

(6)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING No.6
PREScot ROAD; BOMBAY-1

O.A. No.87/1990

Anita Dias Souza
C/o. Shri Gurunata Suria Rau
Sardessai
Advocate
1/5 Ashwini
Santa Inez, Panaji 403001

..Applicant

V/s.

1. Chief Secretary to the
Government of Goa
Secretariat,
Panaji, Goa, 403001

2. Director of Education of
Government of Goa, 18th June Road,
Panaji, Goa 403001 .. Respondents

Coram: Hon. Shri P S Chaudhuri, Member (A)
Hon. Shri T C Reddy, Member (J)

JUDGMENT
(PER: P 6 Chaudhuri, Member (A))

DATED: 13-09-1991

This application under section 19 of the Administrative Tribunals Act. 1985 was received initially on 23.6.1989 and again, after resubmission after removal of defects, on 14.2.1990. In it the applicant who is a retired Headmistress of a Government primary school is seeking a direction that the formula prescribed by Article 445 of the Estatuto do Funcionalismo Ultramarino (which is translated as Statute of Overseas Functionaries and is hereafter referred to ^{as}, in short, EFU) by reducing the denominator from 36 to 29, i.e., in proportion to the reduction of the age limit for retirement on superannuation from 65 to 58 years.

2. The applicant joined Government service with effect from 18.3.1961 as Professora Provisoria after some temporary service during the erstwhile Portuguese regime and her service conditions were then governed by EFU under which the minimum and maximum age limits to join Government service were 18 and 35 years respectively and age limit for retirement on superannuation was 65 years. With the liberation of Goa in December, 1961, the applicant's services were continued in the Indian Admini-

stration by the Goa, Daman and Diu (Administration) Ordinance, 1962, and the applicant was subsequently absorbed and regularised under the Goa, Daman and Diu (Absorbed Employees) Act, 1965 and Rules framed thereunder viz., the Goa, Daman and Diu (Absorbed Employees Conditions of Service) Rules, 1965 (for short, the Rules). The applicant was thus an "absorbed employee" as defined in the said Act and Rules. By order dated 28.1.1987 it was intimated that as she was born on 23.1.1927 she shall stand retired on superannuation with effect from 31.1.1987.

3. The portion of these rules with which we are concerned came into force with effect from 1-2-1966. Rule 7 of the Rules deals with pension. Rule 8 deals with retirement and superannuation. Rule 14 deals with the exercise of the option provided for in Rule 7. We reproduce these rules below:

"7. Pension:

(1) Every absorbed employee shall be subject to the pension rules contained in the Civil Service Regulations as applicable to persons who entered Government service on or after the 1st October, 1938, including the liberalised pension scheme sanctioned by the Government of India, in the Ministry of Finance O.M.No.3(1)-E(Spl)47, dated the 17th April, 1950, as amended from time to time, and service rendered by such employee prior to the 20th December 1961 under the Portuguese Administration of Goa, Daman and Diu, shall be deemed to be service under the Central Government for the purposes of the said Regulations and scheme.

(2) Notwithstanding anything contained in sub-rule (1) an absorbed employee shall, subject to his paying contributions to the pension fund as laid down in the Statute of Overseas Functionaries, as in force immediately before the appointed day, have the option to count his service under the Portuguese Administration of Goa, Daman and Diu prior to the 20th December 1961 and subsequent service under the Government for pension in accordance with that Statute and to draw pension calculated in accordance with articles 445 and 447 thereof instead of the pension as calculated under the Civil Service Regulations:

Provided that the pension which he may draw by virtue of such option shall not exceed the maximum pension which a functionary of Group D specified in proviso 1 of article 91 of that Statute could have drawn under that Statute.

Explanation I: In the case of absorbed employees who have exercised their option under this sub-rule, the personal pay, if any, shall be deemed to be part of basic pay for determining the amount of pension.

Explanation II: Contributions made by an absorbed employee towards any pension fund under the Statute of Overseas Functionaries or any orders relating to such contributions shall not be refunded to him irrespective of whether he exercised the option under this sub-rule or not.

(3) A person who has exercised the option under sub-rule (2) shall not be entitled to any gratuity, death-cum-retirement gratuity or family pension under the rules and order referred to in sub-rule (1) or to commute his pension but shall otherwise be governed by those rules and orders except in so far as they relate to counting of service for pension and determination of the amount of pension.

(4) and (5) do not concern us.

(8) Retirement and Superannuation: -

In the matter of retirement and superannuation an absorbed employee shall be subject to the Central Rules. (The two provisos to this rule do not concern us).

14. Exercise of Option:

(1) the option under sub-rule (2) of rule 7 or sub-rule (1) of rule 10 shall be exercised in writing so as to reach the authority mentioned in sub-rule (2) within six months from the appointed day.

(2) The option shall be intimated by the absorbed employee, in such form as the Central Government may prescribe;

(a) if he is a gazetted Government servant, to his Accounts Officer; and

(b) if he is non-gazetted Government servant, to his Head of Office.

(3) The option once exercised shall be final.

4. With the rules coming into effect, the provisions of EFU were revoked except that, as far as pensionary benefits and allowances were concerned, the absorbed employees were given an option to join the Civil Service Regulations or continue under the old Rules.

But Rule 8 made the absorbed employees subject to the 'Central Rules' in the matter of retirement and superannuation. 'Central Rules' has been defined in the Rules as meaning the rules relating to conditions of service generally applicable to persons appointed to the Central

AM

Civil Services. So, by the provisions of Rule 8 the age limit for the applicant's retirement on superannuation was reduced by 5 years i.e., from 65 years under EFU to 60 years, the retirement age applicable to Teachers under the Central Rules.

