

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO. 41/2001

DATE OF DECISION: 11/7/2001

Shri Vidyadhar Bapurao Sonawane  Applicant

Shri Z.M.Arhad  Advocate for  
Applicant.

Versus

Union of India & Anr.  Respondents.

Shri V.S.Masurkar  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.

*Shanta*  
(SHANTA SHAstry)  
MEMBER(A)

abb

**CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION NO:41/2001  
DATED THE 11<sup>th</sup> DAY OF JULY, 2001**

**CORAM: HON'BLE SMT.SHANTA SHAstry, MEMBER(A)**

1. Shri Vidyadhar Bapurao Sonawane,  
r/at "Mathura Apartment",  
Flat No.24, 2nd Floor,  
Nawale Colony, Nashik Road. .... Applicant

By Advocate Shri Z.M.Ahad:

V/s.

1. The Union of India,  
through Secretary,  
Ministry of Finance,  
New Delhi-11.

2. The General Manager,  
Currency Note Press of  
Government of India,  
Ministry of Finance,  
Department of Economic Affairs,  
Nashik Road,  
Nashik. .... Respondents

By Advocate Shri V.S.Masurkar:

**(ORDER)**

**Per Smt.Shanta Shastry, Member(A)**

The applicant has sought to count his past service of 8 years from 1946 to 1954 in the then Bombay State Rationing Department, Ahmednagar for purposes of fixation of pay alongwith the service rendered by them with the respondents by him till his superannuation on par with his colleagues whose services were counted for pay by orders and direction of the Collector of Jalgaon by his letter dated 24/7/84.

2. The applicant worked as a time keeper in the Currency Note Press, Nasik Road w.e.f. 28/3/56. He was employed through the Employment Exchange, Jalgaon and superannuated on 1/5/83. Prior to his employment with respondent No.2, the applicant had

...2.

worked in the rationing department in the Collector of Ahmednagar in the State Government of Maharashtra. That department was non Civil Supply Department of ration and it had the control of Government of India. There were certain changes made in the food policy of the Central Government, as a result of which the rationing department was closed and the services of the employees in the said office were terminated by the order of the Central Government with a direction that the ex employees of the civil supply department will get the preference in the Central Government Vacancies as and when they fell vacant. The applicant submits that there were two other similar persons Shri B.P.Dhake, and Shri Jain who also had worked in the rationing department earlier in Jalgaon and whose services had been similarly terminated on the closure of the rationing department were allowed to count their previous services while fixing their pay and pension. Both of them were appointed in the Currency Note Press, Nashik Road were the applicant was also working. Therefore the applicant pleads that he being similarly placed, his past services also should be counted for purposes of pay fixation and pension. The applicant had moved the respondents by letter dated 16/5/81 to fix his pay by counting the previous service. He received a letter for the first time on 12/3/1997 from the respondents stating that his past civil service rendered in civil supply department of the State Government can not be considered under clause (b) of sub-rule 2 of rule 18 of C.C.S: (Pension) rules of 1972.

3. Further, the applicant submits that even according to the rules "the authority issuing the order of substantive appointment to a service or posts as is referred to in Sub Rule (1) shall

along with such order require in writing the Government servant to exercise the option under that sub rule within three months of the date of issue of such order, or if he is on leave on that day, within three months of his return from leave, whichever is later and also bring to his notice the provision of clause (b)" of rule 18 of C.C.S. (Pension) Rules of 1972. According to the applicant this is mandatory provision and the respondents did not inform him about this. It is not his fault therefore that he could not get this option immediately on his joining the respondent No.2. He therefore has given his option two years before his retirement. The applicant therefore prays that on the analogy of the cases of his colleagues and in view of the fact that the provisions of the Rule-18 of the CCS Pension Rules, were not intimated to him, his past service should be directed to be counted for purposes of pay fixation and pension.

4. The respondents submit that the applicant was entitled to every benefit way back in the year 1983 and he had accepted all of that without any objection. The present application suffers from serious delay and laches. The cause of action arose in 1957, even assuming that the cause of action arose when he superannuated in 1983, the applicant has approached only now. It suffers from delay and laches. The respondents are relying on the following judgements in support of their stand. The delay and laches deprives the applicant of their right. Secondly, the applicant has not impleaded the Bombay State Rationing Department as a party respondent in the present case.

