

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1057/98

Date of Decision: 22.7.1999

Shri M.S. Awade

Applicant.

Shri J.M. Tanpure

Advocate for
Applicant.

Versus

Union of India & 2 Others

Respondent(s)

Shri R.K. Shetty


Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri.

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


(R.G. Vaidyanatha)
Vice Chairman.

H.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No.1057/98

Thursday this the 22nd Day of July, 1999

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

Shri Mahadeo Santu Awade,
Ex-Veicle Depot, Dehu Road
Employee, T.No.693, A/P-Village,
Aswali, Tah. Khandala Bawda,
District Satara.
By Advocate Shri J.M. Tanpure

.. Applicant.

V/s.

1. Union of India, through
the Secretary, Ministry of Defence,
South Block, New Delhi-110 001.
2. The Commandant,
Central AFV Depot, Kirkee,
Pune - 411 003.
3. The Commandant,
Ordance Depot, Fort,
Allahabad.

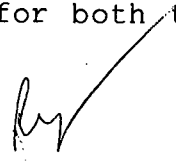
.. Respondents.

By Advocate Shri R.K. Shetty.

Order (Oral)

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

This is an application filed by the applicant under section 19 of the Administrative Tribunals Act, 1985 seeking retirement benefits. The Respondents have filed their reply opposing admission. I have heard Counsel for both the



sides regarding admission.

2. The applicant was working as SAWYER in the Central Vehicle Depot at Dehu Road which is under the Department of Ministry of Defence. The applicant joined the service on 2.1.1943 and was discharged from service on 1.3.1967. At that time he was a member of Contributory Provident Fund Scheme. The pension scheme was not available at that time. The Government, subsequently introduced the pension scheme. Under that scheme the existing members of contributory provident fund scheme were given an option either to continue in the same scheme or to opt for pension scheme. The cut off date set out in the CPRO 58/1972 is 1.3.1969. The applicant made representation claiming his option for pension scheme and the said claim was subsequently rejected on the ground that the applicant was not in service as on 1.3.1969 and therefore he cannot opt to come over from the contributory provident fund scheme to the pension scheme. The applicant in this application challenges the legality of the cut off date as artificial, illegal and illogical date which makes unreasonable classification. The Counsel for the Applicant submitted that the applicant is entitled to pension as per the pension scheme of 1972 and prays that the fixation of crucial date 1.3.1969 be declared as illegal and arbitrary.

3. The Respondents have filed thier reply opposing the application and submits that the pension scheme of 1972 is



applicable for those employees who were in service as on 1.3.1969 and only those who retired earlier cannot get the benefit of the said scheme. It is therefore, stated that the applicant who retired/discharged from service long before the pension scheme he cannot get any pensionary benefits under the 1972 Pension Scheme.

4. At the time of arguments the learned Counsel for the Applicant submitted that the applicant is entitled to pension as per CPRO 58/72 and the cut off date i.e. 1.3.1969 is illegal and arbitrary. He also submitted that though he has put in 24 years of service he has not been given the benefit of the said scheme, but many other employees who had rendered less years of service than the applicant, by virtue of that orders were granted the benefit. The learned Counsel for the respondents submitted that the applicant is challenging the policy decision of cut off date set out in the circular which clearly specifies that a person who is in service as on 1.3.1969 can only come over to the Pension Scheme and the Tribunal cannot interfere with it.

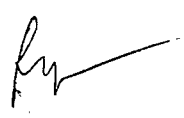
5. It is well settled that if it is a policy matter the Tribunal cannot interfere whenever the Government introduces new scheme or new rules or revision of pay scales etc., then a cut off date has to be clearly set out, similarly as per pension scheme whereby a man who was in service as on 1.3.1969 has been given option to come over to



the pension scheme. However, the applicant retired/discharged from service long before that and hence he cannot get the advantage of the said CPRO. The applicant stated in this application that the cut off date fixed is arbitrary and illegal and the Tribunal can interfere. The role of the Tribunal or a Court in this matter is very very limited.

