

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 120 of 2000.

Dated this 30^{Tuesday}, the 30th day of March, 2004.

Shri Baban Shripat Gaikwad, _____ Applicant.

Shri J. M. Tanpure, _____ Advocate for
Applicant.

VERSUS

● Union of India & Others, _____ Respondents.

Shri R. K. Shetty, _____ Advocate for
Respondents.

CORAM : Hon'ble Shri S. G. Deshmukh, Member (J).

(i) To be referred to the Reporter or not ?

(ii) Whether it needs to be circulated to other
Benches of the Tribunal ?

(iii) Library.


(S. G. DESHMUKH)
MEMBER (J).

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Dated this Tuesday the 30th day of March, 2004.

CORAM : Hon'ble Shri S. G. Deshmukh, Member (J).

Shri Baban Shripat Gaikwad,
Ex-Central Vehicle Depot
Mazdoor, Ticket No. 1913,
R/o New J Type 25/6,
Range Hills,
Pune - 20.

... **Applicant.**

(By Advocate Shri J. M. Tanpure)

VERSUS

1. Union of India through
The Secretary,
Ministry of Defence,
South Block,
New Delhi - 110 001.
2. The Commandant,
Central A.F.V. Depot,
Kirkee, Pune 411 003.
3. The Chief Controller of
Defence Accounts (Pensions),
Allahabad.

... **Respondents.**

(By Advocate Shri R. K. Shetty)

O R D E R

PER : Shri S. G. Deshmukh, Member (J).

The present O.A. is filed for a declaration that applicant is entitled for pensionary benefits in respect of his first service from 01.07.1969 with enhanced basic pension and Dearness Relief from time to time in addition to the pensionary benefits from his second service alongwith all the arrears with 18% interest thereon and the compensation of Rs. 50,000/- as the applicant has suffered mental agony and mental torture due to non payment of earlier pension.

2. The applicant's case is that he was working as a Mazdoor in Central Vehicle Depot, Dehu Road, Pune from 06.03.1948 to

30.06.1969. Due to closure of the establishment, the services of the applicant were terminated from 30.06.1969. As the applicant had exercised option for pensionary benefits, he started receiving pension w.e.f. 01.07.1969 for life from the Treasury Office, Pune. Further, it is the case of the applicant that he received the second appointment under Respondent No. 2 as a Mazdoor Ticket No. 2889 and he served under him from 19.03.1970 till 31.03.1986. The applicant was receiving pension of earlier service from 01.07.1969 till 1978 from the Treasury Office, Pune, and thereafter he started receiving pension from Bank of Maharashtra, Kirkee Branch, Pune, till 31.08.1983 when it was revealed that applicant was overpaid Dearness Relief amounting to Rs. 5,611/- from 01.08.1973 to 31.08.1983 as during this period the applicant was in the employment of Respondent No. 2. The applicant was initially receiving Rs. 28/- as his monthly pension which was enhanced to Rs. 40/-. Since the huge amount of Rs. 5,611/- was to be recovered, the bank authorities stopped his monthly pension of Rs. 40/- to be payable per month. The applicant was receiving his monthly pension of Rs. 28/-/Rs. 40/vide P.P.O. No. C/IND/PROV/1234/78 issued by Respondent No. 3. As the applicant was superannuated on 31.03.1986 from the office of Respondent No. 2, he started receiving pension of Rs. 375/per month vide P.P.O. No. C/AOC/CORR/POST 86 REV/000036/87. Meanwhile, the applicant was not receiving his pension of Rs. 40/- in respect of his earlier service as a huge recovery of Rs.5,611/- was being made. The applicant was making representation to the Bank personally and through the Union Leader of Central Vehicle Depot. It is contended that for a long period all the original pension documents of the applicant maintained with the Treasury Office, Pune, were lost by the Treasury Office, Pune and lot of time was consumed to obtain duplicate pension documents by the Bank. Finally, the bank officials were successful in getting pension documents from other

sources. It is contended that Respondent No. 3 illegally cancelled all the earlier P.P.Os. in respect of the applicant's first pension and his pension was revised from Rs. 375/- to Rs. 411/- w.e.f. 01.04.1986 for life. The applicant had approached all the respondents through the Bank in respect of his first pension. P.P.O. No. C/AOC/Corr/94/97 was passed by the Respondent No. 1 merging the first pension. Hence, this O.A.

