

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 147/99.

Date of Decision: 2-9-99.

Shri R.K.Pawar Applicant.

Shri A.I.Bhatkar for Mrs.N.V.Masurkar Advocate for
Applicant.

Versus

Union of India & Anr. Respondent(s)

Shri V.D.Vadhavkar for Shri M.I.Sethna Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. B.N.Bahadur, Member(A).

Hon'ble Shri.

(1) To be referred to the Reporter or not? No
(2) Whether it needs to be circulated to other Benches of the Tribunal? No

B.N.Bahadur

(B.N.BAHADUR)
MEMBER(A)

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 147 of 1998.

Dated the 2nd day of September, 1999.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Shri R. K. Pawar,
Resident of 53 Anjali,
Sector-5, Charkop,
Kandivilli (West),
Mumbai - 400 067.

... Applicant.

(By Advocate Shri A. I. Bhatkar for
Mrs. N. V. Masurkar).

VERSUS

1. Union of India through
The Secretary to the
Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi.

2. The Chief Commissioner of Customs,
New Customs House,
Mumbai. ... Respondents.

(By Advocate Shri V. D. Vadhavkar for
Shri M. I. Sethna).

O R D E R

This is an application made by Shri R. K. Pawar seeking relief as follows :

(a) This Hon'ble Tribunal be pleased to direct the respondents to grant pension and other retiral benefits to the applicant as admissible under the

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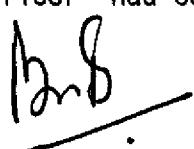
C.C.S. (Pension) Rules, 1972 with effect from 19.06.1981 after treating the applicant as the holder of a substantive post, and arrears with interest at the rate of 21% per annum and direction for future pension.

- (b) Pass any order that the Tribunal may deem fit and proper in the facts and circumstances of the case.
- (c) Cost of this application be provided for.

2. The facts of the case, as brought out by the applicant, are that he joined as Preventive Officer, Grade-II on 18.04.1962 and successfully completed the probation on this post. He was promoted as Preventive Officer Grade-I, on a temporary basis, subsequently.

3. Departmental proceedings were initiated against applicant under Rule 14 of the C.C.S.(C.C.A) Rule, 1965, for major penalties vide O.M. dated 19.06.1979 and, on conclusion of these proceedings, the applicant was compulsorily retired vide order dated 19.06.1981 and with effect from 18.06.1981.

4. The applicant states that Assistant Chief Accounts Officer had certified his entitlement to a pension of Rs. 130.00

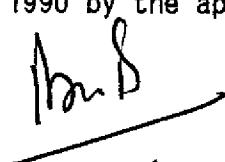

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with effect from 19.06.1981, but the Chief Accounts Officer in his letter dated 08.05.1991 ruled that the applicant was not entitled to this pension, since he had not fulfilled either the condition of confirmation in Government Service or of 20 years qualifying service. Being aggrieved by the impugned order giving this decision, the applicant is before us with the reliefs he seeks.

5. The respondents in the case have filed a written statement generally denying all the allegations and contentions made in the application. It is stated that the applicant was under suspension from 31.03.1979, and thereafter compulsorily retired with effect from 19.06.1981. Since he was not confirmed in the grade of Preventive Officer nor had put in 20 years of qualifying service, he was not entitled to pensionary benefits, which have therefore been denied to him.

6. Thereafter, in the statement, the respondents deal with the contentions in the O.A. parawise. In para 6, the chronology of salient events in the career of the applicant have been provided from 1964 to 1981. The assertion of the applicant that a pension of Rs. 130.00 was certified to the applicant, initially, has been admitted, but support of Pension Rule 40 has been drawn by the respondents for their action of denial of pension to the applicant. It is further stated that a representation made in 1990 by the applicant has been duly replied.

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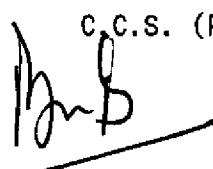
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7. Respondents also state that records of confirmation in respect of the applicant are not available in the Department but "his case for confirmation might have been considered but, due to his poor service record, he might not have been confirmed in the grade of Preventive Officer."

