

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 09-09-2010

PRESENT:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

In the Matter of:

O.A. No.289/2009

Smt. Urmila Guru ... Applicant
Versus
Union of India & Ors. ... Respondents

(For Full details, see the enclosed cause title)

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For Applicant: M/s. P.K.Padhi, J.Mishra, Counsel.

For Respondents: Ms.S.B.Jena, ASC
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O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):

The case of the Applicant is that while her husband working under the Respondents applied for voluntary retirement on 17.1.1992 which was accepted by the competent authority on 4.4.1992 retiring the applicant retrospectively w.e.f. 17.1.1992. Her husband was in employment of the Respondents w.e.f. 20.08.1970. As the husband of the applicant did not complete 20 years of service as required under rules for obtaining voluntary retirement, the voluntary retirement application of the husband of the applicant was treated as resignation and accepted by the authority w.e.f. 17.1.1992. Accordingly the Respondents denied sanction of the family pension in favour of the Applicant. Being aggrieved, the applicant has approached this Tribunal in the present OA seeking direction to the Respondents for payment of pension/Family Pension with all consequential benefits w.e.f. the date of voluntary retirement. In this connection, by placing reliance on the decision of the Principal Bench of the Tribunal in the case of **Smt.Bimla Devi v Chief Secretary, Delhi Administration and another**, ATJ 1992 (1) 360 and Jabalpur Bench of the Tribunal in the case of **A.P.Shukla v UOI and others**,

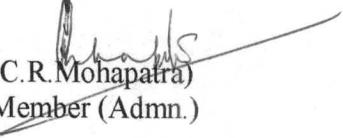
1996 (2) ATJ 157-161 it has been contended by Learned Counsel for the Applicant that as the husband of the applicant has admittedly put in more than 10 years regular and qualifying service, be it voluntary retirement or resignation, he was entitled to pension and after him the applicant is entitled to Family pension.

2. The crux of the contention of the Respondents in their counter is that the applicant remained on extra ordinary Leave (EOL) on medical certificate and Personal affairs continuously from 07.11.1988 to 16.1.1992. After his last EOL on personal affairs from 3.6.1991 to 16.1.1992 he sent his application dated 17.1.1992 for resignation which was accepted by the competent authority w.e.f. 17.1.1992. He tendered his resignation possibly as he was aware that for voluntary retirement 20 years qualifying service is necessary. The husband of the applicant had put in qualifying service of 16 years 10 months and 05 days only. While denying the assertion of the applicant that the husband of the applicant when tendered voluntary retirement the Respondents could not have treated the application and accepted the same retrospectively, it has been contended by the Respondents that it is too late in the day to say so. If the acceptance of resignation was in any manner illegal the husband of the applicant could have questioned the same but not the wife. Since the husband of the applicant resigned from service the wife is not entitled to any relief as claimed in this OA.

3. Heard Learned Counsel for both sides and perused the materials placed on record. It is not in dispute that the husband of the applicant had put in less number of years than the requirement as per the rules for opting voluntary retirement from service. It is also a fact that the Respondents accepted the application of the husband of the applicant to be a resignation and the husband of the applicant was no more in service in the eye of law w.e.f.

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17.1.1992. It is a fact that the husband of the applicant had never challenged the acceptance of resignation retrospectively during his life time (expired on 22.3.2005) nor in this OA the order treating the application of the husband as resignation and accepting it retrospectively. As long as the said order stands, as per rules the applicant is not entitled to pension or pensionary dues of her husband. Similarly the decision of the Principal Bench and Jabalpur Bench of the Tribunal relied on by the Applicant are of no help to the Applicant in view of the contrary decision taken by the Hon'ble Apex Court in the case of **Union of India and others –v-Braj Nandan Singh**, 2006 (1) AISLJ 503 holding that as per the Rules in the case of resignation one cannot claim pension. In view of the fact and law stated above, this OA being devoid of any merit and is accordingly dismissed. No costs.


(C.R. Mohapatra)
Member (Admn.)