

Central Administrative Tribunal, Mumbai Bench

Original Application No. 1049 of 1995

Mumbai, this the <sup>95<sup>th</sup></sup> day of June, 2001

Hon'ble Mr. Kuldip Singh, Member (J)  
Hon'ble Mrs. Shanta Shastry, Member (A)

Shri S.S. Karkera,  
then working as T.O.A. in  
the Office of the Chief General Manager  
Maharashtra Telecommunications  
Maharashtra Circle, Bombay-400001  
and residing at 2/55, Old B.D.D. Chawls  
D.D. Wagh Marg, Dadar (East)  
Bombay-400014

- Applicant

(By Advocate: Shri S.R. Atre)

Versus

1. Union of India, through  
The Member, Department of  
Telecom, Sanchar Bhawan  
New Delhi-1
2. The Secretary,  
Department of Personnel & Training  
Ministry of Personnel (Pension and  
Gratuity), Government of India  
New Delhi-110001
3. The Chief General Manager  
Maharashtra Telecommunications  
Maharashtra Circle, Bombay-400001 - Respondents

(By Advocate - Shri P.M. Pradhan)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant in this OA has assailed order dated 12.9.94 passed by respondent no. 3 whereby he has been denied terminal gratuity after serving for more than nine years under respondent no. 3. He has also prayed that Rule 26(1) of CCS (Pension) Rules, 1972 be declared as ultra vires and unconstitutional.

2. Facts as alleged by the applicant in brief are that, he joined service under respondent no. 3 as LDC w.e.f. 14.8.84. He resigned from the job on

2.8.93 by tendering three months notice to the respondents, stating therein that since he was law graduate and was desirous of practising law, therefore, he wanted to resign from Govt. service. His resignation was accepted by the appointing authority w.e.f. 2.11.93. On the said date, the applicant had completed 9 years, one month and 18 days service in the Department of Telecommunication. After his resignation, the applicant asked for grant of terminal gratuity since he had served the department for such a long period. He also made a representation vide Annexure A-3. He submitted in his representation that as per Clause 4(b) of the Payment of Gratuity Act, he was entitled for terminal gratuity for the period of qualifying service he had put in the department. But the respondent no.3, vide order dated 12.9.94, rejected his representation stating that as per rule 50 of CCS (Pension) Rules, he was not entitled for any gratuity. Thereafter, the applicant preferred a claim before the controlling authority also under the Payment of Gratuity Act, 1972. After having learnt that the Payment of Gratuity Act did not apply to the Central Govt. employees, the applicant withdrew that application.

3. Applicant preferred an appeal before respondent no.1 under the provisions of Rule 23 of CCS (CCA) Rules, 1965 regarding grant of terminal gratuity on the basis of qualifying service and pointed out how he was entitled for grant of pension under Rule 50 of CCS (Pension) Rules. The applicant further states

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that since he has resigned from service after seeking proper permission, so the only point remains opened for interpretation is whether resignation for taking up profession instead of another appointment in Central/State Govt., could be taken as a case under Rule 26 (2) and submitted that Central Govt. servant resigning from service either for taking up a profession or for accepting another service in the Central/State Govt., constitute one single clause and there cannot be any sub-division or sub-classification. Thus it is submitted that the provisions of rule 26(2) are ultra vires and unconstitutional in so far as the restriction of eligibility for concession granted under that rule, restricting thereby the benefits only to those taking up another appointment under the Central or State Government and it amounts to discriminatory treatment to those who resigned from service for bettering their prospects by entering other disciplines. The applicant has also submitted that under the Payment of Gratuity Act, an employee resigning from service after five years, is to be treated as having retired and such resignation entitles him for grant of gratuity and the same provisions are required to be incorporated in CCS (Pension) Rules. Thus the applicant claims that he is entitled for retirement benefits such as gratuity etc.

4. Respondents are contesting the OA. They have pleaded that the representation of the applicant has been rightly rejected. It is submitted that the

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provisions of CCS (Pension) Rules do not require any alteration. These are perfectly constitutional and applicant has been rightly denied the gratuity.

5. We have heard learned counsel for the parties and gone through the records.

6. Learned counsel for the applicant has relied upon a judgement reported in 1996 (2) ATJ 157, A.P.Shukla vs. UOI & ors. wherein it has been held that "resignation is an act by which an employee gives up his job and such resignation amounts to voluntary retirement." He has relied upon another judgement reported in AIR 1990 SC 1808, M/s J.K.Cotton Spg. & Wya. Mills Company Limited, Kanpur vs. State of U.P. & ors. wherein the Hon'ble Supreme Court held that "resignation is not retrenchment rather it is covered by voluntary retirement."

7. On the basis of the above two judgements, learned counsel for the applicant submitted that applicant had sought voluntary retirement and whatever service he had on his credit, he is entitled to retiral benefits for that period.

8. Rule 26 of CCS (Pension) Rules clearly provides the effect of resignation when it says that "resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service." There is no dispute that the case of the applicant being an employee of the Central Government

is covered under CCS (Pension) Rules and Rule 26 (1) in specific terms says that whenever an employee resigns from his service, it entails forfeiture of past service. Resignation cannot be equated with retirement under the CCS (Pension) Rules. Provision for retirement has been specifically provided in F.R. 56 which gives the detail as to how a Government servant shall retire from service and this also takes care of all sorts of retirement such as voluntary/compulsory retirement etc. but resignation has not been equated with retirement. Thus it cannot be said that the applicant having retired from service, is entitled to service gratuity.

9. As far challenge to the vires of Rule 26(2) of CCS (Pension) Rules is concerned, applicant has tried to draw support from the Directive Principles of State Policy - Chapter IV of the Constitution of India, particularly he has relied upon Articles 41 and 43 but on perusal of the same, we find that this also do not give support to the applicant and it cannot be said that rule 26 (2) makes any discrimination between those employees who resign to take up another State or Central Govt. job and those who resign to take up some profession because both the sets of employees belong to different classes and it cannot be said that the employee resigning from Govt. service in order to take up some profession are being discriminated in any manner.

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10. We are also of the opinion that judgements cited by the learned counsel for the applicant are also out of context since they are based on labour laws and not on pension Rules.

11. In the result, we are of the considered opinion that this O.A. does not call for any interference and deserves to be dismissed. It is, therefore, dismissed. No costs.

*Shanta*  
(Mrs. Shanta Shastray)

Member(A)

*Kuldeep*  
(Kuldeep Singh)  
Member(J)

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