

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 133/2000

Date of Decision : 21<sup>st</sup> August 2001.

L.C.Chandekar 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)

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

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

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.133/2000

Dated this the 21<sup>st</sup> day of August 2001.

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

Laxman Chandrabhan Chandekar,  
R/at 360, Nana Peth,  
Pune-411 002.

...Applicant

By Advocate Shri J.M.Tanpure

vs.

1. Union of India  
through the Secretary,  
Ministry of Defence,  
South Block,  
New Delhi.

2. The Garrison Engineer,  
7, Club Road,  
Ranchi, Bihar.

...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 the declaration that the applicant is entitled for pension from the date on which he was compulsorily retired from service along with arrears and 18% interest thereon. Alternatively, the declaration is sought that the applicant is entitled for Ex-gratia payment from 1.11.1997 onwards along with cost.

*Sign*

2. The applicant joined Central Vehicle Depot, Dehu Road, Pune as a Painter on 31.1.1945. The said Depot was under the process of disbandment and the Depot was abolished, hence the applicant was transferred to Garrison Engineer, Ranchi, i.e. Respondent No. 2 on permanent posting in public interest w.e.f. 13.4.1967.

3. The applicant proceeded on sanctioned leave w.e.f. 16.4.1975 to 15.5.1975. He extended his leave from time to time. A Charge-sheet under Rule 14 of the CCS (CCA) Rules, 1965 for absence was served on the on 8.5.1976 and after a departmental enquiry, penalty of compulsory retirement was imposed on 29.8.1977.

4. The applicant during the course of enquiry and thereafter by letter dated 26.10.1977 and the reminder dated 5.1.1978 made representations for completion of pension papers finalisation. Vide letter No. P/1013/354/10/E1B dated 6.6.1979 the respondents intimated the applicant through Defence Civilian Pensioners Forum Pune that he did not opt for Pensionary benefits and elected to be retained the existed C.P.F. benefits, hence he is not entitled to pensionary benefits. The applicant represented vide his letter dated 26.11.1979 to Respondent No.2 requesting him to search of his pension option form which he has given and opted for the same during his service. He also stated that he be allowed to give his option for pensionary benefits at this stage

*J. L. M.*

since the C.P.F. benefits claim has not been finalised/settled and the option already exercised for coming over to the pensionary benefits is not traceable in the office. The respondents vide letter No. 10078/169/18/E1c(3) dated 20.3.1980 refused the request of the applicant stating that pensionary scheme cannot be progressed at this belated stage. Further representation in May, 1980 and on 15.6.1981 with a request to allow him to opt for pensionary scheme if the option form was lost by the respondents and before the final settlement of CPF benefits. The applicant received the amount of C.P.F. benefits amounting to Rs.10,858/-. The applicant represented the matter vide letter dated 24.4.1989 to the Ministry of Defence, New Delhi but in vain. Further representation dated 20.12.1989 was rejected by Respondent No.1 vide letter No. A.20003/ REP/ SC/ LCC/15/W1c/(V) dated 2.3.1990 on the ground that "C.E. Central Command Lucknow to whom the case was referred have intimated that during the service you have not opted for the pensionary benefits and that you have started demanding for pensionary benefits only after your compulsory retirement, as such your request for Pension/Gratuity at this stage can not be considered." Hence, this OA. for the above said reliefs.

5. The application is accompanied by Delay Condonation application and the ground to condone the delay is "extreme old age and eye sight problem, it was not possible to file the OA. within time and he had handed over all the papers to Advocate Harish A.Gaikwad for filing this case but unfortunately he expired and the applicant was not aware of his address, it was impossible for him to trace out his address".

J. G. M. ' / '

..4/-

6. Regarding the sufficient cause for not filing the OA. within the period of limitation, it is suffice to mention that the applicant has failed to state the dates on which he has handed over the papers to Advocate Shri Harish A. Gaikwad and received back, old age and eye sight problem when started is also not mentioned. Such vague applications deserves no consideration, do not constitute sufficient cause, the application deserves to be dismissed and is dismissed accordingly.

However, as the pension is the recurring cause of action, I proceed to examine the case on merits.

7. The claim of the applicant is resisted by the respondents on the ground that until the applicant was compulsorily retired from service on 29.8.1977, he was throughout a Member of the Indian Ordnance Workers Provident Fund Scheme and never opted to come over to the pension Scheme. The applicant exercised the option vide Option Form dated 11.7.1962 (Exhibit-'R-1'). Being an optee of the Contributory Provident Fund Scheme, he was excluded from the pensionary benefits under provision of the Pension Rules. Even after the CCS (Pension) Rules, 1972 and in terms of the Govt. of India, Ministry of Defence letter No. 90315-ACD-OS-SC(1)/8357/D (CIV-II) dated 30.8.1976 (Exhibit-'R-2'), the industrial personnel were required to exercise their option for pensionary benefits only upto 28.2.1977 and the applicant failed to do the same. The applicant for the first time decided to come over to the Pension Scheme only in the month of July, 1979 after compulsory retirement on 29.8.1977. The claim of the applicant for pensionary benefits has already been rejected by the Govt. of India, Ministry of Defence, New

*Signature*

..5/-

Delhi vide letter dated 2.3.1990. The application deserves to fail not only on merits but also on the ground of being grossly barred by limitation. The final settlement of Indian Ordnance Factory Works Provident Fund assets of the applicant amounting to Rs.10,558/- have been paid to the applicant on 6.6.1985. The litigation is frivolous one. In the above circumstances, the applicant is not entitled to any relief for pensionary benefits even under the provisions laid down in CCS (Pension) Rules, 1972. Hence, prayed for dismissal of the OA. along with the cost.

