

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00025/2021

Wednesday, this the 27th day of January, 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

M.P.Chothy,
Ex.Deputy Director,
Aged 71 years, S/o.Painkan,
Macherikkudy House, Iringole Kara,
Perumbavoor Village, Ernakulam Dist.,
Iringole P.O., PIN – 683 548.
Regional Office, E.S.I Corporation,
Ashram Road, Ahmedabad – 14.

...Applicant

(Party-in-Person)

v e r s u s

1. Director General,
Employees' State Insurance Corporation,
Panch Deep Bhavan, ESIC Headquarters Office,
C.I.G Marg, New Delhi – 110 002.
Phone No.011-23235391
E-Mail-dir-gen@esic.nic.in
2. The Secretary to Govt. of India,
Ministry of Labour and Employment,
New Delhi – 110 001.
3. The Secretary to Govt. of India,
Ministry of Personnel, PG & Pensions,
Department of Pension and Pensioner's Welfare,
New Delhi – 110 001.Respondents

(By Advocates Mr.T.V.Ajayakumar [R 1-2] & Mr.S.R.K.Prathap, ACGSC [R3])

This application having been heard on 21st January 2021, this Tribunal on 27th January 2021 delivered the following :

ORDER

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

The applicant has filed this O.A seeking to quash Annexure A-3 Speaking Order arising out of the direction of this Tribunal dated 19.03.2020 in O.A.No.903/2019 filed by him. Vide this order the Director General, ESI Corporation considered his representation dated 31.07.2019 and has decided the following:

1. *The qualifying service for calculation of pension is 32.5 years (ie. 65 half years).*
2. *Basic pension of Rs.5308/- fixed w.e.f 02.04.2002 is in order.*
3. *Revised basic pension of Rs.11997/- fixed w.e.f 01.01.2006 on implementation of 6th CPC is found to be in order as per the rules.*
4. *Since, the revised basic pension of Rs.11997/- fixed w.e.f 01.01.2006 is higher than the minimum of pay in the Pay Band and the Grade Pay (ie. Rs.10500/-) no further fixation of pension is required.*

2. The applicant has filed the O.A claiming that the order has continued to deny the portion of pension due to him in violation of the rulings of the Hon'ble Supreme Court in C.A.No.6770/2013 and orders of the Principal Bench of this Tribunal in O.A.No.655/2010 and O.A.No.1165/2011. The reliefs sought by the applicant in this O.A are as follows :

- (i) *Quash the maliciously framed, defiant, illegal Annexure A-3 Speaking Order.*
- (ii) *Direct the 1st respondent to pay full pension of Rs.5513/- as per Rule 49(2) of CCS (Pension) Rules with effect from 02.04.2002 read with the ruling of Hon'ble Principal Bench of C.A.T in O.A.No.1165/2011 fixing 20 years' service for full pension.*

(iii) Direct that applicant's revised basic pension on 01.01.2006 is Rs.12715/- and revised pension on 01.01.2006 is Rs.28737/- as per column 3 of the ready reckoner.

(iv) Direct that the applicant's stepped up pension on 01.01.2006 is Rs.39237/- ie., Rs.28737/- + Rs.10500/-.

(v) Direct that the applicant is entitled for the payment of arrears of pension of Rs.93,73,981/- as on 31.12.2020 and interest of Rs.49,43,153/- as on 31.10.2020 as per the statement and work out the amount till the date of payment.

(vi) Award a compensation of Rs.3 crores for the constant mental agony and for snatching 8 years from the life of the applicant by abusing the official power and position.

(vii) Direct the 1st respondent to issue revised pension payment orders dated 02.04.2002 showing Rs.5513/-, Rs.39237/- on 01.01.2006 and Rs.100837/- on 01.01.2016 as basic pensions.

(viii) Direct the 1st respondent to make all the payments within two weeks and report back the compliance to this Hon'ble Tribunal within 15 days.

(ix) It is also humbly prayed that the O.A may be disposed immediately taking into account of the untold miseries and sufferings of the applicant for the past 8 years and also of the fact that the applicant is a senior citizen of 71 years and party in person.

(x) This Hon'ble Tribunal may be pleased to delete para 4.1 of O.M dated 01.09.2008 in the light of the Order of the Hon'ble Principal Bench in O.A.No.655/2010.

(xi) Delete the reference to para 4.1 and para 4.2 in the O.M dated 28.01.2013 and quash the misleading para 7 of the O.M dated 28.01.2013.

