

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 20/2001

Date of Decision: 12.10.2001

Ramesh Appasaheb Botaljee.

Applicant

Shri D.N. Deshpande.

Advocate for Applicant

Versus

Union of India & another

... Respondents

Shri r.K. Shetty.

Advocate for Respondents

CORAM: HON'BLE 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

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(SMT. SHANTA SHAstry)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 20/2001

THIS THE 12TH DAY OF OCTOBER, 2001

CORAM: SMT. SHANTA SHAstry MEMBER (A)

Ramesh Appasaheb Botaljee,
Age 49 years, Occ: Service,
R/at Ankoor-park-I.D-8
Maharshinagar, Pune-411 037. . . Applicant

By Advocate Shri D.N. Deshpande.

Versus

1. The Union of India
Ministry of Defence, New Delhi
through the Secretary,
Ministry of Defence,
Nirman Bhawan, New Delhi.
2. The Chief Engineer,
MES Southern Command,
Maniksha Road, Pune-411 001. . . Respondents

By Advocate Shri R.K. Shetty.

O R D E R

None was present either in person or through counsel on behalf of the applicant. The applicant was not present on the previous three occasions also. I therefore, proceed to dispose of this application in terms of Rule 15(1) of the CAT (Procedure) Rules, 1987 on the basis of the available pleadings on merits.

2. The case in short is that the applicant had earlier worked as Superintendent B & R Grade-I with the Military Engineering Service (MES for short) with effect from 22nd November, 1971. Thereafter, in pursuance to a public advertisement, he had applied for the post of

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Assistant Engineer in the Pune Municipal Corporation. He was duly selected and after tendering his resignation on 31.10.1984 he had joined his new post in Pune Municipal Corporation on 4.11.1984. The applicant was denied pension for his past service of 12 years and 11 months in the MES. He has, therefore, prayed for directing the respondents to pay him the pension from the date of his retirement/resignation with arrears with 18% interest.

3. The applicant had approached the Tribunal earlier also in the year 1988 in OA No.220/88. The Tribunal dismissed the application as being devoid of merit on 12.4.1991. The respondents denied the pension for the past service to the applicant on the ground that the applicant had resigned from the previous service and according to Rule 26 of the CCS (Pension) Rules unless the resignation is technical resignation, the resignation entails forfeiture of past service and accordingly his pension is bound to be forfeited

4. The applicant kept quiet for some time after the judgment of this Tribunal. However, the applicant came across a judgment of the Bombay High Court in W.P. No.2186/98 decided in 1999 wherein the High Court interpreted the meaning of the word 'resignation' as superannuation and further ruled that pension cannot be forfeited. Similarly, the Principal Bench of the CAT, New Delhi in the case of Bimlardevi Vs. Union of India

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& Others reported in 1992 (2) SLJ 310 held that the applicant was not entitled for pension by considering the judgment of the Bombay High Court in W.P. No.2186/98 that the pension cannot be forfeited in terms of Rule 26 of the CCS (Pension) Rules, 1972. According to the applicant, it is the judgment of the High Court of Bombay, which has given rise to the cause of action in his case. The applicant submitted a representation to Government of India and the Chief Engineer, MES on 16.2.1999. However, he was intimated on 28.1.2000 by the Chief Engineer, MES that his office has not received any order or instructions from higher authorities for grant of pension on completion of 10 years of service based on the judgment of the High Court. The applicant has submitted that he had completed 12 years and 11 months pensionable service without any break or without any blemish in MES under Government of India. He did not receive any pension for his past service. The applicant has further relied on the judgment in the case of M/s. J.K. Cotton Spinning & Weaving Mills Company Limited, Kanpur Vs. State of Uttar Pradesh reported in AIR 1990 SC 1808 and the judgment in the case of Bimlardevi (supra). There is no application for condonation of delay.

5. The respondents have stated that a similar case of resignation from service and seeking of pensionary benefits has been rejected by the Ernakulam Bench of this Tribunal, wherein a reference has been made to the

judgment in the case of J.K. Cotton Mills (supra). The respondents have also raised the issue of limitation. The applicant has resigned in 1984 and has approached this Tribunal after a period of 17 years. Thus, it is clearly barred by limitation.

6. The respondents have further submitted that the applicant's case was a pure case of resignation. He had also given an undertaking that he understood that since the transfer to the new post was not in public interest, his parent department will not be liable to pay retirement benefit or to allow him to carry forward the leave earned by him in his parent department and therefore also the applicant is not entitled to any pensionary benefits. Merely putting in 10 years of service will not entitle the applicant to the pension as 20 years service is required for voluntary retirement. The respondents are, therefore, against grant of any pensionary benefits for the past service to the applicant.

7. I have carefully considered the case. According to me since the applicant had resigned, he is not entitled for the benefit of the pension for his past service in the MES as per the rules. Even, if the resignation were to be interpreted as voluntary retirement in terms of the judgment in the case of J.K. Cotton Mills (supra), for pension a minimum of 20 years is required. The applicant had not put in that much



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service. Therefore, also the applicant cannot be granted any pension for the past service. Further, the applicant's case is already decided by this Tribunal once in 1988 on the same issue. Therefore, he cannot agitate the matter now again taking shelter of a subsequent judgment by the High Court in another matter. The learned counsel for the respondents has also produced a judgment of the Supreme Court in Union of India Vs. Rakesh Kumar reported in 2001 SOL case No.232 decided on 30th March, 2001 wherein it has been held that the respondent, who retired after completing the qualifying service of 10 years but before completing qualifying service of 20 years took voluntary retirement is not entitled to get pension. This is the latest judgment which also supports the view that the applicant is not entitled for benefit of pension for the past service rendered in MES. In the facts and circumstances of the case, the application has no merit and is accordingly dismissed. No costs.

Shanta ✓
(SMT. SHANTA SHAstry)
MEMBER (A)

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