

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 254/2000

Date of Decision: 12.10.2001

Smt. Tulsibai Shiripati Bhosale. Applicant

Shri J.M. Tanpure. Advocate for Applicant

Versus

Union of India & another ... Respondents

Shri R.K. Shetty. Advocate for Respondents

CORAM: HON'BLE SMT. SHANTA SHASTRY. ... MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal? /x
- (3) Library ✓

Shanta Shastri
(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 254/2000

THIS THE 12TH DAY OF OCTOBER, 2001

CORAM: SMT. SHANTA SHASTRY . . . MEMBER (A)

Smt. Tulsabai Shripati Bhosale,
W/o late Shripati Hari Bhosale,
Ex-Mazdoor PT of Garrison Engineer,
Dehu Road, Pune-412 101. . . 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 Garrison Engineer,
Dehu Road,
District-Pune. . . . Respondents

By Advocate Shri R.K. Shetty.

ORDER

This is an application seeking family pension. The applicant's husband Shri Shripati Hari Bhosale was working as Mazdoor PT. While working within the office premises the applicant's husband was severely bitten by a mad dog. Even after hospital treatment, he expired on 03.9.1967 while in service. The applicant was paid an amount of Rs.3000/- towards gratuity, CPF etc. Later on the applicant was sanctioned ex-gratia payment since 1989. The prayer of the applicant is to grant her family pension along with all arrears in addition to the ex-gratia payment being received by her.

2. According to the respondents, the applicant is not entitled to any family pension because the applicant's husband had not opted for pension. He had opted only for the CPF scheme. Since the applicant is already enjoying the benefit of ex-gratia since 1989 she is now estopped from approaching the Tribunal seeking the benefit which is to be given only to pensioners.

3. Further, the respondents submit that the alleged cause of action arose in 1969, whereas she is approaching this Tribunal after a period of nearly 31 years, therefore, limitation would apply in this case.

4. The learned counsel for the applicant pleads that the applicant, no doubt received ex-gratia payment. She is receiving only Rs.150/- ex-gratia payment, whereas, the co-workers of the applicant's husband and their widows are receiving pension/family pension of about Rs.1500/- per month. The applicant is illiterate and therefore, she had signed all the documents at the time of receiving the amount of gratuity/CPF. She did not know anything about the contents. Further, according to the applicant, her husband must have exercised the option to go over to the pension scheme like his co-workers during his life time. But the applicant has been denied the family pension after his death.

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5. Learned counsel for the applicant has now produced a letter dated 11th November, 1976 whereby the OM dated 17th June, 1974 of the Ministry of Finance, Department of Expenditure was forwarded certain instructions about option for pension scheme have been prescribed therein. Under this letter it is provided that all the Industrial Personnel whether permanent or temporary, who had retained CPF benefits were allowed to exercise the option for pensionary benefits. The option was to be exercised by 16th December, 1974 at the latest. The option was opened to those in service on 01.01.1973, who had retired or died before issue of the letter dated 17th June, 1974 and those who died without exercising any option within the valid period of exercising the option, their families were allowed to exercise such option. In this letter it was stated that since sufficient publicity had not been given, the date for exercising option was extended further to 23rd February, 1977. According to the learned counsel for the applicant it makes clear that had the applicant's husband been alive, he could have exercised the option and even the applicant could have exercised her option on the death of her husband and therefore, the applicant is entitled for pension scheme. The learned counsel for the applicant has also cited one judgment of this Tribunal in OA No.569/87 reported in ATR 1988 (2) CAT 49. In this case it was pointed out that para 10 of the pension scheme of 16.11.1957 required that every retired employee be individually informed of the scheme for exercising option. The applicant therein who had

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retired on 09.6.1957 before the introduction of the scheme was not informed about the Railway Board's scheme through oversight. His case for grant of pension was pending consideration in 1971, but he expired on 13.3.1972 before his case could be finalised. The deceased wife moved the authorities for grant of pensionary benefits in 1986. The Tribunal held that the applicant's husband was entitled to pension from 09.6.1957 on the hypothesis that he exercised option and the applicant would be entitled to family pension according to rules. The applicant in the present case presses that she is also entitled to family pension on the analogy of this OA No.569/87.

6. The learned counsel for the applicant is also relying on another judgment of the Supreme Court of India in the case of State of Orissa & another Vs. Pratiba Ghosh & another. In this case the applicant's husband, retired Head Master, had opted for CPF. Subsequent notification enabled the husband to opt for family pension. However, in the meantime he had expired and the Tribunal passed order awarding arrears of pension and family pension to the wife. The Supreme Court held that the option has to be exercised but by that time the husband had expired and therefore, the Supreme Court set aside the award of arrears of pension. Since, However, the Tribunal had granted the family pension, the Supreme Court was not inclined to interfere with that part of the order.

