

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH : BANGALORE.

DATED THIS THE SEVENTEENTH DAY OF DECEMBER, 1986.

Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman,
and
Hon'ble Shri P. Srinivasan, Member (Admn.).

APPLICATION NOS. 1086 & 1270 of 1986 (I)
(W.P. Nos. 4189/83 & 10846/83)

Between:

S. Muthuswamy,
Assistant Master,
Bangalore Military School,
Hosur Road,
Bangalore. ...Applicant in both the cases.

(Shri V.A. Mohanarangam, Advocate)

and

1. Union of India, rep. by its
Deputy Chief of Army Staff,
Army Headquarters,
New Delhi-110 011.
2. The Principal,
Bangalore Military School,
Hosur Road, Bangalore. ...Respondents in both cases.

(Shri N. Basavaraju, Standing Counsel).

These cases coming up for hearing today, before this
Tribunal, Hon'ble Shri Justice K.S. Puttaswamy, Vice-
Chairman, made the following:-

1

O R D E R

As the questions that arise for determination in these cases are inter-connected, we propose to dispose of them by a common order.

2. Shri S. Muthuswamy, the common applicant in these cases, joined service on 5.8.1957 as an Assistant Master in the Military Schools of the Ministry of Defence of the Government of India. The post held by the applicant is a civilian post.

3. In 1982 and thereafter also, the applicant was working as an Assistant Master in the Bangalore Military School, Bangalore. On 20.12.1982, he applied to the Principal of that school for two days' casual leave on 23rd and 24th December, 1982 and permission to avail the restricted holiday on 22.12.1982 and closed holidays on 25th and 26th December, 1982. On 1.1.1983, the Principal has rejected the same and treated his absence on 22nd, 23rd and 24th December as leave without pay (Annexure C). In writ petition No. 4189/83 presented before the High Court of Karnataka on 24.2.1983, the applicant had challenged the said order and had sought for a direction to grant him the leave applied on 20.12.1982, which on transfer under Section 29 of the Administrative Tribunals Act, 1985 ('the Act'), has been registered as Application No. 1270/86.

4. In exercise of the powers conferred by clause (h) of Article 459 of Civil Service Regulations (CSR), the Deputy Chief of Army Staff, Army Headquarters, New Delhi (DCAS), by his order No. 57830/III/GS/MT15(a) dated 12th April, 1983 (Annexure E) communicated to the applicant on 8.6.1983 and acknowledged by him on 9.6.1983, has compulsorily retired him from service from 10.6.1983 with three months' pay in lieu of three months' notice. In writ petition No. 10846/83 presented on 15.6.1983, the applicant, while challenging the said order of the DCAS, had sought for various other reliefs before the High Court of Karnataka, which on transfer, has been registered as Application No. 1086/86.

5. Shri V.A. Mohanarangam, learned counsel, has appeared for the applicant in both the cases. Shri N. Basavaraju, learned Additional Central Government Standing Counsel, has appeared for the respondents in both the cases.

6. We will now deal with these cases in their order.

Application No. 1270/86

7. Shri Mohanarangam contends that on the facts and circumstances, the Principal was not justified in refusing the leave sought for by the applicant on 20.12.1982.

8. Shri Basavaraj contends that the refusal of the leave was for valid reasons and justified.

9. We find that the applicant proceeded on leave, without obtaining prior sanction of leave of absence, which in the normal circumstances, is a very good ground to reject this application. But having regard to his compulsory retirement from service, we are of the view that it is a fit case in which we should quash the order of the Principal and sanction the leave sought by him.

Application No. 1086/86

10. Shri Mohanarangam contends that the compulsory retirement of the applicant was not in the public interest and was based on irrelevant considerations and materials.

11. Shri Basavaraj contends that the retirement of the applicant was in the public interest and the decision of the appropriate authority on the recommendations of a Committee constituted for the purpose cannot be examined by this Tribunal as if it is a court of appeal.

12. Article 459(h) of the CSR empowers the appropriate authority to retire a civil servant on his attaining 55 years of age, is analogous to F.R. 56(j), Rule 16(3) of All India Services (Death -cum- Retirement) Rules, 1948, and Note 1 to Rule 285 of the Karnataka Civil Services Rules.

13. When the applicant had completed the qualifying service of 55 years, which he does not dispute, it was

undoubtedly open to the appropriate authorities to consider his case for retirement and retire him if it found that his continuance beyond 55 years was not in public interest. In application No. 132/86 and connected cases (S.B. ASWATHA NARAYANA v. GOVERNMENT OF INDIA & OTHERS) decided on this Tribunal on 28.11.1986, had explained the scope and ambit of the powers of the authorities, and the powers of this Tribunal to interfere in such cases. Bearing the principles stated in Aswatha Narayana's case, we now proceed to examine the order of retirement made against the applicant.

14. We have also carefully examined the records, the proceedings of the committee, which examined the case of the applicant, and the proceedings of the DCAS. We find that the committee, on an examination of the service records of the applicant, found that his continuance was not in the public interest and recommended his retirement. On an examination of the proceedings of the Committee and the records, the DCAS had passed the order of retirement against the applicant. We notice from them that the retirement of the applicant was based on relevant considerations and material. When once we find that the appropriate authority had taken into account relevant factors and had based his decision on relevant material, this Tribunal cannot examine them as a Court of Appeal, and come to a different conclusion. We, therefore, cannot uphold the challenge of the applicant to the order dated 12.4.1983 of the DCAS.



