CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 424/94

Transfar Application No: --

DATE OF DECISION: 14-8-95

Smt.Anusuya Shantaram Palande
Petitioner

Mr.D.V.Gangal
Advocate for the Petitioners

Versus

U.O.I. & Ors.
Respondent

Mr.R.K. Shetty
Advocate for the Respondent(s)

CORAM :

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

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 ? X

M.R.Kolhatkar

(M.R.KOLHATKAR)
Member(A)

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Received copies of Petition Produced in the court on 20/11/95. Urgent

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.424/94

Smt.Anusuya Shantaram Palande,
Bldg.No.24, Room No.6,
Colaba Cuffe Parade Transit Camp,
Colaba,
Bombay - 400 005. .. Applicant

-versus-

1. Union of India
through
Adjutant General Branch,
Army Head Quarters,
DHQ P.O.,
New Delhi - 110 011.

2. The General Officer
Commanding,
Head Quarters
Maharashtra/Gujarat Area,
Colaba, Bombay - 400005.

3. The Controller of Defence
Accounts(Pension),
Allahabad. .. Respondents

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

Appearances:

1. Mr.D.V.Gangal
counsel for the
applicant.

2. Mr.R.K.Shetty
counsel for the
respondents.

JUDGMENT: Date: 14-8-95
(Per M.R.Kolhatkar,Member(A))

In this application u/s.19 of the Administrative Tribunals Act,the relief claimed is for declaration that the applicant's husband was entitled to pension and the applicant is entitled to family pension and to direct grant of this relief with all arrears with interest.

2. The applicant's husband is stated to have worked as Messenger-cum-Gardner in the office of respondent No.2 from 1-1-1961 till 1-1-1980. It appears to be an error and perhaps the

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applicant wanted to mention 1-1-1981. The respondents have conceded that the applicant was in their service from 20-3-61 till 29-12-1980 on which date he was compulsorily retired.

3. According to the applicant, the award of punishment of compulsory retirement was imposed on the applicant's husband on the ground that he was unauthorisedly absent but the fact that the unauthorised absence was due to loss of his son and the shock received by him was not taken into account and the applicant's husband was unjustly made to retire. Moreover he was ~~xkxx~~ stated to be a quasi-permanent employee and not a permanent employee and on that ground Govt. denied him the pension. The applicant's husband had filed an appeal dated 30-4-81 against compulsory retirement which is seen at Annexure A-3. A letter rejecting the appeal dt. 5-8-91 is filed at Annexure A-4, though this letter refers not to the appeal dt. 30-4-81 but to other correspondences. It appears that the applicant after almost 12years made a representation for pension on 29-7-93 which is not on record but a reminder dt.8-9-1993 is at Annexure-A6. Reply was sent to this letter on 13-09-1993 asking him to meet the Administrative Officer on 21-9-93. But in the meanwhile the applicant expired on 17-9-93 vide annexure A-5. Thereafter the widow wrote a letter on 27-10-93 Annexure A-8 asking for arrears of pension and family pension to which a reply was sent on 29-10-93 Annexure A-1 informing her that as her husband was a quasi-permanent employee, he is not entitled to any pension/gratuity benefits. It is this communication which has been impugned by the applicant.

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4. The application has been resisted by the respondents. According to them the applicant was in service from 20-3-1961 and was compulsorily retired on 29-12-1980 and as such he has completed 19years, 9months and 9 days of service. Out of this he has illegally absented himself from duty for 697 days and after reducing the same from qualifying service for pension the net qualifying service works out to 17 years, 10 months and 12 days. He was declared as quasi-permanent employee. From the perusal of the service records & inquiry proceedings, it is stated that, it appears that he was not confirmed as permanent employee as he was frequently absenting himself from duties which dislocated the normal day to day work. He applied for pension after a lapse of 12 years but even before such an application, the office had sent the pension documents in May,1981 to the CCDA(P) Allahabad who had returned the documents stating that Shri SR Palande was quasi-permanent employee and was not entitled for pensionary benefits. (Exhibit R-1 to written statement)

5. Subsequently, the applicant amended the application which amendment was allowed on 10-2-1995. In this amendment the applicant has stated that her husband was working as a Nayak in the Indian Army and did active service from 10-10-1941 to 12-6-1947. He has been paid war gratuity of Rs.123.40 and gratuity of Rs.102/- but still his war service rendered by her husband was not counted. Therefore, the total service put in by the husband of the applicant is 26½ years and on that basis the applicant's husband should be granted pension and the applicant should be granted family pension. The applicant has also

referred to IVth Pay Commission according to which even temporary employee is entitled to pensionary benefits of Rs.375/- w.e.f. 1-1-1986.

