

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

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O.A.No.191/90

New Delhi, This the 12th day of August, 1994.

HON'BLE SHRI J.P. SHARMA MEMBER(J)  
HON'BLE SHRI P.T. THIRUVENGADAM MEMBER(A).

Shri Bundu  
S/o Mohd. Ismail Ex.T.N. 287  
R/o Ordnance Factory Muradnagar Estate  
Muradnagar Distt. Ghaziabad(U.P.)  
(By Advocate; Shri V.P. Sharma) ..... Applicant.

Versus

1. Union of India through The Secretary  
Ministry of Defence, Govt. of India  
New Delhi.
2. The Director General of Ordnance Factories  
Ministry of Defence, Govt. of India  
10, Auckland, Calcutta.
3. The General Manager,  
Ordnance Factory, Ministry of Defence  
Muradnagar  
(By Advocate: Shri V.S.R. Krishna) ..... Respondents.

ORDER(ORAL)

BY SHRI J.P. SHARMA

The applicant initially joined as a Tailor 'C' in Ordnance Factory, Chandigarh in the year 1963. On request he was reverted to the post of Labour Grade-II in the year 1966. On his request he was transferred from Chandigarh to Muradnagar, Distt. Ghaziabad, U.P. in 1968. The applicant served in the capacity of Labour Grade-II in Ordnance Factory, Muradnagar. He superannuated in 31st July, 1975. Since he was a industrial worker, he retired at the age of sixty. The applicant was not granted the pensionary benefit. The applicant filed the present application in February, 1990. He <sup>prayed</sup> has for the grant of relief and be awarded pension and gratuity as per the rules, after <sup>quashing</sup> ~~XXXXXX~~ the order dated 10th February, 1989. He also prayed for quashing the notification dated 14th July, 1987.

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2. A notice was issued to the respondents to <sup>opposed</sup> contest the application for who/the grant of relief on the ground that the applicant was not a confirmed employee in the permanent strength of the Ordnance Factory, Muradnagar, and as such, his service could not be counted as qualifying service for the grant of pensionary benefits. The applicant has also not completed 20 years of service which is the basic contention for grant of pensionary benefits to a industrial employee in accordance with the Govt. of India O.M.No.38/1082-ER/Unit dated 24th November, 1993. In view of the fact XXXX the applicant is not entitled to any benefit, XX the counsel for the respondent referred/order dated 10.8.1989 <sup>to the impugned</sup> as quoted below:-

"In accordance with CCS(Pension) Rules, 1972 the basic condition for grant of Pension to Govt. servants is that he should be confirmed in any post and should have <sup>as</sup> a minimum of 10 years service/qualifying service. In the Ministry of Defence Letter No.18(16)/74/D(Civ.II) dated 20.7.1974 serving Govt. servants (both Pmt. & Temporary) were given an opportunity to come over the Pensionary scheme, if they so desire. It is implied that option exercised under the above Govt. letter is applicable only when the individuals otherwise fulfil the basic conditions attached to the grant of pension. As the present case, Shri Bundu has not been confirmed in any of the post he is not eligible to pensionary benefits under the new pension rules (Abstracts are incorporated in Appendix 5 of CCS(Pension) Rules, 1972".

.....3/-

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3. The learned counsel for the applicant stated that for the pensionary benefits the limitation provided in Section 21 should not be a hurdle. However, it is not so. Pension though may ~~fall~~ <sup>be</sup> due every month but it should be ascertained sum of money declared to be paid. Merely the claim that the person is entitled to the pensionary benefit can not be said to be pension falling due every month. This claim <sup>is</sup> analogous to any other service matter. However, we find that since 1975 the matter remained under active consideration of the respondents and whatever may be the reasons the applicant was conveyed the decision through the General Secretary, ~~XXXXX~~ Pensioners Association on 10th February, 1989. This letter shows that earlier the communication was addressed in September, 1988. The present application was filed in 1990, though it is expected that a literate or illiterate or semi-literate employees have to abide by the same law of limitation but those who have advanced in age and have retired needs a sympathetic and magnanimous approach particularly in a claim which has certain material issues over adjudication. In the case of P.L. Shah Vs. Union of India, 1989 (SEC page 346), the Hon'ble Supreme Court considered the case of non-payment of suspension allowance filed years after suspension and the decision of the Tribunal was set aside ordering that so much of the claim which can be in the limitation should have been considered by the Tribunal. In view of this, though the applicant by his own delay may ~~lose~~ <sup>lose</sup> original claim for a certain period but atleast he can be given

the benefit if he ultimately gets success from one year ~~prior~~ <sup>with</sup> to the filing of application and that will coincide X/ the date of the impugned order.

