12 as terminal gratuity. At the very outset, we are not impressed by the plea of limitation raised by the respondents in view of the decision of the Supreme Court in the Madras Port Trust Vs. Hymanshu International, 1979(1) SLR 757 in which the Supreme Court observed as follows:-

" It is high time that Government and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims/citizens and do what is fair and just to the citizens".

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10. Salary and allowances as well as pension are payable to a public servant month after month. Right to receive salary or pension is a recurring right. That being so, the cause of action to claim these amounts arises from month to month (Vide C.N. Locanathan Vs. Union of India, 1989(9) ATC 61 at 64).

11. In respect of a claim based on a recurring right, such as the right to pension, it is open to the Tribunal to fix a date within a period of 3 years from 1.11.1982 from which the applicant could be paid the amounts due to him, in view of the provisions of Section 21(2)(a) of the Administrative Tribunals Act, 1985 (Vide P.L. Shah Vs. Union of India and Another, AIR 1989 SC 985).

12. As to the merits of the claim put forward by the applicant, it will be noticed that this is not a case in which the applicant has opted for a Contributory Provident Fund Scheme as distinguished from pension.

13. In the well-known case of D.S. Nakara Vs. Union of India, AIR 1983 SC 130, the Supreme Court has observed that "the antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet

by the decision of the Constitution Bench in Deoki Nandan Prasad Vs. State of Bihar, AIR 1971 SC 1409 wherein it was held that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension.

14. Summing-up the true scope of pension, the Supreme Court observed in Nakara's case that "pension is not only compensation for loyal service rendered in the past but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you gave your best in the hey day of life to your employer in the days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation for the service rendered. In one sentence one can say that the most practical *a* raison d'etre for pension is the

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inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon" (vide page 29 of the judgment, page 138).

14A. In Poonamal Vs. Union of India, 1985 SCC (L&S) 802, the Supreme Court has held that all widows and dependants of deceased Government servants would be entitled to the benefits of family pension scheme after it had become non-contributory since 22.9.1977, irrespective of whether they had or had not agreed to make the necessary contribution envisaged in the 1964 liberalisation scheme. The Court considered it as an extremely humane problem and relied upon its decisions in Nakara's case and Deoki Nandan Prasad's case.

15. In Smt. Bhagwanti Vs. Union of India & Others, JT 1989(3) SC 545 at 548, the Supreme Court referred to the aforesaid observations and held that the Government shall extend the benefit of family pension to the spouses of Government servants who had got married to them after their retirement and the children born after their retirement, though the rules in force excluded them from the definition of 'family' in the CCS (Pension) Rules, 1972.

16. The Supreme Court further observed that "the avowed purpose of the Pension Rules is to provide a sustenance in old age".

17. In the instant case, the applicant has been denied pensionary benefits on the ground that he has not held a substantive post in the Government though he was declared quasi-permanent. Why the Government did not consider the case of the applicant for confirmation is not clear from the records before us. The Supreme Court has observed in S.B. Patwardhan Vs.

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State of Maharashtra, AIR 1977 SC 205 as follows:-

" Confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. A glaring instance widely known in a part of our country is of a distinguished member of the judiciary who was confirmed as a District Judge years after he was confirmed as a Judge of the High Court. It is on the record of these writ petitions that officiating Deputy Engineers were not confirmed even though substantive vacancies were available in which they could have been confirmed. It shows that confirmation does not have to conform to any set rules and whether an employee should be confirmed or not depends on the sweet will and pleasure of the Government".

(See also Shiv Kumar Sharma Vs. Haryana State Electricity Board, AIR 1985 SC 1673)

18. The Government have duly taken note of the aforesaid observations and have modified the Rules relating to confirmation. According to the revised procedure for confirmation which is effective from 1.4.1988, confirmation will be made only once in the service of an official which will be in the entry grade. Confirmation is delinked from the availability of permanent vacancy in the grade. An officer who has successfully completed the probation may be considered for confirmation. Since all the persons who complete probation in the first appointment will be declared as permanent, the distinction between permanent and temporary employees for grant of pension and other pensionary benefits has cease to exist with effect from 1.4.1988. (Vide OM No. 13011/1/86-Estt.(D) dated 28.3.1988 reproduced in Swamy's Complete Manual on Establishment and Administration for Central Government Officer, Second Edition, pages 309 to 317).

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19. Pension being in the nature of economic security in the evening of life of a Government servant, it would be iniquitous to deny the applicant pensionary benefits on the ground that during the period of his 19 years of service in the Rehabilitation department, an order of confirming him in a post was not issued. The applicant is presently 74 years of age and the learned counsel of the applicant stated that the case of the applicant is the first of its kind. The other colleagues who had worked with him in the Rehabilitation department are enjoying pensionary benefits. In the interest of justice and equity, we are of the view that the applicant should be given proportionate pension for the period of service rendered by him to the Government, by treating him to have been confirmed for the purpose of pension. In the facts and circumstances of the case, <sup>however,</sup> we do not consider it appropriate to direct the respondents to pay to the applicant arrears of pension prior to the date of filing of the present application, i.e., 19.9.1988.

20. We, therefore, order and direct as follows:-  
(i) ~~That~~ <sup>The respondents</sup> shall, as a special case and not to be quoted as a precedent, give pension to the applicant for the period of service from 12.11.1941 to 8.3.1968 during which he has served in the Indian Army and the then Ministry of Rehabilitation which is now under the

Ministry of Home Affairs, Department of Internal Security (Rehabilitation Division) excluding the period from 17.2.1947 to 8.2.1949. The applicant should be deemed to have been confirmed before he joined Oil and Natural Gas Commission for the purpose of pension.

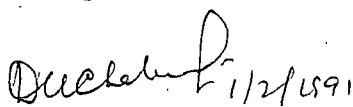
(ii) The respondents are directed to give proportionate pension as in (i) above from 19.9.1988. The arrears from the said date should also be paid to the applicant together with Simple Interest at the rate of 10% per annum.

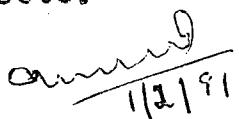
(iii) The applicant would be entitled to the benefit of family pension and the respondents shall take necessary action in this regard on the receipt of an application duly filled in by him in accordance with the rules.

(iv) The respondents shall comply with the above directions within a period of two months from the date of receipt of this order.

(v) We make it clear that this order will not constitute as a precedent.

There will be no order as to costs.

  
(D.K. CHAKRAVORTY)  
ADMINISTRATIVE MEMBER

  
1/2/91  
(P.K. KARTHA)  
VICE CHAIRMAN(J)