

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 350 of 2001.

Dated this Friday, the 10th day of August, 2001.

Shri U. T. Naik, Applicant.

Shri S. M. Shettigar, Advocate for the
Applicant.

VERSUS

Union of India & Others, Respondents.

Shri M. I. Sethna alongwith Advocate for
Shri S. D. Bhosale, Respondents.

CORAM : Hon'ble Smt. Shanta Shastry, Member (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library. ✓

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(Smt. SHANTA SHASTRY)
MEMBER (A).

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ORIGINAL APPLICATION NO.: 350 of 2001.

Dated this Friday, the 10th day of August, 2001.

CORAM : Hon'ble Smt. Shanta Shastri, Member (A).

Ulhas T. Naik,
C/o. 19-B/3, Takshila,
M.C. Road, Andheri (East),
Mumbai - 400 093.

... Applicant.

(By Advocate Shri S. M. Shettigar)

VERSUS

1. Union of India through
its Secretary,
Ministry of Finance,
Department of Economic Affairs,
New Delhi.

2. The General Manager,
India Government Mint,
S. B. Road, Fort,
Mumbai - 400 023.

3. Shri S. T. Bing,
Administrative Officer,
India Government Mint,
S. B. Road, Fort,
Mumbai - 400 023.

4. Shri S. N. Lahiri,
Sr. Works Manager,
India Government Mint,
S. B. Road, Fort,
Mumbai - 400 023.

... Respondents.

(By Advocate Shri M. I. Sethna
alongwith Shri S. D. Bhosale)

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O R D E R (ORAL)

PER : Smt. Shanta Shastry, Member (A).

The grievance of the applicant in this case is, his resignation was accepted illegally by the respondents. The resignation was a compelled/reluctant resignation against the rules and the respondents did not consider the representation and the notice sent to them for the payment of gratuity, death-cum-retirement fund and other pensionary benefits due and payable to the applicant. The following prayers have been made by the applicant in para 8 of the O.A. :-

"8) RELIEFS SOUGHT :

Under the circumstances brought out about in the Application, the Applicant prays that :

(a) This Hon'ble Tribunal be pleased to declare that the Applicant's resignation was not clear and unconditional but was under compelling circumstances.

(b) This Hon'ble Tribunal be pleased to declare that the Applicants reluctant/compelled resignation as voluntary retirement and the Applicant is eligible for gratuity and other pensionary benefits.

(c) The Hon'ble Tribunal be pleased to declare that the Applicant is entitled to the legitimate dues of gratuity, D.R.F. and other pensionary benefits with 18% interest per annum.

(d) This Hon'ble Tribunal be pleased to direct the Respondent No. 2 and 3 to forthwith release the amount of D.R.F. with 18% interest per annum which was deliberately and intentionally with-held by Respondents.

(e) This Hon'ble Tribunal be pleased to direct the Respondent No. 1 to conduct a full fledged impartial inquiry on the basis of the representations submitted by the Applicant and thereafter punish the guilty."

Although the applicant has contended that the he was frustrated and in that moment of frustration he was compelled to give this resignation, which was accepted immediately by the respondents, the same should not have been accepted according to him, and since the resignation was accepted, he should have been given the dues payable to him.

2. The respondents have filed the reply. In the reply, the respondents have brought out that the applicant was engaged as a Lower Division Clerk in the India Government Mint on 01.02.1991. He tendered his resignation on 03.03.1999 and the same was accepted on 26.04.1999. The applicant was relieved unconditionally. According to the respondents, the applicant had tendered the resignation with an intention to go for a practice in law, as he had passed L.L.B. The applicant had been called in person on 10.04.1999 and he was asked of his intention, as expressed in his application, and the applicant had informed that whatever was there in his mind, he had put up in the paper and he intended to go for a practice in the Court and wanted to register his name in the Bar Council before the Court closed for summer vacation. He, therefore, requested to accept his resignation and relieve him by 26.04.1999 itself, as he could not wait up to the end of April, 1999. The respondents, therefore, considered his request and in order to help him in his future plans, recommended the acceptance of the resignation from 26.04.1999. The respondents have also stated in their written statement that it was revealed from their records that during the short spell of

his service in the Mint, applications of the applicant had been forwarded to different establishments like Air India, Metropolitan Magistrate, Intelligence Bureau, etc. for bettering his prospects as per his request. This showed that the applicant was not interested in continuing in the respondents' organisation and, therefore, it cannot be said that the applicant's resignation was a compelled or forced resignation.

