

(09)

In the Central Administrative Tribunal
New Bombay Bench.

Date of decision:

Regn. No. O.A. 616/87.

Smt. P. John Applicant

vs.

The Secretary, Respondents.
Ministry of Defence(R&D)
and others.

For the applicant : Shri K.R. Pillai, counsel.

For the respondents : Shri M.I. Sethna, counsel.

CORAM:

Hon'ble Mr. M.Y. Priolkar, Member(A)

Hon'ble Mr. T.S. Oberoi, Member(J)

JUDGEMENT

(delivered by Shri T.S. Oberoi, Member).

20.12.1990

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant who was declared medically incapacitated for retention in Government service, has prayed for the grant of proportionate disability pension and gratuity, on the basis of having put in 10 years 11 months and 19 days of service.

2. The applicant's case briefly is that she was appointed as a Switch Board Operator, on 15.5.1957 in Southern Command Signal Regt. Poona. She was transferred to Research and Development Establishment (Engr) Dighi, where she worked from 22.1.66 to 3.5.1968. The applicant ceased to be in government service,

after being declared permanently incapacitated for service, with effect from 3.5.1968. She was issued a discharge certificate on 4.8.1970 and paid an amount of Rs.1035/-, as terminal benefit, under Army Instructions No.14 of 1966, annexed as Annexure-4 to the application. The applicant was declared quasi-permanent prior to her discharge from service and has claimed proportionate pension and gratuity, in accordance with the rules, applicable in her case under Article 447A(b) of Central Service Regulations Vol.I (12th Edition). The applicant is aggrieved with the refusal of the respondents to pay her pension and gratuity as claimed by her and hence this O.A.

3. In the counter filed on behalf of the respondents, the applicant's claim was opposed/resisted. It was inter alia stated that the applicant having not been substantively appointed nor having put in 20 years of service, was not entitled to disability pension and gratuity, as claimed by her. Her claim was also opposed on the ground of limitation, as she filed the present OA well over 16 years of her discharge on medical grounds.

4. During arguments, broadly speaking, the above contentions, as put forth in the OA and the reply, respectively, by the applicant and the respondents, were urged.

5. A careful perusal of the material on record shows that the matter was under a long and protracted correspondence between the applicant, the respondents and the Audit Authorities. Applicant's case has been declined primarily on the ground that she was neither declared substantive nor had put in 20 years of minimum service, to be entitled to disability pension and gratuity, in

accordance with the rules on the subject. However, a perusal of the counter and the relevant documents filed by the respondents shows that there is ambiguity in the respondents' case, with regard to the length of service which entitles the applicant to the proportionate pension and gratuity, as claimed by her. On page-5 of the counter, the respondents have inter-alia stated: ".....Since the individual was not holding the post of Telephone Operator in the substantive capacity, she was only paid terminal benefits amounting to Rs.1035/- at the rate of Rs.183.50 per month as per the then existing orders....." Further, on page 6 of the counter, it is mentioned: ".....The statement of the individual that she was entitled to draw proportionate pension and Death-cum-retirement gratuity claim since she has been medically boarded out after 10 years 11 months & 19 days is not correct since the basic condition of holding the post in substantive capacity having more than 10 years qualifying service is not fulfilled by the applicant....."

6. Similar position has been expressed in the copy of the draft parawise comments, provided by the department, appearing at pages 33 to 35 of the paper-book, relevant portion on internal page-2.

7. Further, letter No. RDE/0107/MIN/EST dated 14.2.1986 issued by the Senior Administrative Officer, Government of India, Ministry of Defence, Research & Development Organisation, Research & Development Estt. (Engrs) Dighi, Pune, reads as under:-

"However, the matter is being separately taken up with R&D Hqrs., New Delhi to ascertain whether or not you could be considered for grant of permanancy prior to 3.5.68."

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Again, letter dated 4.4.1986 (page-14 of the paper-book), the last paragraph goes as under:-

"As regards grant of permanent status, the matter has already been taken up with the higher authorities and their decision as and when received will be communicated to you."

8. From a perusal of the material on record placed by the respondents, it is not clear as to whether a decision, to that effect, had eventually been arrived at, or not. The decision taken, either way, may materially affect the applicant's case, with regard to her eligibility or otherwise for the pension. C.D.A.(P) letter dated 28.12.1987 at page 31 of the paper-book is silent with regard to the number of years of minimum service that may be necessary, entitling the applicant for proportionate disability pension. It lays stress as her holding substantive appointment.

Para 3 thereof may be extracted for benefit: " As regards Pension Rules enforced prior to 1.6.72 i.e. at the time of her invalidation of service on 3rd May, 1968, it is stated to refer CSR Vol.II (V Edition) 1964 Appendix 41"Liberalised pension Rules." According to these rules basic condition holding Substantive Appointment for grant of pensionary benefits remained unchanged. Therefore, it is considered that the above named lady is not entitled for pensionary benefits under the provisions which were enforced prior to 1.6.1972."

9. A contention has been raised that the matter has been taken up by the applicant very belatedly. In this regard, suffice it to say that being a continuing cause of grievance, that alone may not be sufficient to bar the present application on the question of limitation.

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10. It was also contended on behalf of Respondents that having already accepted terminal benefits/gratuity in terms of Ministry of Finance O.M. No.F.4(25)EV(C)/63 dated 22.11.65 (Annexure 4 to the O.A.), the applicant was not eligible for any other gratuity or pensionary benefits (Para 4). The applicant has taken up the plea that because of some mental ailment/ disorder, she did not understand the implications of the payment of the terminal gratuity paid to her, by the respondents. Though, this might be a factor against the applicant's case, this, to our mind, does not lessen the onus on the part of the respondents, to assess and disburse the correct pensionary benefits to the applicant, if otherwise due, in accordance with rules, applicable in her case.

11. As a result of the foregoing and in the interest of justice, we are of the view that the matter deserves reconsideration at appropriate level, and accordingly, we direct that the respondents will take up the matter again, with the concerned authorities, for appropriate decision, if already not taken, with regard to the permanent status, whether to be granted to the applicant or not, after which the question of applicant's eligibility for pension and gratuity, as per rules applicable in her case, may be examined. The applicant claims these benefits under C.S.R. Rule 447A(a), which mentions the requisite service as not more than 20 years, and the same may not exclude the service of 10 years 11 months and 19 days, put in, by the applicant, as, according to the learned counsel of the applicant, during the relevant period, the minimum spell of service required for the grant of dis-

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ability pension, was 10 years, which was later changed, to 20 years during the spell 1980 to 1986, and was again brought down to 10 years, as per O.M. No.2/4/87-PIC dated 14.4.1987, issued by the Government of India, Department of Pension and Pension Welfare. We also direct that decision in the matter, as far as possible, be arrived at within four months from the receipt of a copy of this order. Needless to say that in the event, the applicant still remains aggrieved, she would be at liberty to approach the Tribunal again, in accordance with the provisions of law.

12. With the above directions, the application is disposed of, leaving the parties to bear their own costs.

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(T.S. OBEROI)
MEMBER (J)

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(M.Y. PRIOLKAR)
MEMBER (A)