

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 371/2001

Date of Decision : 16th October 2002

Smt.M.E.Solkar

Applicant

Shri G.S.Walia

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

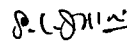
Shri V.D.Vadhavkar for
Shri M.I.Sethna

Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the reporter or not ? yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? No
- (iii) Library yes


(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.371/2001

Dated this the 16th day of October 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Smt.M.E.Solkar,
Widow & Legal Heir
of E.I.Solkar,
R/at Peth Killa,
Bhatkar Wada,
Dist.Ratnagiri.

...Applicant

By Advocate Shri G.S.Walia

vs.

1. Union of India through
Collector of Customs,
Customs Collectorate - Pune,
Commercial Building,
Hira Baug, Tilak Road,
Pune.
2. Asst. Commissioner of Customs,
Dapoli Customs Division,
Dapoli, Dist. Ratnagiri.

...Respondents

By Advocate Shri V.D.Vadhavkar
for Shri M.I.Sethna

O R D E R

{Per : Shri S.L.Jain, Member (J)}

The applicant impugns order No.1/1997 and the appellate order dated 27.4.1998, claims consequential benefits, seeks direction to the respondents to pay invalid pension to him with consequential benefits along with arrears.

Pl-8111 -

..2/-

2. The applicant was censured and period of absence from 6.2.1989 to 9.1.1996 was ordered to be treated as 'dies - non' vide impugned order No.1/97. The applicant preferred an appeal against the said order which is rejected vide appellate order dated 27.4.1998. The applicant has filed this OA. before this Tribunal on 28.2.2001 claiming the application within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

3. During the pendency of the OA., the applicant expired on 4.4.2001 and his widow is brought on record.

4. The relief regarding order dated 1/97 and the appellate order dated 27.4.1998 with consequential benefits can be termed as one relief for the reason that original order No.1/97 merges in appellate order dated 27.4.1998. The direction to pay invalid pension is a separate cause which has no direct or consequential relation with the impugned order No.1/97 or appellate order dated 27.4.1998. As such, the applicant's OA. is in violation of Rule 10 of CAT (Procedure) Rules, 1987.

5. The relief in respect of impugned order No.1/97 and appellate order dated 27.4.1998 is barred by limitation as the OA. is filed on 28.2.2001 beyond period of one year prescribed under Section 21 of Administrative Tribunals Act, 1985.

P. C. Sharma

6. Facing the said situation, the learned counsel for the applicant argued only for the relief-direction to the respondents to pay invalid pension. It is note worthy that the applicant has not challenged any order rejecting his request for invalid pension. It is also worth mentioning that there is no pleading on behalf of the respondents rejecting prayer for invalid pension. When the matter was argued on 3.10.2002 in absence of the pleadings by the respondents, order rejecting prayer of the applicant for invalid pension was not allowed to be put forth before this Tribunal and the matter was adjourned as part-heard on 7.10.2002. This fact is noticed by the learned counsel for the respondents in official file and thereafter on 8.10.2002 he filed further affidavit in this behalf.

7. Rejection of request of the applicant for invalid pension on 5.8.1999 while OA. is filed on 28.2.2001, certainly the OA. can be claimed as barred by limitation. In my considered opinion, such a view, when the respondents themselves were not aware of the said order, nothing on record to suggest that order was communicated to the deceased employee is not justified. The right to claim pension being recurring cause of action, I proceed to decide the claim on merits.

8. The applicant was granted invalid retirement on 31.8.1998 which is not a fact in dispute.

S.L. Singh —

..4/-

9. The learned counsel for the applicant on the basis of Rule 35 and 36 argued that one is the superannuation pension, another is retiring pension, the third is invalid pension, fourth is compensation pension and fifth compulsory retirement pension. Thus, there are various pensions and the conditions in which an employee is entitled for such pensions are enumerated in CCS (Pension) Rules, 1972. He further argued that in view of Rule 49(2)(c) the pension amount in respect of invalid pension shall not be less than the amount of family pension admissible under sub-rule (2) of Rule 54. He referred to Rule 49 (2)(a) & (b) and argued that in these cases it is being stated that "in the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service/ before completing qualifying service but in case of Rule 49 (c) such provisions do not exist. As such, the invalid pension/ granting of the same is not depended on some conditions or criteria, as no criteria has been laid down for granting of invalid pension. On the other hand, the learned counsel for the respondents argued that Rule 49 (2)(c) deals only with the amount of pension and it does not lay down any criteria for granting of invalid pension.