3. The Learned Counsel for the respondents submitted that whatever dues were there, have been ordered to be paid to the Applicant or have already been paid. Leave encashment of Rs. 2,541/- was paid on 28.05.1999, G.P.F. of Rs. 23,278/- was paid on 07.06.1999 and CGEGI Scheme Rs. 2,926/- was paid on 14.08.1999. As for D.C.R.F., the applicant has to make an application to the Committee established for the purpose to claim the dues admissible in this respect. The applicant failed to make such an application. The respondents, in good faith, informed the applicant on 15.01.2000 to come forward for completion of the formalities for collection of the dues but he has neither approached the Committee nor anyone else for settlement of the D.C.R.F. account. Even now, the respondents have offered to consider his application if he comes forward so as to give him his dues. In case he does not come forward and the amount remains unclaimed, the same would get transferred to the Reserve Fund as per procedure.

4. Learned Counsel for respondents submits that the applicant, having resigned, is not entitled to any other dues. He forfeits them as per Rule 26 (1) of the C.C.S. (Pension) Rules, by which the applicant is governed.

5. The Learned Counsel for the applicant submits that he is not pressing about the reinstatement or cancellation of his resignation. He is interested in getting the dues. The Learned Counsel has drawn my attention to Section 4 of the Payment of Gratuity Act, 1972. Under this Act, in Section 4(1) it has been provided that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years (a) on his superannuation, or (b) on his retirement or resignation, or (c) on his death or disablement due to accident or disease. According to the applicant, this particular provision applies in his case and, therefore, he is entitled to payment of gratuity, as he has put in more than five years continuous service. This point had not been taken by the applicant either in the O.A. or in the rejoinder, except to repeat that the applicant is entitled to gratuity. However, the learned counsel for respondents submits that this Act is mainly for the benefit of industrial workers. It is given in the statement of Objects and Reasons while enacting this Act that there is at present no Central Act to regulate the payment of gratuity to industrial workers, except the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 and, therefore, this Act provides for

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payment of gratuity to persons employed in factories, plantations, shops and establishments, employing 10 or more persons and for matters connected therewith or incidental thereto and, therefore, if the applicant wants to claim gratuity, he should have approached the Labour Court if he was really an Industrial Workers. No doubt, the India Government Mint, is an industrial establishment under the Shops & Establishment Act and, therefore, any grievance of the workers therein can be taken to the Labour Court. The Learned Counsel for the respondents further points out that the Applicant was only a L.D.C. and he cannot be said to be a industrial worker and, therefore, he may not be eligible to approach the Labour Court in this matter. In view of this discussions, according to the respondents, the applicant is not entitled to any gratuity as he is governed by the C.C.S. (Pension) Rules.

6. I have given careful consideration to the rival contentions in this matter and in my considered view, the applicant being governed by the C.C.S. (Pension) Rules, is not entitled to receive any gratuity, as he resigned. It is clearly barred under Rule 26 (1) of the C.C.S. (Pension) Rules. Further, whatever dues were admissible to the applicant, have already been paid to the applicant and it is not denied that the same has been paid. The applicant has not come forward to claim the D.C.R.F. amount. It is not that the respondents have not offered the

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same. It is, therefore, the applicant who is at fault. Even now, the applicant would be at liberty to approach the constituted committee with an application to claim the D.R.F. and the respondents assure to consider the same.

7. In the facts and circumstances of the case, I do not find any merit in the O.A. and the same is accordingly dismissed. No costs.

Shanta Shastri

(Smt. SHANTA SHASTRY)
MEMBER (A).

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