

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO. 108/2001

Dated this, the 12th Day of July, 2001.

Shri Jaibir Singh Dabas
(Applicant by none)

Applicant

Versus

UOI & Ors. Respondents

(Respondents by Shri V.S.Masurkar, Advocate)

CORAM:

HON'BLE SHRI B.N. BAHADUR, MEMBER (A)

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

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

(3) Library. *P*

B.N.
(B.N. Bahadur)
Member (A)

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

O.A. No.108/2001

Date of Decision:- 12.7.2001

CORAM: HON'BLE SHRI B.N.BAHADUR, MEMBER (A)

Shri Jaibir Singh Dabas,
JN-4/15/13, Sector-9, Vashi,
Navi Mumbai 400 703. Applicant

(Applicant by none)
vs.

1. Union of India, through
The Secretary,
Ministry of Defence,
South Block,
New Delhi 110 011
2. The Admiral Superintendent,
Naval Dockyard,
Mumbai 400 023. Respondents.

(Respondents by Shri V.S.Masurkar, Advocate)

O R D E R (ORAL)

[Per: B.N.Bahadur, Member (A)]:

This is an Application made by Shri Jaibir Singh Dabas seeking the relief in substance for a declaration that Applicant is entitled to pension w.e.f. 2nd July 1997 and that such pension cannot be forfeited in terms of Rule 26 of the CCS (Pension) Rules. Neither the Applicant nor his Counsel is present.

2. At the outset, I note that in response to the reply by Respondents a written submission dated 21.6.2001 has been made by Shri R.P.Saxena, learned Counsel for the Applicant which interalia states that rejoinder could not be filed and also seeks to draw support from the judgement of the Lucknow Bench of this

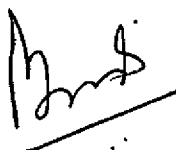
..2/-



Tribunal in the case of *Om Prakash Singh Maurya vs. UOI* in O.A.No.353/1994 (Exhibit A.2 to the Written submissions). The submission of written brief finally ends with the prayer that the "matter may be decided accordingly."

3. Learned Counsel for the Respondents Shri V.S.Masurkar brought to our notice a judgement of Supreme Court in the matter of *Rakesh Kumar vs. UOI* which, he contended, squarely covered the case before me. In view of these facts and the absence on behalf of the Applicant/Counsel I have proceeded to decide this case on merits on the basis of the pleadings O.A. and the papers and brief therein.

4. The facts of the case are that the Applicant makes this Application for Pension, which he is claiming on the facts of his resignation after 17 years 9 months and 7 days of qualifying service, as he states in the O.A. The Applicant joined the service as a Highly Skilled Gr.II (Elec. Fitter) on 25.7.1979 and submitted his resignation, which was accepted, with effect from 2nd May 1997. The Applicant avers that his resignation could be considered as voluntary retirement, and that since he had completed 10 years of service he should be provided with the benefits that he seeks. This point is in fact expounded in the grounds taken at Para 5 of the Application. It is with such grievance that the Applicant is before me. As stated earlier, a judgement made by the Lucknow Bench of this Tribunal in O.A.353/94 (Ex. A.2) (Page 31) is also sought to be made the basis of support by the Applicant.

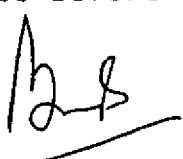


5. The Respondents have filed a Written Statement, stating that the Applicant was permitted to resign from service w.e.f. 2nd May 1997 and have taken the stand that, as per existing Rules, resignation from service could not be treated as voluntary retirement and hence the Applicant was not entitled to the benefits claimed on this basis. Rule 26 of CCS Rules 1972 is cited in support, among other grounds. Parawise replies are made in the Written Statement.

6. I have heard learned Counsel Shri Masurkar for the Respondents and have gone through the papers on record. At the outset, it is clear that on resignation the service standing to the credit of the Govt. Servant who resigns stands forfeited as per Rule 26. Even assuming that the benefit of the Ruling in *J.K. Cotton Spg. Wvg. Mills Co.Ltd. Kanpur vs. State of U.P. & ors AIR 1990 SC 1808* is granted to the extent that resignation is considered as voluntary retirement, the question of adequacy of service vis-a-vis entitlement to Pension at that time will necessarily will have to be gone into. This cannot be ignored.

7. Admittedly, the service put in by the Applicant is 17 years plus and clearly less than the 20 years required as per Rules. Some judgements are cited by the Applicant as stated above. Since a judgement of the Supreme Court is sought to be depended upon, we will first take up this judgement i.e. the judgement in the matter of *UOI vs. Rakesh Kumar (S.C.) [2001 (2) SLR 261]*. It is indeed true that the matter is gone into in detail in this case, and applies squarely to the facts of the case before us. The Headnote of the judgement reads as follows:

..4/-



Constitution of India, Article 300 A --Border Security Force Act, 1968, Section 8 -- Border Security Force Rules, 1969, Rule 19 -- Central Civil Services (Pension) Rules 1972, Rules 35, 36, 13 and 49 -- Pension -- Members of Border Security Force who have resigned from their posts after servicing for 10 or more years but less than 20 years are not entitled to pension/pensionary benefits under the relevant provisions of Border Security Force Act, 1968 and the Border Security Force Rules, 1969 or the Central Civil Services (Pension) Rules, 1972.

Since the judgement of the Hon'ble Apex Court is available before me, and is clearly applicable to the issue at hand it would not serve any useful purpose in going into the judgement of Lucknow Bench of the Tribunal cited.

8: In view of the above, no further detailed reasoning is required and it could be clearly concluded that no interference can be made in the case before me. In the consequence this O.A. is hereby dismissed with no orders as to costs.



(B.N. Bahadur)

Member (A)

sj*