

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 106 of 2003

Jabalpur, this the 7th day of November, 2003

Hon'ble Shri M.P. Singh, Vice Chairman (Administrative)
Hon'ble Shri G. Shanthappa, Judicial Member

Ganesh Ram, aged about
65 years, S/o. Shri Lalchand,
R/o. 3/6, Ushaganj, Indore (M.P.). ... Applicant

(By Advocate - Shri S. Nagu)

V e r s u s

1. Union of India,
through the Secretary,
Ministry of Defence,
Government of India,
South Block, New Delhi.
2. Chief Engineer, Central
Command, Lucknow (U.P.).
3. Commander Works Engineer
Mhow, District Indore (M.P.).
4. Garrison Engineer (MES),
Mhow Cantt (MP).
5. Principal Controller of Defence
Accounts (Pensions),
Draupadi Ghat, Allahabad (UP). ... Respondents

(By Advocate - Shri K.N. Pethia)

O R D E R

By Shri G. Shanthappa, Judicial Member -

The applicant has sought for the following main reliefs :-

- i) "to quash the impugned order passed by the respondents of disentitling the applicant to pension as void, illegal and arbitrary.
- ii) to direct the respondents to forthwith release the pension to the applicant with retrospective effect alongwith arrears of pension at the admissible rate alongwith penal interest at the rate of 18% per annum for its delayed payment and unjustified withholding.
- iii) to direct the respondents to take appropriate steps such as disciplinary action against the erring officers/employees so as to prevent recurrence of such gross and blatant violation of fundamental rights or retired employees.
- iv) to impose heavy cost on the respondents for unnecessarily dragging the applicant to the Court again by properly reimbursing him.

2. While arguing the case the applicant has requested




to permit him ^{sub} this Tribunal to delete para iii of para 8 i.e. relief sought, which is regarding to take appropriate steps such as disciplinary action against the erring officers/employees so as to prevent recurrence of such gross and blatant violation of fundamental rights of retired employees. Accordingly the applicant has been permitted to withdraw the said relief.

3. The case of the applicant is that the applicant joined the services in Military Engineering Service as a Sub-Overseer on permanent and substantive basis on 26.08.1964. He was absorbed in the regular establishment on 30.11.1964. After completion of 17 years of service in MES the applicant was selected for the post of Junior Engineer in ONGC (Oil and Natural Gas Commission). He was relieved from MES with a specific request for retention of his lien in MES for a period of one year. The said selection was made on 24.4.81. The applicant had submitted his resignation to the authorities of MES on 24.04.1981, subject to approval of lien by the Chief Engineer. The applicant was appointed as Junior Engineer in ONGC on 16.05.1981. Thereafter the applicant sought to return to MES as the ONGC refused to count the services rendered by him in the MES and for which a Civil suit was filed by the applicant which was transferred to the Jabalpur Bench of the Central Administrative Tribunal and was registered as TA No. 26/1988. This Tribunal finally held that the applicant could not claim seniority for the original post of Sub Overseer. Thus the judgment of the Tribunal became final as none sought to challenge it.

4. Subsequently the applicant has filed OA No. 304/1992 challenging the refusal of the MES to grant pro-rata pension for the 17 years of service rendered by the

applicant in MES. The applicant superannuated as Assistant Executive Engineer from ONGC after completing more than 14 years of service. No pension was payable as none was admissible for ONGC service. The said OA No. 304/1992 was finally disposed of with a finding that the resignation of the applicant from MES was a technical one and not a simple plain resignation and the fact of resignation being technical is further bolstered with the fact that the Jabalpur Bench of the Tribunal in TA No. 26/1988 had held that the lien of the applicant was retained. The observation made in the said order is based on records. Since the respondents did not comply with the said order of this Tribunal in OA No. 304/1992 passed by the Ahmedabad Bench, the applicant had filed a contempt petition No. 56/1999 before the Ahmedabad Bench. The said order of the contempt petition was challenged before the Hon'ble Supreme Court in Civil Appeal No. 1458/2002. The Hon'ble Supreme Court was pleased to dispose of the said appeal without expressing any view on merits of the impugned decision taken by the respondents.

