(17) O.A. 230/2000

(18) O.A. 231/2000

(19) O.A. 232/2000 Dt. 22.3.2001

Learned Counsels Shri S.V. Marne is present for the Applicants.

2. Shri S.S. Karkera for Shri P.M. Pradhan, Counsel for R.1 and Shri G.S. Bhargavaram is present for R.2.

3. Shri Karkera states that he would like to get instruction in respect of a document regarding offer of appointment produced by Applicant and that this will be important to this case.

4. One last chance is given. The case is posted for Final Hearing on 19.4.2001.

(B.N.Bahadur)
Member (A)

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NOS.230, 231 & 232/2000

Dated: 19.4.2001.

Arjun Parshuram Dhavale & Ors.	Applicants.
Shri D.V.Gangal.	Advocate for

Versus

Union of India & Anr.	Respondent(s)
Shri S.S.Karkera for Shri P.M. Pradhan for R-1 and Smt.Jayashree Kurup for M/s.Kini & Co. for R-2.	Advocate for Respondent(s)

CORAM :

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

(1) To be referred to the Reporter or not? Y

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

(3) Library. ✓

(SHANTA SHASTRY)
MEMBER(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NOS. 230, 231 & 232/2000

Thursday, this the 19th day of April, 2001.

Coram: Hon'ble Smt. Shanta Shastry, Member (A).

1. Original Application No.230/2000.
Arjun Parshuram Dhavale,
F-9/7, Airport Colony,
Bamanwada, Vile Parle (E),
Mumbai - 400 099. ...Applicant.

2. Original Application No.231/2000.
Pandurang Daulat Khambe,
P-12/6, Airport Colony,
Andheri Sahar Road,
Vile Parle (E),
Mumbai - 400 099. ...Applicant.

3. Original Application No.232/2000.
Keshav Premji Dhakrao,
A-10/5, Airport Colony,
Andheri Sahar road,
Mumbai - 400 099. ...Applicant.

(By Advocate Shri D.V.Gangal)

Vs.

1. The Union of India,
through The Director General of
Civil Aviations,
East Block No.II & III,
R.K.Puram,
New Delhi - 110 022.
2. The Executive Director,
National Airport Authority
of India, Safdurjung Airport,
New Delhi - 110 022. ...Respondents.

(By Advocate Shri S.S.Karkera for Shri
Shri P.M.Pradhan for R-1 and Mrs.Jayashree
Kurup for R-2 for M/s.Kini & Co.)

: O R D E R (ORAL) :

{Per Smt. Shanta Shastry, Member (A)}

The Applicants in all the three OAs are seeking identical reliefs. The applicants are similarly placed, so

...2.

also the Advocates for the applicants and the respondents are common. I am therefore, proceeding to dispose of all the three OAs by a common order. For the purpose of illustration, the facts in OA No.230/2000 are given. The Applicant in this OA is working as a Chowkidar with the National Airport Authority of India (for short, NAAI) i.e. Respondent No.2 (R-2). Prior to his appointment with R-2, he was working as Chowkidar under Respondent No.1 (R-1). He also worked as a casual labour Chowkidar with R-1 for some time. As per details given at page 12 of the OA, the applicant was engaged as casual Chowkidar from 8.9.1976. He was regularised on 1.2.1980. Thereafter, he was sent on deputation to the NAAI from 1.6.1986 and he was absorbed on 2.10.1989. Thus, he has put in regular service of 9 years and six months and casual service of 3 years and 5 months.

2. The relief sought is to grant pensionary benefits by taking into consideration half of the service rendered by the applicant as casual Chowkidar with all arrears of pension w.e.f. 2.10.1989 together with interest.

3. The applicant has not impugned any particular order. He has, however, made a representation to the concerned authorities on 3.2.2000 which has been forwarded on 16.2.2000 to the Regional Executive Director, Bombay Region of NAAI.

