

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 518/96

Transfer Application No.

Date of Decision 28.1.1997

Smt. A.S.Palande

Petitioner/s

Shri D.V.Gangal

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri R.K.Shetty

Advocate for
the Respondents

CORAM :

Hon'ble Shri. M.R.Kolhatkar, Member (A)

Hon'ble Shri.

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA. NO. 518/96

Dated this the 28th day of January 1997

CORAM: Hon'ble Shri M.R.Kolhatkar, Member (A)

Smt. Anusuya Shantaram Palande
residing at Building No. 24,
Room No. 6, Colaba Cuffe Parade
Transit Camp, Colaba, Bombay.

By Advocate Shri D.V.Gangal

... Applicant

V/S.

1. Union of India through
Adjutant General Branch,
Army Head Quarters,
DHQ P.O., New Delhi.
2. The General Officer Commanding,
Head Quarters Maharashtra/Gujarat Area,
Colaba, Bombay.
3. The Controller of Defence
Accounts (Pension),
Allahabad.

By Advocate Shri R.K.Shetty
C.G.S.C.

... Respondents

O R D E R (ORAL)

(Per: Shri M.R.Kolhatkar, Member (A))

Heard Shri Gangal for the applicant and
Shri R.K.Shetty for the respondents.

2. This matter is yet to be admitted. Written
statement has been filed by the respondents on
20.11.1996 in which they have opposed the admission
on the ground that the OA. is barred by principles
analogous to the principles of resjudicata. The
reliefs claimed in this OA. are as below :-

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"(a) That this Hon. Tribunal may be graciously pleased to call for the records of the case from the Respondents and after examining the same issue a Writ of Mandamus commanding the Respondents to grant pension and gratuity to the applicant's husband from 29.12.80 to 17.9.1993.

(b) To hold and declare that the Applicant's husband has rendered Civilian Service from Jan. 1961 to 29.12.1980 plus War Service from 10.10.41 to 12.6.47 which should be treated as qualifying service for pension.

(c) To hold and declare that all the arrears mentioned in prayers (a) & (b) are to be granted to the Applicant.

(d) To hold and declare that the Applicant's husband was entitled to pension and pension and gratuity and that the arrears of pension from 29.12.80 to 17.9.1993 to be paid to the applicant."

Thus, relief is to be seen in the context of the orders passed in the OA.No. 424/94 dated 14.8.1995. In that OA. relief claimed was for declaration that the applicant's husband was entitled to pension and the applicant is entitled to family pension and to direct grant of this relief with all arrears with interest. The Tribunal's orders were as below :-

" OA. is allowed. The respondents are directed to treat the applicant as holding a permanent post as on the date of his compulsory retirement on 29.12.80 and if on the basis of his permanent status, and taking into account also his war service the applicant's husband is entitled to pension he should be treated to have been granted pension from the date of his compulsory retirement. We also direct the respondents to grant family pension to the applicant on the footing that her husband was drawing pension at the time of death.

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We, however, are not inclined, in the circumstances, to grant arrears of pension to the widow. We direct the arrears of family pension be given to the widow and the arrears of family pension be paid within four months of communication of the judgement. We further direct that in future the applicant should be granted family pension on a monthly basis as per rules."

From the order of the Tribunal it is clear that the Tribunal directed grant of family pension to the widow on the basis of fiction) that the applicant's husband was drawing pension at the time of his compulsory retirement. In that OA. the Tribunal had specifically denied the arrears of pension to the applicant. It had only granted arrears of family pension to the widow. On the face of it, the reliefs claimed by the applicant are clearly hit by principles analogous to the principles of resjudicata. There is, of course, one aspect of the OA. to the extent that calculation of pension is adversely affected by denial of counting war service because the respondents have only granted family pension to the widow on the basis of service rendered by him without counting the war service for which they have given their own reasons in the written statement. Therefore, there could be a case for the applicant for proceeding against the respondents for contempt in case such a proceeding is advised.

3. The main question is whether the OA. can lie. The counsel for the applicant relied on the Full Bench judgement in C.R.Rangadhamaiyah and Ors. vs. Chairman, Railway Board, New Delhi & Ors., 1994(1) ATJ 305 and other judgements, namely, Smt. Laxmi Vishnu Patwardhan vs. Secretary, Railway Board & Anr. 1988 (2) A.T.R.(C.A.T) 49 and Jagan Prasad Srivastava vs. Union of India & Ors. 1989(3)(CAT) SLJ 449 and on the other hand the respondents relied on the judgement of the Hon'ble Supreme Court in Commissioner of Income Tax, Bombay vs. T.P.Kumaran, 1996(3) SLJ 101 regarding resjudicata.

4. The reliance placed by the applicant on the three judgements referred to above is entirely misconcieved. The applicant wants me to hold the judgement to per incuriam to the extent of the arrears of pension and wants to avail of fruits of judgment in the form of family pension which has been granted by that judgement. The fact that in some other cases the applicants have been held entitled for arrears of pension does not obligate this Tribunal to entertain an OA. when record shows that the relief was claimed and the relief was specifically denied in the earlier OA. In this context, the reliance placed on the three judgements referred to by the counsel for applicant cannot but be called inappropriate. I, therefore, dismiss the OA. at the admission stage itself, the applicant is at liberty to file contempt petition in ^{case of} the reliefs granted by the Tribunal in OA.NO.424/94 but not implemented by the respondents. No order as to costs.