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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 283/93.

Transfer Application No:

DATE OF DECISION: 18.7.94

Shri Shrichand Ranpat, Petitioner

Smt. K. Nagarkatti, Advocate for the Petitioners

Versus

Ministry Of Defence & Others, Respondent

Shri R. K. Shetty, Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Shri

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).

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(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH.

O.A. NO.: 283/93.

Shri Shrichand Ranpat ... Applicant

Versus

Ministry Of Defence & Others ... Respondents.

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

APPEARANCES :

1. Smt. K. Nagarkatti,  
Counsel for the Applicant.
2. Shri R. K. Shetty,  
Counsel for the Respondents.

JUDGEMENT

DATED : 18/7/94

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

1. This application is filed against the refusal of the Respondents to pay Pensionary benefits vide its order dated 24.03.1992.
2. The Applicant joined the erstwhile Central Depot (DUV) w.e.f. 09.04.1945 as Driver. The said post was later re-classified to VM/MV grade w.e.f. 05.10.1951 and his pay was fixed accordingly. Subsequently, his re-classification was antedated 01.09.1950 superseeding the earlier pay fixation and annual increments. He was confirmed in the post of VM/MV w.e.f. 01.09.1953 and appropriate entry was made in the service records. Subsequently, on closure of the DUV, the applicant's service was discharged w.e.f. 01.04.1969 after being given three months notice on 01.01.1969. While in service, he had opted to retain the Central Provident Fund (CPF) benefits, however, consequent upon the issue of department circular dated 10.09.1975, he opted for pensionary benefits. This also was recorded in his service records.

3. In the light of the above, the Learned Counsel for the applicant, Smt. K. Nagarkatti, contends that after his discharge from service, he made a claim for pension on 12.04.1979 alongwith other employees, who had been similarly discharged from service. While other employees claim for pension were sanctioned, the Applicant's application was kept pending. Due to non-receipt of pension/gratuity, he had approached various concerned authorities several times but of no avail. The Department CAFVD (Fourth Respondent) recommended the Army Head Quarters for fresh confirmation. The said request was rejected vide their letter dated 12.07.1979. Ultimately, the Applicant was informed on 05.09.1987 that on scrutiny of his documents revealed that his service was not confirmed and hence he was not eligible for pension and gratuity. He made a further application to the Pension Adalat to be held on 30.05.1988 at Pune. After scrutiny, he was informed that his claim for pension could not be granted as he was not confirmed. Again the matter for grant of Applicant's pension was taken up by the Member JCM Army Head Quarters recommending his pension claim. Nevertheless, they did not entertain the request and the same was rejected. Further, the Member JCM again appealed on behalf of the Applicant to the Chief Controller Of Accounts, Allahabad (Respondent No. 3) to consider the matter of grant of pension and gratuity vide his letter dated 05.04.1990. The Accounts Officer, Allahabad, vide his letter dated 07.05.1990 suggested the Respondent No. 4 to obtain Government sanction for grant of pension/gratuity in favour of the individual. Accordingly, the fourth respondent referred the matter for sanction of pension as per Order of CDA (Pension) Allahabad to the first

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Respondent vide letter dated 19.04.1990. Reminders were sent for expediting the claim of pension.

Finally, on 24.03.1992 the fourth respondent was informed that the Army Head Quarters had not agreed to his claim for pensionary benefits and that the matter be treated as closed.

4. In the light of the above, the Learned Counsel for the Applicant submits that since correspondences were going on between one section of the department to other section, retaining his case for pension and gratuity benefits, ultimately, the respondents have rejected his claim on 24.03.1992 and he filed this O.A. on 22.03.1992. Therefore, the same is within the time limitation. As against this, the respondents in their reply have stated that the Applicant was retrenched as the depot was disbanded. Admittedly, the respondents have not granted pension to the Applicant as his service documents indicate that though the Applicant was initially confirmed w.e.f. 01.09.1953, the confirmation was cancelled but the reasons for the cancellation of the confirmation could not be detected in the absence of connecting documents. Secondly, as the demand of the Applicant arose on 01.04.1969 and thereafter on 21.03.1993 this Hon'ble Tribunal has no jurisdiction to adjudicate upon the dispute. Thirdly, the alleged cause of action of the applicant is barred by limitation and deserves to be dismissed. The respondents have taken a plea that some entries in the available service documents gave rise to the belief that during the span of his service, the Applicant was punished on many occasion for careless driving, sleeping during duty hours, unauthorised absent, etc. and therefore the cancellation

