

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:517/2000
DATED THE 21st DAY OF 2001**

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

Shri Tukaram Krishna Zare
At Post-Akola Wasud
Tel:Sangola,
Dist: Solapur,
Pin - 413 307.

... Applicant.

By Advocate Shri.K.R.Yelwe

V/s.

1. Union of India through
The Secretary to the Government of India,
Department of Atomic Energy,
New Delhi.
2. The Chairman,
Bhabha Atomic Research Centre,
Government of India,
Chatrapati Shivaji Marg,
Mumbai.
3. The Deputy Establishment Officer,
Bhabha Atomic Research Centre,
Government of India,
Personnel Division,
Trombay, Mumbai - 400 085. ... Respondents

(ORDER)

Per Smt.Shanta Shastry, Member(A)

The applicant has approached this Tribunal against the letter dated 13/4/2000 from the Respondent No.3 informing him that he is not entitled to any pensionary benefits since he had resigned from service. Therefore the applicant has prayed to call for the records and proceedings of the matter and thereafter to quash and set aside the impugned order since the applicant has served for more than 20 years and he is entitled to pensionary

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benefits admissible under the rules and to direct the respondents to pay the pension and pensionary benefits accordingly as per rules.

2. The applicant had initially joined as Casual Worker on 5/12/1961 in BARC. On his request for absorption/regularisation vide his letter dated 15/3/1965 he was informed on 29/3/65 that he might keep his name current on the rolls of the regional employment exchange for nomination as and when any requisition is sent by the respondents. Thereafter, he was appointed w.e.f. 1/4/1966 through selection. He was confirmed in the post of tradesman w.e.f. 1/3/71 and was also promoted to post of Tradesman Grade B and Tradesman C. He was further confirmed in the post of Tradesman Grade C on 19/1/1982. It is stated by the applicant in the OA that he had given option to retain CPF benefits consequent on his confirmation as Tradesman A in 1976. On 3/1/1982, he requested the administration to allow him to come over to the pensionary benefits. In the meantime, since his father was ill, the applicant was compelled to give notice of voluntary retirement on 30/12/1982 with a request to relieve him from 10/1/1983. The applicant has further submitted that after about one year from the date of his exercising the option to come over to the pension scheme and after he had tendered the notice of voluntary retirement, he was informed vide letter dated 12/13-1-83 since he was confirmed in a technical post, it was not permissible to have a second option, therefore his request for coming over to pension scheme could not be acceded to. His notice of Voluntary Retirement was accepted as resignation by Competent Authority vide memo dated 11/4/1983. Thereafter he again applied for re-engagement and was allowed to resume duty on

6/6/84 and worked upto 11/85. According to the applicant he put in a total service of 21years 10months, therefore he is entitled to all the service benefits such as pension, gratuity,etc., but he has not been paid any retiral dues. He made a representation on 15/3/90 but no reply was received by him. On making a further representation on 20/1/2000 and 3/3/2000, the same was rejected vide the impugned letter dated 13/4/2000.

3. The respondents submit that the application is barred by limitation because the applicant resigned from the service of BARC in the year 1983 and has filed this application in the year 2000. The applicant was a beneficiary of the CPF schemne and not general provident fund at the time of his resignation in 1983. Pension and Pensionary benefits such as commutation of pension, family pension, retirement gratuity etc are admissible only to those contributing to the general provident fund and not to those who are CPF beneficiaries. The applicant resigned from service when he had not rendered 20years of qualifying service, therefore he could not take voluntary retirement. According to rule 26 of the CCS Pension Rules 1972, such resigntatioon entails forfeiture of past service. After his resignation, the applicant had also collected his CPF dues amounting to Rs.17,865/-. Having collected the CPF amount in 1983, the applicant cannot now seek the intervention of this Tribunal for payment of pension and pensionary benefits. Further, the applicant joined service on regular basis only on 1/4/66 and not on 5/2/61 as claimed by the applicant. Therefore the applicant's statement that he had put in 21years of service is not correct. His total period of qualifying service is only 16 years, 10months and 12 days. Though he was re-engaged after his resignation, it was a fresh

appointment w.e.f. 6/6/84 and he again resigned w.e.f. 5/12/84.

Since he was a CPF holder, question of Voluntary Retirement does not arise in his case.

