

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:422.2000

DATE OF DECISION: 29.5.01

Shri Govind Krishnaji Sawant Applicant.

Shri S.P.Kulkarni Advocate for
Applicant.

Versus

Union of India and others. Respondents.

Shri V.S.Masurkar Advocate for
Respondents

CORAM

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

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

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

(3) Library. ✓

Shanta Shastry
(Shanta Shastry)
Member(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:422/2000

Tues-day the 29th day of MAY 2001

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

Govind Krishnaji Sawant
Residing at
Jejuri, at P.O. Jejuri
Tal. Purandar, Pune.
Dist. Pune.

...Applicant.

By Advocate Shri S.P. Kulkarni

V/s

1. Union of India through
Postmaster General (BD & FM)
Videsh Dak Bhavan
(Foreign Post),
Ballard Estate, P.O. Mumbai.
2. Chief Postmaster General
Maharashtra Circle
2nd floor, Old GPO Building
Fort, Near C.S.T. Rly,
GPO Compound,
At P.O. Mumbai.
3. The Assistant Director General
(Pension), Office of D.G.(Posts)
Department of Posts,
Ministry of Communication,
Govt. of India, Dak Bhavan.
P.O. New Delhi.
4. The Secretary
Department of Posts,
Ministry of Communications,
Govt. of India, Sanchar Bhavan,
Sansad Marg., P.O. New Delhi.

...Respondents.

By Advocate Shri V.S. Masurkar.

O R D E R

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

The applicant has sought pension and pensionary benefits by treating his resignation as application for retirement and to quash and set aside all letters of the respondents rejecting for grant of pension to him. He has also prayed that the pension and

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other benefits should be released within six months alongwith interest on arrears of pension and other benefits at the rate of 6/8/12 % since 1995/1997. He has also claimed ~~cost~~ of the OA of Rs. 2000/- to be awarded to him.

2. The applicant has worked in the Postal Department from 17.5.1946 to 6.10.1967. After taking extra ordinary leave for 7 months and 17 days he tendered unconditional resignation which was accepted vide letter dated 19.7.1968 effective from 24.5.1968.

3. The respondents have denied pension to the applicant in terms of Pension Rules particularly Rule 26(2) ^{as} resignation entails forfeiture of service and hence in the absence of qualifying service no pension is payable for such cases.

4. The plea taken by the applicant is that though Rule 26(2) of CCS Pension Rules 1972 lays down that resignation entails forfeiture of service, there is no provision either to grant or deny the pension to those who resign. At present even 10 years of service ~~entitles~~ ^{entitles} one to pension. Further the learned counsel for the applicant has placed reliance on the judgement of the Hon'ble Supreme Court in the case of J.K. Cotton Spg. & Wvg. Mills Company Ltd. Kanpur V/s State of U.P. and others. (AIR 1990 SC 1808), ^{to be treated as} wherein it was held that resignation is retirement and therefore service rendered prior to it cannot be forfeited by denying penionary benefits. Another case relied upon is that of

Om Prakash Singh Maurya V/s Union of India and others of the Lucknow Bench of this Tribunal decided on 14.9.1998 in OA 353/94. That Bench after discussing Rule 26(2) and other pension Rules came to the view that pension cannot be forfeited in terms of Rule 26(2) of the CCS Pension Rule 1972. This Bench ~~draws~~ ^{support from} the judgement in the case of A.P. Shukla V/s Union of India and others 1996(2) AISLJ 157 and the case of Smt. Bimla Devi V/s Union of India and others 1992(2) SISLJ 310. In all these cases pension was allowed even though the applicants therein had resigned, by treating the resignation as voluntary retirement.

5. The applicant therefore maintains that he is entitled to pension in terms of judgements referred to by him.

6. The learned counsel for the respondents however repeats that the applicant is not entitled to any pension as he had resigned unconditionally. Further the respondents had sought clarification from higher authorities and decision in the matter in view of the judgements cited by the applicant. However the clarification was received and it was made clear that inspite of the judgement the applicant is not entitled to any pension. The learned counsel for the respondents has also made a reference to the judgement of Ernakulam Bench of the Tribunal in OA 155/94 in the case of Dr. N.P. Hrishikesh V/s Union of India and others decided on 18.4.1995. The Tribunal held a different view than that of the Lucknow Bench of this Tribunal and after discussing Rule 26 as well as Rule 5(1) of the CCS Pension Rules 1972 concluded that

the condition that a person who voluntarily resigns from service ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ forfeits past service for reckoning eligibility to pension cannot be considered unreasonable or perverse. The Government servant resigns voluntarily fully knowing the consequences of such resignation and there would not be any denial or violation of his Fundamental Rights, if the rule prescribes that resignation tendered by him results in forfeiture of his past service and as a consequence affects his eligibility for pension and other terminal benefits. The OA was therefore dismissed.

