

**CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI**

Dated this Thursday the 20th day of August, 2009

Coram: Hon'ble Shri Jog Singh - Member (J)
 Hon'ble Shri R.C.Joshi - Member (A)

O.A.473 of 1997

Dr.Madhukar Shridhar Bhate,
Scientist 'D' (Retd.),
1160, Gharpure Colony,
Shivajinagar.

(By Advocate Shri S.P.Saxena) - Applicant

Versus

1. Union of India
through the Secretary,
Ministry of Defence,
DHQ, PO, New Delhi.
2. The Director General &
Scientific Officer,
(DRDO), Ministry of Defence,
DHQ, PO, New Delhi.
3. The Commandant,
College of Military Engineering,
Dapodi, Pune

- Respondents

(By Advocate Shri R.R.Shetty)

ORAL ORDER

Per: Shri Jog Singh, Member (J)

This is the second round of litigation. Earlier the applicant had approached this Tribunal but his OA was dismissed on 7.10.2002 on the ground that it was hit by limitation as prescribed under Section 21 of the Administrative Tribunals Act, 1985. Against the



said order, the applicant moved the Hon'ble High Court in Writ Petition No.2291 of 2004. The Hon'ble High Court, on 19.3.2008 passed the following order -

" On motion made by the learned counsel for the Petitioner, Petition is allowed to be withdrawn with liberty to make an application for condonation of delay in filing Original Application before the Central Administrative Tribunal. If such an application is made, the Central Administrative Tribunal shall decide this application in accordance with law. All contentions available to both the sides are kept open to be urged before the Central Administrative Tribunal."

In view of the aforesaid order, the applicant is before us by way of the present OA.

2. The grievance of the applicant pertains to non-extension of benefit of 2 years service to him while he was in employment with the respondents. The same benefit was extended to other similarly situated persons.

3. Briefly stated, the facts of the case are that while working on the post of Scientist 'D' under the respondents, the applicant superannuated on attaining the age of 58 years on 31.7.1994. The applicant's date of birth is 31.7.1936. The applicant was, however,



given extension of 2 months upto 3.9.1994. The applicant states that by Office Memorandum dated 24.12.1985, the respondents had increased the age of retirement of Scientists upto 60 years. All the other similarly situated Scientists were given the benefit of the said increase in the age of retirement. However, the applicant was denied the benefit owing to wrong interpretation of the proviso in the order dated 24.12.1985. The learned counsel for the applicant submits that the said proviso was declared unconstitutional and violative of Article 14 of the Constitution by Division Bench of this Tribunal in the case of **O.P.Gupta Vs. Union of India** (T.A.521/86) dated 15.9.1989. By the said proviso artificial distinction was sought to be withdrawn among similarly situated doctors, on the basis that where such individuals/Scientists were eligible for promotion in the preceding five years, they were also to retire on attaining the age of 60 years. No basis was found and no rational nexus was seen by the Tribunal with the object to be achieved by the said letter regarding enhancement of the age of superannuation. This order



was taken up by the respondents to the Hon'ble Supreme Court by way of **Special Leave Petition (Civil Appeal No.4488/90)** and the Hon'ble Supreme Court upheld the order of the Tribunal by this order dated 20.11.1996 with the following observations -


"The basis indicated in the proviso for making this classification has no rational nexus with the object of enhancing the age of superannuation. The proviso is clearly discriminatory and, therefore, violates Articles 14 and 16 of the Constitution as rightly held by the Tribunal."

4. Thereafter it appears that the respondents have extended the benefit of this proviso to similarly situated Scientists by extending the age of superannuation. However, it is stated by the learned counsel for the applicant that in some cases the Scientists were not given the benefit of extension of age by two years and they approached this Bench of the Tribunal in OA 672 of 1992 (**A.S.Chaudhary Vs. Union of India & others**) and Bangalore Bench of CAT in OA 297 of 1991 (**Dr.G.P.Chatterjee Vs. Union of India & another**) which were allowed favourably and even they were continued in service upto 60 years. Thus, it is

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evident that all other similarly situated Scientists have been extended the benefit of the said order dated 24.12.1985 regarding the age of superannuation whereas the applicant has been discriminated in this regard.