entry of confirmation become more lucid. The Applicant has been paid a sum of Rs. 3,942.00 during March 1969 on account of retrenchment compensation and Rs. 2,949.95ps. during 09/1969 on account of Government Contribution. It is also stated that the Pensionary benefits were awarded to those who have refunded the Contributory Provident Fund back to the Government during that point of time. This also give doubt on his eligibility to become a pensioner.

5. We have heard the rival contentions of the Learned Counsel for both the parties and perused the records. It is an admitted fact that his re-classification of the post was antedated to 01.09.1950 and accordingly his pay was then refixed w.e.f. 01.09.1950 superseeding the earlier pay fixation and annual increments. While cancelling the casualities of increments dated 24.10.1956 and 24.10.1957 by error the confirmation entry was also cancelled with the increments casualities. This appears to be a genuine clerical mistake which is admitted by the respondents vide their letter dated 05.02.1990 wherein it is stated at para 5, which is reproduced below :-

(b) ✓

"On scrutiny of service documents in respect of the above named individual, it has now been revealed that the confirmation entry in the Service Book was erroneously cancelled alongwith the Casualties of increments. The factual position of cancellation of confirmation entry is as under :-

(a) The individual was initially re-classified from Driver Gde to VM/MV w.e.f. 05 Oct 51 and his pay was fixed vide Part II Order No. 64/58 (Page 5 of Service Book 1). Subsequently his reclassification

antedated to 01 Sep 50 vide Part II Order No. 84/61 (Page 2 of S/Book II). His pay was then refixed wef 01 Sep 1950 superseding the earlier pay fixation and increments. In that while cancelling the casualties of increments dated 24 Oct 56 and 24 Oct 57, the confirmation entry was also cancelled alongwith the increment casualties which is a bonafide clerical error."

Therefore, it is stated as a bonafide clerical error because confirmation entry alone is not cancelled quoting the separate part II order authority. The authority quoted as Part II Order is pertaining to revision of pay fixation and grant of revised increments cancelling the earlier pay fixation and increments. Under the circumstances explained at para 5 above, the individual is confirmed in the rank of VM/MV. To avoid technical audit observation the confirmation entry is re-entered on page 4 of service book part III duly signed by H.O.O.

6. Further, assuming that the Applicant's confirmation was to be cancelled and his services were to be treated as temporary, he would have been entitled to a show cause notice and an opportunity of being heard against the proposed order as it sought to change the terms and conditions of his service. However, no such notice was issued nor was any opportunity given to him to plead against the cancellation. It is also an admitted fact that similarly placed employees as that of Applicant who had been discharged from services, following closure of DUV, their confirmat-

ation was not cancelled and they have been paid pensionary benefits. He has quoted in his O.A. two three names, who were also similarly situated as that of the Applicant and they were drawing pensions. Since the respondents issued three months notice to the Applicant, it confirms that he is a permanent employee, otherwise, the question of issuing three months notice does not arise.

7. The Respondents state that the Applicant is not confirmed and that the said contention is not supported by any documentary proof and also submitted that the petition is barred by time, and other facts, they have not disputed such as regarding the payment of pension to others, who have been discharged alongwith the Applicant and it is quite apparent, that due to sheer negligence or careless attitude on the part of the respondents, they did not put up the requisite papers for sanction of pension to the Higher Authorities and it is clear from the above, that the cancellation was not the confirmation order already issued to the Applicant but the cancellation was necessitated on account of re-fixation of pay, they were forced to cancel the earlier order. Further, it can be said that the cancellation of confirmation order is in tune with the service jurisprudence. Undisputedly, the subject matter is under correspondence between various wings of the department and ultimately the intimation was given to the Applicant only on 24.03.1992 and on receipt of the same, within a year's time, he filed this O.A. for the present reliefs. Therefore, I am of the view, that the plea of limitation raised by the Respondents is not tenable and the same is rejected. Similarly, the cancellation of the confirmation order is not sustainable and is rejected.