5. The Pension Scheme under EFU is a contributory scheme and ^{under} Article 437 thereof all the employees who are entitled to pension shall be liable to contribute towards the Pension Fund at the rate of 6% of the emoluments drawn. Under Rule 7(2), which we have quoted, the absorbed employees were given an option between pension calculated in accordance with Articles 445 and 447 of EFU and pension as calculated under the Civil Service Regulations.

6. We may digress here to quote the translations of not only Articles 445 and 447, but also Articles 435 and 437 of EFU.

Art.435 - The period of service rendered in overseas provinces shall always be increased by one fifth for the purposes of retirement pension.

Art.437 - All the employees who are entitled to pension shall be liable to contribute towards pension fund 6% of the total emoluments corresponding to the post they hold.

Art.445 - The pension for voluntary or compulsory retirement is proportionate to ⁽¹⁾ the number of years of service reckoned and, if the period of service is not more than thirty six years, it is calculated by the following formula, taking into account only the completed years:

$$P = \frac{V}{36} X$$

where X is equal to the number of years of service till the maximum limit of thirty six, and V equal to the pay or basic salary reduced by one ninth.

Para 1 - When the number of years reckoned for pension is more than thirty six, no deduction of one ninth shall be made and, for every year of service upto forty, the pension shall be calculated on the basis of one fortieth of the amount worked out for the purpose of fixation of pension.

(The other 2 paragraphs do not concern us).

Art.447 - The pay to be considered for ~~calculation~~ calculation of yearly pension is the net amount after deducting the contribution towards the pension fund from the pay or basic salary.

It may be noted that under Art. 447 the pay for calculating pension is to be derived after deducting the contribution towards pension fund from it, i.e., after deducting 6%.

7. The applicant noticed that her pensionary benefits had been materially affected by the reduction in the age of superannuation laid down by rule 8(supra). It came to her notice that other persons similarly situated had made representations but these representations had either not been answered or ~~been~~ been rejected. Therefore, she filed this application.

8. The respondents have opposed the application by filing their written statement. During the circuit-sitting at Goa, we have heard Mr. M.S. Usgaocar instructed by Mr. G S R Sardessai, learned counsel for the applicant and Mr. H R Bharne, learned counsel for the respondents.

9. The relief prayed for by the applicant is claimed on the grounds that, first ~~since~~ she had already paid thousands of rupees as contribution towards the pension fund and this amount was not refundable in case she opted for pension under the Civil Service Regulations, she had no alternative but to exercise her option for pension under EFU. Secondly, the formula devised for calculation of pension under Article 445 of EFU is essentially based on two factors viz., first, the basic pay at the time of retirement and secondly, the number of completed years of service which is directly linked with the maximum age limit of 35 years fixed for entry into Government service and superannuation age limit of 65 years, so as to ensure that, whoever joined Government service even at the maximum age of 35 years, had a chance to complete

36 years because of the increase of 1/5 of service rendered provided for in Art. 435 of EFU. It is her case that this formula can never hold good when one of its parameters, i.e., the age limit for retirement on superannuation has been ~~been~~ reduced by 5 years without any adequate compensation. Thirdly, it is discriminatory that in a variety of ways, the provisions of EFU have remained unchanged and static for the last 32 years, though elsewhere, for example in Macau, where EFU is still in force, it was suitably amended long back. Reliance is placed on D.S. Nakara & Others V. Union of India, (1983) 2 SCR 165.

10. The respondents contended that it was open to the applicant to either continue under the ~~pension~~ scheme under EFU or the pension scheme under the Civil Services Regulations. They deny that she had contributed thousands of rupees towards pension fund ~~by~~ 1966, when the rules came into force. They submit that her contribution by that date was less than Rs.2,000/- . They further contend that when the option was extended by the Rules ~~in~~ 1966, it was made clear that the age of retirement on superannuation would be reduced. In other words, the choice that the applicant had to exercise was between pension under EFU with a reduced age of retirement and pension under the Civil Service Regulations. It is not as if the age of retirement was reduced after she exercised her choice. Further, all absorbed employees covered under EFU who were in service as on 1-1-1986 were given a fresh option to shift over to pension under the Civil Service Regulations on 15-11-1989. The applicant was in service on 1-1-1986 and so it was open to her to exercise this option. It is the respondents final submission that there is no discrimination between the two sets of optee ~~optee~~ pensioners. Each pension scheme is a comprehensive scheme in itself and it was open to the applicant

to choose one or the other. They contend that it was not open to her to evolve a scheme of her own by changing the content of the EFU pension scheme. They further contend that what happened in other Portuguese territories after the liberation of Goa is obviously of no relevance.

11. We see considerable merit in these submissions of the respondents. Each of the two pension schemes is quite distinct from the other. The EFU scheme calls for contributions and gives what appears to be a higher pension. On the other hand the pension scheme under the Civil Service Regulation provides for commutation, death-cum-retirement gratuity, family pension. The two schemes are quite distinct and comprehensive in themselves. ^{make it} A simple example will make it clear that it is not possible to tinker with such schemes. The applicant's prayer for ^{the} reducing denominator from 36 to 29 i.e., by 7 years is based on the reduction in retirement age by 7 years from 65 to 58 years. But all employees do not retire at 58 years; in fact the applicant herself was required to retire only at 60 years. We obviously cannot have different denominators for different people. In this view of the matter we see no merit in the application and are of the opinion that it deserves to be dismissed.

12. The application is accordingly dismissed. In the circumstances of the case there will be no order as to costs.

T. Chaudhuri and
(T C Reddy)
Member (J)

P. S. Chaudhuri
(P S Chaudhuri)
Member (A)

13-9-1991