

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 296/99

DATE OF DECISION: 14.10.1999

Smt. Sitabai Dattoba Kamble Applicant.

Shri J.M. Tanpure. Advocate for  
Applicant.

Versus

Union of India and others Respondents.

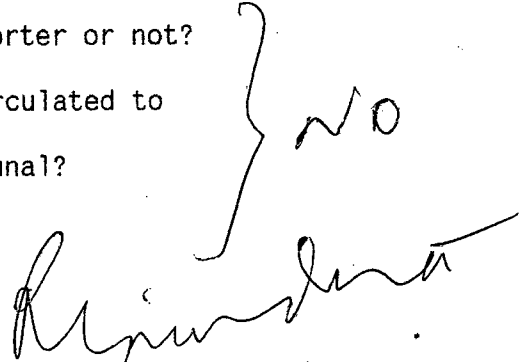
Shri R.K. Shetty. Advocate for  
Respondent(s)

CORAM

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

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?
- (3) Library.

  
(R.G. Vaidyanatha)  
Vice Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:296/99

THURSDAY the 14th day of OCTOBER 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyantha, Vice Chairman.

1. Sitabai Dattoba Kamble,  
Resident of  
Balewadi, Tal. Haveli  
Dist. Pune.
2. Krushnabai Ananda Bhalerao  
Resident of 38  
Aundh Road, Khadki  
Pune. ....Applicant

By Advocate Shri J.M.Tanpure.

V/s

1. Union of India through  
The Secretarty,  
Ministry of Defence  
South Block, New Delhi.
2. The Commandant  
Central AFV Depot,  
Kirkee, Pune.
3. The Chief Controller of  
Defence Accounts(Pension)  
Allahabad.
4. Director General of Ordnance  
Services (OS - 8C(i) Master General  
of the Ordnance Branch  
Army Head quarters,  
DHQ PO New Delhi. ....Respondents.

By Advocate Shri R.K.Shetty.

ORDER (ORAL)

{Per Shri Justice R.G.Vaidyanatha,Vice Chairman }

This is an application by which the applicants are claiming pensionary benefits. The respondents have filed reply. I have heard counsel for both sides.

2. One Shri Namdev Satva Gaikwad was an employee in the Central Vehicle Depot, Dehuroad, for about 26 years as Mazdoor till he came to be dis-charged from service on 1.4.1969 due to disbarment of the Depot. He was not paid any pensionary benefit though he had made number of requests and even recommended by the lower authority. ultimately he died on 24.8.1993. The applicants are the two daughters of the deceased and stated that they are the legal heirs and they are entitled to claim arrears of pensionary benefits which are due to the deceased employee from 12.6.1972 ( the date of letter of the Ministry of Defence granting pensionary benefits) till the death of the employee i.e. 24.8.1993. The respondents have opposed the claim and among other grounds they have stated that since the employee was temporary employee, he is not entitled to any pensionary benefits.

3. The applicants have filed M.P. 231/99 for joint application. M.P. is allowed.

M.P. 232/99 is filed for condonation of delay, though on the face of it, it appears that the application is barred by limitation, The lower authorities have recommended the case of the applicants for grant of pension to the deceased employee. As per letter dated 25.4.1997 (page 13 of the paper book) concerned authority has recommended sanction of the amount. The we have one more letter (Exhibit R-2) wherein by order dated 22.10.1993 the Headquarters Office has rejected the claim of all the seven employees including Shri Gaikwad. By that time the employee had died on 24.8.1993, but the rejection order is passed two months later. There is nothing on record to show that the rejection order was communicated either to the employee or to the members of the family. In these circumstances there is sufficient ground for condonation of delay. Accordingly M.P. 232/99 is allowed.

4. The stand of the respondents is that the applicant was a temporary employee therefore he is not entitled to pensionary benefits under 1972 Rules. Then the respondents have also mentioned about steps taken by the administration in attending to the representation of the applicant for pensionary benefits.