4. The learned counsel for the applicant contends that he had given notice for voluntary retirement on 30/12/1982. The respondents should either have accepted the same or rejected it instead of treating the request as a letter of resignation. A proper notice should have been given to the applicant before accepting it as resignation. Also the applicant had given his application to switch over to pension scheme much before Voluntary Retirement i.e. on 3/1/1982. In fact keeping in view that he might be allowed to switch over to the pension scheme, he had given the notice for voluntary retirement. The learned counsel further submits that the question of limitation does not arise in his case as he is claiming pension on the basis of his voluntary retirement and the same is supported by the ratio in the judgement in the case of M.R.Gupta v/s. Union of India 1995(5)SCALE 20(SC) Further, he came to know of a judgement of the Supreme Court in the matter of J.K.Cotton Spinning and Weaving Mills Co.Ltd Kanpur v/s. State of Uttar Pradesh and Ors (AIR 1990 SC 1808) through a press release. Besides, his representation has been disposed of on merits by respondents only on 13/4/2000 therefore the objection of the respondents on the ground of limitation needs to be overruled.

5. The applicant has also shown willingness to refund the amount of Rs.8,660.65 paid to him as employer's contribution to provident fund, or the same can be adjusted against the amount of arrears of pension and DCRG due to him if his claim for pension is acceded to. The learned counsel for the applicant has also argued that the applicant had put in 21 years of service since the respondents could not produce the record for the period 1961 to

1966 an adverse inference can be drawn and the applicant could have been deemed to have put in the service during the aforesaid period. Till his regularisation in 1/4/1966, he had worked in the Garden Section and the Central, Workshop of BARC from 5/12/61 to 15.3.65. Also according to the CCS (Pension)rules,1972 though 20 years service is prescribed for voluntary retirement, the rules also provide 10 years service for being eligible for pension. The learned counsel also contends that the respondents avoided to state the circumstances under which notice for Voluntary Retirement came to be treated as resignation and why his option to come over to the pension scheme came to be rejected.

6. I have heard the learned counsel for applicant as well as respondents and have given careful consideration to the pleadings. It is very clear from the record, that the applicant was a beneficiary of C.P.F. He had opted for the same in 1971 after his confirmation as Tradesman A. After his resignation in 1983, he also accepted the amount of CPF without any protest, although he had given a letter for option for pension scheme. The respondents have clearly stated that the applicant was not entitled to give a second option as he was in a technical post and not a scientific post, and his request for changing over to Pension Scheme was categorically rejected vide letter dated 12/13-1/1983 i.e. much before his resignation was accepted vide memo dated 11/4/83. Applicant cannot therefore now agitate the issue now after 17 years. The ratio in M.R.Gupta's case is applicable in matter of pay pension, retiral benefits, etc not for resignation. In the instant case, the applicant was not at all a beneficiary of the Pension Scheme, therefore limitation would apply. He should have pursued the matter in 1983 itself,

instead he took it up seven years thereafter and further 11 years later in 2000. I cannot therefore accept that limitation does not apply in this case.

7. The applicant is aggrieved that when he had given notice for Voluntary Retirement, the same has been treated as Resignation. Perhaps it would have been in the fitness of things if the respondent had given a proper notice before converting the letter to resignation. All the same nothing prevented the applicant from challenging the same at that time itself or he could have withdrawn the resignation immediately. The applicant did not do it that time nor at any future time. It is true that in the case of J.K.Cotton Mills, the Hon. Supreme Court held that even a resignation could be treated as retirement if the person concerned had requisite qualifying service. In the present case the applicant has not been able to establish that he had put in 20 years service at the time of his resignation. Even though the Service record of 1961 to 1965 is not available, still the service rendered by him as Casual Worker was not regular service nor has he shown anything to support that he had been granted temporary status for that period. In the absence of that the service rendered by him as Casual Labour cannot be counted as qualifying service.

8. In the facts and circumstances of the case, the applicant is not entitled to claim any pensionary benefits as his option for pension scheme had been categorically reject. Being a beneficiary of CPF, and having accepted the amount of CPF the

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applicant now cannot claim pension benefits. In my considered view therefore the OA is devoid of merit and no relief can be granted. Accordingly OA is dismissed. However, I do not order any costs.

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(SHANTA SHASTRY)
MEMBER(A)

abp

31/11/2001
Dewarwala