3. We have heard the applicant who has appeared in person and Shri.T.V.Ajayakumar, learned counsel who has appeared for Respondent Nos.1-2. Learned counsel for the Respondent Nos.1-2 who appeared before this Tribunal on 14.01.2021 drew our attention to the fact that an appeal against Annexure A-3 Speaking Order has been filed on 26.11.2020 by the applicant before the Secretary to

the Government of India, Ministry of Labour and Employment, which is the controlling Ministry of the ESI Corporation. A copy of the appeal has also been produced by the applicant at Annexure A-18 and it has not yet been disposed of by the said Secretary to the Government of India, Ministry of Labour & Employment. The applicant did not make any submission in this regard while the matter was heard on 14.01.2021. On the date of hearing on 21.01.2021 the applicant has filed an M.A.No.180/68/2021, wherein, he has clarified that he had sent an appeal dated 26.11.2020 to the Secretary, Ministry of Labour with a request to send a reply within three weeks. The appeal was delivered at Delhi on 03.12.2020 and the three weeks time given by him was over on 24.12.2020. Since no reply was received till 30.12.2020 which, according to him, proves that the Appellate Authority has declined to reply, this O.A was filed on 30.12.2020. The applicant has submitted in para 6 of the O.A that no reply is received till date, which points to the fact that the Appellate Authority has declined to reply. He submits that if any submission regarding his appeal is to be made, it was to be made by him and not by the counsel for the respondents and thus the submission does not deserve any consideration.

4. We have carefully gone through the documents provided by the applicant and also the submissions made by him in M.A.No.180/68/2021. The applicant had claimed that since he had given a specific time of three weeks for response to the appeal submitted by him to the Secretary, Ministry of Labour & Employment and since no response has been received from the said Secretary, he has filed the O.A seeking reliefs. We have also gone through the appeal at Annexure A-18 filed by him

and we find that it needs to be considered properly at the appropriate level. We do not agree that a non response so far amounts to a rejection of the appeal. In the appeal it has been stated that the Director General, ESIC was not ready to accept the application of Rule 49(3) of CCS (Pension) Rules as she has stated that he has only 32.5 years of service against his calculation of 33 years of service. Further, it has been stated that the order of the Principal Bench of this Tribunal in O.A.1165/2011 dated 21.04.2015 has not been followed by the ESIC. Further, the Director General has also disregarded another order of the Principal Bench of this Tribunal in O.A.655/2010 dated 01.11.2011. In addition to this, the Director General has also not properly implemented the O.M.F.No.38/37/08-P&PW(A) dated 28.01.2013 of the Government of India and has thus denied his legitimate right as ruled by Hon'ble Supreme Court in Civil Appeal No.6770/2013.

5. Thus we find that the applicant has submitted that the Director General, ESIC has not properly followed the CCS (Pension) Rules, ignored the judgments of the Principal Bench of this Tribunal as well as Hon'ble Supreme Court and also not properly followed the O.M's issued by the Department of Pension & Pensioners Welfare. Hence, we are of the opinion that the appeal against the Director General's decision has to be appropriately considered by the appropriate authority, namely, the Secretary, Ministry of Labour & Employment, Government of India. Since the appeal at Annexure A-18 has already been submitted, we direct the concerned authority, namely, Secretary, Ministry of Labour and Employment, Government of India to go through the appeal/representation and pass a detailed speaking order taking into account all the issues brought out by the applicant in the aforesaid appeal. While

doing so the Secretary will be guided by the Rules, Standing Instructions/O.Ms as well as the relevant Court judgments as applicable in this regard. The appeal shall be disposed of by the Secretary within a period of four months from the date of receipt of a copy of this order.

6. With the above direction, the O.A is disposed of. No order as to costs.

(Dated this the 27th day of January 2021)

(K.V.EAPEN)
ADMINISTRATIVE MEMBER

(P.MADHAVAN)
JUDICIAL MEMBER

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List of Annexures in O.A.No.180/00025/2021

1. **Annexure A-1** - The photocopy of letter dated 06.10.2020 of Dy.Director, Trichur.
2. **Annexure A-2** - True photo copy of message dated 09.10.2020 issued to Dy.Director, Trichur.
3. **Annexure A-3** - True photocopy of Speaking Order with forwarding letter dated 12.10.2020.
4. **Annexure A-4** - True photo copy of Speaking Order dated 24.06.2019.
5. **Annexure A-5** - True photocopy Hon'ble S.C.Judgment in Civil Appeal No.6770/2013 for Hon'ble Tribunal only.
6. **Annexure A-6** - True copy of representation dated 01.08.2020 to 1st respondent.
7. **Annexure A-7** - Copy of half yearly calculation of service of applicant.
8. **Annexure A-8** - True photocopy of Rule 49(3) and Rule 49(4) and Govt. decision.
9. **Annexure A-9** - True photo copy of the order of Hon'ble Principal Bench of C.A.T in O.A No.655/2010 for Hon'ble Tribunal only.
10. **Annexure A-10** - True photo copy of the order of Hon'ble Principal Bench of C.A.T in O.A No.1165/2011 for the Hon'ble Tribunal only.
11. **Annexure A-11** - True photo copy of Rule 49(2) of C.C.S Pension Rules.
12. **Annexure A-12** - Page 42 of ready reckoner.
13. **Annexure A-13** - True photo copy of para 12 of Govt. Resolution dated 29.08.2008.
14. **Annexure A-14** - True photo copy of O.M dated 28.01.2013.
15. **Annexure A-15** - Calculation of arrears of pension and arrears of interest.
16. **Annexure A-16** - True photo copy of para 4.1 of O.M dated 01.09.2008.
17. **Annexure A-17** - True copy of O.M dated 06.04.2016.
18. **Annexure A-18** - True copy of Appeal dated 26.11.2020.