6. In their additional reply, the respondents have stated that since the applicant's husband was not confirmed(declared permanent)in the civil post, the applicant is not entitled to any pensionary benefits under the CCS(Pension)Rules,1972. As regards the demand of applicant for family pension the respondents had earlier stated that the recommendation of the IVth Pay Commission would not apply to the applicant because the Govt. servant in question was retired compulsorily without pension on 29-12-1980 i.e.much before 1986. The respondents have additionally stated that under Rule 54(2)(b) of the CCS(Pension) Rules,1972, the family of Govt.servant who dies after retirement from service and was on the date of death in receipt of a pension, is only entitled to family pension. Further, the respondents have also enclosed Govt. of India Ministry of Home Affairs O.M. No.38(16)-Pension Unit/80 dt. 30-12-80 according to which the minimum service for temporary employee to be eligible for pension was specified as 20 years. To quote the CPRO in question:

> "The question of grant of pension to Government servants who retire after long years of service without being confirmed in any post has been under the consideration of the Government. The position has been reviewed and the President is pleased to decide that a Government servant who on his retirement from service on attaining the age of superannuation or on his being declared

to be permanently incapacitated for further Government service by the appropriate medical authority after he has rendered temporary service of not less than twenty years shall be brought within the purview of CCS(Pension)Rules, 1972 and the condition of holding a pensionable post in a substantive capacity shall be dispensed with in his case. Consequently, such a Government servant will be eligible for the grant of superannuation or invalid pension, death-cum-retirement gratuity and family pension in accordance with the provisions of the aforesaid rules.

2. For computing temporary service for the purpose of the preceding para of this Office Memorandum, the spells of service which are treated as non-qualifying under the CCS(Pension)Rules,1972 shall be ignored. Interruption(s) in service shall amount to forfeiture of past service unless such interruptions are condonable under rule 28 of the CCS(Pension)Rules,1972,"

7. At the argument stage, the counsel for the respondents raised a preliminary objection that the O.A. is not maintainable on the ground of limitation. For this purpose he relied on the judgment of a division bench of this Tribunal in J.A.Sams vs. U.O.I. & anr. to which I was a party. 1994(2)SLJ 328. However the applicant relied on the case of Smt.Laxmi Vishnu Patwardhan v. Secretary,Railway Board & anr.,ATR 1988(2)CAT 49. In para-6 of that judgment the court held that "a just claim for pension and family pension cannot be allowed to be whittled down on the ground of delay." It is true that in J.A.Sams' case we have held that the limitation applies to pension matters. This was in the context of the general contention raised that pension being a monthly payment the cause of action arises from month to month.

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While the general proposition that merely because pension is a monthly payment, limitation does not apply does not appeal to us, we are required to consider the facts and circumstances of the case before rejecting an O.A. on the grounds of limitation especially keeping in view the provisions of Section 21 of the A.T. Act. In this particular case, we note that the applicant had raised the issue of pension though after a lapse of 12 years from the date of rejection of his representation regarding compulsory retirement, but the respondents had entertained the representation and asked the applicant to meet the concerned officer on 21-9-93, on which date the applicant was no more. His petition for pension and consequent grievance about non receipt of pension was pursued by his widow and the same was negatived by the respondents by their letter dt. 29-10-93. The application was filed on 12-3-94. In our view, therefore, the plea of O.A. being time barred is not sustainable and is rejected.

