

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 876/2000

THURSDAY the 18th day of APRIL 2002

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

Namdeo Dhondiba Satav,
R/at Wagholi, Tal.
Haveli, Dist. Pune.

...Applicant

By Advocate Shri J.M. Tanpure.

V/s

1. Office of the Controller of
Defence Accounts (Pension)
Draupadi Ghat, Alahabad.
2. Union of India through
The Senior Quality Assurance
Officer, Senior Quality
Assurance Estt. (ARMTS)
Within the premises of
Ammunition Factory,
Khadki, Pune.

...Respondents..

By Advocate shri R.R. Shetty for Shri R.K. Shetty.

ORDER (ORAL)

{Per 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/ ex-gratia payment from the date of his medical incapacitation with the direction to the respondents to invoke Rule 88 of Pension Rules for granting pension to the applicant alongwith interest at 18% per annum.

2. Before commencing the arguments the learned counsel for the applicant is asked to elect whether he is claiming pension or ex-gratia payment. He has stated that he is claiming the pension and not ex-gratia payment. Therefore I proceed to decide the case of the applicant regarding pension only.

J.M. -

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3. The applicant had joined the Inspectorate of Armaments as a labourer in Ammunition Factory, Kirkee on 16.8.1963. On 15.9.1967 while on duty he was seriously injured through an accident in the Factory premises while discharging the Government Duties. He was admitted to Military Hospital, Wanawari, after a treatment of 6 to 7 months he completely lost his eye vision and became 100% blind. Then the IOFA boarded the applicant out of Government services on medical ground in the month of April 1968 without any pensionary benefits.

4. The respondents have stated in para 6 of the written statement that since the applicant has rendered less than 5 years service he is not entitled to any pensionary benefit. Further it has been stated that compensation under Workmen's Compensation Act 1923, according to the rate then prevailed, has already been paid as mentioned in his affidavit dated 5.5.2000. The IOFWPF fund is contributory provident fund and accordingly the assets standing to the credit of his IOFWPF A/c No. I - 14718 including own deposit with interest plus Govt. contribution with interest has already been paid in 1968. It is clear that the applicant was covered by the provisions of Contributory Provident Fund and compensation under Workmens Compensation Act 1923 was paid to him.

5. The learned counsel for the applicant on the basis of his affidavit dated 5.5.2000 argued that the applicant did not know on which ground or purpose or on what account the amounts were paid. Afterwards approximately Rs. 11,000/- was paid to him in

Reasons /

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1969 in two instalments. Suffice to say that ignorance / evasive answer in this respect of the applicant cannot be considered. When asked by the Tribunal the learned counsel for the applicant was ~~unable~~^{was} to inform that there was any other law under which this amount could have been paid. In such circumstances the pleadings raised by the respondents cannot be ignored.

6. The learned counsel for the applicant relied on Exhibit 'D' which states that it appears from the copy of the affidavit dated 5.2.2000 he has already received compensation of Rs. 11,000/under Workmens compensation Act 1923. No such records are available with the respondents but with respect to the compensation and payment of the same is admitted fact and there is no other provision under which the applicant could receive the compensation, as such it is held that it was paid under provision of Workman Compensation Act 1923.

7. The learned counsel for the applicant relied on Rule 88 of CCS (Pension) Rules 1972. The said Rule in force with effect from 1.6.1972 the applicant's case is not covered by the said Rules, the reason being that the applicant was not in service after April 1968.

8. The learned counsel for the applicant relied on Central Civil Services Extra Ordinary Pension Rules. Perusal of the same makes it clear that the said Rules do not apply in the case where provision of Workmen's Compensation Act 1923 applies.

Sign /

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9. The learned counsel for the applicant relied on Appendix A to CPRO 106/64 which has been filed alongwith sur-rejoinder. The sur - rejoinder is not taken on record because no provision for filing sur-rejoinder do exist. Only CPRO 106/64 is considered. The learned counsel for the applicant relied on para (ii), (iii) and (iv) of the CPRO. The applicant was not confirmed and never exercised the option. As such (ii), (iii), and (iv) does not apply.

10. The learned counsel for the applicant further argued that confirmation is based on the availability of vacancy. The officers who were successfully completed probation may be considered for confirmation. The said proposition of law now cannot be doubted but the said proposition of law came into force from 13.6.1988. As such the applicant is not governed by the said provision which never existed at the relevant time. As such even on facts the applicant has no case.

11. The learned counsel for the applicant also argued that as the applicant had completed 4 years and 8 months service which though less than 5 years but exceeds than half year should be treated as 5 years. No such provision is brought to the notice of the Tribunal-in force at the relevant time. As such, I am unable to agree with the submission of the learned counsel for the applicant.

ASDH

12. In the result, I do not find any merit in the OA, as such it is liable 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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