

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 1009/95

Date of Lecision 13.03.1996

M.S.I.Shah

Petitioner

Mr. S.P.Kulkarni

Advocate for the Petitioner.

Versus

U.O.I. & 3 ors.

Respondent

Mr. V.S. Masurkar

Advocate for the Respondents.

Coram:

The Hon'ble Mr. V. Ramakrishnan, Member (A)

The Hon'ble Mr.

1. To be referred to the Reporter or not? Mo

2. Whether it needs to be circulated to other  
Benches of the Tribunal? Mo

*MR. V. RAMAKRISHNAN*  
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6  
PREScot ROAD, MUMBAI-1

O.A.No. 1009/95

DATED: THIS 13th DAY OF MARCH, 1996

Coram: Hon. Shri V. Ramakrishnan, Member(A)

M.S.I. Shah  
13 Tayabi Manzil  
4th Road, Prabhat Colony  
Santacruz (E)  
Bombay 400055  
(by Mr. S.P. Kulkarni, Counsel) ..Applicant

v/s.

Union of India through  
Superintendeing Engineer (Elect.)  
Bombay Central Electrical Circle  
CPWD, 2nd floor; New CGO Complex;  
Nishtha Bhawan, 48 Vithaldas  
Thakersey Road, New Marine Lines,  
Mumbai 400020 & 3 ors.  
(By Mr. V.S. Masurkar, Counsel) ..Respondents

O R D E R  
(Per: V. Ramakrishnan, Member(A))

The Applicant in this case was serving in the Central Public Works Department (C.P.W.D.) and was sent on deputation to National Bank for Agriculture and Rural Development (NABARD) with effect from 1.1.1987. Initially the period of deputation was for two years which got extended by a further period of three years upto December 1991. Sometime in November 1991 NABARD asked for the applicant's option as to whether he would like to get permanently absorbed to which the applicant conceded and the CPWD also approved the proposal for the permanent absorption of the applicant in NABARD on 22.12.92. As the applicant's date of birth was 3.1.1935 he retired

from service 31.12.1993. In the meanwhile the proposal for his permanent absorption was being processed and on 2.3.1994 formal Government sanction was issued for absorbing him in NABARD w.e.f. 1.1.1992. As the formal order was issued only in March 1994 some of the retirement benefits due to the Applicant were released some months thereafter, even though on his absorption retrospectively w.e.f. 1.1.92 he is deemed to have been retired from <sup>service</sup> the Government, on that date. The Applicant has been aggrieved by the fact that there has been a delay in release of the various retiral benefits and claims interest thereon. He also submits that he has been allowed only 2/3rd of the Full Pension i.e., after deducting 1/3rd pension for commutation even though he has not been paid the commuted value of the Pension. He prays for release of full pension for this period with interest on the delayed payments.

2. I have heard Mr. S.P. Kulkarni, Counsel for the applicant and Mr. V.S. Masurkar, Counsel for the respondents. From the respondent's reply it is seen that the applicant's contention that various entitlements are paid to him only in the second half of 1994 has not been disputed. Shri Masurkar, however, submits that as the question of absorption of applicant in NABARD was under consideration, which no doubt got a little delayed, the question of sanction of his retiral benefits would arise only when the formal sanction dated 2.3.1994 was issued retrospectively absorbing the

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applicant in NABARD with effect from 1.1.1992 and ~~was~~ deemed to have ~~been~~ retired from Government service with effect from that date. The reasons as to why proposal for absorption took such a long time to be processed has<sup>'</sup> not been clearly brought out.

3. Shri Kulkarni <sup>for</sup> contested that the delay is purely due to administrative lapses, including the unduly long time taken by the department to process the proposal for the applicant's absorption in NABARD and the delay cannot be attributed to any lapse on the part of the Applicant and therefore he is rightfully entitled to the reliefs sought for. He also draws my attention to the Supreme Court judgment in R. KAPUR V. DIRECTOR OF INSPECTION (PAINTING & PUBLICATION) INCOME TAX AND ANOTHER, JT 1994(6) S.C.354 and also the judgment of the Tribunal in PRITAM SINGH V. UNION OF INDIA, 1991(1) ATJ 600, which he says will clearly show that the applicant has got<sup>'</sup> legal right for what he is claiming.