3..... The respondents filed the counter affidavit and contended that during the period of re-employment also the applicant was drawing full pension including dearness relief, which is not in accordance with rules, as a person cannot draw two dearness relief at the same time as is categorically laid down by the Supreme Court as well as the Government of India, Decision No. 3 to Appendix 6 of C.C.S. (Pension) Rules. Accordingly, the recovery of excess amount of dearness relief paid to him being Rs. 5,611/- was ordered. This amount has already been recovered from the applicant. It is contended that applicant did not inform the applicant that he was already drawing pension for the services already put in by him at the C.V.D., Dehu Road, on account of which he was allowed to draw his pension including Dearness Relief and also basic pay plus dearness relief in his new post which meant that the Government of India was paying him two sets of Dearness Relief which is not permitted as per rules. The applicant is entitled to full pension plus dearness relief only from 01.04.1986 when he superannuated from his second employment. It is further contended that the respondents have taken steps and made necessary amendments vide their letter dated 13.01.1997 in order to enable the applicant to draw full pension on the basis of the 36 years, 10 months and 28 days of service (maximum service 33 years) put in by him which includes the service rendered by him under the CVD, Dehu Road. On the basis of the order dated 13.01.1997 the respondents have granted pension @ Rs. 411/- vide

P.P.O. No. C/AOC/Corr/94/97 after counting both Civil Service rendered by him and taking into account 10 months average pay of Rs. 820.24 i.e. 50% of Rs. 820.24 being Rs. 411/- w.e.f. 01.04.1986 for life in supersession of all the previous pension paying orders. Thus it is contended that no cause of action whatsoever survives. The O.A. has become infructuous and deserves to be dismissed.

4. Heard the Learned Counsel, Shri J. M. Tanpure, for the applicant and Shri R. K. Shetty, Learned Counsel for the respondents.

5. It is apparent from the contention of the applicant and respondents that the applicant was initially working in Central Vehicle Depot, Dehu Road, Pune from 06.03.1948 to 30.06.1969. His services were terminated on account of the closure of the Depot for which he was granted compensation pension @ Rs. 28/- per month w.e.f. 01.07.1969 vide P.P.O. No. C/IND/PRO/1234/78 on the basis of 20.1/2 years net qualifying service put in by him. He was further granted extra pension @ Rs. 12/- per month w.e.f. 01.03.1970 and thus he was drawing a pension of Rs. 40/- per month. The applicant was re-engaged as a Mazdoor in the Central A.F.V. Depot, Kirkee, Pune from 19.03.1970 till 31.03.1986 and started receiving pension @ Rs. 375/- per month vide P.P.O. No. C/AOC/CORR/POST 86 REV/000036/87. It is the contention of the respondents that on receipt of the pension from Treasury Office, Pune, dated 22.01.1987, the Central A.F.V. Depot submitted documents for necessary amendment and the respondents on receipt of service documents, reviewed the case of the applicant and clubbed his both civil services and on the basis of qualifying service after clubbing both the services, granted pensionary benefits vide P.P.O. No. C/AOC/Corr/94/97 w.e.f. 01.04.1986. The respondents in that respect relied on Rule 7 of the C.C.S. (Pension) Rules, 1972 whereas the applicant relied on

Rule 18 of C.C.S. (Pension) Rules for continuing to draw the pension of his earlier service.

6. Rule 7 of the C.C.S. (Pension) Rules, 1972 reads as follows :

7. Limitations on number of pensions :

(1) A Government servant shall not earn two pensions in the same service or post at the same time or by the same continuous service.

(2) Except as provided in Rule 19, a Government servant who, having retired on a superannuation pension or retiring pension, is subsequently re-employed shall not be entitled to a separate pension or gratuity for the period of his re-employment."

The case of the applicant is not covered as per Rule 19 as he had not rendered military service. The applicant cannot be said to be in a continuous service also. He has rendered his service in two spells. In the first spell he rendered his service as a Mazdoor in Central Vehical Depot from 06.03.1948 to 30.06.1969 and due to closure of the establishment applicant was terminated from 30.06.1969 and was granted compensation pension @ Rs. 28/- and further extra pension @ Rs. 12/- per month. In the second spell the applicant was re-engaged as a Mazdoor in the Central Armour Fighting Vehicle Depot from 19.03.1970 to 31.03.1986. On superannuation he was granted pension Rs. 375/- per month as per P.P.O. No. C/AOC/Corr/94/97. Both the P.P.Os. are of the office of the Controller of Defence Accounts (Pension), Allahabad. Services rendered in both the spells by the applicant are of Mazdoor under C.V.D., Dehu Road and C.A.F.V.D., Kirkee, both under the Ministry of Defence. As per Rule 7 a Government servant is not entitled to earn two pensions for the same service or post at the same time. The applicant rendered both the service as a Mazdoor in C.V.D. and C.A.F.V.D. under the Ministry of Defence. Thus, as per Rule 7, the applicant is not

entitled to earn two pensions for the same service or post. I have mentioned that sub-rule 2 of Rule 7 is not applicable in the case of the applicant as he has not rendered the military service in the earlier spell of his service. As the applicant has rendered his two spells of service in the same service or post, he is covered by Rule 7. Rule 18 is not applicable in the case of the applicant. The respondents have rightly reviewed the case of the applicant and clubbed both of his services and granted pension @ Rs. 411/- per month vide P.P.O. No. C/AOC/Corr/94/97 taking into account 10 months average pay of Rs. 820.24ps. (i.e. 50% of Rs. 820.24 = Rs. 411/-) with effect from 01.04.1986 for life, cancelling the previous pension payment orders.

7. The O.A. is devoid of merits and is accordingly dismissed. No order as to costs.

S. G. DESHMUKH
(S. G. DESHMUKH)
MEMBER (J).

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