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7. According to the applicant, the application is not hit by limitation, it is a continuous cause of action that the applicant has been denied the pension. The applicant has further placed reliance on the judgment of the Supreme Court in Union of India & others Vs. D.R.R. Shastri 1997 (1) SCC 514. The Supreme Court observed in this case that since the respondents had not informed the applicant therein about exercising of option as per letter dated 22.7.1974 enabling all members of CPF to opt for the pension scheme, the order of the Tribunal holding the applicant entitled to opt for the pension scheme and refunding the amount already received was valid despite the fact that the time specified for opting for the liberalised pension scheme had already expired. According to the applicant in both these cases, the bar of limitation has been over-ruled and therefore, in applicant's case also the limitation should not come in the way of granting benefit of pension scheme.

8. The learned counsel for the respondents, however, oppose the claim. The learned counsel points out that having enjoyed the benefit of the ex-gratia payment, the applicant cannot now come up for grant of pension/family pension after 11 years thereafter. The applicant has no case. Even though the applicant has relied on the judgment in the case of State of Orissa & another Vs. Prativa Ghosh & another (supra), that judgment is more in favour of the respondents than that of the applicant. The Supreme Court clearly held

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therein that once the applicant retired when the CPF scheme came into force and having got the retiral benefits, ordinarily he would not be entitled to claim the pension or family pension unless the subsequent notification gives the option and the option is exercised. In this case by the time subsequent notification was issued, the applicant's husband had already died. Not only that the applicant was not in service as on 01.01.1969 or 01.01.1973. The Railway Board notification referred to by the applicant also does not help him because it is clearly stated that the option is open to those who were in service as on 01.01.1973 and not to those who died or had already retired. More over the applicant's husband had clearly exercised his option in 1962 to go over to the CPF scheme. There was no further option exercised by him. As the further option was granted only after 1969 he could not therefore, have opted for the pension scheme. Therefore, also the applicant is not entitled to any family pension.

9. I have heard the counsel for both the parties and have given careful consideration to the pleadings and perused the judgments referred to. In my considered view, first of all, the application is definitely hit by limitation. The applicant's husband died in 1967 and the applicant is approaching now in 2000. Therefore, the application does not deserve to be considered as it suffers from delay and laches. Merely because the applicant is illiterate, it does not mean that

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limitation would not apply in this case. Even though it is a pension matter, of late even the Supreme Court has held that even in the matters of pension limitation would apply, as has been held in the case of Union of India Vs. Shankar (JT 2000 (8) SC 77). That apart, I find that the applicant has been granted ex-gratia payment in 1989. I do not accept that the applicant can choose better of two schemes either ex-gratia scheme or pension scheme, having once accepted the ex-gratia payment. She cannot agitate now that too after enjoying ex-gratia from 1989. On that ground also she is not entitled.

8. In addition, it is clear that the applicant's husband had opted for the CPF scheme in 1962, thereafter, he has not exercised any option. As pointed out by the respondents, the letter of 17.06.1974 allowing even widows to exercise the option was only for those whose husbands were in service as on 01.01.1973. The applicant's husband expired in 1967 itself. Therefore also the letter asking to exercise option dated 17th June, 1974 does not help the applicant. The judgments relied upon by the applicant also cannot be applied to the applicant's case. In both the cases, benefit of the pension scheme was granted because no communication had been made to the applicants therein about option to be exercised for switching over to the pension scheme. That is not the case applicant's husband knew about the scheme but chose to opt for CPF. In the

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facts and circumstances of the case I do not find any merit in this OA, accordingly the OA fails and is dismissed. No costs.

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(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

REVIEW APPLICATION NO.02/2002
IN
ORIGINAL APPLICATION NO. 254/2000

THIS 30TH DAY OF JANUARY, 2002

CORAM: HON'BLE SMT. SHANTA SHASTRY. .. MEMBER (A)

Smt. Tulabai Shripapti Bhosale. .. Applicant

Versus

Union of India & Others. .. Respondents

O R D E R

This Review Petition has been filed against the order dated 12.10.2001 passed in OA No.254/2000 dismissing the application. The applicant in the aforesaid review petition has sought review of the order on the ground that the legal points/ law stated by the applicant in her rejoinder and argued by her advocate ~~are~~ not referred to/ reflected while dismissing the OA. Further, the applicant has contended that the Tribunal did not refer/rely on Exhibits A1, A2 and A3 and the Miscellaneous Application for condonation of delay. According to the applicant, the judgment in the case of Union of India Vs. Shankar is irrelevant and there cannot be any estoppel against law. The applicant chose or decided which right she has to exercise. Therefore,

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