5. The respondents have also stated that though the applicant has stated to have working under the Government of Maharashtra in the Rationing Office of Civil Supply Department,

no comments can be made. No documentary evidence produced at the time of his appointment. He should have applied well in time immediately on his joining the respondent No.2. He also retained the Gratuity paid to him by the State Government. In regard to the two colleagues mentioned by the applicant, they were not paid any Gratuity by the State Government therefore their services have been counted for pensionary benefit. The applicant also applied to the Ministry of Personnel and Public Grievances and Pension on 8/7/96 for counting of his past service. The request was considered but was rejected. The respondents have also refuted the claim of the applicant that limitation does not apply in his case because according to the judgement in the case of M.R.Gupta, it is a continuous cause of action and therefore the application needs to be entertained. The respondents in turn have relied on the latest judgement in the case of N.S.Solanki V/s. Union of India and Ors reported in 2000(5)SLR (SC) 359 wherein the Supreme Court held as under:-

**"The claim for option for pension after 20 years have lapsed after the resignation cannot be entertained."**

6. In short even though it was a matter of Pension, the Apex Court did not entertain the applicant on the ground that the claim was made after 20 years had lapsed after resignation. In the present case also, the application has been made after a long lapse of period and therefore the limitation would apply and delay cannot be condoned.

7. I have heard the counsel for both sides. As per the normal rules, no doubt, the applicant should have given his option by surrendering Gratuity amount received by him from his previous employer well in time. However, it is seen from the

pleadings that it was for the respondents to have intimated to the applicant about the option to be exercised. The respondents have not shown the appointment letter of the applicant or any other document that the applicant had been intimated about the option as well as the position of rule-18 of the CCS Pension Rules 1972. The applicant has worked with the erstwhile rationing department for the Collector of Ahmednagar for which he has produced the necessary documents in support. Since it was changing of job from State Government to Central Government, there should have been no difficulty in treating his service rendered with the State Government for purposes of pay fixation and Pension.

8. This view is supported by the O.M. dated 31st March, 1982 and O.M. dated 25th October, 1996. The relevant portion of the OM dated 31/3/1982 is reproduced below:-

It has since been decided in consultation with the State Governments that proportionate pensionary liability in respect of temporary service rendered under the Central Government and State Governments to the extent such service would have qualified for grant of pension by the Government, will be shared by the Governments concerned, on a service share basis, so that the Government servants are allowed the benefit of counting their qualifying service both under the Central Government and the State Government for grant of pension by the Government from where they eventually retire. The gratuity, if any, received by the Government employee for temporary service under the Central or State Governments will, however, have to be refunded by him to the Government concerned.

2. The Government servants claiming the benefit of combined service in terms of the above decision are likely to fall into one of the following categories:

- (i) Those who having been retrenched from the service of Central/State Government secured on their own employment under State/Central Governments either with or without interruption between the date of retrenchment and the date of new appointment.

- (ii) Those who while holding temporary posts under Central/State Governments apply for posts under State/Central Governments through proper channel with proper permission of the administrative authority concerned;
- (iii) Those who while holding temporary posts under Central/State Governments direct without the permission of the administrative authority concerned and resign their previous posts to join the new appointments under State/Central Governments.
- The benefit may be allowed to the Government servants in Categories (1) and (2) above.

Government of India Department of Pension and Pension Welfare O.M. dated 25/10/1996.

It is clarified that according to the provisions of Part-A (Introductory) of Appendix-5 to Government Accounting Rules, 1990, the liability for pension including gratuity should be borne in full by the Central/State Governments to which the Government servant permanently belongs at the time of retirement. These provisions do not exempt any State Government from the applicability of the reciprocal arrangement which dispenses with sharing of pension liability. However, in the matter of processing proposals for counting of service rendered by an employee in the State Government, the procedure laid down in O.M. dated 31/3/1982 (Decision (6) above) and 30/6/1976 (Decision (7) above) would continue to be followed.

9. The applicants' case is covered by para-2(i) of the O.M. dated 31/3/1982. This being the decision, the benefit of the temporary service rendered in the State Government by the applicant for being counted as qualifying service for granting of Pension, is to be allowed subject to the Gratuity received by the applicant is refunded by him to the concerned Government. The applicant retired in 1983 i.e. after the issue of the O.M. dated 31/3/82. The O.M. has come into force w.e.f. that date and cases of all Government servants retiring on that date and thereafter

are to be regulated accordingly. The applicant's past service with the State Government deserves to be counted for purposes of Pension.

10. The fact remains that he did serve and in those days there was no question of granting any option etc in 1957. The CCS Pension Rules came into force only in 1972 and therefore also those rules could not be said to be applicable in the applicant's case. His past service therefore should have been considered for purposes of pension. According to me, the applicant is entitled for grant of his past service. Since the applicant has approached this Tribunal after a lapse of 18 years, I do not order any arrears in his case. The pay fixation may be done by giving notional pay fixation and the pensionary benefits be revised. Accordingly, the OA is allowed. No costs.

*Shanta Shastray*

(SHANTA SHAstry)  
MEMBER(A)

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Central Administrative Tribunal  
Mumbai Bench

CP No.119/2001 in  
MPs-361, 422/2002  
OA No.41/2001

Mumbai, this the 14th day of June, 2002.