15. In their statement of objections, the respondents have asserted that the applicant was absent from duty for a period of about 4½ years from 7.7.1973 to 6.12.1977 and that absence had not so far been regulated, by the competent authority.

16. We have given our anxious consideration as to how the period of absence from 7.7.1973 to 6.12.1977 should be treated. We are of the view that the appointing authority in exercise of the powers conferred on it by Rule 27(2) of the Central Civil Services (Pension) Rules, 1972, (Pension Rules) should have treated the same as extraordinary leave for purposes of pension. We are of the view that this becomes all the more necessary, now.

17. When the applicant was in service, he had made various claims before the authorities which had not been settled for one or the other reason. On that basis, the applicant's post retirement claims also have not been settled. Shri Mohanarangam, in a Memorandum of Calculations, filed before this Tribunal, has catalogued them as hereunder:

DETAILS OF CLAIMS

1. Gratuity based on 14 months' pay at an approximate salary of Rs. 1800/- per month.	Rs. 25,200.00	Ps.
2. Leave encashment benefit for 6 months permissible under the scheme at Rs. 1800/-.	10,800.00	

3. Pension arrears approximately at Rs. 900/- per month as no ad-hoc pension or provisional pension was fixed nor paid during the pendency of the proceedings and as on today and due for 42 months at Rs. 900/- x 42 months. 37,800.00

4. Arrears of pay & allowances under revised scale of pay (III Pay Commission) from 1.7.73 till 7.12.77 at an average of Rs.1000/- per month for 54 months. 54,000.00

5. Salary for having worked at Belgaum unpaid for April, May & June,1973, at Rs. 725/-.

6. Salary for September 1980 at Rs. 1500/- p.m. at Military School, while working at Chail. 1,740.00

7. Salary not paid in December 1982 and February 1983 at Bangalore based on Rs. 1500/- p.m. 4,500.00

8. Salary under paid from December 1977 till September 1983. 32,000.00

9. Unpaid claims such as deputation T.A. to Poona from Belgaum. 500.00

10. L.T.C. claim i.e., Block year 1970-71 at Belgaum. 600.00

11. N.C.C. Honararium for the period from 1967 till 1977. 6,500.00

Rs. Ps.

12. Transfer T.A. claim from Belgaum to Chail during 1977-78 (Presidential Orders sanctioning in 1983).	5,053.00
13. Travel allowance in May 1982 to Escort boys to Delhi.	691.20
14. Penal rate of rent recovery while at Belgaum during the period of authorised stay.	5,753.81
15. Advance of transfer T.A. for transfer from Chail to Bangalore 1980 despite claims preferred.	4,250.00
16. Advance travel allowance for journey to Chail 1981 despite claim submitted.	1,696.00
17. T.A. claim for journey to Chail 1980.	2,200.00
18. T.A. claim for journey to Chail, 1981.	1,200.00

The correctness of these claims are seriously disputed by the respondents. In this view, we cannot for the first time adjudicate on all of them and determine their correctness. We must necessarily direct the competent authorities to examine these claims and pass appropriate orders as the circumstances justify.

18. As the applicant has not been receiving any pension, we consider it proper to direct the respondents to settle his pension and other terminal benefits with expedition, and in any event on or before 31.3.1987. But as regards

other claims, which require greater examination and time, we consider it appropriate to direct the respondents to settle them on or before 30.6.1987.

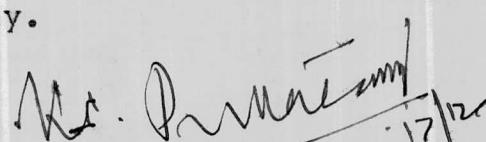
19. In the light of the above discussion, we make the following orders and directions:

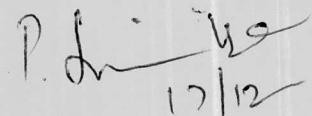
- (1) We quash the order dated 1st January, 1983 (Annexure E in Application No. 1270/86) and direct the respondents to treat the period as leave sanctioned on his application dated 20.12.1982 and regulate the payments due for that period in accordance with rules regulating the same;
- (2) we dismiss Application No. 1086/86 in so far as it challenges order dated 12.4.1983 (Annexure E) of the Deputy Chief of Army Staff;
- (3) we direct the respondents to examine the pension and other terminal benefits due to the applicant in terms of the order made by the DCAS on 12.4.1983 treating the period of his absence from duty from 7.7.1973 to 6.12.1977 as extraordinary leave without pay and settle the pension and other terminal benefits due to him with all such expedition as is possible in the circumstances of the case, and in any event, on or before 31.3.1987;

(4) we direct the respondents to examine the other claims of the applicant detailed at paragraph 15 supra and pass such appropriate orders as the circumstances justify and make available to the applicant such amounts as are found due to him with all such expedition as is possible in the circumstances of the case, and in any event on or before 30.6.1987.

20. Applications are disposed of in the above terms. But in the circumstances of the cases, we direct the parties to bear their own costs.

21. Let this order be communicated to the parties within ten days from this day.


M. J. Dunnigan
17/12
VICE CHAIRMAN


P. J. W.
17/12
MEMBER (A).

dms.