4. Regarding the refusal of the pension to the applicant the ground taken by the respondents is that he was an unconfirmed employee. In the letter dated 23rd September, 1988 issued by Ordnance Factory, Muradnagar it is clearly mentioned that the applicant was holding a pensionable post but he was not given pension due to the reason that neither he was permanent nor completed 20 years of service at the time of his superannuation. Accordingly, he was paid only his own contribution and terminal gratuity. This clearly shows that he was also not covered by Contributory Provident Fund scheme. The main point to be decided here is that the administration keeps a person unconfirmed on a post for longer duration and the incumbent continues to work on the post without any break in continuity then whether non confirmation will deprive him the benefit of the grant of pension. The <sup>similar</sup> ~~xxx~~ case came before the Hon'ble Supreme Court in the case P.K. Jain Vs. Union of India reported in Judgement Today, 1994 Vol.IV, SC page 507. The facts of that case may not imperi materia. With, the present case, as the petitioner P.K. Jain was recruited by UPSC on a post of substantive nature was placed on probation but continued on the post for 12 years but remained unconfirmed.

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His claim for pension was rejected by the Tribunal but the Hon'ble Supreme Court holding that the post was of substantive nature in the case of Baleswardass Vs. UPSC reported in 1988 (Vol.I SCR page 449) held that the provisions of rule 13 of CCS Pension Rules could be attracted and the service of the applicant will be counted as qualifying service for the grant of pension.

5. Under Rule 49(2) of the CCS Pension Rules 1972, 33 years of service is taken to be a maximum period for the grant of maximum benefit with regard to the grant of pension. The service falls short of that than pro rata pension is granted. If a person has served for 12 years on a post of substantive nature, than in that case he may be unconfirmed but he can not be said to be on the temporary strength of the cadre and if by administrative inadvertance or non action the incumbent retired unconfirmed can not be denied the benefit which can be available to a similar employee in other unit or any other employee of Union of India. The post at the most can remain temporary for a period of 3 years beyond, that it assumes the nature of a substantive post and in any case if a person has continued for 12 years on a post that post can be temporary but the appointment can not be said to be not of substantive nature.

6. The applicant's counsel, however, has also annexed certain copies of the judgement with the rejoinder but these are not readable at all and are not reported one. It is not proper to defer the hearing for furnishing the readable copies.

7. In view of the facts and circumstances the appointment of Sh. Bundu being of substantive nature, he is entitled to the grant of pensionary benefits on the basis of the last pay drawn on his retirement with interim relief granted by subsequent pay commission report and that pension may be calculated on the date of his retirement. The applicant shall not be paid any pension for the period from 1st August, 1975 till 31st January, 1989. However, his pension shall be calculated from time to time during this period. He will be granted pension with effect from 1st February, 1989. He will be continued to get that pension as has been modified subsequently by different orders issued by Govt. of India. The surviving widow will also be entitled to, if any, family pension. The claim for the benefit of pension from 1st August, 1975 to 31st January, 1989 has been withheld because of delay in filing this application. While disposing of this application we have also taken note of the pensionary benefits to industrial employees on which O.M. dated 18th November, 1960 has been issued by Ministry of Finance. We also mentioned here that the learned counsel for the applicant did not press for the quashing of the O.M. dated 14th April, 1987 which relates to terminal death benefits to temporary employees. The application

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is therefore, allowed as said above with the direction to the respondents to trace out the records and calculate the pension of the applicant as given in the body of the judgement and the payment be effected to the applicant within a period of four months from the receipt of the passing of the judgement. Cost on parties.

P. J. Ra

(P.T. Thiruvengadam)  
Member(A)

Jowany

(J.P. Sharma)  
Member(J)

MR.