8. The applicant contends that her husband was entitled to pension and she is entitled to family pension by virtue of Rule 49(2)(b) according to which the minimum length of qualifying service is ten years. However, the rule 49 in its amended form came into force on 20th July, 1988. When the applicant's husband retired well prior to this date, he cannot take advantage of the amended Rule 49(2)(b). We are, therefore, required only to count the length of service

as rendered by the applicant's husband at the time of his compulsory retirement and see whether according to the then prevalent Rules, whether he is entitled for pension. The respondents have brought out CPRO 33/81 of which detailed extracts have been given above which show that w.e.f. 30-12-80 minimum qualifying service for a temporary Govt.servant was 20 years whereas the applicant had completed a chronological service of 19years, 9 months and 9 days only of which qualifying service was only 17years, 10 months and 12 days. Thus the applicant's husband was not entitled to pension acco ding to that CPRO which however came into force one day after the retirement of the applicant. It is seen from the letter dated 19-5-81 from CDA Allahabad that the individual retired as quasi-permanent employee and as such in accordance with the existing rules he is not entitled to pension/ gratuity awards.

9. Counsel for applicant contends that it was not his fault that he was not declared as a permanent employee. The respondents contend that the record of the employee was most unsatisfactory. He was awarded penalty of stoppage of increment by order dated 26-4-75, subsequently by order dated 25-2-1977 and for the third time by order dated 23-9-1978. The service book shows that he was chargesheeted on 16-10-80 for absenting from duty without permission and without even prior intimation w.e.f. 9-9-80 and when expressly ordered to rejoin duties in writing, failed to do so and continued to remain absent till 22-12-80 and hence the punishment of compulsory retirement was awarded.

10. The applicant relies on the judgment of G.S.Pawar vs. U.O.I., O.A.717/92 decided by this Tribunal on 24-8-1994. In that case the issue involved was that the applicant was not confirmed although a vacancy was kept for him and he had passed confirmation examination and the applicant had completed more than 10years of qualifying service. The applicant was denied pension only on the technical ground that there was no confirmation order. The Tribunal relying on the ratio of Supreme Court judgment in B.G.Kajrekar vs. Administrator, Dadra & Nagar Haveli & Ors.1993 II CLR 678 held that the applicant was entitled to be confirmed in terms of ratio of that judgment and department was directed to sanction and pay compulsory retirement pension in terms of Rule 13 of CCS(Pension)Rules,1972.

11. It appears to us that on facts, the judgment in G.S.Pawar's case does not apply in this particular case because in that case the non confirmation of the applicant was a mere technicality. However, we have perused Kajrekar's judgment, in para 4 of which the Supreme Court has observed as below :

> "4. It is not disputed that the post of Chief of Police under Dadra and Nagar Haveli Administration was declared permanent with effect from June 14,1967. On the date the appellant had already put in about thirteen years of service but his case for confirmation was not considered on the ground that there were no recruitment rules for the post in existence. The recruitment rules for the post of Chief of Police under the Administration of Dadra and Nagar Haveli came into force on January 19,1980. The said rules provided "by transfer on deputation" as the method of recruitment to the post of Chief of Police. The

recruitment rules have no relevance to the question of confirmation of the appellant as he had retired from service on January 31,1977 much before the coming into force of the recruitment rules. It was incumbent on the respondents to have considered the question of confirmation of the appellant before his retirement, specially when he was being retired after serving the respondents for twenty-three years. It was wholly arbitrary on the part of the respondents to have kept the appellant as an unconfirmed employee for a period of twenty-three years on the ground that there were no recruitment rules for the post he was holding."

The reasons as to why the Supreme Court granted relief of deemed confirmation are given in paras 5 & 6 of the judgment which are reproduced below:

"After the publication of the recruitment rules a Departmental Promotion Committee was convened on July 4,1981 for considering the question of confirmation of the appellant as Chief of Police. The Departmental Promotion Committee did not recommend the appellant for confirmation on the ground that during the course of his service, two departmental enquiries were instituted against the appellant. The enquiries could not be completed before the appellant's retirement and the findings were made available thereafter. The proceedings of the Departmental Promotion Committee further show that as a result of the enquiries Rs.4000 were to be deducted from the gratuity amount of the appellant as a measure of punishment. The Departmental Promotion Committee found that the confidential reports of the appellant for the last three years were good but the Committee declined to recommend confirmation because of the two enquiries.

