

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 585/2001 & 599/2002.

Date of Decision : 30-04-2003

M.D. Shirodkar & Anr.

Applicant

Shri J.M. Tanpure

Advocate for the  
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri R.R. Shetty

Advocate for the  
Respondents

CORAM :

The Hon'ble Shri A.S. Sanghvi, Member (J)

The Hon'ble Shri Shankar Prasad, Member (A)

- (i) To be referred to the reporter or not ? *Mc*
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? *Mc*
- (iii) Library

*As*

(A.S. SANGHVI)  
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NOs.585/2001 & 599/2002.

Dated this the 30<sup>th</sup> day of April, 2003.

CORAM : Hon'ble Shri A.S.Sanghvi, Member (J)

Hon'ble Shri Shankar Prasad, Member (A)

OA.No.585/2001

Manohar Dharmaji Shirodkar,  
R/at 735, Somwar Peth,  
Talegaon Dabhade,  
Tal.Maval, Dist.Pune.

... Applicant

By Advocate Shri J.M.Tanpure

vs.

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

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

... Respondents

By Advocate Shri R.R.Shetty

OA.No.599/2002

Mahadev Vithhal Kamble,  
R/at Thergaon, C/o A.D.Dhond,  
Tal.Haveli, Sandip Nagar,  
Shivraj Colony, Pune.

... Applicant

By Advocate Shri J.M.Tanpure

vs.

1. Union of India  
through the Secretary,  
Ministry of Defence,  
South Block, New Delhi.

2. The Secretary,  
Ministry of Personnel, Public  
Grievances and Pension,  
Deptt. of Personnel & Training,  
North Block, New Delhi.

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

... Respondents

By Advocate Shri R.R.Shetty

O R D E R

{Per : Shri A.S.Sanghvi, Member (J)}

Both these OAs. raise common question of facts and law and are heard together and being disposed of by this common judgement. The applicants in both the OAs. were employees of respondents who are claiming Ex-gratia payment in view of the provisions of Rule 39 of CCS (Pension) Rules, 1972. Both the applicants were serving in the Central Vehicle Depot and on the closing of the Central Vehicle Depot in 1967, they were retrenched from service. The applicant of OA.NO.585/2001 had put in about 19 years of service prior to retrenchment while the applicant in OA.No.599/2002 had put in about 17 years of service. Both the applicants are claiming that if they had not been retrenched from service, they would have completed more than 25 years of service on the date of their superannuation and as such, would have become entitled to the pension. They were, however, not considered eligible for pension. According to them, they are entitled to the benefit of Decision 5 of Appendix 13 of CCS (Pension) Rules, 1972 and are entitled to be paid the Ex-gratia payment as decided by the Government in the Decision 5 of Appendix 13. They, therefore, prayed that the respondents be directed to consider their case for Ex-gratia payment. They have also contended that the O.M.No.45/52/97- P and PW(E) dated 16.12.1997 be declared unconstitutional, arbitrary and violative of Article 14 of the Constitution and the same be quashed and set aside. In the same breath it is also prayed that it be declared that the applicants are entitled for ex-gratia payment under the O.M. dated 16.12.1997.

2. The respondents in the identical reply in both the OAs. have contended inter alia that the O.M. dated 16.12.1997 is very much constitutional and can not be considered to be violative of Article 14 of the Constitution merely because it does not apply to the case of the applicant. They have also contended that the applicants are not entitled to the ex-gratia payment in view of the provision of Decision 5 of Appendix 13 which apply only to the cases of the employees who retired on superannuation and who are not eligible for CPF benefits. The applicants had not retired on superannuation as their services had to be brought to an end because of their being found surplus on account of the closure of the Depot and they having not completed 20 years of service prior to the retrenchment, they are not entitled to any of the benefits prescribed under Decision 5 of Appendix 13 of the CCS Rules. They have prayed that both the OAs. be dismissed with cost. The applicant in OA.No.599/2002 had earlier filed an OA.No.268/2000 and the said O.M. was not challenged. He is therefore barred by the principles of resjudicata/constructive resjudicata.

