

CENTRAL ADMINISTRATIVE TRIBUNAL  
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 804/1996

Date of Decision: 31.12.96

Suresh Venkatesh Jawalkar

Petitioner/s

Shri S.S.Karkera for  
Shri M.D. Lonkar.

Advocate for the  
Petitioner/s

V/s.

Govt. of India, Min. of Finance Respondent/s  
New Delhi and others.

Shri Suresh Kumar for  
Shri M.I. Sethna,

Advocate for the  
Respondent/s

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)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH 'GULESTAN' BUILDING NO.6  
BOMBAY BENCH

Original Application No. 804/96

Tuesday the 31st day of December 1996

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

Suresh Venkatesh Jawalkar  
102, Laxminarayan 'A' Wing  
Wani Ali, Kulgaon(East)  
Badlapur, Dist Thane. ... Applicant.

By Advocate Shri S.S. Karkera for Shri M.D. Lonkar.

V/s.

Government of India  
Ministry of Finance  
Department of Revenue  
through its Secretary,  
New Delhi.

The Commissioner of Central  
Excise, Bombay - II  
Piramal Chambers, Jijibhoy  
Lane, Lalbaug, Parel  
Bombay.

The Collector of Central  
Excise, Bombay - II  
Piramal Chambers,  
Lalbaug, Bombay.

Pay & Accounts Officer  
Central Excise, Bombay II  
6th floor, Piramal Chambers  
Lalbaug, Bombay. ... Respondents.

By advocate Shri Suresh Kumar for Shri M.I. Sethna.

O R D E R (ORAL)

¶ Per Shri M.R. Kolhatkar Member(A) ¶

Heard the learned counsel for the parties.

2. In this O.A. the applicant has challenged the voluntary retirement notice dated 27.5.94 which was to take effect after three months i.e. on 31.8.94

His main grievance is regarding the delay in payment of provisional pension, Provident Fund, leave encashment and Group Insurance Scheme and non payment of benefit of commuted value of pension and gratuity.

3. Written reply filed by the respondents today has been taken on record. It appears that the respondents were not initially clear about the rules position ~~qf~~ to acceptance or otherwise of the notice of voluntary retirement, but later on the voluntary retirement was accepted with effect from 1.9.94. The reason why the benefits were denied to the applicant is that by the memorandum dated 25.9.95 a disciplinary enquiry has been initiated against the applicant. The respondents contended that in terms of Rule 9 of the CCS(Pension) Rules the respondents can only sanction provisional pension till the results of the disciplinary enquiry are known.

4. The learned counsel for the applicant relies on the decision of the Tribunal in the case of V.D. Chaudhari QA 1296/94 decided on 28.3.96 in which the term " institution" and "continuence" of disciplinary proceedings in terms of Rule 9 were interpreted. In para 7 of the judgement it was held " It is clear that unless the charge sheet is issued to the Government employee or if the Government employee has been placed under suspension prior to the date of retirement, disciplinary proceedings will not be deemed to be instituted prior to date of retirement

and therefore they cannot be continued after the date of superannuation. "

5. In para 12 of the Judgement the Tribunal held that:

In the light of the discussion, I am compelled to hold that on 31.10.94, the Disciplinary Proceedings were not instituted against the applicant nor were they continued under Rule 9(2) of the CCS Pension Rules. Therefore, the action of the department in only paying provisional pension to the applicant and withholding remaining retirement benefits by resorting to rule 9(4) and rule 69 of the CCS Pension rules is clearly illegal and is therefore required to be interfered with. In the result, the O.A. succeeds and the department is directed to pay to the applicant all the terminal benefits including gratuity and commuted value of pension. So far as the interest is concerned, we direct that the same may be paid to the applicant, 3 months from the date of retirement i.e. from 1.2.95 at 12% as the delay is not treated as culpable. There will be no orders as to costs. The payments to be made within two months of communication of this order. <sup>11</sup>

6. On the facts of the case there is no doubt that the case of the applicant is on all fours with the facts of V.D.Chaudhari's case. The only difference is that V.D.Chaudhari's case was that of Superannuation and the present case is that of voluntary retirement. However, that does not make a difference to the principle. It is seen that G.P.F. , Provisional Pension, Group instance, Leave encashment etc. has been paid to the applicant on different dates from 20.2.95 to 20.9.96 as mentioned under para 7 of the

written statement. The applicant's entitlement of these pensionary benefits was crystallised on the date of voluntary retirement i.e. on 1.9.94. The applicant is therefore entitled to payment of interest within three months from the date of voluntary retirement till the date of actual payment at the rate of 12% P.A. The respondents are also directed to fix the pension of the applicant finally and make the payment alongwith gratuity and Commuted value of pension. Consequent ~~on~~ payment of commuted value of pension the amount of pension will get reduced. The same should be adjusted before making final payment. So far as the interest on gratuity is concerned the same may be paid as per Rules namely 12% beyond three months. Action in this regard should be completed within three months from the date of communication of the order. No order as to costs.

*M.R.Kolhatkar*  
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(M.R. Kolhatkar)  
Member(A)

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