

(11)
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

CAMP AT PANAJI

O.A. No. 485/89
Exxxx No.

1989

DATE OF DECISION 06.01.1992

Shri Lawrence D'Souza

Petitioner

Shri E.C.Mendes

Advocate for the Petitioner(s)

Versus

The Garrison Engineer (West)
and others

Respondent

Shri P.M.Pradhan

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice U.C.Srivastava, V/C

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

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


 (U.C.Srivastava)
 V/C

CENTRAL ADMINISTRATIVE TRIBUNAL, BOMBAY BENCH,
CIRCUIT BENCH AT PANJI.

Original Application No. 485 of 1989
Shri Lawrence D'Souza Applicant.

Versus

The Garrison Engineer (West)
and others Respondents.

Appearance:- Shri E.O. Mendes, counsel for the applicant.
Shri P.M. Pradhan, counsel for the respondents.

Ceram:- Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. A.B. Gorthi, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

By means of this application, the applicant has prayed that a direction may be issued to the Garrison Engineer (respondent no. 1) to transfer the pro-rata pensionary benefits/ service gratuity payable on account of the services of the applicant with it, to the respondent no. 5 i.e. Mormugao Dock Labour Board, an autonomous statutory body constituted under the Indian Dock Workers (Employment and Regulation) Act of 1948 and also the respondent no. 3 i.e. Central Board for Workers Education which is a Society registered under the Societies Registration Act, 1860 is directed to transfer the pro-rata service gratuity/ terminal gratuity payable on account of the services of the applicant with it to respondent no. 5 and rule-4 of the gratuity Rules of the respondent no. 3 may be quashed as it is in contravention of the Gratuity Act or to pass another order directing the Respondent no. 3 to

amend the rule suitably with retrospective effect.

The applicant was appointed as Motor Pump Attendant on 5.10.1967 with the Garrison Engineer (West) (Respondent no. 1) and after passing the trade test, he was promoted to the post of Refrigeration Mechanic and after serving with the respondent no.1 for a period of 10 years, 5 months and 14 days, he has become a quasi permanent employee.

The applicant who had applied for the post of Education Officer in the Central Board for Workers Education through proper channel was selected after interview and vide a communication dated 25th February, 1978 the respondent no. 3 informed the respondent no. 1 that the applicant was selected for the post of Education Officer, Training Course and further therein assured full pay protection.

The applicant was relieved from duty by the respondent no. 1 w.e.f. 18.3.1978 to join the training institute of the respondent no.3 for taking up the employment outside the Military Engineering Services. The applicant who was employed with the respondent no. 3 on a higher grade continued in the service of respondent no.3 and accordingly after the two year period the lien with respondent no.1 expired and the applicant had to submit a formal resignation on technical grounds which he executed in March, 1980. The P.F. Contribution of the applicant was deducted by the respondent no. 3 so long he was in his employment and he was informed that he would not be required to resign as he was holding a quasi permanent post in a Government undertaking as he will not be treated like direct recruits at the stage of initial ^{entry} ~~enquiry~~.

The respondent no.1 on 21.1.1982 remitted an amount of

Rs. 2603.00ps to the applicant in payment of his G.P.F. final settlement. Whilst in the employment with respondent no.3, the applicant through proper channel applied for employment with respondent no.5 and was duly selected and asked to report with effect from 24th October, 1983. He got his appointment there and he had submitted his resignation w.e.f. 24.10.1983 to take up the services with respondent no.5. The applicant made a request to the respondent no.5 for the inclusion of his past services namely from 5.10.1967 to 18.3.1978 with the Military Engineering Services and from 19.3.1978 to 23.10.1983 with the Central Board for workers Education, for the purposes of pension and continuity of services, which was accepted by the respondent no.5. The respondent no.3 latter on transferred the leave salary due and the employee's contribution alongwith the employer's contribution to respondent no. 5, but he did not transfer the pro-rate gratuity amount. In view of the Ministry of Shipping and Transport O.M. No. 28/10/84-Pension Unit-Valume-I dated 12.9.1985 regarding the mobility of personnel between Central Government departments and Autonomous bodies and the counting of past services for pension, the applicant requested the respondent no.5 to permit him to take necessary steps to have his services with the respondent no.1 counted for pensionary ^{benefits} and for counting of past services. The respondent no. 1 replied to the respondent no. 5 to its letter in this behalf that the P.F. amount has already been paid to the applicant but no gratuity was paid to ~~the~~ him. The applicant's claim is that he is entitled to have his past service with respondent