3. We have heard the learned counsel of both the parties and duly considered the rival contentions.

4. It is an admitted position that the applicants had not retired on superannuation but they were retrenched from service on account of closure of the Depot where they were working. It is also not in dispute that they were paid the retrenchment compensation. They are claiming ex-gratia payment in view of

Decision 5 of Appendix 13 of the CCS (Pension) Rules. Though they claim benefits of the decision 5 of Appendix 13, in the same breath they are seeking a declaration that the O.M. dated 13.6.1988 is arbitrary and discriminatory and is violative of the principles of Article 14 of the Constitution. The Decision 5 under the Appendix 13 is in continuation of the O.Ms. dated 13.6.1988 and is based on the recommendations of the Vth Central Pay Commission Clause VI of the decision 5 under the Appendix 13 reads as under :-

"Based on the recommendations of the Fifth Central Pay Commission, the President is pleased to decide to grant ex gratia payment to the CPF beneficiaries who retired between the period 18th November, 1960 to 31st December, 1985 at the rate of Rs.600/- p.m. with effect from 1st November, 1997, subject to the condition that such persons should have rendered at least 20 years of continuous service prior to their superannuation for becoming eligible to the ex gratia payment. They will also be entitled to Dearness Relief as may be notified from time to time in future. They will also be entitled to Dearness Relief @5% with effect from 1.11.1997 as admissible to existing ex gratia beneficiaries."

5. A bare reading of this clause leaves no room for doubt that this decision applies to the cases of the employees who were CPF beneficiaries and who retired between the period from 18.11.1960 to 31.12.1985 and also who had rendered 20 years of continuous service prior to their superannuation. Now, admittedly both the applicants had not completed 20 years of continuous service nor had they retired on superannuation. Since the applicants had not retired on superannuation, they are not eligible to claim the benefit of Decision 5 of Appendix 13 of CCS Rules.

6. Shri J.M.Tanpure, learned counsel for the applicants has submitted that this provision is harsh and unreasonable. It was not the fault of the applicants that they had to be retrenched from service and they could not be continued in service till the date of their superannuation. According to him, this provision discriminates between the employee retired on superannuation and the employee who was retrenched from service and hence the same deserves to be quashed and set aside as violative of Article 14 of the Constitution. We are unable to agree with the submission of Shri Tanpure. It is to be seen that the benefits of ex-gratia payment were extended to the employees who retired on superannuation and who were beneficiaries of CPF. It can not be said to be discriminatory as it does not apply to the cases of the employees who had not completed the service. Those who were retrenched before completion of their full service are paid the retrenchment compensation under the law. Their cases can not be equated with the cases of those who have completed full service and retired on superannuation but were not found eligible for pension on account of their being CPF beneficiaries. This provision is made only to mitigate loss to the CPF beneficiaries and not for the purpose of giving any relief to those whose services had come to an end prematurely. Separate provisions are made of retrenchment compensation etc. for those whose services are put to an end untimely or on account of their being found surplus. They can not therefore be heard to say that the provisions which are beneficiary to one class of employees

deserves to be quashed as violative of the Constitution. We, therefore, do not find any merit in the contention put forward before us. We also do not find that the applicants are entitled to the benefits of Decision 5 of Appenndix 13 of the CCS (Pension) Rules. The reliefs prayed therefore cannot be granted. Both the OAs. are therefore rejected with no order as to costs.

7. Copy of this judgement be placed in OA.NO.599/2002.

*Shankar Prasad*  
(SHANKAR PRASAD)

MEMBER (A)

*A. S. Sanghvi*  
(A. S. SANGHVI)

MEMBER (J)

mrj.

*Shankar Prasad*  
*6.5.03*