8. The papers and comments in this case have been carefully perused. The Learned Counsel on behalf of both sides have been heard and their arguments considered.

9. The Learned Counsel for the applicant made in brief, the following points in his oral arguments :

- (a) He took us over the facts of the case and made a special mention of the fact that the applicant had been seriously ill, as can be seen from the documents provided as Annexure to this O.A. Hence, the delay took place in moving the Tribunal.
- (b) The contention of the respondents that a minimum of 20 years service was required for eligibility to pension, applied only for voluntary retirement and not for compulsory retirement. Here the normal rules are applicable as laid down in the C.C.S. (Pension) Rules.



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(c) In regard to the contention of the respondents about non-confirmation of the applicant, the counsel for applicant argued that this contention cannot hold water for denial of pension. In his support he cited the following judgements :

- (i) 1996 (32) ATC 767.
- (ii) 1991 (SCC) L&S 563.
- (iii) CAT (HP) SLJ (CAT) 1994 49.

(d) The Learned Counsel for the applicant strenuously contented further that Rule 49 of the C.C.S. (Pension) Rules helped his case clearly.

10. Arguing the case on behalf of the respondents, the Learned Counsel for respondents made the following points :

(a) Rule 13 para 2 of the C.C.S.(Pension) Rules was not satisfied, in as much as the service of applicant was not followed, without interruption, with substantive appointment.

(b) The record of service of the applicant was full of blemish, as can be seen in the chronology of events listed at para 6 of the written reply statement made by respondents. Hence, in the face of such a record, there could hardly have been any occasion for him to be confirmed.

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(c) The case was hit by delay and laches, as all these orders were not challenged by the applicant for a very long period.

(d) Responding to the arguments made in regard to the cases cited, it was pointed out that the first case cited by applicant was one of voluntary retirement, and distinguishable from the present case. In regard to the second citation made by the counsel for applicant, the counsel for respondents argued that this case (R. M. Bhatnagar V/s. State of Madhya Pradesh) was also distinguishable as, in the case before us, the record of the applicant was full of blemish. Similar argument was made by counsel for respondents in his attempt to distinguish the third citation made by the counsel for applicant.

(e) It was not clear how a certificate of the type issued by Accounts Department of the Respondents (copy at Annexure - 3) was issued. No credence should be given to this.



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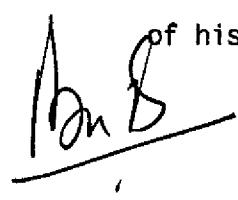
(f) Even if it is held that Rule 49 of C.C.S. (Pension) Rules goes against the respondents, it was evident that total arrears cannot be paid to the applicant and the settled law in regard to limitation on this score be followed.

11. In re-argument, the counsel for the applicant argued that no adverse record had been produced and the inference that adverse record existed and hence confirmation might not have been made, was not a legal inference. Similarly, he argued that applicant was promoted in 1978, and hence there could be no reasoning in saying that record prior to 1978 was adverse.

12. Two questions therefore arise as relevant towards taking a decision on providing the reliefs sought by the applicant :

a. Whether the number of years of service rendered as qualifying service entitle the applicant to getting pension as per rules and

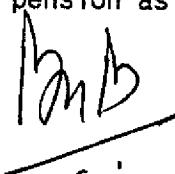
b. Whether the contention raised against the applicant by respondents regarding non-confirmation in service, will stand in the way of his entitlement for pension.



