

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.

14/2001
~~722/97~~

Date of Decision: .10. 09.2001

Shri S.G. Deshmukh

Applicant(s)

Shri J.M. Tanpure.

Advocate for applicant

Versus

Union of India & another

.. Respondents

Shri R.K.Shetty.

Advocate for Respondents

CORAM: SMT. SHANTA SHASTRY.

MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓


(SMT. SHANTA SHASTRY)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.14/2001

THIS, THE 10th DAY OF SEPTEMBER, 2001

CORAM: SMT. SHANTA SHASTRY.

.. MEMBER (A)

Sadashiv Ganpat Deshmukh,
Ex-Vehicle Mechanic (MV)
Ticket No.3434, of Central
Vehicle Depot, Dehuroad, Pune,
R/at Amabedkar nagar, Near
Datta Mandir, Dehu Road,
Pune-412 101. ... Applicant

By Advocate Shri J.M. Tanpure.

Versus

1. Union of India,
through the Commandant,
Central AFV Depot, Kirkee,
Pune-3.
2. The Commandant,
Ordnance Depot, Fort,
Allahabad. ... Respondents

By Advocate Shri R.K. Shetty.

O R D E R

The relief sought in this OA by the applicant is for compensation pension as well as ex-gratia payment as per the decisions (5) of the Appendix 13 of the CCS (Pension) Rules, 1972 along with arrears of compensation pension and ex-gratia payment at 18% interest thereon. The applicant has also claimed compensation of Rs.50,000/- to be awarded as he has suffered mental agony and torture due to non-receipt of the compensation of pension in time.

2. The applicant worked in the Central Vehicle Depot, Dehu Road/ Vehicle depot workshop as a vehicle mechanic since 5.6.1948 till 9.11.1966 when he was discharged from service on 9.11.66 due to disbandment of the depot/ closure of the Establishment. He was not provided any alternative appointment. He was subscribing to the Indian Ordnance Factory Contributory Provident Fund Scheme and his account No. was 44762. It is stated by the applicant that he entered into correspondence with the respondents for pensionary benefits and later on had approached the All India Pensioners" Association, Pune, who by letter dated 9.10.94 had requested the Respondent No.1 to consider granting of pension to the applicant. The said letter was replied to on 29th October, 1994. Thereafter, a letter also was written by the association on 17th January, 95 to Respondent No.2 in the same context.

3. The main contention of the applicant is that he is entitled for compensation pension under Rule 39 of the CCS (Pension) Rules 1972. According to him the officers suppressed the letter dated 11.7.1977 at Exhibit A5, thus, depriving pensionary benefit to the discharged employees of the Central Vehicle Depot, Dehu Road, Pune. Further, another person named Shri Baban Shripati Gaikwad who also worked with the applicant in the same depot and was also discharged, has been given pension plus compensation pension with effect from 1.3.1970 vide Provisional Pension Payment Order dated 14th February,

1978. The applicant also claims that he is entitled for ex-gratia payment as he was a member of I.O.F.W.P. fund. The applicant is relying on the Supreme Court judgment in S.P. Bhanrale Vs. Union of India & Others (1996 Lab I.C. 2756) wherein it was held that market rate interest on arrears of pension etc., should be granted.


4. The respondents in their written reply have stated that the applicant is not entitled to any pensionary benefits or any benefit under CCS (Pension) Rules, 1972 as he is not governed by these rules being part of the Indian Ordnance Factory Workers Provident Fund scheme by virtue of which he was allotted account No. 46762. He had opted for the aforesaid Contributory Provident Fund scheme during his service of his own choice. Therefore, he had foregone the right of pensionary benefit while working in the vehicle depot.

5. The respondents have also denied that the letter dated 11.7.77 clarifying the position in respect of Rule 39 of the CCS (Pension) Rules applies to the case of the applicant. It is applicable to only those who are governed by the pension rules. Further, the applicant had not exercised option for pension within the prescribed period and option was available to those who were in service as on 1.3.1969 or thereafter and not to those who had been discharged prior to that date.

6. The respondents have also taken strong objection to the OA as it is beyond the period of limitation, because the cause of action arose in 1966 when he was discharged and also this Tribunal has no jurisdiction to adjudicate upon the matter as it pertains to a time when the Tribunal was not in existence. he has approached this court after 34 years. The learned counsel is relying on the judgment in the case of Union of India vs. Shankar (2000 (2) SCSLJ 271) wherein the Supreme Court has held that limitation would apply even to the matters of pension.

