

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 1980/91

21.05.1992

SMT. HARDEV KAUR

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM :

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

FOR THE APPLICANT

...SH.M.L. CHAWLA WITH
SH.S.L. LAKHAN PAL

FOR THE RESPONDENTS

...MS. NISHA SAHAI, PROXY
COUNSEL FOR SH.M.L. VERMA

1. Whether Reporters of local papers may
be allowed to see the Judgement?

2. To be referred to the Reporter or not?

JUDGEMENT (ORAL)
(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant is widow of a retired civilian army employee, Shri Jodh Singh, who died on 14.5.1986. The widow has filed this application for the grant of pensionary benefits, liable to be paid which accrued to her late husband by virtue of his service with the respondents from 10.8.1932 to 10.8.1973 in various capacities, firstly as NCE (Artificer), Vehicle Mechanic and subsequently as Supervisor Technical Grade-III. She has also claimed family pension admissible to her after the death of her husband w.e.f 14.5.1986. The learned counsel for the applicant has taken to the history of the case that the applicant has served for about 40 years continuously without any break in service in the corps of EME even after having been declared as quasi

permanent w.e.f. 1.7.1962, but was not awarded pensionary benefits in spite of the best attempts made by the deceased employee by making successive representations to the respondents. The learned counsel for the applicant also referred to certain similar matters having been adjudicated upon and the persons similarly situated were granted the relief of pensionary benefits. The learned counsel has referred to the judgement of the Hon'ble Supreme court upholding the decision of the Hon'ble High Court of Bombay in the case of Anant Rao Shukl Vs. UOI annexed to the application as Annexures A2 and A3. Annexure A3 is the decision of the High Court of Bombay wherein while deciding appeal No.658/85 in Writ Petition No.118/81 (Union of India Vs. Anant Rao Shukl), the Division Bench held that Rule 7 of the Pension Rules does not make any distinction between quasi permanent and permanent service. Further it was held that the petitioner of that case having been retired in 1971, then by virtue of sub para 2 of Rule 7, it was not a condition precedent for his entitlement for pension that he should have been confirmed in the post.

The learned counsel for the applicant also referred to the decision in the case of Mani Ram Talwar & Anr. Vs. UOI & Ors. (OA 36/88) decided by the Principal Bench on 25.7.1991, the copy of the judgement annexed as Annexure A5 to the application where Mani Ram Talwar along with other was enrolled in army in EME as NCE on 8.9.1937 and also worked as

Supervisor Technical Grade III till 1959 without any break. He was also along with others promoted to the higher post of Supervisor Grade II and was also declared permanent alongwith others on 1.7.1962. They were also not granted pension. They claimed pension under Rule 7 Section 4 of the Revised Pension Rules, revised from time to time. In the year 1974, the Government of India granted the pensionary benefits to all Supervisor Technicians and as such the serving personnel in that category were brought on regular establishment. But this provision did not cover those who had retired before 1.4.1974, although they were similarly placed. The present applicant earlier joined Indian Army as NCE and worked till 1959 as Vehicle Mechanic and thereafter as Supervisor Technical Grade III till 1973 having been declared as quasi permanent on 1.7.1962. He, therefore, also retired before 1974. The Division Bench in para 2 observed as follows :

Smt. Raj Kumari Chopra, learned counsel for the respondents stated that the instant case is distinguishable from the one decided by the High Court of Bombay and is not covered by the spirit of the Government letter dated 4th July, 1974. The distinction no longer exists after the decision in the case of D.S. Nakra Vs. Union of India. We are also of the view that there was no rationale in the discrimination of those retired before 1st April, 1974 and any such discrimination is violative of Article 14 of the Constitution of India. Accordingly, we allow this application and direct the respondents to pay the pensionary benefits to the applicants as has been done in the case of Anant Rao Shukul Vs. Union of India, within a period of three months from the date of communication of this order. There shall be no order as to costs."

I think that there is no further scope in the matter any more as the case is fully covered by this judgement. However, the learned counsel for the applicant has also referred to another decision of the Principal Bench given in CA 1532/89 decided on 31.7.1991 (Mahan Singh Vs. UOI). A similar view has also been taken in this case. The learned counsel for the respondents argued the case on the point that the applicant was not on a pensionable establishment and was not made permanent during his tenure of service. There is no substance in this argument after the judgement referred to above one of which of the Bombay High Court having been upheld by the Hon'ble Supreme Court. The main ~~blank~~ ^{objection} of the respondents appears to be that the judgements are judgements in personem and cannot be applied to similarly situated persons. However, after the judgement of Amrit Lal Berry's case by the Hon'ble Supreme Court,

I do not find that these judgements cannot be taken as exemplars by the administration to decide the cases of similarly situated employees, ~~though~~ ^{they} they may be judgements in personem.

The learned counsel for the applicant also referred to the case of P. Savita Vs. UOI decided by the Hon'ble Supreme Court, 1985(2) SLJ 331 SC. In this case, the Hon'ble Supreme Court was ceased that the matter of fixing the pay

scale of Draftsman Grade II by promotion from Draftsman Grade III. The administration has made certain distinction in granting the scale given to Draftsman Grade II. Though the principles of that case are on the principle of 'Equal Pay for Equal Work', but at the same time it was directed in the judgement that those similarly placed be also given the benefit.

It is not necessary to go into further details of this matter and the application is, therefore, allowed with the following directions:

(a) On an undertaking given by the applicant's widow along with all surviving heirs of the deceased employee to the respondents, she shall be allowed all the pensionary benefits which accrued to the deceased employee by virtue of his continuous service with the respondents from 1932 to 1973.

(b) If any gratuity etc. has already been paid or there was any CPF scheme according to which the deceased employee has been paid, then that shall be taken into account while calculating the pensionary benefits of the deceased employee. All those pensionary benefits shall be paid to the aforesaid widow as said above within a period of four months from the date of receipt

-6-

of a copy of this judgement. The employee died on 14.5.1986 and after that the applicant shall be entitled to the family pension as per rules, which shall be calculated on the last pay drawn by the employee. In the circumstances, the parties shall bear their own costs.

J. P. Sharma

(J.P. SHARMA) 21.5.92
MEMBER (J)
21.05.1992

AKS