

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

1. ORIGINAL APPLICATION NO.850/98.
2. ORIGINAL APPLICATION NO.854/98

Thursday, this the 16th December, 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

1. ORIGINAL APPLICATION NO.850/98

Smt.Chandbi S.M.Hussain,
R/O. 113, Shivaji Nagar,
Pune - 5.

... Applicant.
(in OA 850/98)

2. ORIGINAL APPLICATION NO.854/98.

R.J.Shirsat,
Block No.12, Room No.14,
Sadguru Jangli Maharaj Society,
Senapati Bapat Marg,
Pune - 411 016.
(By Advocate Mr.J.M.Tanpure)

...Applicant.
(in OA 854/98)

Vs.

1. Union of India through
The Secretary, Ministry of Defence,
South Block,
New Delhi - 110 001.
2. The Commandant,
Central AFV Depot,
Kirkee,
Pune - 3.
3. The Chief Controller of Defence Accounts
(Pensions),
Allahabad.
4. Director General of Ordnance Services
(OS-8C(i) Master General of the
Ordnance Branch, Army Head Quarters,
DHQ PO,
New Delhi - 110 011.

(By Advocate Mr. R.K.Shetty)

...Respondents.
(in OA 850 and
OA 854/98)

: O R D E R (ORAL) :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

These are two OAs filed by the respective applicants for pensionary benefits. The respondents have filed reply opposing both the applications. After hearing both the counsels, I am disposing of both the OAs.

2. In OA 850/98, the applicant Smt.Chandbi is the widow of the deceased Late Shaikh Mohd. Hussain who was employed in the Central Vehicle Depot, Dehu Road from 1943 to 1969 and had worked for 26 years. Due to disbandment of the Depot his services came to be terminated on 1.4.1969. It is stated that by virtue of the Government Order of 1972, the employees who were in service as on 1.3.1969 and onwards ^{are} entitled for pensionary benefits, consequently, the family is entitled for family pension after the death of the pensioner. The applicant's husband died on 7.10.1994, hence the applicant is entitled to arrears of pension till 7.10.1974 and she is entitled to family pension from that date till her life time. She also claims interest at the rate of 18% on the arrears and family pension. Therefore, the applicant has approached this Tribunal for grant of arrears of pension, arrears of family pension and future family pension.

3. The respondents in their reply have taken the stand that applicant's husband was not entitled to pension under the 1972 Rules. It is admitted that there was some correspondence and recommendation, were made for payment of pension purely on humanitarian grounds. It is also alleged that applicant's husband was holding a temporary post and therefore he is not covered by Pension Rules. Hence, he cannot claim pension

4. In OA 854/98, applicant R.J.Shirsat was working in the Central Vehicle Depot, Dehu Road from 1948 to 1969. Due to disbandment of the said Depot his services came to be terminated on and from 1.4.1969. By virtue of the Government Order dt. 12.6.1972 the applicant is entitled for pensionary benefits. It is submitted that other officials who were similarly situated like the applicant had approached this Tribunal and got orders in

their favour, therefore, the applicant is also entitled to pensionary benefits under the 1972 orders. He has approached this Tribunal praying for pensionary benefits from 1.4.1969 and onwards. He also claims interest at the rate of 18% p.a.

5. In the reply it is stated that the applicant is not entitled to any pensionary benefits. The main defence is that since the applicant was a temporary servant, therefore he is not covered by the Pension Rules and he is not entitled to any pension under the 1972 Rules. It is admitted that there was some correspondence and the applicant's case for pension was recommended, but this was purely on humanitarian grounds. It is therefore stated that the applicant is not entitled to the reliefs prayed for.

