

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.2608/2016

Orders reserved on : 20.08.2018

Orders pronounced on : 23.08.2018

Hon'ble Ms. Nita Chowdhury, Member (A)

Phoola Devi w/o late Sh. Bal ram (Chowkidar), aged 51,
r/o A-212, J.J. Colony, Shakarpur Delhi 110034.

....Applicant

(By Advocate : Shri Rishi Jain)

VERSUS

1. Director General (Works) CPWD,
Nirman Bhawan,
New Delhi.

2. The Engineer in Chief
Delhi PWD, 12th Floor,
MSO Building, New Delhi.

3. Public Grievances Commission,
Govt. of NCTD, TP Estate,
Vikas Bhawan, M Block, New Delhi-110110.

.....Respondents

(By Advocate : Shri Ch. Shamsuddin Khan)

ORDER

By filing the instant OA, the applicant is seeking the following reliefs:-

- “i. to set aside the letter dated 6.4.2016 issued by the Respondent No.3 and letter dated 11.3.2016 issued by Respondent No. 2 vide which the applicant was erroneously denied pension.
- ii. to direct the Respondents to grant Invalid Pension and Family Pension as per Rule 38 and Rule 54 of the CCS (Pension) Rules, 1972 respectively.

- iii. Pass such other and further orders, which this Hon'ble Tribunal may deem fit and proper, in the facts and circumstances of case."

2. Facts in brief are that the applicant is the wife of late Sh. Balram, who had worked as Chowkidar in the respondent department at GT Karnal Road, HOT Mix Plant, PWD-1, Division-1 w.e.f. 1.1.1979 to 11.12.1983 on muster roll and 12.12.1983 to 30.6.1990 as regular chowkidar.

2.1 On 30.4.1989, applicant's husband met with an accident thereby he was disabled to do further work and the respondent department by letter dated 9.5.1989 was informed about the said incident and after the said accident, her husband applied for VRS as he was unable to perform duty on account of physical disability.

2.2 On 23.6.1990 (Annexure A-2), the Executive Engineer of the respondent department issued a letter whereby it is informed to the applicant's husband that he gave application for invalid pension, his invalid pension cannot be granted and the case of his wife's appointment cannot be considered and he was informed by letter of odd No.1523 dated 14.3.1990 and 1847 dated 15.6.1990 and he did not submitted his proposal yet. Thereafter, vide letter dated 31.8.1990 addressed to the applicant's husband, the respondent department informed him that "the disabled person who is desirous of obtaining physical disability certificate may visit on 19.9.1990 in Room No.1 of External Patient department of

this establishment. Kindly come at 2:00 pm along with all necessary documents of treatment with passport size photograph showing the disabled organ.” The applicant’s husband appeared before the said authority and on 7.11.1990 (Annexure A-5), the office of Medical Superintendent Safdarjang Hospital, New Delhi issued a certificate of physical disability of applicant’s husband certifying 75% permanent physical impairment in relation to his Body. The Executive Engineer issued a letter dated 5.7.1991 to the applicant whereby applicant was appointed in place of her physically disabled husband. The respondent department made the payment of Rs.8358 with respect of GPF of her husband’s account. The applicant’s husband died in the year 1992.

2.3 On 15.6.1999, the applicant applied for family pension before the respondent department. Thereafter again on 17.8.1999, 18.9.1999 and 28.9.1999, the applicant wrote to respondent department for grant of family pension. The applicant kept on writing for the family pension but they never took any action regarding the same.

2.4 Being aggrieved by inaction of the respondent department, the applicant filed a complaint before Public Grievance Commission on 12.12.2013. The respondent department wrote a letter dated 21.5.2014 to the Public Grievances Commission stating therein that deceased Govt.

employee did not complete qualifying service of 10 years. According to the applicant, her husband completed more than 10 years of service. The letter dated 11.3.2016 issued by the respondents addressed to the Chairman, Public Service Commission was communicated to the applicant vide letter dated 6.4.2016 stating therein that :

“That my husband has met with an accident on 26/04/1989 during his duty and thereafter he was not in a position to perform the duties and hence applied for VRS from the service which was subsequently granted by the department on 30/09/1990 to him and Smt. Phoola Devi (Wife) has been approached in his place as Beldar on compassionate ground.”