10. The learned counsel for the applicant on the basis of Rule 50(i)(b) argued that if a Government servant dies even within one year of his service, he is entitled to a 'death gratuity'. As such, when a person is retired on invalid pension,

P. L. Jain -

..5/-

the said criteria deserves to be adopted as no qualifying service is necessary for granting invalid pension. 'Death Gratuity' and 'invalid pension' are two different concepts. As such, the criteria laid down for 'Death Gratuity' can not be applied in case of invalid pension.

11. The learned counsel for the respondents argued that the date of birth of the deceased employee is 15.7.1939 and at the time of invalidity, he was having only qualifying service of 2 years 7 months and 21 days. According to him, when the superannuation of the applicant was on 31.7.1999, even by that time had he not been invalidated, he must have not completed even 10 years of qualifying service which is essential for pension, such applicant who has only qualifying service of 2 years, 7 months and 21 days cannot be held to be entitled for invalid pension. According to him, the same criteria which is meant for pension must be adopted for invalid pension also.

12. The case of an individual can not be an exception to a rule. On a careful perusal of the rules, I am of the opinion that no criteria is laid down as far as it relates to qualifying service in respect of invalid pension. It is true that in case of death, the Death Gratuity is to be provided as per entitlement in view of Rule 49 (2)(c), the cause being the employee cannot further serve the employer, but the table appended below Rule 49 (2)(c) shows that it varies as per the period of service rendered by the employee. In case of invalidity of an employee, he by the circumstances beyond his control, not able to work further.

P.L. Singh

Keeping in view the said circumstance, Rule is framed regarding his entitlement for invalid pension even based on the social responsibility of the Government which can be gathered from the Rule itself which says that such an invalid employee can be employed on lower post provided he is willing to do so employed. On a further consideration, I find that as the applicant was ^{not} employed on lower post, his right regarding invalid pension remains in tact.

13. In the result, the OA. is allowed partly and it is hereby held that the deceased employee is entitled to invalid pension commencing from 1.9.1998 till 4.4.2001 as per his entitlement based on his pay as detailed in Rule 52(2) of CCS (Pension) Rules, 1972. The respondents are directed to pay the same to the applicant within three months from the date of receipt of copy of order. No order as to costs.

R. S. JAIN
(S.L.JAIN)

MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

MP No.39/04,
CP No.11/04 in
OA No.371/2001

20th Jan, 2004

Heard Shri R.G.Walia, Counsel for
Applicant. Shri V.S.Masurkar, Counsel for
Respondents.

CP-11/2004 has been filed on 19/12/2003
for delay in implementation of the Tribunal's
order dated 16/10/2002.

MP-39/2004 has been filed by the
respondents for extending the time for
implementation of the Tribunal's order.

We have heard the arguments of both the
counsels the counsel for respondents has
mentioned that a Review Petition No.54/2003 filed
by the respondents is pending before the
Tribunal. It will be more appropriate to pass
orders in the CP and MP after the review petition
is decided.

Learned counsel for applicant stated that
the review petition is filed by the respondents
only for correction of clerical error relating to
Rule 52(2) occurring in the last para of
Tribunal's order dated 16/10/2002.

We find that this issue has been settled
vide the order dated 29/7/2003 and three months
time was granted for implementation. ~~the same~~

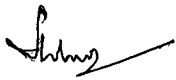
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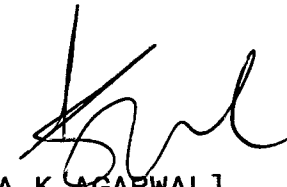
In this very OA, the review petition is pending from June 2003 for constitution of an appropriate bench. However, the counsel for applicant submitted that the pendency of the review ^{petition} cannot be taken as a reason for non implementation of the order of Tribunal. He also submits that the review has now become redundant.

Keeping in view all these facts, we are of the opinion that ~~and~~ the CP, AMP should be heard after the RP is decided.

Registry to place RP before a Single Bench within a week.

List the case for orders on RP-54/2003, on 28/1/2004.


(MUZAFFAR HUSAIN)
MEMBER(J)


[A.K. AGARWAL]
VICE CHAIRMAN

abp