6. After hearing both the sides and perusing the materials on record, I find that the only defence made out in the reply is ~~that~~ since applicants were temporary servants they are not entitled to any pensionary benefits. But, at the time of arguments the learned counsel for the respondents submitted that even if 1972 rules are applicable to the applicants, they have not exercised any option within the stipulated time as mentioned in the 1972 Government Order and therefore the applicants cannot claim any benefit of pension under the 1972 order. In my view, this stand is not taken in the reply. Whether the particular official has given option or not is purely a question of fact. If the respondents had taken a specific plea on this point, the applicant would have replied it or we could have called for record to find out whether such an option had been given or not. Therefore, ^a~~the~~ question of fact cannot be pressed into service at the time of argument without being covered by pleadings. In

addition to this, we find there is some correspondence which shows that the Local Officers were recommending the case of applicants for grant of pension. If really there was no such option then the local officers would not have recommended at all or would have sent an endorsement to the applicant, stating that their claim cannot be entertained for want of option. At this stage we may refer to one document Ex. R-2 produced by the Respondents which is dt. 24.5.1999. It pertains to claim of seven officials which includes the husband of applicant in OA 850/98 and also applicant in OA 854/98. There is a reference in para 5 of the said letter that these officials have given option though it is stated that it was given in 1989. Some correspondence also shows that the concerned records were missing. Therefore, it is quite likely that the earlier option exercised by the officials might have been lost when the records were missing and presumably fresh options might have been obtained in 1989. Anyhow, since such a stand is not taken in the reply, I have not allowed the respondents to canvass the question of option at the time of arguments which is purely a question of fact and ~~were~~ raised for the first time at the time of arguments.

7. Now, coming to the main argument of the respondents counsel that the husband of the applicant in (OA 850/98) and applicant in (OA 854/98) were temporary employees and therefore they are not entitled to any pensionary benefits. I find that the respondents have not placed sufficient materials to show that these employees were temporary employees. The materials on record shows that these two officials had worked for 21 and 26 years, this fact of service is not disputed in the reply. We have already seen that the respondents themselves were

recommending the case of these two officials for grant of pension. In addition to this, some points were raised by the respondents before a Division Bench of this Tribunal in OA No.1313/93, a copy of the Judgment is annexed as Ex.A-6 at page 14 of the paper book of OA 850/98. The copy of the Government letter at Ex.R-2 refers to seven officials which includes the two applicants in the two present cases before me. In OA 1313/93 Smt.Anthony Amma was the applicant and she was widow of Peter Joseph whose name is shown at Sl.No.(e) in Ex.R-2 which is the official letter dt. 24.5.1999. The Division Bench in Anthony Amma's case by Judgment dt. 12.12.1995 rejected the respondents contention that these employees were temporary employees. All these seven employees stand on common ground. Therefore, the finding of the Division Bench which has become final cannot be re-opened at this stage to say that all these employees were temporary employees. The order has become final and the respondents have implemented the order of the Tribunal so far as Smt.Anthony Amma's case is concerned.

Similarly, I had occasion to consider the case of one of the officials in OA 1056/98. By order dt. 14.10.1999, I have allowed that application and rejected the similar argument that the applicant being temporary employee is not entitled to any pensionary benefits under the 1972 order. As against this, the learned counsel for the respondents has placed before me two Judgments of Learned Single Member of this Bench, one is OA 850/93 where the Judgment is dt. 13.10.1995 and the other one is OA 843/93 where the Judgment is dt. 22.12.1995. No doubt, the Learned Single Member has taken the view in the case of

S.N.Jadhav and T.S.Jagtap that they were temporary employees and therefore were not entitled to pensionary benefits. It is significant to note that in those two cases there is no reference to grant of pension under the 1972 Government Order. Even otherwise, when there is a Division Bench Judgment in OA 1313/93, the question of making reference to two earlier judgments of Single Member Bench is not necessary. I am bound by the Judgment of a Division Bench. When Judgment of a Division Bench is operating, I cannot attach any value to two Judgments of Single Member Bench. I have already pointed out that sitting singly, I have already taken the view that the plea of respondents that applicants were temporary employees cannot be accepted particularly in view of the finding of the Division Bench in the earlier case. Since I am bound by the Division Bench, I hold that the respondents cannot be permitted to say that the applicant's husband in OA 850/98 and the applicant himself in OA 854/98 were temporary employees, therefore, they are not entitled to any pensionary benefits.

8. It may be, that the two employees have received the benefits of Contributory Provident Fund Scheme, but the pension scheme of 1972 came three years later. The 1972 order itself mentions that it applies even to retired employees. If the employees have already received the benefits under the CPF scheme either they will have to refund that amount to claim pensionary benefits or the amount paid under the CPF scheme should be adjusted and deducted from the arrears of pension.