*(Signature)*

8. During the course of hearing, the Learned Counsel for the Respondents Shri R. K. Shetty, draws my attention to CSR Rules 481 by virtue of which he submits that the compensation of the invalid pension shall be payable only on completion of not less than 30 years of service. The Applicant has not fulfilled the aforesaid condition, therefore, he could not be paid any pensionary benefits. This plea, he has not taken either in the pleadings or mentioned in any of their correspondences to the Applicant. Admittedly, the Applicant has put in nearly 24 years of continuous service, which has not been disputed by the Respondents. The mere fact they have allowed him to opt for the pensionary benefits in the year 1975, after his retirement in the year 1969 itself indicates, that apart from the Applicant, they have allowed to other employees to opt for pensionary benefits if they choose to do so. It is not the case of the respondents that the Applicant had not availed to opt for the pensionary benefits. In their letter dated 05.02.1990 they have stated that the Applicant had opted for the pensionary benefits. It is unfortunate that the respondents have given a deaf ears to the plea of the Applicant for a considerable period of 25 years without going into the merits of the case.

9. In this connection, the Learned Counsel for the respondents draws my attention to the decision rendered by this Tribunal vide dated 06.09.1993 in O.A. No. 945/92 Shri J. Y. Pagare v/s. Union Of India. He states that the aforesaid decision is similar to the facts of this case and the same is binding on the Tribunal. On perusal of the same, I find that in that case the Applicant has put in nearly 20 years and he has not been confirmed. That was only a temporary employment. Besides that, the D.P.C. held on 05.05.1961 had considered the

case of the Application but he was found not fit for confirmation. In that case, the Applicant has superannuated. Therefore, the present case is clearly distinguishable from that of the case cited above because in the present case, the Applicant has not superannuated. Further, he was confirmed in the grade in which he was working. The said confirmation was inadvertently cancelled by the authorities, which under any circumstances, they were unable to justify the same. They have not adduced any documentary or any oral evidence to support that stand. Therefore, the said judgement would not be of any use for the respondents in relying upon their proposition.

10. It may be recalled that the Applicant is only a Class-IV employee and the treatment meted out to him by the respondent is considered to be very harsh, especially, having put in nearly 24 years of service. The respondents are not justified in denying the pensionary benefits in order to cover up their negligence and frauds. It is not the case of the respondents that the Applicant has concocted the documents. On the other hand, the respondents themselves have taken up the case of the Applicant, but the rejection was made only on the technical plea that the confirmation order has been cancelled and no concrete cogent correspondence is forthcoming from the respondents.

11. In the light of the above, I am satisfied that the denial of the pensionary benefit is not at all justified and in the result the O.A. is allowed. As stated earlier, the application is not barred by limitation.

12. It may be observed that the loss

suffered by the Respondents be recovered from the erring officers.

13. In the circumstances, the following directions/orders are issued to the respondents :-

- (i) The Applicants service may be treated as confirmed w.e.f. 01.09.1953 as per the entry vide DUV Part-II No. 33 dated 24.05.1957.
- (ii) The Respondents are directed to pay the pensionary ~~and other~~ allied benefits as contemplated in M.O.D. dated 10.09.1975 within a period of three months from the date of receipt of copy of this order.
- (iii) In the light of the reasonings stated above, the question of re-confirmation of the Applicant's service does not arise.
- (iv) The respondents are directed to re-calculate the pension, gratuity (DCRG) and other dues within a period of three months, after deducting the amount which has already been received by the Applicant. Regarding CPF benefits, Retrenchment Compensation due if any, the same may be paid within a period of three months from the date of receipt of copy of this order.
- (v) The respondents are directed to pay interest @ 12% for the belated payment of pensionary benefits to the Applicant from 1992 till the payment is made, whichever is later.

14. In the light of the above, the O.A.  
is disposed of. No order as to cost.

( B. S. HEGDE )

MEMBER (J).

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