

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 576/99

Date of Decision : 20<sup>th</sup> October 2000

Smt.G.B.Bhapkar Applicant.

Shri J.M.Tanpure Advocate for the  
Applicant.

VERSUS

Union of India & Ors. Respondents.

Shri R.K.Shetty Advocate for the  
Respondents.

CORAM :

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

The Hon'ble Smt.Shanta Shastri, Member (A)

- (i) To be referred to the Reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? *No*
- (iii) Library *yes*

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

mrj\*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.576/99

Dated this the 20<sup>th</sup> day of October 2000.

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

Hon'ble Smt.Shanta Shastri, Member (A)

Smt.Girijabai Balu Bhapkar,  
W/o Balu Shivram Bhapkar,  
T.No.6093, an ex-employee of  
Ordnance Depot, Talegaon Dabhade,  
Tal.Maval, 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,  
Ordnance Depot, Talegaon,  
Dabhade, Pune.
3. The Controller of Defence  
Accounts, (Pensions),  
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 seeking the reliefs as under:-

- (a) For the declaration that the Applicant is  
entitled to receive the Family Pension since  
December,1991 alongwith 18% interest on the  
arrears thereof.

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(b) Applicant is also entitled to receive difference between death and retirement Gratuity alongwith 18% interest thereon.

(c) For the declaration that Applicant is entitled to Salary due, Leave encashment, Provident Fund, etc. alongwith 18% interest thereon.

(d) Costs of this Application be given to the Applicant.

2. The applicant filed an OA.NO.1146/95 before the Central Administrative Tribunal, Bombay Bench which was decided on 17.11.1995 and the following order was passed :-

" In the circumstances, the respondents are directed to dispose of the representation with reference to Rule 54 of the Pension Rules keeping in view the Govt. of India Order No. 12 within a period of two months from the date of receipt of this order. The OA. stands disposed of."

3. The applicant was paid family pension vide P.P.O. dated 17.2.1998 marked as Ex.'A-1' from the date commencing 1.9.1996 vide Annexure-'A-10' dated 6.12.1999, the family pension was ordered to be paid from 11.9.1993 and Retirement/Death Gratuity was also ordered to be paid less already paid.

4. In respect of Leave Encashment, the respondents have stated that no amount is due (Para 6 of the W.S.).

5. In respect of G.P.F. claims, it is stated in rejoinder that the same is claimed several times but the respondents did not pay heed to her persistent demands but issued letter dated

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dated 12.10.1977 and asked the applicant to attend his office for submission of certain documents pertaining to G.P.Fund. It is suffice to state that there is no allegation in the OA. for submission of required filled forms for payment of G.P.F.

6. The learned counsel for the applicant has drawn our attention to letter of respondent dated 28.9.1974 marked as Ex.'A-2' and his letter dated 19.10.1974 marked as Ex.'A-3' and argued that in compliance of Ex.'A-2' vide Ex.'A-3', an indemnity Bond duly completed in all respects and duly signed by the Sureties was submitted. He further argued that there was no reason to ask the applicant vide letter dated 1.12.1977 Ex.'A-7' to render an affidavit duly executed before a Magistrate stating that your husband is missing and that you are eligible to receive Family Pension and that in event of your husband reappearing, you will refund all the amount received by you from Govt.

7. The Indemnity Bond submitted by the applicant vide Ex.'A-3' is in possession of the respondents, which they failed to place it on record. Hence, it can not be said that the said Indemnity Bond was lacking in some respects which necessitated to call for further affidavit which is filed by the applicant on 6.12.1977.

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8. In view of O.M. dated 25.1.1991, no such affidavit is necessary one. Hence to ask for such an affidavit and to delay the matter for payment of Family Pension, cannot be held to be a good ground in favour of the respondents and it was only a face saving device to explain the delay.

9. The difference between retirement gratuity and death gratuity is payable after the death is conclusively established or on the expiry of seven years period from the <sup>date of</sup> missing. In the present case, the applicant lodged the report in respect of missing on 16.8.1993 though missing was reported from December, 1991. The amount was paid vide P.P.O. dated 6.12.1999 within 7 years of lodging of F.I.R. The death is not established by any other means. Hence, we are of the considered opinion that there is no considerable delay in payment in this respect.

10. Regarding 'Family Pension', we are of the considered opinion that the respondents ought to have acted on the Indemnity Bond already submitted by the applicant vide Ex. 'A-3' on 19.10.1974 and paid the said Family Pension w.e.f. 11.9.1993 which they failed to pay and for the first time ordered on 19.2.1998 to pay the same w.e.f. 1.9.1996 and thereafter on 6.12.1999 vide Ex. 'A-10' ordered to be paid w.e.f. 11.9.1993. Thus, there was an abnormal delay in processing the claim of the applicant in this respect. hence, the respondents are liable to pay interest in this respect for the delayed payments.

