

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

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

Dated: 16.12.1999.

Smt.Chandbi S.M.Hussain & Anr.

Applicants.

Mr. J.M.Tanpure

Advocate
Applicants.

Versus

Union of India & Ors.

Respondent(s)

Mr. R.K.Shetty

Advocate for
Respondent(s)

CORAM :

Hon'ble Shri D.S.Baweja, Member (A),
Hon'ble Shri S.L.Jain, Member (J).

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to
other Benches of the Tribunal?
- (3) Library?


(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B,

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.

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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, ^athe 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

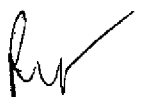
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recommending the case of these two officials for grant of pension. In addition to this, some points ^{were} raised by the respondents before a Division Bench of this Tribunal in OA No.1313/93, a copy of the Judgment is annexed as Ex.A-6 at page 14 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

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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

...7.



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) 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.

C.P.Nos.3/01 and 4/01
in
OA Nos.854/98 and 850/98
3.5.2002.

Shri J.M. Tanpure, Counsel for applicant. Shri
R.R. Shetty, Counsel for respondents.

We are informed that final order passed in O.A. was stayed on 18.6.2001 by High Court of Judicature at Bombay. The contemner-respondent is not present today though the Writ Petition has been dismissed on 8.3.2002. However, as the High Court was approached by official respondents, and ~~the~~ Writ Petition has been dismissed by High Court, it became essential for respondents to give effect to the order.

We find that the respondents have filed an affidavit when the Division Bench hearing the matter, passed order, to which one of us {Hon'ble Smt. Shanta Shastri, Member (A) } was party, the relevant part of which is as follows:

"2. The respondents have now submitted that 3 P.P.Os have already been issued in respect of the applicants and the letter has been issued by the Treasury Officer asking the applicants to be present for verification and to furnish the bank account number.

3. In view of this nothing survives now except for the actual payment. As per the Tribunal's order dated 16th December, 1999 the applicants are entitled to interest on the arrears of pension at the rate of 6% from the date of filing the O.A. till the date of realisation. We, therefore, discharge the alleged contemners. We do not order any costs."

Considering above facts, we give one more opportunity to

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respondents to comply with the order within a period of one month failing which we will proceed. However, on next date Counsel for respondents will make statement about payment as the respondents issued P.P.O. but after an interim-order they informed treasury that the payment be not made.

Let the case be listed on 14.6.2002, when the Counsel for respondents will make statement as to whether the payment has been made.

A copy of this order be given to Counsel for respondents by 6.5.2002.

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(Smt. Shanta Shastry)
Member (A)

B. Birmit

(Birendra Dikshit)
Vice Chairman.

H.

dt 3.5.2002
Order/Judgement despatched
to Applicant/Respondent (s)
on *30.5.2002.*

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

CP No.41/2002 in OA No.854/1998
CP No.42/2002 in OA No.850/1998

26/7/2002

Heard Shri J.M.Tanpure, Counsel for Applicant and Shri R.R.Shetty for Shri R.K.Shetty, Counsel for Respondents.

CP Nos.41/2002 and 42/2002 were filed in OA Nos.854/1998 and 850/1998 by the applicants appearing ^{therein}. The respondents have now produced a letter dated 25/7/2002 to show that PPOs for payment of interest on pensionary benefits of the applicants have been forwarded and they were collected by the applicants personally on 22/7/2002 from the CDA; (Pension) Allahabad and are under despatch to Treasury to Pune and the payments are expected to be made shortly. The respondents are therefore requesting for four weeks time for full implementation of the order. The learned counsel for the applicants agree. Time is allowed.

Accordingly both the matters to be listed on 6/9/2002.

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(SMT. SHANTA SHASTRY)
MEMBER(A)

B. Dikshit
(BIRENDRA DIKSHIT)
VICE CHAIRMAN

abp

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30/7
11.26.7.02
order/Judgment despatched
to Applicant/Respondent(s)
on 1.8.2002
CV
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