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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 383/92

~~Transfer Application No.~~

Date of Decision 10.11.95

Shri J.S. Pinto

Petitioner/s

Shri D.V. Gangal

Advocate for  
the Petitioners

Versus

Union of India & Others

Respondent/s

Shri V.S. Masurkar


Advocate for  
the Respondents

CORAM :

Hon'ble Shri. B.S. Hegde, Member (J)

Hon'ble Shri. M.R. Kolhatkar, Member (A)

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

  
(B.S. Hegde)  
Member (J)

ssp.

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BOMBAY BENCH

O.A. 383/92

Shri J.S. Pinto                      ...        Applicant

v/s

Union of India & Others ... .. Respondents

CORAM : 1) Hon'ble Shri B.S. Hegde, Member (J)

2) Hon'ble Shri M.R. Kolhatkar, Member (A)

APPEARANCE : 1) Shri D.V. Gangal, counsel for the Applicant.

2) Shri V.S. Masurkar, counsel for the Respondents.

## JUDGEMENT

Dated: 10.11.95

(Per: Hon'ble Shri B.S. Hegde, M(J)).

1. The Applicant filed this O.A. against order dated 24th May 1991 wherein the Respondents i.e. the Naval Transport Pool, Colaba have directed the Applicant to furnish the requisite documents concerning his request for pensionary benefit and also vide their order dated 16th December 1991 (Annexure 'B').

2. At the outset, it appears that the Applicant seems to have worked in the Indian Army right from 1947 as a Motor Mechanical Fitter as a civilian till about December 1960. Thereafter, his services are terminated. The reliefs claimed in this O.A. are vague and he has contended that he should be given pensionary benefits from the date of his termination from Army etc. During the course of hearing, the learned counsel for the Applicant Shri Gangal draws our attention to Rule 19 and 20 of CCS (Pension) Rules 1972 which would be applicable

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to the Applicant<sup>which</sup> reads as follows :-

"Rule 19(1) A Government servant who is re-employed in a civil service or post before attaining the age of superannuation and who, before such re-employment, had rendered military service after attaining the age of eighteen years, may, on his confirmation in a civil service or post, opt ... ..etc."

The counsel for the Applicant urged that he should be given the benefit stated in Rule 19. Since he is appointed prior to 1948, therefore he should be given benefit of CCS (Pension) Rules under Rule 20. On perusal of the said rule, we find, that the Applicant has not fulfilled the required conditions laid down in Rule 20; hence the contention made by the Applicant that the aforesaid condition should be made applicable to him has no substance.

3. The Respondents in their reply denied the various contentions of the Applicant, contending that, the Applicant was a permanent employee in the Indian Army/ Navy. As per the existing rule, Government servants who retire after the age of superannuation and after completing 10 years of continuous pensionable service are entitled for the said benefits. The Pension Rules came into effect only in 1972 and prior to that there was no such scheme that <sup>when</sup> an individual retires on attaining the age of 60 years and non-industrial employee retires on attaining the age of 58 years after putting 10 years of service <sup>he</sup> is entitled for pension for the said service. Applicant's <sup>his</sup> case is not falling under the said category.

*[Signature]*

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His services were terminated. Even assuming for the sake of argument without admitting that the applicant has completed 10 years of service, he is not entitled for pension and he had not retired on attaining the age of 60 years by virtue of his appointment under the industrial category. Since the applicant has not completed 10 years of service and has not superannuated, he is not entitled for pension. The Indian Army/Navy is a separate department under Ministry of Defence and they have not been impleaded as a party respondent and for non-joinder of parties the O.A. is required to be dismissed. The Applicant's appointment as a Fitter in Navy falls under Industrial category. Prior to the implementation of the recommendation of II Pay Commission for grant of pension to the Industrial employees, there was no pension scheme for Industrial employee. Such Industrial employees were, however, governed by Contributory Provident Fund Scheme. The Applicant was enrolled in the said Scheme and was allotted Account No. 11916. The Pension scheme for Industrial employees i.e. civilians in Defence Services was made effective only vide O.M. dated 18-11-1960. Since the Applicant was holding only temporary appointment at the time of his termination and he was also not in service to enjoy the benefit introduced by the Government after his termination, hence the question of payment of pension to the Applicant does not arise and hence his contention is not tenable. Since the termination took place in the year 1955 and for a period of 30 years he has not agitated his grievance in any forum and thus the application is time barred. The question to be seen here is whether the service rendered by the Applicant was pensionable and whether the Government servant fulfilled

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the terms and conditions laid down for the purpose. That would depend upon the relevant rules at that time. Therefore, it was urged that the applicant has not made out any case for granting any pensionary benefits; therefore, the O.A. be dismissed with cost.

3. We have heard the arguments of the parties and perused the pleadings. During the course of hearing, the learned counsel for the applicant withdrew the <sup>m P</sup> ~~relief~~ regarding Army ~~not~~ being included as a party and stated that he is not pressing for the same. Any service rendered in Army will not survive since he has not produced any certificate to that effect and it is not open to the Tribunal or any other party to rake up the matter at this stage. Since the subject matter pertains to period prior to 1982, this Court has no jurisdiction to go into the claim of the Applicant. Section 21 is in paramateria with S. 5 of Limitation Act, 1963. The provision of S. 21 of the A.T. Act is more rigorous than the Limitation Act. Section 21 contains provision for condonation of delay if valid and satisfactory explanation is given. In the instant case, no such application is filed by the Applicant explaining delay and latches. It is a well settled principle that repeated representations and reminders would not stop the limitation to run. The Applicant did not initiate any judicial proceedings to challenge the termination order passed as early as in 1955. Since the cause of action has arisen prior to 1982 period, a period of more than 3 years of constitution of the Tribunal, we hold that the application is barred by limitation and cannot be entertained. The relief

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claimed by the Applicant is refixation of his pensionary benefits right from 1960 onwards.

4. The Applicant has not adduced any documentary proof to show that his service has been confirmed at any particular point of time and according to Government of India instructions, that pension cases can be preserved for a period of 7 years after retirement/death in service etc. Since the applicant has raked this issue after a lapse of 30 years, he has no locus standi to seek for any pensionary benefits.

5. In the circumstances, we see no merit in the O.A. and the same is dismissed with no order as to costs.

*M.R. Kolhatkar*

(M.R. Kolhatkar)  
Member (A)

*B.S. Hegde*

(B.S. Hegde)  
Member (J)

ssp.