

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated Wednesday the 24th day of April 2002

Coram: Hon'ble Mr.B.N.Bahadur -Member (A)

O.A.394 of 2001

S.E.Pillay,
Ex-Vehicle Depot, Dehu Road,
Vehicle Mechanic (MV), T.No.3491,
R/o 1, Guruwar Peth, Pune 4 11 042.
(By Advocate Shri J.M.Tanpure)

- Applicant

Versus

1. Union of India
through the Commandant,
Central AFV Depot, Kirkee,
Pune - 411 003.

2. The Commandant,
Ordnance Depot, Fort,
Allahabad.

(By Advocate Shri R.K.Shetty) - Respondents

O R D E R

By Hon'ble Mr.B.N.Bahadur, Member (A) -

The applicant in this case was an employee of Vehicle Depot Workshop EME, Dehu Road, and was appointed as Vehicle Mechanic (MV) in June, 1948. His services were terminated due to retrenchment i.e. due to closure of Establishment/Disbandment of Vehicle Depot w.e.f. 5.11.1966. He was not provided with any alternative employment after his discharge from service. The applicant goes on to state that he had rendered 18 years continuous, unblemished, service from 9.6.1948 to 5.11.1966. He had received an amount of Rs.4,000/- in 1967, being a Member of Indian Ordnance Factory Workers Provident Fund. It is alleged by the applicant that one Mr.Baban Shripati Gaikwad who was also an employee like him is getting a Compensation Pension of Rs.12/per month w.e.f. 1.3.1970 (Exhibit A-4) and thus the applicant is also entitled for grant of Compensation Pension.



2.. It is with such grievances that the applicant is before us seeking the relief by way of declaration that he is entitled to Compensation Pension in terms of orders at Exhibit A- 5, and is also entitled for Ex-Gratia payment as per Decision No.(5) of Appendix 13 of Central Civil Services (Pension) Rules, 1972. The arrears of these amounts along with interest @ 18% is also sought.

3.. The respondents in the case have filed a written statement stating that, admittedly, the applicant was a Member of the Indian Ordnance Factory Workers Provident Fund Scheme and has received Rs.4,000/- as Compensation due to him under the said Scheme in 1967 itself. It is contended that the applicant is therefore not entitled to any benefit under the C.C.S.(Pension) Rules. In regard to the alternative prayer for ex-gratia payment, the respondents also state that the applicant is not entitled to this benefit since he has not put in 20 years service prior to superannuation, having admittedly put in only 18 years of service.

4.. The respondents further state that the applicant has approached this Tribunal earlier by way of O.A.575 of 1999 which has been rejected by this Tribunal vide judgment and order dated 5.8.1999, a copy of which has been annexed by the respondents as Exhibit R-1. The point of jurisdiction and limitation for a cause starting from 1966 is also raised. The respondents in their further part of the written statement have dealt with the averments made in the OA parawise indicating inter alia that the



vis-a-vis Shri Gaikwad; and that such a right has not been established by proper evidence etc.

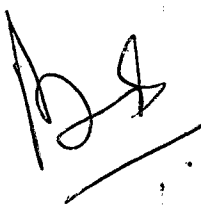
5. I have considered all papers in the case and have heard the learned counsel on both sides namely Shri J.M.Tanpure for the applicant and Shri R.K.Shetty for the respondents. After taking me over the facts of the case, the applicant's learned counsel first sought to pitch his claim vis-a-vis Mr.Gaikwad and stated that any person was entitled for Compensation Pension irrespective of the fact whether he was a Contributory Provident Fund or Pension Optee. He sought to draw support from the communication of Army Headquarters dated 11.7.1977, copy of which is at Exhibit - A -5. Arguing for the claim of ex-gratia payments as sought in Para 8 of the OA, the learned counsel sought support from Appendix 13 as cited above. It was argued that 20 years service may have been required under normal circumstances, but the fact was that the applicant had no option to go after 18 years service because of the Factory having been closed by a decision of the Government and not through any fault of the applicant.

6. The learned counsel for the respondents - Shri R.K.Shetty took support of the points in the written statement as reproduced in gist above. It was argued by him that the Contributory Provident Fund optees were not entitled to any type of pension and once it was a fact that they were not entitled to any type of pension, they were not entitled to Compensation Pension either. On the same basis he argued that Mr.Gaikwad's case was different, in that Mr.Gaikwad was an optee for pension Scheme.



7. Let us first take up the objection raised by the respondents to the effect that the applicant is again agitating the matter that was decided in OA 575/99. A copy of the order is available at page 20. It is seen that the application was filed by the applicant for claiming pension. The application was filed in the year 1999, and disposed of in the same year. Here in the present OA before us now the argument taken by him is that irrespective of the fact that whether the applicant is a pension optee or a Contributory Provident Fund optee, claim for Compensation Pension, nevertheless stays. I, therefore, examine his case on merits without rejecting it straightaway on the point of res judicata.

8. The learned counsel for the applicant has provided us an extract of Page 472 taken from a book of which is titled "Law relating to Services and Dismissals". It is his contention that these were rules that were applicable. I could not see the entire position of rules since this was just a one page extract. Pension is divided into four classes according to this extract viz. (a) Compensation Pension; (b) Invalid Pension; (c) Superannuation Pension and (d) Retiring Pension. Even if we go by this, we find it difficult to accept the position that Compensation Pension is a class by itself and would be available to an employee who had opted for a system of Provident Fund rather than that of pension. It is difficult to accept this position. It is well and truly agreed



...5/-

on the part of the respondents to take the stand as done that the case of Mr. Gaikwad was different, in that he was a person who had opted for the pension system. I have not been convinced by production of any specific rule or specific case law to reinforce the argument raised that Compensation Pension being an entity in itself or something to which the applicant is entitled inspite of his being a Provident Fund optee. In view of this conclusion, the applicant cannot take recourse or draw support from the communication of 11.7.1977 (copy at page 10). This communication is in fact issued as a clarificatory communication on a particular doubt raised before the Government. I have also seen the provisions of Chapter 5 of Central Civil Services (Pension) Rules. I cannot find any provisions to the effect that Contributory Provident Fund optees could opt for pension. Thus the applicant has failed to prove his case by relevant evidence.

9. In regard to the claim for ex-gratia payment, this matter has been the subject of decisions in several OAs decided by this Bench of the Tribunal. The one issue that has been clearly decided is that unless an employee has put in 20 years of service, he is not eligible to ex-gratia payment. No argument has been put forth on behalf of the present applicant to enable this Tribunal to change this view.



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10. In view of the above discussion, this Tribunal is not convinced that any case has been made out by the applicant for the relief that he seeks. The OA is accordingly dismissed without any order as to costs.

B. N. Bahadur

(B.N. Bahadur)
Member (A)

mb

dt 29/4/2
Order/Judgement despatched
to Applicant/Respondent (s)
on 20/6/02

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