8. The applicant filed the rejoinder, attached with it five documents, namely, his application dated 10.6.1976, 26.11.1979, February, 1980, 15.6.1981 and reply dated 20.3.1980 sent by the Office of the Works Engineers, Ramgarh Cantt.

9. Annexure-'A-4' dated 10.6.1976 is prior to retirement of the applicant, a request to allow him to retire with full pension benefits of service. In Exhibit-'A-5' a letter by the applicant dated 26.11.1979, the applicant states that :-

"I had given my option for pensionary benefits but the same is not available in your records it appears.

Further, I beg to submit that now the Govt. of India vide Min.of Home Affairs, Dept. of Personnel and AR OM No. 3(2)-PU/79 dated 9.8.1979 has given a fresh opportunity to opt for the pensionary benefit scheme as laid down in the CCS (Pension) Rules, 1972.

In view of the Govt. of India letter cited above (Copy attached) I hereby take an opportunity to opt the pensionary benefits scheme which may kindly be considered and action taken at an early date to claim and pay me the pension.

P. G. M. ' - ..6/-

10. Thereafter, application dated February, 1980 and 15.6.1981 was sent by the Forum and the reply is Exhibit-'A-8'. The reply is to the effect that as the applicant is compulsorily retired on 29.8.1977, the case for coming over to Pension Scheme cannot be progressed at this belated stage. Thus, the claim of the applicant has been negatived by the respondents on 20.3.1980.

11. Even thereafter the applicant preferred representations in May, 1980, 15.6.1981, 24.4.1989, 20.12.1989 which were rejected on 2.3.1990. The applicant has accepted the C.P.F. benefits amounting to Rs.10,558/-. The applicant claims that he has received the said amount due to old age, hard economic position and under protest. It is very easy to allege the fact but he has not placed on record any of his protest as claimed by him. Having accepted the benefits, which was not a compulsion for the applicant, now the applicant is not entitled to raise such pleas which by his conduct debars him to raise such pleas on principle of estoppel.

12. The truthfulness of the applicant is also doubtful as he has failed to place on record any of his representations prior to his compulsory retirement on 29.8.1977 regarding switching over to pensionary scheme, on the other hand, the respondents have placed on record 'R-1' Option Form dated 11.7.1962 by which the applicant has opted to remain on C.P.F. Benefit Scheme. Option

*S. J. M.*

was to be exercised latest by 28.2.1977, the applicant has failed to exercise the option within the prescribed period, hence, the applicant cannot now claim that his case be considered for switching over to pensionary scheme.

13. Not only this, the applicant's request in this respect has been rejected on 18.7.1979, again on 2.3.1990 and he has preferred this OA. on 16.2.2000. As stated above, I do not find any ground to condone the delay of more than 8 years. Hence, request of the applicant for switching over to pensionary scheme after the cut of date which is rejected, I do not find any fault in this respect and the OA. deserves to be dismissed and is dismissed accordingly for the said relief.

14. In alternative, the applicant has prayed for Ex-gratia payment from 1.1.1973, this claim is preferred on the recommendations of the IVth Pay Commission. Perusal of the same makes it clear that it was an additional benefit granted for the first time to the C.P.F. beneficiaries subject to certain conditions laid down in the O.M. dated 13.6.1988 and 27.6.1988. The claim of switching over to pensionary benefits and claim based on O.M. dated 13.6.1988 and 27.6.1988 and revised in view of the recommendation of V Pay Commission are not based on one and the same question of fact and law.

*Di-8nd -*



15. Alternative relief, though the applicant claims but it is not an alternative relief but it is the another relief which is barred under Rule 10 of CAT (Procedure) Rules, 1987. The dictionary meaning of alternative is offering a choice of two things or choice between two things or either of these. The relief of ex-gratia is not alternative relief but a separate relief. The reason is that a person who is entitled for pension is not entitled for ex-gratia. In addition to it, I do not find that the applicant has ever approached the respondents for the said relief. The Tribunal acquires the jurisdiction in case of in-action by the respondents or after an order is passed by the respondents a judicial review. The Tribunal cannot entertain the claims which is neither agitated or claimed before the respondent, nor there is an inaction by the respondents as such the applicant failed to exhaust the departmental remedies available to him, hence for the first time he is not competent to ask the Tribunal to decide the matter in this respect.

16. In the result, OA. deserves to be dismissed and is dismissed accordingly. It is a fit case where the applicant deserves to be saddled with cost, keeping in view the facts of the present case, amounting to Rs.600/- (Rs.500/- as Legal Practitioner's fee + Rs.100/- as other expenses) payable to the respondents within one month from the receipt of the copy of the order.

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

MEMBER (J)

mrj.

R.P. No-61101  
billed by Applicant,  
by circulation.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

R.P.No.61/2001 in OA.NO.133/2000

Dated this the 19<sup>th</sup> day of November 2001.

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

Laxman Chandrabhan Chandekar

...Applicant

vs.

Union of India & Ors.

...Respondents

ORDER BY CIRCULATION

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

This is an application under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 for Review of the order passed in OA.NO.133/2000 on 21.8.2001.

2. I have carefully perused the grounds raised in Review Application. The application appears to be on ground of mistake or error apparent on the face of record. The underlying object of this provision is not to enable the Court/Tribunal to write a second judgement. A mere repetition of the old and considered arguments cannot create a good ground for review.

*S.L.J.*

..2/-

3. In the result, I do not find any merit in Review Application. It deserves to be dismissed and is dismissed accordingly. Suffice to say, it is an abuse of the process of the Tribunal. As such dismissed without notice to the other party by Circulation. No order as to costs.

*P. S. Jain*  
(S.L.JAIN)

MEMBER (J)

*dt 19/11/01*  
mrj.order/Judgment despatched  
to App<sup>nt</sup> espondent (s)  
on 31/12/01

*M*