

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH.

Original Application No. 828/ 1996.

Date of Decision : 31.3.1997

Smt. Ashwini A. Wagh

... Applicant/Petitioner/s

Shri S.S. Karkera

... Advocate for the
Petitioner/s

V/s.

Union of India & Ors.

... Respondent/s

Shri B. Ranganathan

... Advocate for the
Respondent/s.

Chairman:

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

(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).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 828 of 96.

I pronounced this the 31st day of March 1997.

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

Smt. Ashwini A.Wagh,
11-C/204, Neelam Nagar,
Phase II, Gawanpada Road,
Mulund (East),
Bombay - 400 081.

... Applicant.

(By Advocate Shri S.S.Karkera)

V/s.

1. Union of India
through the Secretary,
Department of Atomic
Energy, Old Yatch Club,
Colaba,
Mumbai - 400 005.
2. The Director,
Bhabha Atomic Research Centre,
Anushakti Nagar,
Central Complex, Trombay,
Mumbai - 400 085.
3. The Controller,
Bhabha Atomic Research Centre,
Central Complex, Trombay,
Mumbai - 400 085.
4. The Head, Personnel Division,
B.A.R.C. Trombay,
Mumbai - 400 085. Respondents.

(By Shri B.Ranganathan for
Shri J.P.Deodhar.)

O R D E R

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

The applicant was a U.D.C. with Respondent No.4.

She belonged to Non-technical Staff of the Department.

Consequent on the recommendation of the IVth Pay
Commission the G.P.F. scheme was extended to the Central
Government employees and an option was given up to
31.3.1988 for switching over to the pension scheme.

The scheme and the option were not available to the
Scientific and Technical Personnel. The applicant

admittedly opted for C.P.F. Scheme. The grievance of the applicant is two fold. First of all, she ~~applied~~ on 24.1.1994 for voluntary retirement and her application for the same was turned down by the order dt. 16.3.1994 on the ground that she was not entitled for voluntary retirement under Rule 48 A of CCS(Pension) Rules 1972 (vide Ex. 'A'). This is the first impugned order. Secondly, the applicant resigned from service w.e.f. 26.4.1994 and after ~~receiving~~ full amount under C.P.F. she made a representation, received in the department on 19.2.1996 regarding extending pensionary benefits to her. This representation was rejected by letter dt. 19.4.1996 which is at (Ex. 'B'). This is the second impugned order.

2. The grievance of the applicant is that the option for scientific and technical personnel for switching over to the pension scheme was extended by order dt. 4.1.1994 (at Ex. 'G'). According to her, the staff working in the BARC is a homogeneous class who is paid ~~of~~ consolidated fund of India out of budgetary provision and ~~although it is~~ divided into scientific and technical ~~on the one hand and non-scientific and non-technical~~ staff ~~on the other~~ for ~~extending the date of option for pension scheme for scientific staff to a~~ much later date than the non-scientific and non-technical staff ~~the~~ is violative of ~~guarantee of equality under Article 14 of the Constitution of India. Moreover, her representations have been rejected by a non-speaking order, which is also against the principles of natural justice and she has~~ therefore prayed for the relief of directing the respondents to convert resignation ~~to~~ to voluntary retirement by extending pension scheme to her and grant her all pensionary and terminal benefits w.e.f. 12.5.1994.

3. The respondents have opposed the O.A. According to them ~~that~~ the scheme of change of the Central Govt. Employees from the C.P.F. to Pension Scheme was based on the implementation of the recommendation of the IVth Central Pay Commission. Vide O.M. Dt.1.5.1987 it was para 6.3 specifically stated that these orders do not apply to scientific and technical personnel of the Department of Atomic Energy, Department of Space, Department of Electronics and such other Scientific Departments as have adopted the system prevailing in the Department of Atomic Energy. Under this scheme the employees have to give an option to continue under the C.P.F. scheme. The option has to be exercised by 30.9.1987 and if no option is received by the above date employees will be deemed to have come over to the Pension Scheme. It would therefore be seen that the distinction between scientific/technical staff and other staff was built into the orders of 1.5.1987 and the same was based on the long standing practice in the Department of Atomic Energy and as pointed out by the Department the Department of Atomic Energy ~~and~~ is the premier Scientific, ~~and~~ Research and Development establishment of the Country. The Scientific and R&D and non-scientific staff for Technical Personnel are responsible for giving supportive assistance like administration, accounting, recruitment, security etc. It would therefore appear that the mere fact that both categories of staff are paid out of the consolidated fund of India does not make the distinction between these two categories of staff as irrational, since the distinction is closely related to the objective proposed to be achieved by which is rooted in the nature of the Department. the categorisation. I am therefore, not persuaded

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that the applicant can invoke guarantee under Article 14 of the Constitution to challenge this distinction as being discriminatory. It has further been pointed out by the respondents that in the case of Scientific & Technical personnel the scheme of option for pension in terms of IVth Pay Commission was first extended in regard to the Department of Atomic Energy on 1.9.1991 and thereafter by the Department of Personnel orders dt. 12.10.1992 and the scheme is such that those who do not exercise any option will be deemed to have opted to retain CPF scheme. Thus the scheme of option is different in the cases of non-technical personnel. Those who/are to specifically opt for CPF scheme and if they do not opt (not continue) under the Pension Scheme. In the case of Scientific and Technical Personnel those who do not opt are deemed to have retained CPF scheme. Thus in the case of non-scientific and non-technical personnel a conscious decision to opt for CPF scheme shows that the concerned employee has considered the pros and cons of the scheme and then taken the decision with an open eye. These categories of persons cannot then/say that an injustice has been done to them. I therefore, find no merit in the O.A. and the same is dismissed with no order as to costs.

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

B.