7. The learned counsel for the respondents pointed out that the applicant had resigned in 1968 and had approached this Tribunal only in the year 2000, i.e. after 32 years of his resignation. The application is therefore hit by limitation as well as delay and laches. The learned counsel for the respondents drew my ~~attention~~ ^{attention} to recent judgement of the Supreme Court in the case of Narayan Singh Solanki V/s Union of India and others 2001 SCC (L&S) 77. The applicant therein had resigned in 1963 opting to take provident fund under the State Railways Provident Fund. Thereafter in the year 1991 he made representation requesting to change his option for provident fund to the Pension Scheme. He had also filed OA before the CAT praying that his resignation in the year 1963 be treated as voluntary retirement and since he had put in more than 10 years of service, he should be held entitled to pension and option exercised by him in the year 1963 be cancelled. The OA was

dismissed as the applicant had not put in 20 years qualifying service required for voluntary retirement. Hon'ble Supreme Court however without going into the merits of the matter held the view that the application ~~does not~~ deserve to be entertained as the applicant had remained silent for nearly 28 years. This delay and laches cannot be condoned where the applicant awakes after a long lapse of ~~time~~. The same applies in the present case also. The applicant has approached after 32 years, therefore he is not entitled to the benefit of the judgement or to pension.

8. The learned counsel for the applicant submits that the applicant came to know about the resignation being treated as retirement through the Pensioners Association of Pune in 1999 and immediately there after he has approached the Tribunal. In view of this limitation does not apply in his case.

9. The applicant has also mentioned in his rejoinder that several aggrieved employees who had resigned service after rendering qualifying service of 10 years had approached this Tribunal through different OAs. One OA was dismissed as ~~lacking~~ in merits, but on filing Writ Petition in the High Court of Bombay, the OA was remitted back to the Tribunal. The other OAs are also at various stages. One such OA 719/2000 was also pending before this Tribunal. The applicant also states that judgement of the Supreme Court is binding and therefore the judgement of Ernakulam Bench of this Tribunal cannot be applied. The applicant has also produced the judgement dated 18.12.1998 in

the case of Shaila D Varekar V/s. State of Maharashtra and others of the Bombay High Court on the issue of cut off date for applying ~~for~~ pension scheme to the petitioner who was a librarian in a Government recognised aided non Governmental Art Educational Institute. In this judgement also it has been held that there was no relevance to cut off date of 1/4/1995 for applying the pension scheme. The High Court relied on the judgement in the case of D.S.Nakara and Others V/s. Union of India AIR 1989 SC 130 as well as J.K.Cotton Spg. and Wvg. Mills V/s. State of U.P. and others and held that the staff would be entitled to pensionary benefits even though they had retired prior to 1/10/1982. Benefit of Pension scheme was allowed to even those who retired on or after 1/1/1973 holding that the date of 1/10/1982 had no nexus to the object sought to be achieved by the scheme.

10. I have heard the learned counsel for both parties and have perused the various judgements relied upon. According to the CCS Pension Rules when a pensioner resigns, he forfeits his service and therefore for lack of qualifying service he is not entitled to any pension. However, as pointed out by the applicant in the various judgements of the Supreme Court it has been held that resignation should be treated as retirement. One has to abide by this judgement. However in the case of the applicant apart from the fact that the application is barred by limitation, the application also suffers from delays and laches. The applicant has approached after 32 years of his resignation. At the time when he resigned there was no scheme for providing voluntary retirement after 20 years of qualifying service. The same came to be introduced much later, somewhere around 1977-78. Therefore even if the

resignation is to be treated as retirement since there was no scheme at all for voluntary retirement after 20 years^{at the relevant time} the applicant cannot get the benefit of that scheme. The Scheme was made applicable only from 1977 onwards. Further it has already been held in several judgements of the Supreme Court that where there is inordinate delay in approaching proper forum one cannot entertain such applications. For instance, in the case of Ex. Cap. Harish Uppal V/s. Union of India and Others. JT 1994(3) SC 126, it was held by the Supreme Court that parties should pursue their rights and remedies and not to sleep over their rights. If they choose to sleep over their rights, the Court ^{may well choose to decline to interfere in its discretionary} will declare ~~in its~~ jurisdiction under Article 226 of the Constitution of India. Similarly, in the case of Government of Andhra Pradesh V/s. M.A.Kareem (SC) 1991(17) ATC 303 (SC) it was observed that Court or Tribunal should not disturb the settled affairs in service after a long period. This view is supported by the latest judgement of the Supreme Court in the case of Narayan Singh Solanki V/s. Union of India and others (supra). Therefore in my considered view, even if limitation were to be overlooked, the application suffers from delay and laches and hence is not maintainable. Also there was no scheme available in 1968 for voluntary retirement after 20 years of service. I am therefore unable to grant any relief in this matter.

11. OA is accordingly dismissed. I do not order any costs.

Shanta S
(SHANTA SHASTRY)
MEMBER(A)

abp.