

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 652/2001

Date of Decision : 3.9.2002

<u>K.R.Joshi</u>	Applicant
<u>Shri A.R.Pitale</u>	Advocate for the Applicant.

VERSUS

<u>Union of India &amp; Ors.</u>	Respondents
<u>Shri Vinod Joshi</u>	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 ~~the~~ Benches of the Tribunal ?
- (iii) Library *yes*

*S.L.Jain*  
(S.L.JAIN)  
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.652/2001

Tuesday this the 3rd day of September, 2002.

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

K.R.Joshi,  
13/289, Vijayanagar Society,  
Swami Nityanand Marg,  
Andheri (East),  
Mumbai.

...Applicant

By Advocate Shri A.R.Pitale

vs.

1. The Accountant General (A&E),  
Maharshi Karve Road,  
Mumbai.
2. The Chief Accounts Officer,  
Maharashtra Industrial Development  
Corporation, Mahakali Road,  
Andheri (E), Mumbai.
3. The Secretary,  
Ministry of Personnel, Public Grievances  
& Pensions, Department of Administrative  
Reforms & Public Grievances,  
Sardar Patel Bhavan,  
Sansad Marg, New Delhi.
4. Union of India,  
Ministry of Law,  
Branch Secretariate at Aykar Bhavan,  
Marine Lines, Mumbai.

...Respondents

By Advocate Shri Vinod Joshi

P. W. N. /

..2/-

O R D E R

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for direction/order to quash and set aside the communication dated 4.1.2001 passed by Respondent No.1 denying the pensionary benefits to the applicant with the declaration that the applicant is entitled to pensionary benefits for the service rendered by him to the Central Government.

2. The applicant joined the service as Upper Division Clerk and was posted in the office of Accountant General, Maharashtra, Mumbai. He served there w.e.f. 21.3.1952 to 5.12.1961. Thereafter he served in Board of Industrial Development, Government of Maharashtra in Industries Department w.e.f. 6.12.1961 to 31.7.1962. W.e.f. 1.8.1962 to 10.3.1967 he was on deputation in MIDC. Vide order dated 3.3.1967 MIDC absorbed the services of the applicant (Ex.'B'page 16).

3. The learned counsel for the applicant relied on Para 1 of Ex.'B' OA.page 16 and argued that services of the applicant were absorbed by MIDC in public interest. It is extracted below :-

"Once it is known to them that they would not derive any benefits by their continuance, they would press for their repatriation to the parent office. But as mentioned above, the Corporation can hardly afford to forgo their services as the edifice of the Accounts & Finance Department principally rests on these three persons who have, without exception, rendered useful service to the Corporation."

..3/-

*P.L.J.*

On perusal of the same, it is clear that the services of the applicant were absorbed in public interest. Non mentioned of the fact that services of the applicant are absorbed in public interest is of no consequence. Mere noting of the words is of no importance but the facts which are enumerated in the para referred above leads to no conclusion other than that applicant's services were absorbed in public interest. Thus, the applicant has served about 14 years, 11 months and 21 days with Central Government including his period of deputation.

4. The learned counsel for the applicant relied on O.M. dated 16.10.1989 which is effective from 31.3.1987. The applicant is superannuated on 30.11.1985 but the principle laid down in the said O.M. is applicable read with Rule 49(2)(b) of CCS (Pension) Rules, 1972.

5. The learned counsel for the applicant relied on 1994 (2) SCC 548 - Praduman Kumar Jain vs. Union of India through Secretary to the Govt. of India, Department of Science & Technology, New Delhi & Anr. which lays down the proposition that applicant who has more than 10 years service with satisfactory work and conduct without being confirmed resigning to join a substantive appointment fulfilled the requirements of substantive appointment and qualifying the service, entitled to pro rata pension and other terminal benefits for the service rendered by him under the Central Government. The counsel for the applicant as well as counsel for the respondents stated that there is no reciprocal arrangement between the Central Government and MIDC, as such on superannuation the applicant is not entitled to claim pension from MIDC. The perusal of the same makes it clear that certainly the applicant is entitled to claim pro rata retirement benefits from the Central Government in view of O.M. referred above.

*[Handwritten signature]*

6. The learned counsel for the respondents argued that the applicant has filed the OA. belatedly and as such OA. is barred by time. Payment of the pension is a duty of the respondents. Pension is not a bounty but the right acquired by an employee after performing satisfactory service for the period as such failure to pay the pension to the applicant by Respondent No.1 was a duty not performed by Respondent No.1, the Respondent No.1 has not denied the said right to the applicant at any earlier occasion and even by the impugned order the right is not denied. In such circumstances the claim of the applicant for pension cannot be held to be barred by time.

7. The applicant is entitled to pro rata pension for the period commencing from 31.3.1952 till 10.3.1967 from the Central Government.

8. In the result, OA. is allowed. The Respondents No.1,3 & 4 are directed to pay the pension (pro rata) for qualifying service in period between 31.3.1952 to 10.3.1967 to the applicant which has fallen due on every 1st day of month with interest thereon at the rate of 9% p.a. w.e.f.1.3.1986 (the date of superannuation 30.11.1985 and three months thereafter). It is fit case where respondents also deserves to be saddled with costs amounting to Rs.1,000/-. The said exercise be completed within a period of three months from the date of receipt of the copy of the order.

*S.L. Jain*  
(S.L.JAIN)

MEMBER (J)

mrj.

CP 67/2004  
For order  
on 13/9/04

By N. Subramaniam  
advised to 30.9.04

30.9.04

None for the applicant.  
Case is adjourned to 27.10.04.

(S. G. Deshmukh)  
M (J)

(A. K. Agarwal)  
V.C.

Dated: 27.10.2004 (S.)

Applicant by Sh. A.R. Pitale.

Respondents by Sh. Vinod Joshi

The learned counsel for the applicant mentioned that writ Petition challenging the order of the Tribunal has been admitted by the High Court but no interim relief has been granted.

In view of the fact that writ Petition has been admitted by the High Court, we should go slow on hearing of CP. The learned counsel may apprise the Tribunal the latest position of the matter before the High Court on the next date of hearing.

List the case on 3.1.2005.

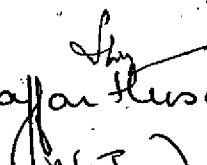
(M. Zaffar Hussain)  
M (J)

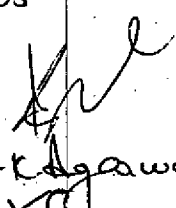
(A. K. Agarwal)  
V.C.

29/10/04

3.1.2005

applicant by Shri S.P. Chaudhary.  
He stated that counsel for applicant  
Shri A.R. Pitale has not come  
to the Tribunal due to some  
personal difficulties and therefore  
seeks adjournment. Case is  
adjourned to 4.3.2005.

  
(Muzaffar Hussain)  
(M.T.)

  
(A. K. Gargwal)

P.R.  
5/1/05