7. The applicant has filed MP No.11/2001 for condonation of delay. The respondents in their reply have reiterated their stand and have opposed condonation of delay. Further, the applicant also demanded to produce the rules / provision under which Shri Baban Shripati Gaikwad has been granted extra pension of Rs.12/- per month as compensation pension.

8. The learned counsel for the respondents submits that Shri Gaikwad had opted for the pension scheme and he was in service as on 1.3.1969 and therefore, he was granted pension after he had refunded the amount received from the CPF. The respondents have therefore, prayed for dismissal of the OA.




9. I have given careful consideration to the rival contentions in the matter. At the outset, it is necessary to consider the objection raised by the respondents on limitation. There is no denial that the applicant had approached this Tribunal after almost 35 years of his having been discharged on 9.11.66. The first request made by the applicant for granting him pension is in 1994. That is the only document to show that he made a request for compensation pension. Even the MP for condonation of delay does not give any satisfactory explanation. The only explanation given is that the applicant is illiterate and does not know the legal provision relating to pension, ex-gratia payment. He did not know that he was entitled for compensation pension and because of his poverty he found it difficult to approach the advocates and only because the present advocate Shri J.M. Tanpure agreed to treat this as charity case, he has managed to file this OA. In my considered view, it is not an explanation at all, which can be accepted. That apart, this Tribunal was established in November, 1985. Therefore, this Tribunal cannot have jurisdiction over a matter relating to 1966. Both on ground of limitation and jurisdiction, the application is not maintainable.

10. On merits, the applicant has referred to rule 39 of the CCS (Pension) Rules clarified vide letter dated 11.7.77, it is seen that this rule provides for ex-gratia pension. Letter of 11th July, 77 only

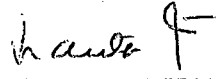
clarified that the assistance offered by the Government to a retrenched employee for securing alternative employment should not deprive the Government servant of his compensation pension. It is stated that the persons involved were low paid employees and it may, therefore, not be possible for them to accept alternative employment at distant places and therefore, such persons are entitled for compensation pension for the services rendered prior to retrenchment. This particular clarification being in the context of pension rules, would only apply to those governed by the CCS (Pension) rules, 1972 and not to those who were participating in any IOFWPF scheme. The pension rules makes it very clear in rule 2 that these are applicable only to those who are governed by the pension scheme. Therefore, this particular rule 39 of CCS (Pension) Rule cannot come to the help of the applicant in this case. The applicant has also cited the case of one Shri Gaikwad, who worked with him and who has been granted pension. The respondents have stated that Shri Gaikwad was in service as on 1.3.1969 and therefore, he has been granted extra pension of Rs. 12/- per month as compensation pension with effect from 1.3.1970. His case, therefore, cannot be compared with that of Shri Gaikwad.

11. In my view, therefore, the applicant has no case for either pension or compensation pension and the respondents have rightly denied him the same. The applicant has relied on the judgment in the case of S.R.



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Bhanrale. That case is distinguishable and cannot apply in the case of the applicant. In the result, the OA is dismissed both on the ground of limitation, delay and laches as well as on merits. No costs.


(SHANTA SHASTRY)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

REVIEW APPLICATION NO. 66/2001
IN
ORIGINAL APPLICATION NO.14/2001

THIS, THE 20TH DAY OF ~~DECEMBER~~ 2001

CORAM: SMT. SHANTA SHASTRY.

.. MEMBER (A)

Sadashiv Ganpat Deshmukh.

Review Applicant

Vs.

Union of India & Others.

... Respondents

O R D E R BY CIRCULATION

This review application is against the decision dated 10.9.2001 in OA No.14/2001. The applicant had sought compensation pension as well as ex-gratia payment along with arrears of compensation pension and ex-gratia payment at 18% interest thereon along with costs. The OA was dismissed both on the ground of limitation, delay and laches as well as on merits. The ground taken in the review application is the Tribunal did not give any judicial findings along with the reasons as to the entitlement of ex-gratia payment to the applicant. Therefore, the applicant has prayed once again to review the order and to grant compensation pension and ex-gratia payment to the applicant with effect from 01.11.1997.

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2. When no finding is given, it is deemed to have been rejected. Although ex-gratia payment was not specifically rejected, the entire OA was dismissed on the ground of limitation, delay and laches and therefore, in my considered view, no review is called for in the present case. Accordingly, the review application is rejected.

Shanta I.

(SMT. SHANTA SHASTRY)
MEMBER (A)

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dt: 20.12.2001
Order/Judgement despatched
to Applicant/Respondent(s)
on 31.1.2002

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