4. I have ~~carefully~~ considered the rival contentions and the reasons for delay in payment of the ~~retiral~~ benefits. Even though the applicant is deemed to have retired from 1.1.92, obviously on account of the fact that an order was issued on 2.3.94 which retrospectively absorbed him in NABARD from January 1992,  the fact remains that the applicant consented for his absorption in NABARD only when about a year was left for his normal superannuation <sup>for</sup> retirement and in fact

the Applicant retired with effect from 31.1.1993 from NABARD and was brought over to the pension establishment. Mr. Kulkarni states that no adjustment was made from the pay of the applicant at NABARD on account of pension from 1.1.92 to 31.1.1993. If the applicant had not been absorbed in NABARD he would have retired as a Central Government servant on 31.1.93, but it so happened that he retired as a NABARD employee. In the absence of absorption he would have been entitled to get his retiral benefits immediately on the date   of his superannuation i.e., on 31.1.93. The position in respect of release of various retiral benefits as brought out in the O.A. were also confirmed by the respondents in their written statement which reads as follows:

	AMOUNT	DUE DATE	PAID ON
D.C.R.G.	56,875/-	1.1.92	7.10.94
Leave Encashment	44,800/-	1.1.92	27.10.94
GPF contribution with interest	41,213/-	30.9.93	10.7.95
Commuted value of pension	69,776/-	1.1.92	NOT YET PAID
Pension	2/3rd		2/3RD PENSION PAID FROM 1.4.95 ONWARDS IN RESPECT OF PENSION DUE FOR MARCH 95
			NO ARREARS OF PENSION PAID
CGEIS	7,192/-	1.1.92	6.1.95

The various retiral benefits have been calculated by the applicant with effect from 1.1.1992 i.e., the date of his absorption in NABARD instead of 31.1.1993 which would have been the date in case of his normal date of super-annuation. Mr. Masurkar submits that the applicant drew full salary from NABARD from 1.1.1992 to 31.1.1993 without any adjustment for pension. In the facts and circumstances of the case I hold that the applicant is entitled to interest and other reliefs sought for as under:

1. D.C.R.G.:

Interest @ 12% per annum be paid with effect from 1.5.1993 upto 7.10.1994, as DCRG was paid on 7.10.1994 to the applicant.

2. Leave Encashment:

Interest @12% per annum from 1.2.1993 upto 27.10.1994.

3. G.P.F. Contribution:

It is not in dispute that the GPF was paid to him only in July 1995 but the respondents state that the delay is on account of some internal correspondence.

The applicant cannot be made to suffer for the same and therefore interest @12% per annum be paid to him upto 30.6.95 as the amount was released in the beginning of July, 1995.

4. Commututed value of Pension:

Shri Kulkarni, I.d. Counsel for the Applicant submits that the Commuted Value of Pension has not been received by the Applicant till to-date. Shri Masurkar, I.d. Counsel for the respondents states that formal ~~sanction~~ has been issued authorising the Bank to make payment of the commuted value, however the actual acknowledgement from the Bank has not been received so far. The applicant would be entitled to interest @ 12% per annum with effect from 1.2.1993 till the date of actual payment.

5. Pension:

It is not in dispute that the applicant has been authorised pension of 2/3rd rate only from the month of March 1995 onwards. The respondents are directed to release the arrears of pension with effect from 1.1.1992 to 31.3.1995 within three months from the date of receipt of a copy of this order. The respondents are also directed to pay interest on the delayed payment @12% per annum from 1.2.1993 onwards viz., from the relevant dates the pension fell due till the date of actual payment.

19/12/95

6. C.G.E.I.S.:

The applicant received a sum of Rs.6,212/- and an additional amount of Rs. 980/- being the refund of contribution from 1.1.1992 to 31.1.93 which makes the total of Rs.7,192/-. The applicant is entitled for interest @12% per annum on this amount from 1.2.93 to 6.1.1995, which is the actual date of payment.

5. It has also been brought to my knowledge that a sum of Rs.1,000/- (Rupees one thousand only) has been held up out of the D.C.R.G. of the Applicant. Shri Masurkar, Counsel, submits that this amount would be released to the applicant as soon as he produces a formal No Objection Certificate (NOC). The respondents are directed to satisfy themselves that no payments are to be recovered from the Applicant within four weeks from the date of receipt of a copy of this order. If there are no dues from the Applicant the ~~sum of~~ <sup>sum</sup> Rs.1,000/- be paid to the Applicant within six weeks thereafter.

6. With the above directions the O.A. is finally disposed of. The Respondents will carryout the above directions within three months from the date of receipt of a copy of this order.  
*No const*

  
(V. Ramakrishnan)  
Member (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH 'GULESTAN' BUILDING NO.6  
PRESOT ROAD, MUMBAI-1

FRIDAY, THIS THE 19TH DAY OF JULY, 1996

REVIEW APPLICATION No. 75/96 IN  
ORIGINAL APPLICATION No. 1009/95

SHRI V. RAMAKRISHNAN .. MEMBER (A)

Mohmed Sharif Ismail Shah,  
13, Tayabi Manzil  
4th Road, Prabhat Colony,  
Santacruz (E),  
Bombay 400 055.