5. It is not necessary to go to the pleadings in details or to consider the documents, since this is covered by a direct decision of the Division Bench of this Tribunal in an un-reported judgement dated 12.12.1995 in OA 1313/93 in the case of Smt. Anthony Amma V/s Union of India and others. Copy of the judgement is at page 14 of the paper book. Even in that case a similar stand was taken by the respondents that applicant's husband was a temporary employee, therefore the applicant is not entitled to family pension or other pensionary benefits. The Tribunal held that the officials have been working for more than 20 years and therefore the case cannot be rejected on the ground that they were temporary employees. The Tribunal allowed the application with a direction to the administration to grant family pension. I therefore hold that the applicant in the present case is entitled to pensionary benefit.

5. At this stage the learned counsel for the respondents submits that the applicant may be directed to apply for succession certificate before the respondents make any payment. The learned counsel for the respondents states that in case subsequently any third person claims, the administration will be

put to difficulty. In the circumstances of the case I feel the interests of the administration should be protected by directing the applicants to execute an Indemnity Bond that they will refund the amount in case third person comes for claiming the amount with one surety, who should be a Government employee or owns immovable property.

6. In the result OA is allowed. The respondents are directed to pay pensionary benefits to the applicants in terms of letter dated 12.6.1972 subject to the condition mentioned above. In the circumstances the respondents are directed to comply with the order within four months from the date of receipt of copy of this order. No order as to costs. \*

*R. G. Vaidyanatha*  
(R.G. VAIDYANATHA)  
VICE CHAIRMAN

NS

\* *Amended on Per  
new date 13-1-2000  
in R.P. 56/99 as  
follows*

" *The Pensionary benefits  
to be paid to the applicants  
shall be less the  
contributory fund amount  
paid to deceased  
employee named Sava  
Bhikara "*

*Per*  
V.C. 13/1/2000

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH.

R.P. No. : 56/99 IN O.A.No. 296/99

Dated this Thursday, the 13th day of January, 2000.

CORAM : Hon'ble Shri Justice R.G. Vaidyanatha, Vice-Chairman.

Smt. S. D. Kamble & Anr. ... Applicants in  
(By Advocate Shri J. M. Tanpure) original O.A.

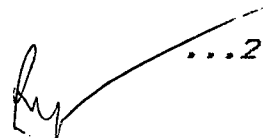
VERSUS

Union of India & Others. ... Review  
Petitioners.  
(By Advocate Shri R. R. Shetty (Respondents).  
for Shri R. K. Shetty).

TRIBUNAL'S ORDER :

This is a Review Petition filed by the respondents seeking review of order dated 14.10.1999. I have heard Mr. R.R. Shetty for Shri R. K. Shetty, the Learned Counsel for respondents (Review Petitioner) and Shri J. M. Tanpure, the Learned Counsel for the original applicant.

While passing the order dated 14.10.1999, a direction is given to the respondents to pay pensionary benefits to the applicants. It is seen that the deceased employee was a member of the Contributory Provident Fund Scheme and had already drawn the benefit under that scheme. If now the pension is to be given, then naturally he will have to refund that amount or Government can adjust that amount while paying the pensionary benefits. By mistake or oversight, in the order dated 14.10.1999

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there is no mention about deducting the amount paid to the deceased employee towards Contributory Provident Fund. Hence, the order requires to be reviewed and necessary clarification has to be given.

2. In the review petition the respondents have also prayed for deducting interest on the Contributory Provident Fund paid to the deceased employee. If this is granted, then naturally the respondents will have to pay interest on the pension. Either the respondents will have to get interest on the provident fund and then pay interest on the pension or there should be no interest on both sides. Having heard both sides, I feel that in the circumstances of the case, there should be no interest either on pension or contributory provident fund.

3. In the result, the Review Petition No. 56/99 is hereby allowed. The operative portion of the order dated 14.10.1999 in O.A. No. 296/99 be amended by adding one more sentence that "Pensionary benefits to be paid to the applicant shall be less the contributory provident fund paid to the deceased official - Namdeo Satwa Gaikwad.

Copy of the amended order be furnished to both sides.

  
(R.G. VAIDYANATHA)  
VICE-CHAIRMAN.