

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1185/93

Date of Decision: 7-7-99

M.D.Shedge

Applicant.

Shri D. V.Gangal

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Sh. V.D.Vadhavkar for Shri M.I.Sethna for R-1 and
Sh. G.S.Bhargavaram with

Mrs.Jayashree Kurup for R-2).

Advocate for
Respondent(s)

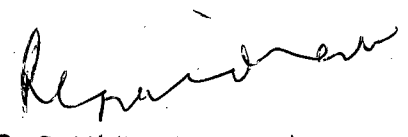
CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice-Chairman,

Hon'ble Shri. D.S.Baweja, Member(A).

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

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(R.G. VAIDYANATHA)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 118593.

, this the 7th day of July 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

M.D.Shedge,
P-315 New Air Port Colony,
Vile Parle (E)
Bombay - 400 099.
(By Advocate Shri D.V.Gangal)

...Applicant.

Vs.

The Union of India through

1. The Secretary,
Ministry of Civil Aviation,
Directorate General of Civil
Aviation, East Block No.II and III,
R.K.Puram,
New Delhi - 110 022.
 2. The Executive Director,
National Air Port Authority of India,
Safdarjung Air Port,
New Delhi.
- (By Advocate Shri V.D.Vadhavkar for
Shri M.I.Sethna, counsel for R-1,
Shri G.S.Bhargavaram with Mrs.Jayashree
Kurup for R-2).

...Respondents.

: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed their reply. We have heard Mr.D.V.Gangal, learned counsel for the applicant, Mr.V.D.Vadhavkar for Mr.M.I.Sethna, counsel for R-1 and Mr.G.S.Bhargavarao with Mrs.Jayashree Kurup on behalf of R-2.

2. Before going to the points of controversy, let us mention some of the basic admitted facts.

The applicant was working as a Chowkidar on casual basis under the Ministry of Civil Aviation at Bombay from 9.9.1976 to

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21.9.1980. His services as a Casual Labour came to an end on 30.1.1980 and he was appointed on regular basis as a Peon under the Civil Aviation Department w.e.f. 2.2.1980. During that period the applicant was working in the Air Port at Bombay. In the meanwhile, the Government brought the Air Port as an Autonomous Body by enacting a new Law called the National Air Port Authority Act, 1985. This new Autonomous Body came into existence w.e.f. 17.12.1985. The applicant was deputed by the Government to work in the new organisation viz. Air Port Authority of India from 1.6.1986 to 1.10.1989, then applicant was absorbed in the service of the National Air Port Authority of India w.e.f. 2.10.1989. The applicant is still working there.

3. On the basis of the above undisputed and admitted facts, the applicant's grievance is that since his service has come to an end under the Government from 2.10.1989 and onwards he is entitled to pension for the period he had worked under government from 9.9.1976 till 1.10.1989.

The stand of the Government is that applicant had put in regular service for about 9 years and 8 months from 2.2.1980 to 1.10.1989, but minimum period of service required for getting pension is 10 years, but since applicant's regular service fell short of 10 years he would not be entitled to pension from the government. It is their further case that the applicant cannot get the benefit of service as a casual labour from 9.9.1976 to 30.1.1980 since he was paid from contingency and that service cannot count for the purpose of pension. It is also the stand of the Government that after the constitution of the National Air Port Authority under an Act of Parliament the application against the Government is not maintainable since all the assets and

liabilities of the Government have been transferred to the new Autonomous Body.

4. The Air Port Authority of India is also impleaded as R-2. The stand of this authority is that there is no liability for this authority to meet the claim of the applicant for pension since the entire period was prior to applicant's absorption under this authority. Therefore, this authority is not liable to meet the demand of the applicant for pension. They have also taken a stand that this Tribunal has no jurisdiction to grant any relief against this authority which is an independent Autonomous Body not amenable to the jurisdiction of this Tribunal under the Administrative Tribunals Act.

The respondents have also taken a stand that the claim is barred by limitation and delay.

5. Though there is a plea taken by the respondents on the point of limitation, we find that the applicant's claim for pension was rejected by Government Order which is dt.15.7.1993, which is at page 13 of the paper book. The present application is filed within few months after the date of the impugned order. Normal period of limitation is one year from the date of cause of action. Here the applicant's claim was rejected by the government in July, 1993 and hence the applicant has approached this Tribunal by filing this application in October, 1993, hence the plea of limitation has no merit in the facts and circumstances of the case.

6. We are also not impressed by the argument of the learned counsel for the first respondent that the government has no liability to meet the demand of the applicant in view of Section 13 of the National Air Ports Authority Act, 1985. The said

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section comes in Chapter IV of the Act with the heading "Property and Contract". Therefore, this Chapter is provided to provide for litigations for or against the authority in respect of properties and contracts, that means if there is any dispute regarding property belonging to the Air Port Authority or any disputes regarding contracts like commercial contracts etc. the suit should be filed against the Air Port Authority and not against the Central Government. Section 13 of the Act though refers to number of items of dispute, it does not mention about any dispute of service matters between the erstwhile employees of the Civil Aviation Department and the Government. Hence, in our view, section 13 is no bar for the litigation of this type where the applicant who is an erstwhile employee of the Government of India is demanding pensionary benefits from the Government of India for the service done by him when working in the Civil Aviation Department. Hence, in our view, the plea that the application is not maintainable against the Government has no merit.

