

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:35/99

DATE OF DECISION: 4th August 2000

Shri Balraj Mohanlal Khaparde Applicant.

Shri S.P.Inamdar Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri V.S. Masurkar Advocate for
Respondents

CORAM

Hon'ble Shri S.L.JAIN, Member (J)

(1) To be referred to the Reporter or not? *yes*

(2) Whether it needs to be circulated to *yes*
other Benches of the Tribunal?

(3) Library.

yes

S.L.JAIN

(S.L.JAIN)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 35/99

the 4th day of AUGUST 2000.

CORAM: Hon'ble Shri S.L. Jain, Member (J)

Balraj Mohaanlal Khaparde
Residing at
Rahimat Villa, Chawl No.1,
Harijanwada, Panvel,
Maharashtra.

...Applicant.

By Advocate Shri S.P. Inamdar.

V/s

- 1 Union of India through
The Chief General Manager,
Telecom, Maharashtra Circle
Mumbai.
2. The General Manager (O)
Maharashtra Telecom Circle
Mumbai.
3. The Chief Supdt. Central
Telegraph Office,
Mumbai.

...Respondents

By Advocate Shri V.S. Masurkar.

O R D E R
{Per Shri S.L.Jain, Member(J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 seeking a direction to respondent No.3 to pay pension and its arrears with effect from 20.12.1992, to pay pension and its arrears forthwith and regularly in future, to settle all the dues to the applicant at an earliest possible date, interest at the market rate on the amount of arrears of pension, to pay Compulsory Group Insurance Scheme with interest at market rate.

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2. The applicant who was Chief Superintendent CTO, Mumbai has been compulsorily retired vide memo bearing No. DISC-325/4221 dated 19.10.1992, preferred an appeal dated 30.10.1992 to the General Manager, Maharashtra Telecom Circle, Mumbai, respondent No.2, who rejected the appeal vide Office Order No. TFC/ATP/BM Khaparde/2 dated 24.12.1992. The applicant filed OA 641/93 before this Tribunal which was rejected vide order dated 7.10.1997. The applicant had represented his case vide letter dated 5.1.98, 11.5.198 and 9.11.1998 and requested the respondents to pay the pensionary benefit, but there is no response from the respondents.

3. The applicant claims that he was appointed as Telegraph Office Assistant on 10.12.1979 and was compulsorily retired on 19.10.1992 after completion of more than 10 years of service and is eligible to receive pension. Hence this OA for the above said relief.

4. The claim of the applicant is resisted by the respondents with the allegations that he was charge sheeted for remaining absent unauthorisedly and was compulsorily retired from service with effect from 19.10.1992. The applicant was in service till his compulsory retirement and as per Rule 10 of CCS (Temporary Service) 1965 only terminal gratuity is admissible to the applicant and an amount of Rs. 9750/- was paid on 6.7.1993. The OA is barred by principle of constructive Res-judicata as the applicant's OA 641/93 was dismissed on merit by this Tribunal vide order dated 7.10.1997. Assuming that the applicant has put more than 10 years service, he was not a

M. S. -

permanent employee and possess temporary status. Hence he is entitled to terminal gratuity only which has already been paid to him. He is not entitled to pensionary benefit. Hence prayed for dismissal of the OA alongwith costs.

5..... The learned counsel for the applicant relied on the recommendations of the IVth Pay Commission which is as under:

2.1 In partial modification of Department of Personnel and Administrative Reforms Officer Memorandum No.38(16)-Pension Unit/80, dated the 30th December 1980, quasi-permanent and temporary employees, who retire on superannuation or on being declared permanently incapacitated for further Government service by the appropriate medical authority after having rendered temporary service of not less than 10 years, shall be eligible for grant of superannuation/invalid pension, retirement gratuity and family pension at the same scale as admissible to permanent employees under the C.C.S.(Pension) Rules 1972.

2.2 Temporary and quasi permanent employees who seek voluntary retirement after completion of 20 years of service shall continue to be eligible for retirement pension and other pensionary benefits like death-cum-retirement gratuity and family pension under C.C.S. (Pension) Rules 1972 in terms of this Department's O.M. No. 32/1/86-P & PW dated 30th September, 1986 (published in Swamysnews as Sl. No.304 of November,1986).