6. The applicant has also stated that many other employees at the relevant time were made entitled to CPRO 1972. The scheme provides for option to those who were in service as on 1.3.1969 to come over to the pension scheme. The applicant had been discharged from the service on 14.3.1967, and hence he cannot get the benefit of 1972 pension scheme since he had already retired from service 2 years prior to the cut off date.

7. The question of illegality and arbitrariness of cut off date as 1.3.1969 was raised by the Counsel for the Applicant. In a matter like this, there is no dispute that Govt. can fix a cut off date which is purely a discretionary one and the question of cut off date being a policy matter, the Hon'ble Supreme Court has clearly held that cut off date is a policy matter in which Courts and Tribunal cannot interfere. In the above circumstances, I do not find any merit in the applicant's contention that the cut off date is arbitrary and illegal.

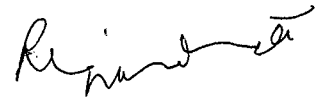


8. It was argued that the employees who had less years of service also got the benefit of pension, but the applicant has been denied the benefit inspite of his putting 24 years of service. This argument has no merit. Persons with lesser service got the benefit, since they were in service on 1.3.1969. Applicant with longer service could not get benefit since he was discharged from service prior to 1.3.1969.

I therefore, do not find any merit in the O.A.

9. A Misc. Petition No.765/98 for condonation of delay is also before me. Since the applicant was discharged/retired in 1967 and the new scheme came into effect in 1972, he has approached this Tribunal after 26 years i.e. 1998. On the face of it, the application is hopelessly barred by limitation. I do not find any merit in this M.P. for condonation of delay.

10. In the result, the O.A. as well as M.P. No.765/98 are rejected at the admission stage. No orders as to costs.



(R.G. VAIDYANATHA)
VICE CHAIRMAN.

H.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

R. P. NO.: 51/99 IN O.A. No. 1057/98.

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

Mahadeo Santu Awade ... Applicant

VERSUS

Union of India & Others. ... Respondents.


ORDER ON CIRCULATION

DATED : 07.12.1999.

This is a Review Petition filed by the applicant seeking review of the order dated 22.07.1999 passed by me in O.A. No. 1057/98. I have perused the entire case file including the contents of the Review Petition.

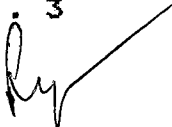
2. The applicant who was discharged from service while he was a member of the Contributory Provident Fund Scheme filed an application seeking benefit of Pension Scheme which was introduced by the Government of India. The Government circular provided the cut of date as 01.03.1969. Since the applicant had been discharged from service two years prior to 1969, I have held that he is not entitled to the benefit of pension scheme. I have also rejected the claim on the ground that it is highly belated, barred by time and delay and laches.

3. Fixing a cut of date while granting new benefits is a well known principle of law. The Government has fixed the cut of

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date as 01.03.1969 for granting pension scheme to contributory fund optees. The applicant is seeking review of the order in view of a judgement of a Division Bench of the Bombay High Court where the High Court has held that rejection of the claim of the Petitioner in that case for pensionary benefits on the ground that she had retired prior to the cut of date is not correct and direction was given to grant pensionary benefits to her, by following the observations of the Supreme Court in D. S. Nakara's case (A.I.R. 1983 SC 130). As already stated, fixing the cut of date is a well known principle in Service Law whenever pension rules are brought into force or whenever monetary benefits are given to employees. There are two recent ^{Constitutional} ~~Statutory~~ Bench judgements by the Supreme Court in Krishena Kumar's case (1991 SCC L&S 112) and case of Indian Ex-Services League and Others reported in 1991 SCC (L&S) 536 where two Constitutional Benches of the Supreme Court distinguished Nakara's case and held that the cut of date fixed by the Government is perfectly correct and not open to challenge.

There is no error apparent on record. The view of the Tribunal may be right or wrong and it can be tested in the proper forum. A review petition is not maintainable on the ground that the view taken by the Tribunal is wrong on a question of law. If the applicant is aggrieved by the order of the Tribunal, his remedy is else but certainly not in the form of Review Petition



unless there is some apparent error on record which is none in this case. Hence, I do not find any merit in the review petition.

4. In the result, the review petition is rejected by this order on circulation.



(R. G. VAIDYANATHA)

VICE-CHAIRMAN.

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