It appears that earlier he has individually approached to Sr. Ortho of Safdarjung Hospital and applied for voluntary retirement on the basis of said incapacity medical certificate after 5 months of his voluntary retirement and consequent individually approached for disability certificate which was issued on 07/11/1990 by the appropriate constituted medical board of Safdarjung Hospital and sought for invalid pension.

It is observed that applicant and her associates resorting to repeated approach from the last about 26 years to the various authorities by filing few un-relevant papers even after being disposed off by the authorities like labour Court, Technical Wing of Pr. Accounts Office, Pay and Accounts Office, competent authority of the department and also matter closed by the commission on 23/12/2015.”

2.5 Being aggrieved by the aforesaid letters dated 6.4.2016 and 11.3.2016, the applicant has filed the instant OA seeking the reliefs as quoted above.

3. Notices were issued to the respondents. They have filed their reply in which they have stated that applicant's

husband met an accident on 30.04.1989 and due to his incapacity to work, he applied for VRS which was granted to him on 30.06.1990. Thereafter, he received gratuity and also GPF Rs.8358/-. In addition to this, his wife (applicant) received an amount of Rs.2273/- for the purpose of treatment on humanitarian ground. The present applicant was also appointed on compassionate grounds. The applicant had also raised this claim before the Labour Commissioner and Public Grievances Commission and her claims were rightly declined by the said authorities.

3.1 Since the applicant's husband never had the qualifying service for the pension. Thereafter, as per records, the applicant's husband applied for voluntary retirement, which was granted to him. Despite his having taken voluntary retirement, they acceded to the applicant being appointment in the department on compassionate ground.

3.2 They further stated the provisions of Rule 54 of CCS (Pension) Rules, 1972 are not applicable in the case of the applicant, as the same are applicable when the Govt. servant dies. As per Rule 38 and Rule 49 of the CCS (Pension) Rules, qualifying service for invalid pension is minimum of ten years. Thus, the applicant is not entitled to the relief claimed in the instant OA.

3.3 They also stated that applicant failed to show why she filed the application dated 12.12.2013 after such an inordinate delay.

3.4 The respondents further stated that as per the provisions of Rule 38 of the Rules *ibid*, a Govt. Servant is required to make known his intention of retirement on invalid grounds to the Head of Office, who will then refer the Govt. servant to a Medical Board or a Civil Surgeon, as the case may be. The invalid pension in such case is sanctioned after a medical certificate of incapacity from the appropriate medical authority is received. As per available records, no application/intention was received for invalid pension nor was sanctioned issued by the department for invalidation under Rule 38 so far. But he has individually approached to Sr. Ortho of Safdarjung Hospital and applied for voluntary retirement on the basis of said incapacity medical certificate after 5 months of his voluntary retirement. The husband of the applicant has simply applied for voluntary retirement, which was granted to him.

4. Heard Shri Rishi Jain, learned counsel for the applicant, and Shri Ch. Shamsuddin Khan, learned counsel for the respondents.

5. Counsel for the applicant submitted that applicant is entitled for family pension in view of provisions of Rules 38 and 54 of the Rules *ibid*, as her husband was declared

medically disabled vide a medical certificate issued by the Safdarjung Hospital. The claim of the applicant was rejected by the respondents vide impugned letters dated 6.4.2016 and 11.3.2016, therefore, the applicant has filed the instant OA for redressal of her grievance.

6. Counsel for the respondents submitted that after the aforesaid accident, the applicant has applied for VRS in the year 1989 itself which was granted to him and thereafter he himself approached to Safdarjung Hospital and obtained disabled certificate and sought for grant of invalid pension. This very request was considered and rejected by the respondents in the year 1990 itself. Thereafter applicant approached before the Labour Commissioner and Public Grievances Commission and her claims were rightly declined by them also.

