

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.1313/93

Smt. Anthony Amma

... Applicant

V/s.

Union of India through
 the Secretary, Ministry of
 Defence, South Block,
 New Delhi.

The Commandant
 Central AFV Depot
 Kirkee, Pune - 3.

The Chief Controller of
 Defence Accounts (Pensions)
 Allahabad.

Director General of
 Ordnance Services
 OS - 8 C (i), Master General
 of the Ordnance Branch,
 Army Headquarters
 DHQ PO New Delhi.

... Respondents.

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

Appearance

Shri J.M. Tanpure, counsel
 for the applicant.

Shri R.K. Shetty, counsel
 for the respondents.

ORAL JUDGEMENT

Dated: 7.9-94

(Per Shri M.R. Kolhatkar, Member (A))

This is an original application under
 Section 19 of the Administrative Tribunals Act 1985.
 The impugned order dated 31.8.93 is said to hold that
 the applicant's husband is not entitled to pensionary
 benefits and the applicant wants us to hold, on the
 contrary, that the applicant's husband is entitled to
 pensionary benefit after completing 20 years and 21 days
 of service and therefore the applicant who is the widow
 is entitled to family pension. The order reads as below:

" The case regarding grant of pension/
 family pension/gratuity in respect of a
 few employees, including your late husband
 Shri Peter Joseph, of erstwhile Central
 Vehicle Depot Dehu Road, which was closed

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down on 31st December 1969 is under consideration of higher authorities.

Since sanction of the Govt. of India is required in the case for which some time will be taken, you are advised to desist from sending reminders in the meanwhile. You may, however, rest assured that the case is being actively progressed with a view of obtaining an early sanction.*

2. There is no dispute that the husband of the applicant had completed 20 years and 21 days of temporary service as on 31.3.69, when the concerned establishment was closed down. He expired on 28.7.72.

Ultimately the applicant relies on Appendix to CPRO 58/92 regarding counting of ETE spells of service ~~for~~ pension and which clarifies that the orders contained therein are applicable both to the affected non-industrial employees (including other categories of employees eg. Gazetted/non-gazetted etc.) serving on pensionary terms as well as to the industrial employees serving on CPF and other Funds benefits on the crucial date viz. 1.3.1969.

3. The case of the applicant is that on the footing of completing 20 years, whether temporary or otherwise, her husband was entitled to pension. However we do not find any such authority in Appendix to CPRO referred to by the applicant. We are, therefore, required to go to relevant CSRs. Her contention is that under CSR 481(b) which is applicable, compensation pension may be granted for inferior qualifying service which is less than 30 years.

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4. The applicant has invited our attention to Exhibit A 3 dt 13.9.86 in which the Central AFV Depot has written to Director General of Ordnance Service for finalisation of pension cases of 7 employees including Shri Peter Joseph, husband of Smt. Anthoniamma who is the applicant. According to the applicant the case which has been decided by this Tribunal in OA 1064/92 dated 22.2.94 supports her. In that Single Bench case the impugned order dated 10.1.1990 which proceeded on the basis that the applicant's husband had not given his option during his life time was struck down. The Tribunal proceeded on the footing that on completion of 20 years, the husband of the applicant is entitled to pension. The learned counsel for the respondents has invited our attention to the judgement of this Tribunal which was also a case pertaining to Ministry of Defence. In that case learned Tribunal held that the applicant had not put in 30 years of service; the applicant had put in only 19 years of service as temporary employee; therefore, the learned Tribunal held that the applicant was not entitled for pension. The learned Tribunal has taken note of subsequent circular which had laid down a smaller length of service. Learned counsel for the respondents has also invited our attention to the decision of the Tribunal in OA 102/94 (Single Bench) decided on 18.7.94. The Tribunal held that it is clear that those who had not put in 30 years of service are not entitled to pension and rejected the application. It is therefore, clear that there is a conflict of decision in respect of Single Benches of this Tribunal namely decision in OA 102/94 dated 18.7.94 and decision in OA 945/93 decided on 6.7.1993 support respondent's case whereas, the decision in which the facts are almost

identical viz OA 1064/92 decided on 22.2.94 helps the applicant. We also note that the decision dated 6.7.93 relies on 30 year rule whereas decision dated 22.2.94 relied on 20 years as qualifying service. It is significant to note that there is a subsequent decision dated 18.7.94 by the same Bench which accepts 30 year rule. It is necessary to reconcile these conflicting decisions. of the Tribunal.

5. We would also like to note that communication dated 31.8.93 talks rule 88 of CCS(Pension) Rules which is as follows:

"Whether any Ministry or Department of the Government is satisfied that the operation of any of these Rules causes undue hardship in any particular case, the Ministry or Department, as the case may be, may by order, for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner, provided that no such order shall be made except with the concurrence of the Department of Personnel and Administrative Reforms".

It is evident from the facts of the case that the department has proceeded on the footing that 20 years of temporary service would not entitle the applicant to pension and 20 years of temporary service rendered by the late husband of the applicant would not entitle the applicant to family pension. We therefore, make the following order of reference.

ORDER

We direct that the case may be placed before the Hon'ble Vice Chairman to refer the matter to a larger Bench, in view of the conflicting

decisions in the following three cases namely:

OA 945/92 decided by the Single Bench
on 6.7.93.

O.A. 1064/92 decided by the Single Bench
on 22.2.94.

OA 102/94 decided by the Single Bench
on 18.7.94.

The larger Bench may decide the following issues.

1. Whether OA 1064/92 should be confined to the facts of that case and O.A. 945/92 and OA 102/94 may be held to lay down correct law.
2. If so, whether applicant is entitled to family pension.
3. If not, whether instant OA may be disposed of by directing department to consider exercise of power of relaxation under CCS(Pension) Rules, vide Rule 88 so as to give the benefit of Family Pension to the applicant.

Copy of this order may be given to both the parties.

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R. Kolhatkar

M.R.Kolhatkar

(M.R.Kolhatkar)
Member (A)

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