5. The learned counsel for the respondents vehemently argued that the OA is barred by limitation in-as-much as the applicant has retired on 31.7.1994 or at the most on 2.9.1994 after adding the period of two months granted to the applicant by way of extension. The submission of the learned counsel for respondents is that the applicant approached the Tribunal 2 1/2 years thereafter in April, 1997. In the meanwhile, the applicant crossed the age of 60 years. The learned counsel for the applicant has moved MP 76/09 for condonation of delay and has, *inter alia*, stated that the applicant has suffered serious accident in July, 1993 and he was operated upon in the Orthopaedic Department of Hardikar Hospital at Pune which is duly approved by the Government. He continued treatment till January, 1996 for the severe injuries suffered in the accident. The learned counsel for the applicant submits that although he remained technically on duty



till 2.9.1994, but he was physically unable to lead a normal life.

6. The next contention of the learned counsel for the applicant is that the above said proviso in the Order dated 24.12.1985 was declared unconstitutional by this Tribunal and the matter was *sub judice* before the Hon'ble Supreme Court till November, 1996, and as stay was operating, he could not approach the Tribunal before that.

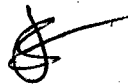
7. We have heard Shri S.P.Saxena, learned counsel for the applicant and Shri R.R.Shetty, learned counsel for the respondents on the question of delay. It is admitted position that the applicant was denied the benefit not because he approached the wrong forum or because he was sitting idle over his rights but for the reason that sufficient good grounds were not available for for condonation of delay. However, in the case of **K.C.Sharma Vs. Union of India & others**, 1998 (1) AISLJ 54 decided by Constitutional Bench of the Hon'ble Supreme Court it is specifically held that delay should be condoned in matters where the case



deserves to be considered on merits. In this connection, a reference may also be made to the decision in the case of **Collector, Land Acquisition Anantnag and another Vs. Mst. Katiji & others**, AIR 1987 SC 1353 wherein it has been held as follows -

"Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties."

In the present case we note that similarly situated Scientists who had approached this Bench of the Tribunal in OA 672 of 1992 (supra) and the Bangalore Bench of this Tribunal in OA 297 of 1991 (supra) have been granted the benefit of 2 years' service but in the case of the applicant the same benefit has been denied to him as he happened to retire in between. Similarly, it appears that the applicant had met with a severe accident and suffered grievous injuries in the said accident and the period of his accident, which is almost three years, concurs with the period when the applicant should have filed the present OA. The applicant was obligated to give first priority to



his health. In the circumstances, we condone the delay and allow MP 76/90 for condonation of delay.

8. In this backdrop, there remains no ground to deny the applicant the reliefs prayed for by him in the present OA. The proviso, in the order dated 24.12.1985, which formed the basis for denying the benefit of 2 years to the applicant, has been quashed and set aside by this Tribunal in the case of O.P.Gupta (supra) and the SLP preferred by the respondents before the Hon'ble Supreme Court has also been dismissed by order dated 20.11.2006. Thus, the respondents have to extend the same benefits to the applicant as has been granted to similarly situated persons, otherwise it would amount to gross discrimination and violation of Article 14 read with Article 16 of the Constitution.


9. In view of what has been stated above, we deem it appropriate to direct the respondents to grant him all the benefits which were granted to similarly situated Scientists who were continued upto the age of 60 years, albeit notionally, except for the pay and allowances for the period 3.9.1994 till 31.7.1996 when



the applicant would have attained the age of 60 years.

It is, however, made clear that the applicant would be entitled to all other retiral benefits after notionally refixing his pay, by deeming him in service till 31.7.1996. Consequent upon such notional refixation, the respondents shall also work out the pensionary benefits due to the applicant on 1.8.1996 and the arrears etc. should be paid within a period of four months from the date of receipt of a copy of this order.

10. With the observations made above, the present OA is allowed. No costs.


(R.C. Joshi)
Member (A)


(Jog Singh)
Member (J)

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