Hon'ble Mrs. Shanta Shastry, Member (Admnv)  
Hon'ble Mr. Shanker Raju, Member (Judl.)

Vidyadhar Bapurao Sonawane,  
Mathura Apartment, Flat No.24,  
2nd Floor, Nawale Colony,  
Nashik Road,

-Applicant

(By Advocate Shri Z.M. Avhad)

-Versus-

1. The Union of India through  
the Secretary, Ministry of  
Finance, New Delhi.
2. The General Manager,  
(Dr. D.M. Sharma),  
(Dy. G.M.)  
Currency Note Press of Govt.  
of India, Ministry of Finance,  
Dept. of Economic Affairs,  
Nashik Road, Nashik.

-Respondents

(By Advocate Shri V.S. Masurkar)

ORDER (ORAL)  
Mrs. Shanta Shastry, Member (A):-

Learned counsel for the respondents Shri Masurkar submits that the original applicant expired on 30.1.2002. However the legal heirs of the applicant have filed MP-361/2002 to bring the legal representatives on record. This has been filed within three months of the death of the deceased applicant, i.e., on 21.03.2002. We, therefore, allow the MP.

2. Name of the applicant shall have to be substituted by the legal heirs accordingly. The amendment shall be carried out within a period of one week.
3. Learned counsel for the respondents further submits that the contemner respondents have filed a Writ Petition No.2068/2002 before the Mumbai High Court and the High Court

passed the order directing issuance of notices, returnable in eight weeks. In view of this the CP is dismissed and the notices are discharged. It is open to the legal heirs to revive the CP after substitution of the names of the legal representatives and after the decision of the High Court in the Writ Petition.

S. Raju

(Shanker Raju)  
Member (J)

Shanta F

(Smt. Shanta Shastry)  
Member (A)

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dt. 14/6/02  
Order/..... 14/6/02  
to 4/7/02  
4/7/02  
DR

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

CP.No.79/2002 in  
OA No.41/2001.

29th Nov, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)  
Hon'ble Smt. Shanta Shastri, Member(A)

Shri Vidyadhar Bapurao Sonawane  
(Since Deceased)

Heirs

1. Mrs.Indira Vidyadhar Sonawane
2. Miss.Sulekha Vidyadhar Sonawane
3. Miss.Vijaya Vidyadhar Sonawane
4. Mr.Dilip Vidyadhar Sonawane

... Petitioners

(By Advocate Shri I.M.Avhad)

V/s.

The General Manager (Mr Sumit Sinha),  
Designated as Deputy General Manager,  
Currency Note Press, Nasik Road-422 101 ... Respondents

(By Advocate Shri V.S.Masurkar)

ORAL ORDER

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman(J)

Shri V.S.Masurkar, Learned counsel for respondents has submitted the statement of calculation of the amounts due to the petitioners in terms of Tribunal's order dated 11/7/2001 in OA No.41/2001. He has also submitted that these orders have been issued after the Hon'ble High Court had dismissed the Writ Petition on 3/10/2002.

2. However, learned counsel for the petitioners has submitted that there has been a deliberate delay on the part of the respondents in complying with the Tribunal's order.

3. Taking into account the facts and circumstances of the case, we are unable to agree with the contentions of the petitioners that there has been any contumacious or deliberate disobedience of the Tribunal's order justifying any further action to be taken against the respondents under the provisions

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of the Contempt of Courts Act, 1971 read with Section 17 of the Administrative Tribunals Act, 1985. The statement of calculation of the amounts due to the petitioners, in terms of the aforesaid order of the Tribunal have been given to the counsel for the petitioner.

4. In view of what has been stated above, CP-79/2002 is dismissed. Notices to the alleged contemners are discharged. File to be consigned to the record room.

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(SMT. SHANTA SHAstry)  
MEMBER(A)

Lakshmi Srinivasan

(SMT. LAKSHMI SWAMINATHAN)  
VICE CHAIRMAN

abb

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH: :MUMBAI

CONTEMPT PETITION NO. 36/05  
IN  
ORIGINAL APPLICATION NO. 41/2001

THIS THE 15TH DAY OF FEBRUARY, 2006

CORAM HON'BLE SHRI A.K. AGARWAL. VICE CHAIRMAN  
HON'BLE SHRI MUZAFFAR HUSAIN MEMBER (J)

Shri V.B. Sonawane ... Petitioner

By Advocate Shri Z.M. Avhad.

Versus

Shri A.K. Khanna & another ... Respondents

By Advocate Shri V.S. Masurkar.

O R D E R (ORAL)  
Hon'ble Shri A.K. Agarwal. Vice Chairman

Shri Dilip Sonawane, one of the legal heirs of the deceased original applicant furnished arguments in person and submitted that his father expired on 30<sup>th</sup> January, 2002. He has alleged in the contempt petition that the respondents have not complied with the direction given by this Tribunal on 11.7.2001 while disposing of OA 41/2001.