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> DPC should have considered the appellant for confirmation on the basis of the record of the appellant as existed in the year 1967/1968.
>
> ....
> We,therefore,hold that the appellant having served the respondents for about thirteen years on June 14,1967 when the post of Chief of Police was made permanent and there being nothing adverse against him at that point of time, he was entitled to be confirmed in the said post."

12. In this particular case, however, the respondents are not very specific on the issue of confirmation or rather the conversion of quasi-permanent status into permanent status. It is wellknown that after the recent amendment of F.R., the question of confirmation is delinked from that of availability of vacancy. However, in the present case the applicant is deemed to be governed by Central Civil Services (Temporary Service)Rules,1965. Under Rule 3 of these rules a Government servant shall be deemed to be in quasi-permanent service :- (i) if he has been in continuous temporary service for more than three years; and (ii) if the appointing authority,being satisfied, having regard to the quality of his work, conduct and character, as to his suitability for employment in a quasi-permanent capacity under the Government of India, has made a declaration to that effect. It is seen from the service book of the applicant that quasi-permanent declaration in respect of applicant's husband was made by order dated 24-7-72 and the applicant was declared as quasi-permanent retrospectively w.e.f. 20-3-63 against the post of Gardener. A perusal of rules shows that a quasi-permanent employee is not terminated under Rule 5 by a simple notice. Rule 9 says that a quasi-permanent

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employee is on par with a permanent employee in matters of leave, allowances and disciplinary matters. Rule 7 provides that a quasi-permanent servant is terminated in the same manner as a Govt. servant in permanent employment or when a reduction has occurred in the number of posts available. There is nothing to show that a reduction in establishment of the Respondents had occurred precluding confirmation of the applicant in due course after a Hearing quasi-permanent status. The applicant, therefore, contends that in effect the applicant's husband was penalised much earlier than 1980 by not being made permanent. The respondents appear to contend that the services of the applicant were not found satisfactory in view of the service record. The definition of permanent and temporary given in F.R. may hereby referred to. According to FR 9(30) temporary post means a post carrying a definite rate of pay sanctioned for a limited time. According to FR 9(22) Permanent post means a post carrying a definite rate of pay sanctioned without limit of time. In the factual background, it is very difficult for us to see as to how the post of Gardener with respondent No.2 can be treated as a temporary post. The applicant was working in that post w.e.f. 1961 to 1980. There is no indication in the service book that a conscious decision was taken not to declare the applicant's husband as permanent in status. The applicant's husband was awarded penalty in April'75, February '77 and September'78. Thereafter he was chargesheeted for the absence for a few days and his explanation/ clarification for his then absence does not appear to have been taken into account. The penalty of

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compulsory retirement was imposed on him on 29-12-80 for absence of a few days. It, therefore, appears to us from the perusal of the service record that it was unfair on the part of the respondents to not to have converted the status of the applicant from quasi-permanent to permanent earlier. He was declared quasi-permanent in 1963 and there does not appear to be any adverse remarks against him till the first punishment of stoppage of increment was imposed on him, i.e. April, 1975, i.e. to say for his record of service for 12 years after getting quasi-permanent status was blemishness. The facts of the case, therefore, appear to be analogous to the case of B.G.Kajrekar v. Administrator, Dadra & Nagar Haveli & Ors referred to earlier where inspite of the long years of service of the applicant, the DPC did not consider the case of the applicant for promotion on the ground that he was not holding a confirmed post on the ~~xx~~ ground of a subsequent enquiry against him. The pleadings of the respondents on this point are ambivalent, because the pleadings are in the following terms "From the perusal of his service records and inquiry proceedings it appears that he was not confirmed as permanent employee as he was frequently absenting himself from duties which dislocated the normal day to day work." However, as observed by us above, the record of absenteeism began to appear from 1975 and there is no clarification as to why he could not be declared permanent between 1963 to 1975. We also note that for the absence of a short period the extreme penalty of compulsory retirement was imposed in 1980. In our view, this is a case in which non declaration of the applicant was permanent has to be treated as a technical lacuna especially when there is no pleading

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