6.1 Counsel further submitted that the claim raised by the applicant in the instant OA filed in the year 2016, was already considered and rejected by the respondents in the year 1990 and as such the present OA is barred by limitation. He further stated that applicant failed to show why she filed the application dated 12.12.2013 after such an inordinate delay. He also submitted that it is a settled law that repeated representation will not extend the period of limitation.

7. Before coming to the merits of the case, it is incumbent upon this Tribunal to deal the issue of limitation as raised

by the respondents. It is an admitted fact that applicant had applied for voluntary retirement in the year 1989 and the same was acceded to in the year 1989/1990 itself and also the request for grant of invalid pension was raised by the applicant's husband after taking voluntary retirement which was considered by the respondents in the year 1990 itself and rejected. Thereafter the applicant raised her grievance before Labour Commissioner as well as Public Grievances Commission and the claim of the applicant was rejected by them also. By filing the instant application, the applicant has challenged the letter dated 6.4.2016 issued by Public Grievance Commission to the applicant stating that her case cannot be re-opened as also the reply dated 18.3.2016 given by the respondent department to the said Commission was also sent with the said letter to the applicant. As such it is evidently clear that the claim raised in the instant OA had already been rejected by the respondent department in the year 1990 itself and the applicant has also not explained what compelled her to file representation again in 2013 for raising the same claim which was rejected by the respondents in the year 1990 without explaining the reasons for delay.

8. The law of limitation in this regard is very clear. The Administrative Tribunals Act, 1985, being a special Act, specifically having a limitation clause. Section 21 of the said Act reads as follows:-

“21. Limitation -

(1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where -

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or , as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section(2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.”

9. The Apex Court in SLP (C) No.7956/2011 (CC No.3709/2011) in the matter of ***D.C.S. Negi vs. Union of India & Others***, decided on 07.03.2011, it has been held as follows:-

“A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21 (1) or Section 21 (2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21 (1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21 (3)”.

10. The Apex Court in the case of ***S.S. Rathore v. State of Madhya Pradesh***, (1989) 4 SCC 582, held thus:-

“We are of the view that the cause of action shall be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle. It is appropriate to notice the provision regarding limitation under s. 21 of the Administrative Tribunals Act. Sub-section (1) has prescribed a period of one year for making of the application and power of condonation of delay of a total period of six months has been vested under sub- section

(3). The Civil Court's jurisdiction has been taken away by the Act and, therefore, as far as Government servants are concerned, Article' 58 may not be invocable in view of the special limitation. Yet, suits outside the purview of the Administrative Tribunals Act shall continue to be governed by Article 58.

It is proper that the position in such cases should be uniform. Therefore, in every such case only when the appeal or representation provided by law is disposed of, cause of action shall first accrue and where such order is not made, on the expiry of six months from the date when the appeal was filed or representation was made, the right to sue shall first accrue.”

11. Having regard to the aforesaid observations of the Apex Court in the said cases (supra), this Court is of the view that the instant OA is barred by limitation.

12. This Court also finds that admittedly the applicant after being declared voluntarily retired had sought for invalid pension, which cannot be accepted in view of the fact that for seeking invalid pension, it is incumbent upon the Govt. servant to apply for the same, appraising his intention of retirement on invalid grounds to the Head of Office. This is not the position in this case. Further as per the Rules *ibid*, for grant of family pension or pension, it is essential that an employee should complete the minimum 10 years of service, which is also not in the case in hand as the respondents have clearly stated in their counter affidavit that applicant's husband rendered 6 years, 6 months and 18 days regular service and his half of service rendered as muster roll, i.e., 2

years 5 months 25 days has also been taken into consideration which comes to 9 years and 13 days, less than 10 years of service.

13. In the result, for the foregoing reasons, I find that the present OA is liable to be dismissed being barred by limitation as well as on merits. Accordingly the same is dismissed. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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