

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 1366/1994

Date of Decision: 23/8/96

Mrs.S.G.Mantri

Petitioner/s

Shri V.H.Kulkarni for Sh.V.B.Raikar

Advocate for the
Petitioner/s

V/s.

Union of India & Ors.

Respondent/s

Shri R.K.Shetty

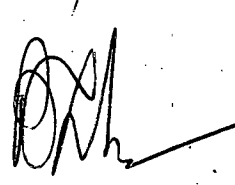
Advocate for the
Respondent/s

CORAM:

Hon'ble Shri P.P.Srivastava, Member (A)

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 ? ☒


(P.P.SRIVASTAVA)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 1366/94

this the 23rd day of August 1996

CORAM: Hon'ble Shri P.P.Srivastava, Member (A)

Mrs. Sumati Ghanashyam Mantri
residing at Shamsunder Co-op.
Housing Society, near Rajendra Nagar,
Pune.

By Advocate Shri V.H.Kulkarni
holding for Shri V.B.Rairkar

... Applicant

V/S.

1. Union of India through
Secretary, Govt. of India,
Ministry of Defence,
New Delhi.
2. Head Quarters, M.N.G.Area(MED)
Colaba, Bombay.

By Advocate Shri R.K.Shetty
C.G.S.C.

... Respondents

O R D E R

(PER: Shri P.P.Srivastava, Member (A))

The applicant was appointed as Family Welfare Extension Educator in 1965 and has continued to work in that post and was compulsorily retired on 17.11.1986 in terms of Rule 56-J of the F.R. The applicant through this OA. has prayed that she should be paid all the pensionary benefits which has accrued to her as a result of compulsory retirement.

2. The counsel for the respondents has, at the initial stage, taken the plea that the applicant was retired in 1986 and she has filed the application in 1994, after a lapse of 8 years and therefore the application is barred by limitation. I am not agreeable to accept the plea of the respondents in as much as the non-payment of pensionary benefits is continuous cause and that the applicant has not



been paid the pension and cause for non-payment of pensionary benefits accrues ^{continuously} 1, therefore, do not accept the plea of limitation in this case.


3. Counsel for the applicant has submitted that the applicant has been representing to the administration about her confirmation but the respondents have not taken any action to confirm her although many vacancies were available for confirming her. The counsel for the applicant has further submitted that in any case, the applicant has been in service for 20 years or more and has been compulsorily retired under Rule 56-J, she should be treated as entitled to pension and should be given pensionary benefits.

4. The respondents in the written reply have brought out that the Office of the Family Welfare Centre at the Military Hospital, Khadakwasala submitted the papers of the applicant of the pensionary benefits to the Accounts Officer, CDA (Pension) Allahabad but the same has been sent back to the department with the remark that the applicant is not holding any substantive post and therefore the pension is not allowed to her in terms of Rule 48 read with Rule 13 of CCS(Pension) Rules, 1972. Thereafter the matter was taken up with the Ministry of Defence for according a special Government sanction for granting pension, etc. to the applicant. However, the Government has not agreed for the same in their reply which is placed at Ex. 'R-3' which is dated 30.4.1993.



5. Respondents have not brought out any material to show why the applicant has not been confirmed from the date when she was appointed in 1966. Nowhere the respondents have brought out that the applicant was not confirmed for the lack of vacancy. The respondents have put on record 'Ex.R-2' dated 23 Dec.'86, wherein it has been mentioned that the name of the applicant was considered by the DPC during May, 85 but she was not found fit for confirmation. However, the respondents have not showed any material that for confirmation the applicant was considered before May, 1985 or not. I am of the opinion that the applicant has a right to be confirmed if the vacancies were available. Since she has been working against the sanctioned post, there certainly was a vacancy for confirming the applicant. Confirmation as such does not require any records of service except that the employee is serving in the department and the post is available for confirmation. The question of confirmation is to be considered after the period of probation or training but no such material has been shown to show that the applicant has been considered for confirmation in the initial stage of service. I am, therefore, of the opinion that the action of the respondents in not confirming the applicant even when she has worked for 20 years cannot be condoned.

6. In the facts and circumstances of this case, and after hearing both the parties, I declare that the applicant should be treated as confirmed in service and she should be paid the settlement dues as if she is confirmed.



7. Applicant has come to the Tribunal on 5.8.1994, although she has been compulsorily retired on 17.11.1986, she will therefore be entitled to the actual payment of pension from 5.8.1993 onwards. All the pensionary benefits to the applicant should be paid within a period of three months from the date of receipt of this order which should include pension, gratuity and all other payments due as a result of retirement. Any dues which are not paid within a period of three months would be entitled to interest of Rs.12% p.a. till the date of payment. In the facts and circumstances of this case, I am of the opinion that the applicant has been forced to approach the Tribunal because of the callous attitude of the administration and, therefore, I award the cost of Rs.500/- to the applicant to be paid within a period of three months from the date of receipt of this order.


(P.P.SRIVASTAVA)

MEMBER (A)

mrj.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

R.P.NO. 94/96 in OA.NO. 1366/94

Thursday this the 7th day of November 1996


CORAM: Hon'ble Shri P.P.Srivastava, Member (A)


Mrs. S.G.Mantri ... Applicant

V/S.

Union of India & Ors. ... Respondents

Tribunal's Order by Circulation

In this Review Petition the applicant has prayed that the entitlement of actual payment of pension should be ^{from} 18.11.1986 instead of 5.8.1993. The claim of the pension was considered and the applicant was given the relief of entitlement of actual payment of pension from 5.8.1993 onwards in view of the fact that the applicant has come to the Tribunal on 5.8.1994. The question of actual payment was decided in the OA. on the basis of limitation as applicable to the OAs.  filed in the Tribunal. The present review petition does not bring out any error in the judgement on the face of record. The applicant has also not brought out any new thing which was not available on record when the OA. was decided. The Review Petition is, therefore, dismissed in limine.


(P.P.SRIVASTAVA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

R.P.No.109/96 in OA.NO. 1366/94

Monday this the 17th day of February, 1997

CORAM: Hon'ble Shri P.P.Srivastava, Member (A)

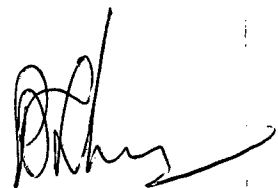
Union of India & Ors. ... Applicants
V/S.

Smt.S.G.Mantri ... Respondent

Tribunal's Order by Circulation

In this Review Petition the petitioners have brought out that there was no permanent post from the date of appointment till the year 1983. They have also brought out that the applicant never held any post on a substantive/permanent basis. The Review Applicant has mentioned that this information was not available during the hearing of the OA. This submission does not seem to be factually correct. The petitioner has brought out in their reply to OA, in Para 12 that the applicant's case was considered for confirmation during May, 1985 but she was not found fit for confirmation. These submissions in written statement are similar to the above assertions.

2. Moreover, the information was not such as it could not have been produced at the time of original hearing with due diligence. The Review Petition has not brought out any error apparent on the face of record. The Review Petition is, therefore, dismissed in limine.


(P.P.SRIVASTAVA)
MEMBER (A)

mrj.