2. It was pointed by learned counsel for the respondents that two contempt petitions filed earlier, have already been dismissed by this Tribunal and therefore, the third / present contempt petition is not legally tenable.

3. We have heard Dilip Sonawane and Shri V.S. Masurkar learned counsel for the respondents.



4. It is observed that contempt petition No.119/2001 was not dismissed on merits but was disposed with the following direction vide order dated 14.6.2002 -

"It is open to the legal heirs to revive the contempt petition after substitution of the name of the legal representative and after decision of High Court in the Writ Petition."

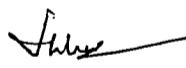
5. The petitioner filed another contempt petition No.79/02 which was disposed of by order dated 29.11.2002. A perusal of this order indicates that the respondents had submitted a statement of calculation of amount due to the petitioner in terms of Tribunal's order dated 11.7.2001. It was also submitted that the writ petition filed in the Hon'ble High Court was also dismissed on 03.10.2002. The respondents had also given a copy of the statement of calculation to the counsel for applicant and in view of this, the Tribunal had dismissed the contempt petition.

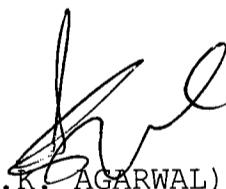
6. However, it has been pointed out by the applicant that the respondents have not paid any amount mentioned in the calculation sheet submitted before this Tribunal on 29.11.2002. On the contrary, on a demand from the respondents made vide order dated 29.7.2003 for the purpose of settlement of the amount, the petitioner deposited a sum of Rs.2523/- . The legal heir of the petitioner submitted that the respondents have not paid any amount to them so far in compliance of the direction of this Tribunal given on 11.7.2001. We are unable to appreciate the argument of



learned counsel for the respondents that the amount could not be paid on account of some objection raised by Pay and Accounts Officer which is based upon a declaration given by the applicant on 14.01.1977 regarding his non-employment in any other department. OA 41/01 was filed in the year 2001 and was also disposed of in the same year after receiving reply as well as hearing the respondents. As such they cannot raise any such objection at this stage.

7. In this case we find that CP 79/02 filed earlier, was dismissed on the ground that the respondents are going to pay the amount to the legal heirs of the petitioner as per the calculation sheet submitted before this Tribunal. In the absence of any such payment, the cause of action still remains. Even the learned counsel for respondents has admitted that the Tribunal's order dated 11.7.2001 has not been complied with as yet. We, therefore, direct the respondents to comply with the order dated 11.7.2001 within a period of three months from the date of receipt of copy of this order, failing which, further action on contempt proceedings will be taken.

  
(MUZAFFAR HUSAIN)  
MEMBER (J)

  
(A.K. AGARWAL)  
VICE CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 41/2001

C.P.No.: 19/2006

Dated: 07.02.2007.

TRIBUNAL'S ORDER

Petitioner, Dilip V. Sonawane in person.

Respondents by Shri V.S. Masurkar.

2. The learned counsel for respondents submitted that the direction given by the Tribunal in its order dated 11.07.2001 have been complied with and the details have been filed along with the reply. He also stated that a revised P.P.O. has been issued on 16.10.2006 wherein the basic pension to the wife of the deceased has been fixed at Rs. 2000/- w.e.f. 01.01.1996. This was done after counting eight years service rendered by the deceased government servant under the State Government.

3. The petitioner contended that he has not received any intimation as to how the arrears have been worked out. He submitted that on an earlier occasion the respondents had mentioned a figure of Rs. 3 Lacs while now from the bank they came to know that only an amount of Rs. 48,000/- has been credited.

4. The learned counsel for the respondents contended that in the order of the Tribunal dated 11.07.2001 it was specifically mentioned that "since the applicant has approached the Tribunal after a lapse of 18 years, I do not order any arrears in his case". However, the

respondents have given the arrears from the year 1991 as mentioned in Exhibit R-4 enclosed with the reply.

5. After hearing both the parties the learned counsel for respondents was directed to furnish the information relating to (i) which eight years were added to the qualifying service; (ii) the amount of increase in pension as a result thereof; (iii) the period for which enhanced pension was payable; (iv) the effect of adding eight years of qualifying service on the family pension, the increased amount as well as the effective date; (v) amount of arrears of family pension.

6. On the basis of points mentioned above, the respondents should furnish a statement indicating the total amount of arrears due to the applicant.

7. The learned counsel for respondents stated that two weeks time may be given for furnishing the details indicated above.

8. List the case on 26.02.2007. A copy of this order may be given to the learned counsel for respondents as requested.

  
(JOG SINGH)  
MEMBER (J)

  
(A. K. AGARWAL)  
VICE-CHAIRMAN.