2.3 In cases not covered by paragraph 2.1 and 2.2. above the terminal benefits will continue to be admissible as at present under the C.C.S. (Temporary Service) Rules 1965.

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On the basis of the same the learned counsel for the applicant argued that as the applicant has rendered temporary service of more than 10 years, he is entitled for retirement gratuity, pension and family pension on the same scale as admissible to permanent employees under the C.C.S. (Pension) Rules 1972.

6. On perusal of para 2.1, I am of the considered opinion that the said provisions applies in case of superannuation, or on being declared permanently incapacitated for further service by medical authority after having rendered temporary service of not less than 10 years. Thus the said provision apply only in two cases stated above. The applicant is neither superannuated nor declared permanently incapacitated for Government Service by proper medical authority.

7. The applicant did not seek voluntary retirement after completion of 20 years of service. Hence para 2.2. is not applicable.

8. On perusal of C.C.S. (Pension) Rules 1972, Rule 40 sub-clause (1) it is clear that it is the discretion of the competent authority who impose penalty of compulsory retirement to provide pension or gratuity or both at a rate not less than two thirds ^{and} not more than full compensation pension or gratuity or both admissible on the date of compulsory retirement. Vide order dated 19.10.1992 the competent authority has not exercised the discretion in favour of the applicant. Even the appeal of the applicant was rejected on 24.12.1992 confirming the order passed by the Disciplinary Authority dated 19.10.1992. The competent authority has not exercised the discretion in favour of the applicant, even by filing OA 641/93, the applicant did not choose

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to agitate the matter before this Tribunal, after a lapse of more than 15 months from the date of order in O.A., The applicant has filed this OA which is barred on the principle of constructive resjudicata and the discretion exercised by the Competent Authority is not arbitrary looking to the facts of the case.

9. The applicant has received the terminal benefits amounting to Rs. 9750/-. Hence he is estopped from challenging non-payment of pension etc.

10. In the result OA deserves to be dismissed and is dismissed accordingly with no order as to costs.

S.L. Jain
(S.L. JAIN)
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO:63/2000 IN
ORIGINAL APPLICATION NO: 35/99

CORAM: Hon'ble Shri S.L. Jain, Member (J)

Balraj Mohanlal Khaparde
Residing at
Rahimat Villa,
Chawl No.1,
Harijanwada, Panvel.

...Applicant.

V/s

Union of India and 2 others

...Respondents.

ORDER ON REVIEW PETITION NO: 63.2000 IN OA 35/99 BY CIRCULATION:

{Per Shri S.L.Jain, Member (J)}

DATED: 14.11.2000

This is an application under Rule 17 of C.A.T.(Procedure) Rules 1987 for review of the order passed in OA 35/99 on 4.8.2000 dismissing the said OA.

2. The applicant claims that his counsel has received the copy of the order on 17.8.2000 and the Review Petition is filed on 18.9.2000 within the prescribed period of limitation. In view of Rule 17 of C.A.T. (Procedure) Rules 1987, the prescribed period is 30 days, for which even as per review application there is no dispute by the applicant. The question is, how the period is to be counted. The day on which the copy of the order is received, is to be excluded, hence the period begins to run from 18th August 2000. The period of 30 days expires on 16th August 2000. As the review application is filed on 18.9.2000 is certainly beyond the prescribed period of limitation. The result is that the review petition cannot be entertained.

R. S. Jain

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3. Apart from it, if the ground for review is perused, order passed in OA 147/98 in case of R.K. Pawar V/s Superintendent of Customs was relied on by the applicant, which is not a fact.

4. Apart from it, keeping in view, that justice should not suffer either on technicalities or on ignorance of ⁱⁿ precedent by the applicant or his counsel, I have perused the said order in OA 147/98 in case of R.K. Pawar referred above and I am of the considered opinion, that the question of law decided in the said case, has no relevance to the present case.

5. I do not find any error on the face of the record to consider/allow the Review Petition. It is liable to be dismissed and is dismissed accordingly without notice to the respondents.

S.L. Jain —
(S.L. Jain)
Member(J)

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dt. 14/11/00
order/Int. attached
to App. Petition (s)
on 28/11/00.

4/12/00