

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 71/99

DATE OF DECISION: 25<sup>th</sup> Sept, 99

Smt. Shantabai Kondiba Gawade 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 S.L. Jain, Member(J)

Hon'ble Shri

(1) To be referred to the Reporter or not? NO  
(2) Whether it needs to be circulated to NO  
other Benches of the Tribunal?

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

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO:71.99

the 27<sup>th</sup> day of SEPTEMBER 1999.

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

Smt. Shantabai Kondiba Gawade  
Residing at  
Near Chinchwad Railway Station  
Booking office, Tal. Haveli,  
Dist. Pune. ...Applicant.

By advocate Shri J.M.Tanpure

V/s

1. Union of India through  
The Secretary  
Ministry of Defence.  
South Block,  
New Delhi.
2. The Commandant,  
Central AFV Depot,  
Kirkee, Pune.
3. The Commandant  
Ordnance Depot,  
Fort, Allahabad. ...Respondents

By Advocate Shri R.K.Shetty.

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 for a declaration that her  
husband was entitled to Pension with effect from 17.2.1966 to  
21.9.1967, she is entitled for Family Pension thereafter during  
her life time with 18% per annum interest on the arrears and

S.L.Jain

pension of her husband, entitled to exgratia payment with effect from 1.1.1968 with interest on the arrears at 18% per annum, medical expenses of Rs. 100 per month amounting to Rs. 37,200/- and a direction to float the pension claim to the C.D.A. Allahabad by deputing somne official for that purpose alongwith costs.

2. The claim of the applicant in respect of Ex-gratia payment is not denied.

3. The applicant's case in brief is that her husband Shri Kondiba Maruti Gawade was working in the Central Vechile Depot Dehuro ad as Majdoor (T.o. 1107) since 1939, terminated with effectfrom 17.2.1966 due to 'Bronchial Asthama' leading to complelte and permanent in capaciation for service. He was entitled for invalidation pension on medical grounds, expired on 21.9.1967. As the depot was under disbandment, the applicant by her letter dated 30.6.1997 asked the respondent No.2 to forward her pension claim, who asked the applicant to approach respondent No.3 , hence asked respondent No.3 to float her pension claim, demanding vide letter dated 10.11.1997 to sent Descriptive Rolls etc.

4. The respondents filed the written statement admitting the fact that applicant's husband was majdoor in C.V.D. Dehu Road from 18..4.1942 to 17.2.1966 when he was discharged from service. He has opted for CPF scheme which does not carry any pensionary benefit during his service on his own accord and was allotted the Indian Ordnance Factory workers Provident Fund Account No. 64955, hence he was not entitled to Family Pension.

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The applicant has not submitted the forms duly filled for the Ex-gratia claim. The claim of the applicant in respect of Pension and Family Pension is barred by limitation. Hence prayed for dismissal of OA alongwith costs.

5. The learned counsel for the applicant relied on letter No.18(2)/72/D(civ-II) dated 12.6.1972 particularly on para 1, 2, and 3 which is as under:

1. I am directed to refer to this Ministry's letter No. 18(10)/68/D(CivII) dated the 24th March 1969 regarding counting of ETE spells of service for pension and to clarify that the orders contained therein are applicable both to the affected non-industrial employees (including other categories of employees eg. Gazetted /non-gazetted etc) serving on pensionary terms as well as to the industrial employees serving on CPF Fund and other Funds benefits on the crucial date viz. 1.3.1969. In the case of the industrial employees their option to count ETE/TE ETA Casual service for pension under those orders will also be treated as an option to count their industrial spell of service on CPF benefitfor pension.
2. The time limit of election of ETE etc/IE service for pension by the affected individuals initially allowed for six months from 24.3.1969 is hereby

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extended. The affected individuals would now exercise the option within six months from the date of issue of these orders. Failure to exercise the option will be treated as an option to continue under the existing terms and conditions in respect of ETE/IE spells of service.

3. Further as it would be equitable to extend similar concession in respect of other spells of service also rendered on CPF benefits the affected employees who were serving on pensionable terms as on 1.3.1969 or were on leave preparatory to retirement (including refused leave) on the aforesaid date and who had elected or deemed to have elected to count their earlier other spells of service if any for CPF benefits (eg)
  - (a) service as Gazetted/Non-Gazetted officer on the IODP Fund under Ministry of Defence No. 17(1)56/512/D(Civ.II) dated 15.1.1958 (b) Ty. service in the NIE on IOFWP Fund/INDPF under Ministry of Defence No. 18(4)/56/13494/D(Civ.II) dated 4.11.1958 etc. are hereby given an opportunity to exercise fresh option to elect pensionary benefits in respect of those spells of service. The affected individuals, should now

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exercise the option within six months from the date of issue of these orders. Failure to exercise the option will be treated as an option to continue under the existing terms and conditions in respect of the relevant spells of Service.

6. Perusal of the same makes it clear that the benefit is extended to officials serving on pensionary terms, who has opted for the same and failure to exercise the option within six months from 24.3.1969, which was further extended to further six months will be treated as an option to continue under the existing terms and conditions in respect of ETE/IE spells of service

7. There is pleading to the effect from the side of the respondents that:

"The applicant or her husband are not entitled for any benefit under the Pension Scheme as the applicant's husband had himself opted for Contributory Provident Fund benefit and has accordingly forgone his right for Pension and family Pension".

The said fact is not denied by the applicant.

8. The respondents vide Exhibit R-I has asked the applicant to submit the documents mentioned in the said letter which the applicant has failed to submit hence her claim for Ex-gratia payment was not considered.

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9. The learned counsel for the respondents relied on ATR 1986 CAT 204 Mukam Raj V/s Union of India and others decided by CAT Delhi for the proposition that there is no discrimination as the two categories are entirely different one. I agree to the same that persons serving on pensionary terms and person serving otherwise are two different categories and they can be treated differently. Hence there is no contravention of rule of equality before law -Article 14 of the Constitution of India.

10. In the result, the OA is liable to be dismissed and is dismissed accordingly with the observation that applicant, if submits forms duly filled for Ex-tria payment, her case be considered. No order as to costs.

S.L.JAIN  
(S.L.JAIN)  
MEMBER(J)

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