7. The stand of the second respondent that this Tribunal has no jurisdiction against it cannot be disputed at all. The Air Port Authority of India does not come under the purview of the Administrative Tribunals Act. Even the learned counsel for the applicant fairly submitted that he is not claiming any relief against the Air Port Authority and that Air Port Authority is made as a party respondent only as a formal party. The applicant is seeking pensionary relief only against the Government of India and not against the Air Port Authority. Hence, this Tribunal is not granting any relief against the 2nd respondent and no relief is prayed for in the application against 2nd respondent.

8. Now, coming to the merits of the case, it is not disputed that when a government official who is transferred or absorbed in an Autonomous Body or Public Sector undertaking then he must be deemed to have retired from the date he leaves the government service in order to join Government Autonomous Body or Public Sector Undertaking (vide Appendix 12 of Swamys Pension Compilation 1993 edition). In Appendix 12 of Swamys Book number of categories are shown about transfer or absorption of Central Government Servants or Central Public Undertakings, Central Government Autonomous Bodys etc. and the rule is on such transfer or absorption the official is deemed to have retired from government service.

It is also not disputed before us that applicant is entitled to pension for his service under the Government of India provided he has completed 10 years or more. Even in the impugned order dt. 15.7.1993, page 13 of the paper book, it is stated that applicant cannot get pension since he does not have 10 years pensionable service and his previous service as a Casual Labour cannot be taken into account. If once it is shown that applicant has 10 years or more qualifying service, then he will be entitled to pension.

It is true that normally service as Casual Labour will not count for pensionable service. This is mentioned in Rule 2 (b) and (c) of Central Civil Services (Pension) Rules, 1972. Then Rule 14 mentions the conditions subject to which his service qualifies for pension. Below Rule 14, at Item No.2, there is reference to Government of India Circular dt. 14.5.1968 and Government of India Circular dt. 10.3.1986 (vide page 31 of Swamys Pension Compilation 1993 edition). The heading of the

Note itself is "counting half service paid from contingency with regular service". One of the objections taken for rejecting the applicant's claim is that his earlier service cannot be counted since he was paid out of contingency, but the Government Order mentioned at Item 2 below Rule 14 provides for counting such service paid from contingency. The government circular says that though normally the period of service paid from contingency will not count for qualifying service for pension, on the request of employees and in consultation with the National Council it has been decided that "half the service paid from contingency" will be allowed to count towards pension at the time of absorption in regular employment, subject to four conditions.

The first condition that it must be a whole time employment and not a part-time employment. In this case, the applicant was appointed on a whole time basis as a Casual Labour and it is nobody's case that it is a part-time job.

The second condition is that it must be a type of work for which regular posts could have been sanctioned like Malis, Chokidars and Khalasis etc. In the present case, the applicant had been appointed as a Chowkidar and therefore, it is a post which is a recognised post and which could be sanctioned.

The third condition is that the payment should have been made either on monthly or daily rates, but computed on monthly basis. There is no dispute in the present case that the applicant was being paid salary on monthly basis.

The next condition is that it should be a continuous service followed by a regular appointment and there is no dispute on this point.



The last clause in that Government Orders says that after the above four conditions are fulfilled, then weightage of past service will be taken into account for qualifying service.

In view of this government order 50% of the casual service should be taken as qualifying service for pension.

9. In the present case, we have already seen that admittedly and undisputedly applicant had put in service as a Chowkidar on Casual Labour basis from 9.9.1976 to 30.1.1980, the period comes to about 3 years 4 months and odd, 50% of the same comes to about 1 year 8 months and few days. We have already seen that the applicant had regular service from 2.2.1980 to 1.10.1989, which comes to 9 years and 8 months. If we add one year and 8 months, the total qualifying service for the purpose of pension comes to 11 years and odd. That means applicant has more than 10 years qualifying service for the purpose of pension. Hence, the denial of the claim for pension by the applicant under the order dt. 15.7.1993 is not sustainable and liable to be quashed.

10. In the result, the application is allowed as follows.


(1) It is hereby declared that the applicant had put in 11 years and odd qualifying service as Chowkidar-cum-Peon under the Ministry of Civil Aviation of Government of India and hence he is entitled to Pensionary benefits as per rules.

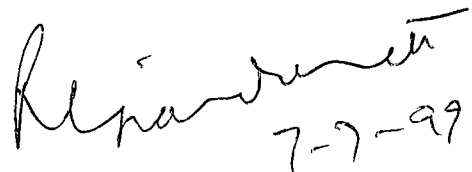
(2) It is hereby declared that the applicant is entitled to pensionary benefits on the basis of qualifying service of the full service from 2.2.1980 to 1.10.1989 and 50% of Casual Labour service from 9.9.1976 till 30.1.1980 and on that basis he is entitled to pensionary benefits as per rules.

...8.



- (3) The first respondent is therefore directed to issue necessary orders for payment of pension to the applicant as per qualifying service declared in this order and pay all the arrears till to day and then go on paying the future pension to him as per rules.
- (4) The first respondent is hereby given four months time from the date of receipt of copy of this order to comply with this order.
- (5) No relief is granted against R-2.
- (6) In the circumstances of the case, there will be no order as to costs.


(D.S. BAWEJA)
MEMBER(A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.