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13. It is seen that in the impugned letter dated 08.05.1991, addressed to the applicant (Annexure A-I) it is stated that the applicant is not entitled to pension, since he has "not fulfilled the conditions viz. confirmation in Government Service or 20 years qualifying service." From the Pension Rules cited by parties and mentioned above, it is clear that, on compulsory retirement, the normal rules of retirement would apply i.e. those which would be available to persons normally retiring with that length of service, etc. unless a considered decision is taken by a Government order to reduce the pension of such an employee. No such order is passed. It is an undisputed fact that the applicant, Shri R. K. Pawar joined service on 03.05.1962 and was compulsorily retired with effect from 19.06.1981, which means that he has served the Government for a little over 19 years. The reading of Rule 48 (a) and Rule 49 of the C.C.S. (Pension) Rules would show that clause 2(b) under Rule 49 would inter-alia be relevant in this case and the fact that the applicant has not completed 20 years would not come in his way towards entitlement to pension as per rules. Doubtless, he will get only pension ^{Part B} proportionate in the manner indicated under the rules. It is, therefore, clear that the case of the applicant for fixing his pension after his compulsory retirement would have to be governed by normal rules applicable and that since he has completed more than ten years of qualifying service, he would be entitled to pension as per rules.

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14. The Counsel for respondents referred to, and sought support of, para 2 of Rule 13 of the C.C.S. (Pension) Rules in this regard. This paragraph inter-alia stipulates as below :

"Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either subsequently or in an officiating or temporary capacity :

Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post."

This will not support the case of the applicant as discussions in the following paragraphs will show.

15. The other contentious issue was that the applicant has not been confirmed in service and is therefore not eligible for pension. It is relevant to record here that in the written statement of the respondents, it is stated in para 7 that the officer was not confirmed in the grade of Preventive Officer, i.e. his stage of entry. On the other hand, it is stated in para 9 as below :

"Though the records of confirmation of the applicant is not available in this department, it is mentioned here that his case for confirmation might have been considered but due to his poor service records he may not have been confirmed in the grade of Preventive Officer."

The statement in para 9 makes sad reading. If any other trivial record was stated to have been lost or otherwise, one can officer, who had put in 19 years of service, was confirmed or not, does not indicate a happy state of affairs.

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16. I have carefully gone through the citations referred to by the Learned Counsel for applicant, especially.

(i) 1996 (32) ATC 787 Bns

(ii) 1994 AISLJ 49

These are sought to be relied upon against the contention of non-confirmation. The ratio in both decisions is relevant to the present case, and therefore there would be no doubt that both the decisions go to help the case of the applicant. On the other hand, the citations referred to by the Learned Counsel for respondents in Ram Kumar & Others V/s. Union Of India reported at [1987 (5) ATC 404] are not relevant to the facts and circumstances of the present case. They relate to Labour Law and Casual Labour in Railways. This judgement cannot help the stand taken by the respondents.

17. In the facts and circumstances of the case above, it would be clear that the first question at para 12 above would need to be answered in the affirmative and the second one in the negative.

18. Now, as regards the point of limitation, and delay & laches, there is no doubt that applicant has come to the Tribunal after long years, even granting that his representation was rejected finally very late too. He is saved from limitation because of the ratio in the case of M.R. Gupta [1995 (3) ATC 86]

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i.e the fact that pension is a continuous cause of action. It is unfortunate that the applicant has been denied what was due to him. The Learned Counsel for the respondents has argued that even if it is found that pension is due to him, the arrears will need to be limited by settled law. There is merit in this argument and the issue is settled by the Apex Court in the case of Jaidev Gupta V/s. Union of India [1998 SCC (L&S) 1587]. The applicant has approached the Tribunal very late, and hence arrears of pension may be paid to him with effect from 1st February, 1995 i.e. 3 years prior to the filing of this O.A. However, fixation of pension be done on the date of compulsory retirement. One time benefits like gratuity, etc. be paid. No interest can be allowed in the facts and circumstances of the case.

20. In consequence, the following order is made on this application :

(1) The impugned letter No. S/15/90/81 Accts. dated 08.05.1991 (A-3) is hereby quashed. The applicant is declared to be entitled to pension-ary benefits as per rules. These should be re-calculated by respondents and paid to the applicant within a period of three months from the date of receipt of a copy of this order.



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(ii) Arrears of pension will be payable only with effect from 1st February, 1995. One time retiral payments due on retirement will of course be paid.

(iii) No order as to costs.

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(B. N. BAHADUR) 2/9/99

MEMBER (A).

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