no. 1 and respondent no.3 counted along with his present service with respondent no. 5. The respondent no.5 has agreed to count the applicant's past service for pension and other benefits provided the pro-rata and past contribution are transferred by the applicant's previous employers. Although, the respondent no.3 did transfer, the respondent no. 3 did not transfer the pension pro-rata and the gratuity in a lumpsum to the respondent no.5 and the respondent no.3 is required to transfer the gratuity amount. The respondent no. 3 has considered that the resignation of the applicant is on technical grounds but has expressed its inability to transfer the gratuity due in terms of Rule-4 of the gratuity rules of respondent no. 3.

2. Now, in the reply filed by the respondent nos. 1 & 2 it has been stated that the applicant was subscriber towards general provident fund and subscribing towards GPF as confirmed vide Central Board for Workers Education Nagpur letter dated 11.8.1981. The applicant was entitled either to count the services towards pension or get the terminal benefits. The services rendered by the applicant has already been verified through audit and passed on to the present employer, and as such the question of transferring his leave salary, pension and gratuity does not arise. The applicant is entitled for the one benefit, either to count the services towards pension with the present employer or to have leave salary, pension/ gratuity etc.

3. That as regards the Central Board for Workers Education is concerned, the payment of gratuity rules under the payment of Gratuity Act, 1972 are not applicable to the employees who are working ~~@@~~ in the Central Board of Workers Education. The employees of Central Board of Workers Education are

governed by C.B.W.E. Gratuity Rules, 1970, and employee who has resigned from the service of the Board is not eligible for gratuity. The applicant has resigned from the Services of the Central Board of Workers Education, so he is not entitled for any gratuity. So far his case for terminal gratuity is concerned, the same was referred to the Government of India and the request to relax the gratuity rules of Central Board of Workers Education, was turned down by the Ministry.

4. Shri Pradhan, learned counsel for the respondents has contended that the applicant was entitled for only one benefit and not both the benefits which so far as the respondent no. 1 is concerned and one benefit has already been given to the applicant, so he can-not claim both the benefits. No rule to the contrary has either been pleaded or placed ~~under~~ the record under which the applicant is entitled to both the benefits. So far as the respondent no. 3 is concerned, we have gone through the gratuity rules and we do not find any flaw in the same. It can-not be said that the rule-4 is violative of ~~Article~~ Article-14 of the Constitution of India. The payment of gratuity rules ^{and} applies only if the special rules did not apply. ^{When the general rules become applicable.} So far as the respondent no. 3, is concerned he ² has got his own rules and in persence of those rules, the general rules have no applicability. The classification laid down in the rules can-not be said to be unfair and unreasonable. Rule-4 provides as under;

"(1) gratuity will not be admissible to an employee who resigns from service or whose services are terminated for misconduct, incolvency or inefficiency. Voluntary retirement after 30 years, qualifying service would

not constitute 'resignation.'

(ii) Except in the case of death, gratuity will be admissible only after 5 years of qualifying service."

The service guide-lines has been laid down in the rules, as such it can not be said that it is arbitrary and unfair or ~~@@~~ in any manner violates the constitutional rights and as such, the rule can not be said invalid and ultra-virus and accordingly we do not find any substance in this application and we hereby dismissed this application without any order as to costs.

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Member (A)

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Vice-Chairman

Dated: 06.01.1992

(n.u.)