4. According to the applicant, he is entitled to pension,

...3.

as he has put in 10 years of service. For this purpose, the applicant maintains that 50% of the casual service rendered by him can be reckoned as qualifying service for the purposes of pension and therefore, adequate qualifying service is available for grant of pension. The Learned Counsel for the applicant has drawn my attention to an order passed by this Tribunal in OA No.1185/93 on 7.7.1999 in the matter of M.D.Shedge Vs. Union of India & Another. The facts in the present OA are identical to the facts of the applicant in OA 1185/93. The OA was allowed and it was held that the applicant is entitled to pensionary benefits as per Rules and also ~~of~~ arrears were directed to be paid to the applicant. The Learned Counsel for the applicant in the present case submits that since the applicant is similarly placed to the applicant in OA 1185/93, the benefit of the Judgment should be extended to him also. In fact, the applicant in OA No.1185/93 and the present applicant are all working in the same organisation under the same Respondents.

5. The Learned Counsel for the Respondent No.1 has raised two objections. According to the Respondents, there is no documentary material produced by the applicant to establish that he has been in continuous service from 1976 to 1980 as ~~is~~ claimed by him. Further, the applicant has made a representation in February, 2000 and without waiting for six

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months, the applicant has approached this Tribunal immediately on 27.3.2000, therefore the application is premature. The Learned Counsel also took the plea that the applicant has approached this Tribunal belatedly and therefore, the application is barred by limitation, and is not maintainable.

6. The Learned Counsel for the applicant, however, has placed on record two documents showing that he has been employed as a casual labour as on 8.9.1976 and has been in employment since then. The Respondent No.2 has also admitted this fact and therefore, the applicant is entitled to the pensionary benefits. As regards the pending representation, it is true that the applicant has approached this Tribunal without waiting for result of his representation. At the same time, almost one year has elapsed since the representation was made and the Respondents have not considered the representation till now, at least. Further, since an identically placed person has already been granted the relief, it is a matter of extending the same benefit to the applicant. In regard to the limitation point, the Learned Counsel for the applicant submits that since this is a matter relating to pension which is a recurring cause of action in terms of the Judgment in the case of M.R.Gupta Vs. Union of India (1995 (5) SCALE SC 29), the application cannot be affectedby limitation.

7. The Respondent No.2 also has filed a reply and the

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Learned Counsel for Respondent No.2 states that the Tribunal has no jurisdiction over R-2 and cannot pass any orders against R-2. Also, no relief has been claimed against the R-2. This is accepted.

8. I have heard the Learned Counsels for the parties and have given careful consideration to the pleadings. I find that the applicant's case is squarely covered by the Judgment in OA 1185/93. All the circumstances and facts are similar and therefore, I do not see any reason why the applicant should be denied the extension of the benefit. In fact, it would be discriminatory to grant the benefit to some employees and not to the others who are identically placed. There are several Judgments of the Apex Court also, which have held that employees should notbe unnecessarily driven to approach the Courts. I agree with the contention of the applicant's counsel that in this particular case, limitation would not apply as this is a matter of pension. The applicant has given details of the service rendered and has produced some record which is not disputed at least by R-2 and therefore, I hold that the applicant is entitled to the pensionary benefits.

9. In respect of the applicants in OA 231 and 232/2000, the Learned Counsel for the applicants has produced substantial proof to show that they had worked continuously

...5.

prior to their absorption in the NAAI. These two applicants are also similarly placed to the applicant in OA No.230/2000, as well as, 1185/93. I hold them also entitled for grant of pensionary benefits. In fact, all the objections raised by R-1 have been appropriately answered to in the Judgment in OA 1185/93.

10. There is no doubt that the applicants have approached belatedly. However, since the Judgment in OA 1185/93 became available in 1999 and the applicants represented in February, 2000, I am inclined to overlook the limitation point. At the same time, in terms of the Judgment in M.R.Gupta's case (supra) while allowing the pensionary benefits, the applicants will be entitled to arrears of pension only from the period of one year prior to their making of the application.

11. In the facts and circumstances of the case, all the three OAs (viz. OA Nos. 230, 231 & 232/2000) are allowed with a direction to the Respondents to grant pensionary benefits to all the three applicants. No costs.

(SHANTA SHASTRY)
MEMBER (A)

B.