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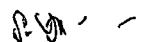
11. Regarding G.P.F., it is suffice to state that respondents are processing the claim. We expect that the amount for which the applicant is entitled as per record of the respondents be processed and paid to the applicant as expeditiously as possible. We refrain to pass any order in this respect as it was not the subject matter of OA. except entitlement of the same as per law without any further delay was stated and in relief clause it is claimed. A new case is made out in rejoinder which is not permissible as per Rules of Pleadings.

12. In the result, OA. is partly allowed and the respondents are ordered to pay interest @ 12% p.a. on the amount of Family Pension already due w.e.f. 10.2.1996 as they were bound to decide the representation within 2 months from the date of receipt of the copy of order in O.A.1146/95 decided on 17.11.1995 which they received on 9.12.1995 and becoming due month to month till actually paid. The applicant shall be at liberty to agitate the matter in resepct of G.P.F. claim if an occasion arises therefor. No order as to costs.



(SMT.SHANTA SHASTRY)

MEMBER (A)



(S.L.JAIN)

MEMBER (J)

mrj.

R.P.No.70/2000 in OA.NO.576/99

Dated this the 9<sup>th</sup> day of Feb. 2001.

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

Hon'ble Smt.Shanta Shastri, Member (A)

Smt.Girijabai Balu Bhapkar

...Applicant

V/S.

Union of India & Ors.

...Respondents

Tribunal's Order By Circulation

This is a review application under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 in respect of an order passed by this bench on 20.10.2000 in OA.NO.576/99.

2. The grounds for review are as under :-

(a) Since C.C.S. (Pension) Rules, 1972 Govt. of India's decisions were re-numbered in the latest edition, the exact rule position could not be cited by the applicant's advocate at the time of hearing.

(b) In the result, OA. is partly allowed and the respondents are ordered to pay interest 12% p.a. on the amount of Family pension already due w.e.f. 10.2.1996. Thus even though the Hon'ble Tribunal awarded 12% interest on Family Pension, still the respondents could not pay/implement the order of this

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Hon'ble tribunal as the word "due" is in the sentence. The family pension has been already paid along with the arrears, but of course payment of the same is too much delayed.

(c) As per the rule-54 Govt. of India's decision No. 12 (5) death/retirement gratuity is to be paid after one year from the date of disappearance of the Govt. Servant. Hence death/retirement gratuity should have been paid on 14.9.1994 (Applicant's husband was missing since December, 1991 and FIR was lodged on 13.9.1993). The said rule further says if gratuity is not paid within 3 months, the interest shall be paid at the rates applicable and the responsibility for the delay should be fixed. Hence applicant is entitled for 18% interest on the amount of gratuity from 14.12.1994 till the date on which the amount of gratuity is paid. As per Exh.A-10 (page 34-35) vide PPO No.C-ACC/CORR/99 dated 6.12.1999 Retirement/death gratuity of Rs.10,440/- is awarded to the applicant but the pension disbursing authority, i.e. Bank of Maharashtra, Induri Branch, Tal.Maval, Dist. Pune has not credited the said amount to the pension account of the applicant.

(d) This applicant most respectfully states that G.P.fund is/was the subject matter of O.A. and no new case is made out in rejoinder at all.

(e) The applicant has prayed for salary due, leave encashment, PF etc. along with 18% interest thereon. Thus an amount payable towards Central Govt. employees Group Insurance Scheme is included in 'etc'.

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3. The perusal of the ground for review (a) as mentioned above, the applicant claims to argue the case afresh which cannot be permitted.

In respect of ground mentioned above (b), Para 12 of the order is to be read fully. The apprehension of the applicant can not be a ground for review.

In respect of ground mentioned above (c),(d) the matter has been dealt in para 9 of the order and we do not find any error on the face of the record.

Similarly, in respect of ground mentioned para (d), it is suffice to state that the allegation that word "etc" includes "Employees Group Insurance Scheme" is foreign either to common sense or any provision of law. The review petitioner must be aware of the fact that the pleadings should be specific for the reason that the opposite party can have an opportunity to meet the same.

4. The review application has been filed, which according to us, <sup>s</sup>a misuse of process of law. It has no merit and it is liable to be rejected and is rejected accordingly.

*L. J.*

(SMT. SHANTA SHASTRY)

MEMBER (A)

*P. L. Jain*

(S.L. JAIN)

MEMBER (J)

mrj.