

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(2)

O.A. No. 353/92
T.A. No.

199

DATE OF DECISION

10.9.93

Shri Mulk Raj

Petitioner

Shri A. S. Chadha

Advocate for the Petitioner(s)

Versus
 Union of India

Respondent

Shri M. L. Verma

Advocate for the Respondent(s)

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The Hon'ble Mr. J.P. Sharma, Member (Judl.)

The Hon'ble Mr. B.K. Singh, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ys*
2. To be referred to the Reporter or not? *Ys*
3. Whether their Lordships wish to see the fair copy of the Judgement? *2*
4. Whether it needs to be circulated to other Benches of the Tribunal? *+*

JUDGEMENT

(of the Bench delivered by Hon'ble
 Mr. J.P. Sharma, Member)

The applicant was enrolled in the Army in the
 E.M.E. as N.C.E. w.e.f. 24.1.1931. He was discharged
 from service on 15.5.1959 after rendering 28 years,
 one month and 22 days' service and was paid Rs.36,000/-
 on account of service gratuity. He was re-employed as
 an ex-Serviceman as Supervisor (Tech.) in the Workshop
 on 16.3.1959. He retired from the civilian service on
 23.7.1973, after rendering 14 years, 4 months and 8 days'
 service. He was not declared permanent till his retire-
 ment. He was not granted any pension due to the reason

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that he was neither permanent in his grade, nor had he rendered 20 years' of minimum service. He was, however, paid a sum of Rs.5,581.50 as gratuity. The applicant made representations one after the other to the respondents, but to no effect. He filed the present application on 23.1.1992 in which he has prayed that the respondents be directed to grant the petitioner all pensionary benefits for his service in the Army from 24.1.1931 to 15.3.1959 and further, to grant the petitioner all the pensionary benefits for his civilian service as Supervisor (Tech.), Grade III from 16.3.1959 to 24.7.1973. He has also claimed interest at the rate of 24% per annum.

2. The respondents contested the application and took the preliminary objection that the application is barred by time. He has already been paid service gratuity for the Army service as well as for the civil service. He was not entitled for pension under sub-rule (1) of Rule 10 of Temporary Service Rules, 1965. As the applicant was not confirmed, no option was taken for counting the military service. It is further stated that in terms of Rule 2, CCS (Pension) Rules, 1972, a Government servant, including Civilian Government servants and Defence services appointed substantively to a civil service of

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post in a pensionable establishment is eligible for grant of pension and DCRG. A Government servant, who at the time of retirement from service, does not hold a lien on a permanent pensionable post, is not eligible for pension and DCRG, but is eligible for terminal gratuity under sub-rule (1) of Rule 10 or sub-rule(1) of Rule 11 of CCS(TS) Rules, 1965. The applicant has only rendered 14 years, 4 months and 7 days' service as temporary/quasi-permanent. Accordingly, he was granted service gratuity for which he was entitled under C.C.S.(T.S.) Rules, 1965. Thus, according to the respondents, the applicant has no case. Besides, his claim is belated and is barred by limitation.

3. We have heard the learned counsel for the parties at length. In fact, the applicant had filed this application in January, 1992 as he was satisfied by making repeated representations to the respondents. The learned counsel for the applicant referred to the letter dated 6.12.1991 from C.D.A., Allahabad, by which the Commandant 505, Army Base Workshop, Delhi, was informed that the Court decision is applicable in specific cases only and not in general. In view of this, the applicant Shri Mulk Raj, cannot be extended the benefit of the Court orders passed in other cases. It is a fact that the



applicant has opposed the Tribunal for redress of his grievances very late. The application, therefore, for the grant of pensionary benefits has been moved after a long time. But, we cannot ignore the decision given in similar cases by the other Benches of the Tribunal as well as by the Bombay High Court. The respondents in para.5 of their reply, have admitted that the averment made by the applicant in para.5 of the application is admitted to them so far as it is under the heading 'Important Note'. It is further stated that the case of the applicant and others similarly affected persons was considered by the Govt., but the applicant's case is not covered under the spirit of the Government letter No.51828/EME/CIB/4236/D.O.II dated 4.7.1974. It is further stated that the appeal of Shri Anant Rao Shukal was allowed by High Court, Bombay and later upheld by the Supreme Court. As the judgement was given only in respect of Shri Anand Rao Shukal and was silent about the similarly affected personnel, it includes the applicants. In view of this admission, the applicant should have been given the benefit of the judgement of a similarly placed person, Shri Anand Rao Shukal. In the case of Anand Rao Shukal, he also joined as non-combatant Cleaner on