5. The case of the applicant is that the respondents have not considered for grant of pension vide Rule 49 of CCS (Pension) Rules, 1972 in Clause 2(b), where it is specifically provided that so long as qualifying service of a Government servant is 10 years or more and he shall be entitled to pension proportionate to the number of years of qualifying service subject to a minimum of Rs. 1275/- per month (unrevised). The decision taken by the respondents is not in accordance with the provisions of Rule 26(2), 70(1) and 37 of the CCS (Pension) Rules, 1972. Hence the applicant is entitled for direction to the respondents for grant of pension with effect from 25.04.1981.



6. Per contra the respondents have filed their reply contending that the services of the applicant has been considered and the applicant is not entitled for pension since he has not completed 20 years of qualifying service. Since the applicant was not holding the substantive post, the contention has been refused because the applicant has rendered less than 17 years of service in the MES. Therefore he is not entitle for pension, but he is only entitle for gratuity amount of Rs. 3,861/- which has already been credited to his account in Bank vide Annexure R-1, dated 17.10.2000. The said amount has been paid by complying the order of the CAT Ahmedabad Bench in OA No. 304/1992. The respondents in their reply contended that as per Rule 48-A of the CCS (Pension) Rules, 1972 a person is entitled only for the pensionary benefits, if he has completed 20 years of qualifying service. Admittedly the said provision of Rule 48-A of CCS (Pension) Rules, 1972 is not applicable to the facts of this case. The respondents have relied on the judgment of the Hon'ble Supreme Court in the case of Union of India and others Versus Dr. Vijayapurapu Subbamma reported in AIR 2000 SC 3113, wherein the Hon'ble Supreme Court held that the length of service for entitlement of pro-rata pension^{is} with effect from 01.01.1986. The relevant paras of the said judgment are extracted below :

"8. Applying the aforesaid principles what we find in the present case is that the respondents retired on 13.11.1980 and under the then relevant rules, an employee who has put in less than twenty years of qualifying service was not eligible to earn pension. At that point of time the respondent had put in only twelve years of qualifying service and, therefore, was not entitled to earn the pension on her retirement. The recommendations of the Fourth Pay Commission were enforced with effect from 01.01.1986 whereby the requirement of qualifying service to earn pension was reduced to ten years from twenty years. By the said recommendations a new class of pensioner was created. But the said recommendations of the Pay Commission were not enforced with effect from 13.11.1980-the date when the respondent retired but with effect from 01.01.1986. Thus, the recommendations of the

Pay Commission not being with retrospective effect, the respondent was not entitled to receive pension under the said recommendations which came into effect from 1.1.1986.

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"The object of bringing into existence the revised terms and conditions in the memorandum dated June 16, 1967 was to protect the pensionary benefits which the Central Government servants had earned before their absorption into the public undertakings. Restricting the applicability of the revised memorandum only to those who are absorbed after the coming into force of the said memorandum, would be defeating the very object and purpose of the revised memorandum and contrary to fair pay and justice."

7. The advocate for the respondents has also relied on the judgment of the Hon'ble High Court of Calcutta in the case of The Garrison Engineer Versus Bholanath Sarkar & Ors. (CTO 1092/2001)(Division Bench Judgment). In a similar circumstances the judgment of the CAT, Calcutta Bench was challenged before the Hon'ble High Court at Calcutta. The point of law involved in the present case and the point of law arose in the order of CAT Calcutta Bench dated 10.4.01 in which the Hon'ble High Court of Calcutta has decided the issue, regarding grant of pension, is similar. The Hon'ble High Court of Calcutta has also referred to the judgment of the Hon'ble Supreme Court which is referred above and the OA No. 999/1987 of the CAT Calcutta was dismissed. The substantial question of law involved is whether the applicant is entitled for the pension with effect from 01.01.1986 or 25.04.1981.

8. After hearing the parties at some length, we are of the view that the issue involved in this case is that whether the applicant has qualified for the pension or whether the applicant has rendered 20 years of service for grant of pension under Rule 49 of CCS (Pension) Rules, 1972. Admittedly the applicant has rendered less than 17 years of service in the Mrs. ~~XXXXXX~~ ~~XXXXXX~~