Review Applicant

Vs

1. Superintending Engineer (Elec.),  
Bombay Central Electrical Circle,  
Central Public Works Department,  
(C.P.W.D.), 2nd Floor,  
New C.G.O. Building, Nishtha  
Bhavan, 48, Vithaldas  
Thackersey Road,  
New Marine Lines,  
Bombay - 20.
2. The Director general (Works),  
O/o the Directorate General of  
Works, Central Public Works  
Department, Ministry of Works  
and Housing,  
Government of India,  
(EC.-III Section) Nirman Bhawan,  
New Delhi-110 011.
3. The Pay and Accounts Officer,  
Pay and Accounts Office,  
C.P.W.D., (South-West Zone),  
Ministry of Works and Housing,  
Government of India,  
C.G.O. Annexe, 18th Floor,  
101, Maharishi Karve Road,  
Bombay-400 020.
4. The Pay and Accounts Officer,  
O/o the Central Pension Accounting  
Office, Ministry of Finance,  
Government of India,  
(Special Seal Revisional Authority)  
(Department of Expenditure),  
274, Shaheed Captain Gaur Marg,  
Shri-Niwas-puri, Near Okhla,  
Subzi Mandi,  
New Delhi - 110 065.

Respondents

O R D E R

The Review applicant Shri Mohmed Sharif Ismail

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Shah, has prayed for a review of my order granting interest on delayed payment of retiral dues with effect from 1.5.93 in respect of DCRG. and 1.2.93 in respect of other entitlements upto the date of payment and prays that interest should also be awarded on DCRG leave encashment and pension commutation value from 1.1.92 upto 31.1.93 also.

2. The review applicant was applicant in OA.No.1009/95 disposed of by me on 13.3.96, when I was sitting in Mumbai Bench. This review application has been received by me in Bangalore on 17.7.1996.

3. The applicant, who was a C.P.W.D. employee was initially on deputation to NABARD some time in November 1991, he was asked whether he would like to be permanently absorbed in NABARD to which he consented. The C.P.W.D. also approved this on 22.12.1992. However, the formal order absorbing him in NABARD with effect from 22.12.1992 was issued only on 2.3.1994 and the applicant was deemed to have retired from government service with effect from 1.1.1992. As the applicant retired from NABARD service also on 31.1.1993, on completion of 58 years of age, and as there was considerable delay in release of the retiral benefits by the Government to the applicant who was retired retrospectively from Government service with effect from 1.1.1992, I had ordered payment of interest on DCRG from

contd. ..3..

1.5.1993 and other retiral benefits from 1.2.1993 till the date of payment. This was done keeping in view the fact that even if he had continued in Government service he would have superannuated on 31.1.1993 and also taking note of the submission made on his behalf that for the period from 1.1.1992 upto 31.1.1993, no adjustment was made from his pay on account of pension. The fact that the applicant consented for his absorption in NABARD only when about a year was left for his normal superannuation date was also noticed.

4. In the present review application, the review applicant has contended that the assumption that no adjustment was made from his pay in NABARD on account of pension from 1.1.1992 to 31.1.1993, is not correct. He has included a statement showing that his pay in NABARD was fixed at Rs.3500/- and with total emoluments of Rs.6143/-, whereas if he had continued in Govt. service his pay would have been Rs.3625/- for a year and Rs.3750/- in January, 1993. His total emoluments including Pension in NABARD was only Rs.6143/-, whereas if he had continued under Government, he would have got Rs.6210/- from January, 1992 to June 1992, Rs.6630/- from July 1992 to December, 1992 and Rs.6755/- for January, 1993. He admits that if the pension amount is also added to his salary in NABARD, it would be more than what he would have got in CPWD during the relevant

18/ contd. . . 4..

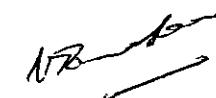
period. He contends that the fact that his emoluments were less in NABARD would show that the adjustment was actually made in respect of Pension due to him from the Government. He further brings out that he was free to negotiate his salary with NABARD.

5. The question of adjustment of Pension is generally viewed in the context that after his retirement his pay in the organisation would have been the last pay drawn minus Pension. Such is not the position here as the pay in NABARD along with Government Pension is much more than the last pay drawn by him under the Government before retirement. In any case, to a specific query, it was submitted on behalf of the applicant that no adjustment was made from his pay at NABARD on account of Pension for the period from 1.1.92 to 31.1.93. The details of the emoluments received by him in NABARD for the period in comparison with what he would have got in CPWD, if he had continued in Government service is obviously within the knowledge of the applicant. It is obviously not a case where any new and important material has since become known which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the O.A. was heard and disposed of.

contd. ..5..

6. It is, therefore, not a fit case for review and the review application is accordingly dismissed.

Note: Review application decided at Bangalore on going through the papers.



(V. RAMAKRISHNAN)  
MEMBER (A)

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29/7/96  
Order/Judgment despatched  
to Applicant respondent(s)  
on 29/7/96

29/7/96

Per Tribunal

Date : 29/7/96

As there will be no Division Bench, the matter fixed on 29/7/96 (holiday) before the Tribunal is adjourned for Admission Hearing / Directions / orders / final hearing on 21/8/96 and 5/9/96.

Inform the advocates / Parties accordingly.

  
Dy. Registrar