9. Another point pressed by the learned counsel for the

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respondents is about limitation. However, there is no plea in the written statement of both the OAs about limitation. When the department itself is recommending the case of these applicants even as late as 24th May, 1999 and there is nothing to show that the claim has been rejected at any time. The bar of limitation is not attracted to the facts of the present cases.

10. In view of the above discussion, I hold that both the applicants in these two cases are entitled to pensionary benefits under the Government Order dt. 12.6.1972.

At some places in the pleadings, applicants have referred to gratuity etc. I am making it clear that applicants are not entitled to benefit of gratuity, but they are entitled to only pension as permissible under the 1972 order.

11. The last point is that applicants have claimed interest at 18% p.a. Applicants have come to Court belatedly. Though, I have held that the claim is ^{not} barred by limitation, It is not ^a the case where interest can be allowed on the arrears of pension. However, I would grant interest at 6% p.a. on the arrears of pension from the date of OA till the date of payment.

12. In the result, both the applications are allowed as follows:

- (1) In OA 850/98, the applicant is entitled to arrears of pension due to her husband S.M.Hussain from 12.6.1972 till 7.10.1994.
- (2) The applicant in OA 850/98 Smt.Chandbi S.M. Hussain is entitled to Family Pension from 8.10.1994 till her life-time or till her death and/or marriage, whichever is earlier. //
- (3) While paying the arrears of pension and arrears of family pension the respondents can deduct or adjust the amount paid to applicants husband under the CPF scheme as per rules.

- (4) The applicant is entitled to interest on the arrears of pension and family pension from the date of filing of this OA viz. 8.10.1999 till the date of actual payment.
- (5) In OA 854/98, the applicant R.J.Shirsat is entitled to arrears of pension from 12.6.1972 till to day ~~and onwards~~
- (6) The applicant R.J.Shirsat is entitled to future pension under the the 1972 orders from to day and onwards for his life-time.
- (7) ^{See} The applicant is entitled to interest on the arrears of pension at the rate of 6% p.a. from the date of filing of this OA viz. 854/98 till the date of actual payment.
- (8) The respondents are directed to comply with these directions within a period of three months from the date of receipt of copy of this order.
- (9) In the circumstances of the case, there will be no order as to costs in both the cases.

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

1. Contempt Petition No.41/2002
in
Original Application No.854/98.

2. Contempt Petition No.42/2002
in
Original Application No.850/98.

, this the 27 day of November , 2003.

Hon'ble Shri Anand Kumar Bhatt, Member (A),
Hon'ble Shri S.G.Deshmukh, Member (J).

1. Contempt Petition No.41/2002.

R.J.Shirsat,
Block No.12, Room No.14,
Sadguru Jangli Maharaj Society,
Senapati Bapat Marg,
Pune - 411 016.
(By Advocate Shri J.M.Tanpure)

...Applicant.

2. Contept Petition No.42/2002.

Smt. Chandbi S.M.Hussain,
R/o. 113, Shivajinagar,
Pune - 411 005.
(By Advocate Shri J.M.Tanpure)

...Applicant.

v.

1. Union of India through
The Secretary - Shri Yogendra Narayan,
Ministry of Defence,
South Block New Delhi - 110 001.

2. The Commandant - Shri Sandeep Bhalla,
Central AFV Depot, Khadki,
Pune - 411 003.
(By Advocate Shri R.R.Shetty)

...Respondents.

Tribunal's Order :

{Anand Kumar Bhatt, Member (A)}

Two Contempt Petitions viz. C.P. No.41/2002 in O.A.
No.854/98 and C.P. No.42/2002 in O.A. ~~No.850/98~~ have been filed
by the applicants. As they are in relation to, a common order is
passed in the said O.As. by this Tribunal on 16.12.1999, hence
the two C.Ps. are taken up for common order.

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2. The operative portion of the order of the Tribunal dt. 16.12.1999 in the above two O.As. is as follows:

" In the result, both the applications are allowed as follows :

(1) In OA 850/98, the applicant is entitled to arrears of pension due to her husband S.M.Hussain from 12.6.1972 till 7.10.1994.

(2) The applicant in OA 850/98 Smt.Chandbi S.M.Hussain is entitled to Family Pension from 8.10.1994 till her life-time or till her death and/or marriage, whichever is earlier.

