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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.**

O.A. 1816/88

Date of decision: 15.1.82

Smt.L.Francis

.. Applicant.

Versus

Union of India & others

.. Respondents.

None for the applicant.

Mrs.Avnish Ahlawat

.. Counsel for the respondents.

CORAM:

The Hon'ble Sh.Justice Ram Pal Singh, Vice Chairman(J).

The Hon'ble Sh.P.S.Habeeb Mohamed, Member(A).

J U D G E M E N T

(Delivered by Hon'ble Sh.P.S.Habeeb Mohamed, Member(A)).

1. In this O.A., under Section 19 of the Administrative Tribunals Act (1985) filed by Smt.Francis, who retired as Headmistress from the School of the Delhi Administration (Adarsh Nagar), one of the Schools taken over from the Delhi Municipal Committee she has prayed for issue of directions by the Tribunal to the respondents, to treat her service rendered on Contributory Provident Fund, as service for the purpose of seniority, gratuity and pension and grant her revised pension at the rate of Rs.260/- P.M. as on 11.9.1972 and further revised pension at Rs.315/- P.M. w.e.f. 1.4.79 alongwith R.I.P., further revised her pension at Rs.825/- w.e.f. 1.1.86 alongwith D.A., grant her interest on the retirement benefits from 1.1.72 with interest and allow her costs of the litigation.

2. Her case is built on the following facts. She was employed as Assistant Teacher in the Municipal Committee, Delhi School in November 1937, declared permanent on 1938; the services of the applicant were taken over by the Government (Delhi Administration) on 1.5.47; the service under Government continuing till 1.5.47 when again the services were transferred to the Delhi Municipal Corporation from

15.5.58. From 1.7.1970 her services were taken over by the Government. She retired from service on superannuation on 9.11.1972. According to her, her total qualifying service for retirement benefits was 38 years, and she is entitled to full retirement benefits on the basis of 33 years' qualifying service. She has supported her claims by referring to the Government of India letter No.F.6374/58.SE(2) dated 29th May 1959 with reference to the recognition of the service rendered by the provisionallised teachers under the erstwhile local bodies (in this case the Delhi Municipal Committee and the Delhi Municipal Corporation whose employees in the schools were taken over by the Delhi Administration) which enjoins on the teachers who were under the C.P.F. to refund the amount of employers' share of the contribution in monthly instalments not exceeding 12 in number and on their having done so, the permanent service rendered by them under the local bodies would be counted for pension and seniority. According to her, she has refunded an amount of Rs.683.90 p. ^{in 1968} representing the employers' contribution alongwith interest thereon and this is sufficient compliance with Government directions to enable her to claim full pensionary benefits.

3. In the absence of the party and her counsel at the time of hearing on 7.1.92, we had to depend on the averments in the application, the reply of the respondents, the rejoinder filed by the applicant and the arguments of the learned counsel for the respondents. The stand of the respondents is that the application is time barred. Besides, as per the Government directions, she had to refund the employers' share of provident fund contribution by

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27th August, 1959. The applicant's contention that she deposited the C.P.F. with interest in September, 1968 was not borne out by the records. The records disclose that the applicant did not exercise her option by the stipulated date for coming over to the pension scheme and though a copy of the treasury challan No.127 dated 22.7.68 has been filed, this is not corroborated by any entries in her service book. Her pension was settled in September, 1975. Her claims for pension, as per her prayer in the application, cannot be reopened.

4. We find that the contention of the respondents that the application is barred by limitation, has to be accepted. Though there is a letter to her of the Delhi Directorate of Education dated 21.11.86 which permits her to meet the departmental authorities about her pension matters, this letter does not extend the period of limitation, laid down under Section 21(2) of the Administrative Tribunals Act, 1985 whereunder the Tribunals has no jurisdiction in respect of a service grievance which arose three years prior to the establishment of the Tribunal. The law on limitation has also been laid down, in a Full Bench judgement of the Tribunal in Parmeshwar Rao versus Union of India (Vol.II of Bahri Brothers) **page 250-262(1991 publication)** which bases itself on the decision of the Hon'ble Supreme Court S.S.Rathore versus State of Madhya Pradesh (A.I.R.1990-S.C.10). The matter is, therefore, clearly hit by limitation and has to be dismissed on this ground alone.

5. However, in view of the issues involved, particularly because it is a matter of pensionary benefits, we have examined the case on merits also. There is no doubt that those governed under C.P.F. benefits and those

governed under other pensionary benefits do not form a class and there is no discrimination in treating them differently, as laid down by their Lordships of the Supreme Court in Krishna Kumar Versus Union of India (1990 14- A.T.C.-846, para 45)

"We are not inclined to accept either of these submissions. The P.F. retirees and pension reirees having not belonged to a class, there is no discrimination. In a matter of expenditure includible in the Annual Financial Statement, this Court has to be loath to pass any order or give any direction, because of the division of functions between the three co-equal organs of the government under the constitution".

The same ratio will also apply in a case where a part of the service on C.P.F. is ignored for purposes of full pensionary benefits. Even if the applicant came to know of the revised conditions for payment of retirement benefits in May 1961 and not in 1959, this does not absolve her of the need for repayment of the employers' share of the C.P.F. within the prescribed time which could have been extended in respondents' discretion and in any case, depositing the same in 1988 will not be sufficient compliance with Government directions. In the circumstances, we do not find any grounds to give her the relief prayed for and the application is dismissed both on grounds of limitation and also on merits. However, the respondents may make a thorough search of the records and repay her the amount deposited by her, if the records disclose the same, after she provides material substantiating the deposit.

(P.S. HABEEB MOHAMED)

MEMBER(A)

(RAM PAL SINGH)

VICE CHAIRMAN(J).