26.9.1931 and continued there till 24.4.1959. He was also re-employed as a Supervisor (Tech.) in the Station Workshop at Colaba as a civilian and continued as such till 25.9.1971 when he retired from service. On his retirement from the Station Workshop, Colaba, he was paid a sum of Rs. 4,660/- and no other retirement benefits. He has claimed for the pensionary benefits as well as the family pension for the period for which he served in the Army till 24.4.1959 as a non-combatant Cleaner as well as for the period he served as Supervisor (Tech.) in the Station Workshop, Colaba. The Bombay High Court granted relief to that petitioner for pension for his service as civilian Supervisor (Tech.) in Station Workshop at Colaba according to the liberalised pension rules. However, his claim for the period from 20.9.1931 to 24.4.1959, was not granted. The appeal against this order before the Division Bench of the Bombay High Court was also rejected and the SLP filed by the Union of India before the Hon'ble Supreme Court was also rejected. The case of the applicant is admitted to be similar by the respondents to the case of said Shri Anant Roy Shukal. Another matter came before the C.A.T. in OA-30/88 - Mani Ram Talwar & Others Vs. Union of India & Ors. and the applicant was also given the benefit similar to

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that of Anant Rao Shukal. The applicant was also enrolled in the Army, E.M.E. as N.C.E. on 8.9.1937 and after discharge as Assistant Foreman, given the job of Supervisor (Tech.) in 1959. They were also not given the pensionary benefits on their retirement from civil service before 1974. In that case, the applicants were given the other benefits in the same manner as had been paid to the Anant Rao Shukal by the direction given in the judgement by the Bombay High Court in the civil Writ Petition No. 1161/81 by their order dated 24.1.1985.

4. In view of this, the withholding of the benefit to the applicant though he has come very late, would be against the principles of equity and justice. In the case of Amrit Lal Berry Vs. Collector, Central Excise, 1975(1) SLR 183 SC, Inderpal Yadav Vs. Union of India, 1985 SCC (L&S) 526 and K.L. Shephard Vs. Union of India, 1988(1) SLJ 105 SC, the Hon'ble Supreme Court clearly laid down that the benefit of the judgement can be extended to similarly situated persons. In view of the above, final rejection of the representation of the applicants by the order dated 6.12.1991, is not justified and this is a case of interference even though the applicant has come quite late and has retired from 23.7.1973. The respondents

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are equally at fault in not giving a definite reply to the applicant. The Counsel for the applicant states that because there has been a number of judgments of similar cases, the applicant, who is a retiree, was assured that he would be given the benefit as has been given to similarly placed persons. The pension accrues to a person till his death and after his death, it is awarded as a family pension to the surviving members of his family under the rules. In such a case, it cannot be said that the claim of the applicant should be totally thrown out of consideration.

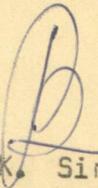
5. The application is, therefore, partly allowed
with the direction to the respondents to pay the pensionary benefits to the applicant, as has been given in the case of Anant Rao Shukal Vs. Union of India, within a period of three months from the date of communication of this order. It is made clear that in the case of Anant Rao Shukal, the benefit was given only of the civil service which was rendered by him after discharge from military service from 27.4.1959 till his superannuation on 25.9.1971. The applicant, therefore, shall also be entitled for the service he rendered on re-employment from 16.3.1959 till 24.7.1993.

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The respondents are directed to pay the pensionary benefits within a period of three months from the date of receipt of this order. No costs.


(B.K. Singh)

Member (A)

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(J.P. Sharma) (01/9/93)
Member (J)