(3) While paying the arrears of pension and arrears of family pension the respondents can deduct or adjust the amount paid to applicant's husband under the CPF scheme as per rules.

(4) The applicant is entitled to interest on the arrears of pension and family pension from the date of filing of this OA viz. 8.10.1999 till the date of actual payment.

(5) In OA 854/98, the applicant R.J.Shirsat is entitled to arrears of pension from 12.6.1972 till to day.

(6) The applicant R.J.Shirsat is entitled to future pension under the 1972 orders from to day and onwards for his life-time.

(7) The applicant is entitled to interest on the arrears of pension at the rate of 6% p.a. from the date of filing of this OA viz. 854/98 till the date of actual payment.

(8) The respondents are directed to comply with these directions within a period of three months from the date of receipt of copy of this order.

(9) In the circumstances of the case, there will be no order as to costs in both the cases."

3. The facts brought about by the applicant are that the Tribunal in the order dt. 16.12.1999 had ordered for payment of pension within three months from the date of receipt of the order. Later, in M.P. 379/2000 the time was extended till 27.7.2000 for implementation of the order. However, the

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contemners challenged the order of the Tribunal on 16.10.2000. Due to non-implementation of the order of the Tribunal, the applicants had filed C.P. No.4/2001 in O.A. No.850/1998 and C.P. No.3/2001 in O.A. No.850/1998. At that time, the contemners issued the Pension Payment Order (for short, PPO) and the Tribunal being satisfied that the order of the Tribunal has been substantially complied with, discharged the alleged contemners. However, later the contemners obtained an ex-parte stay from the Hon'ble Bombay High Court in Writ Petition No.2745/2002 and 2746/2002. The High Court was kept in total darkness about the assurances given in the Tribunal that the order has been complied with. The contemners also vide their letter dt. 19.6.2001 asked the Treasury Officer, Pune to stop the payment of Pension etc.

4. As per the applicant, the High Court dismissed the Writ Petitions by a common order on 8.3.2002. However, even after that the contemners did not ~~cancel~~^{de} the earlier stoppage of payment order which was given to the Treasury Officer.

5. In the reply filed in the C.Ps., the contemners have now stated that the P.P.Os have been issued to the Treasury Officer, Pune and the payment of pensionary benefits has been credited by Bank of Maharashtra to the Accounts of the Applicants.

6. In the Rejoinder, the applicants have claimed that the order of the Tribunal has not been implemented in its spirit and totality. The applicant is entitled to receive benefit from 1.4.1969 and not from 1972. The interest was given on the basic pension and not on the Dearness Relief. The P.P.Os. which is necessary for registration under C.G.H.S. ^{de} have not been given.

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7. In the oral submission, the Learned Counsel for the applicants has reiterated the pleadings in the original C.P. and the Rejoinder.


8. The Learned Counsel for the Respondents Shri R.R.Shetty has submitted in the Court detailed chart in respect of the two pensioners wherein the total calculations of the dues is certified by the Assistant Accounts Officer in the Office of C.D.A. (P), Allahabad. He has admitted that the interest has been paid on the basic pension amount, but he has stated that there is no specific order of the Tribunal that the interest is to cover the Dearness Relief also.


9. We have seen the records of the case and heard the Counsel on both sides. It is true that now the pension amounts have been paid and the orders of the Tribunal have now been substantially implemented. However, the story which comes out both in the order of the Tribunal dt. 16.12.1999 and as narrated by the applicants in the present C.Ps. is that the alleged contemnners have been very reluctant to pay the said dues to the applicants who are senior citizens and have been fighting for their rights for a very long time. It also comes out that on the one hand, they ^(the respondents) informed the Tribunal in the two earlier C.Ps. that the P.P.Os. have been issued and that the ^{in Treasury} officer has been directed to release the payment, whereupon the Tribunal closed the C.P. proceedings. On the other hand, the contemnners were all the time making efforts in the High Court of Judicature from where they initially obtained a stay. To say the least, the contemnners have played hide and seek with the judicial process. It is hoped that this type of practice is not repeated in future.

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10. With these observations, the notice issued against the contemnners are discharged in the two Contempt Petitions and the petitions are disposed of accordingly.


(S.G. DESHMUKH)
MEMBER (J)


(ANAND KUMAR BHATT)
MEMBER (A)

B.