

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 5 of 1993.

DATE OF DECISION 23.4.1993

M.O.Kochuvarkey

Applicant (s)

M/s A.K.Avirah and

Advocate for the Applicant (s)

Sunny Joseph  
Versus

Union of India represented  
by Secretary, Ministry of  
Finance and others

Respondent (s)

None for the respondents

~~Advocate for the Respondent (s)~~

CORAM :

The Hon'ble Mr. A.V..Haridasan, Judicial Member

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

## JUDGEMENT

The applicant a retired M.T.Driver has filed this application praying for the following reliefs:

1. To declare that he is entitled to count his War/Military service with effect from 2.6.1954 to 23.4.1965 and 21.9.1965 to 9.2.1966 as qualifying service for determination of his civil pension with effect from 1.7.1992.
2. To issue a writ of mandamus or other appropriate writ or order directing the respondents to grant and disburse the pension and other pensionary benefits due to him with interest at 18% from 1.7.92 at an early date
3. To issue such other directions or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances in this case.

2. The applicant joined the military service from on 2.6.54 and retired/there on 23.4.65. Thereafter he was called again for military service during war time and rendered service during 21 9.65 to 9.2.66. Thus on the whole he had 11 years 3 months and 7 days of qualifying military service which should count for pension. The applicant got re-employed as a civilian M.T.Driver under the MES, Naval Base, Cochin w.e.f. 1.7.65 and retired on superannuation on 30.6.92. Shortly after his re-employment he had opted for counting of the military service for civil pension and had also refunded the entire pensionary benefits received by him. This is borne out by the order dated 10.7.84 at Annexure.4. The grievance of the applicant is that after superannuation in the Pension Payment Order his pension was seen fixed without reckoning the military service. The non-counting of 11 years service for computation of pension has resulted in considerable loss to the applicant. Even before the date of superannuation on 20.5.92 coming to know that his pension would be fixed without reckoning his military/war service, the applicant made a representation to the second respondent requesting that his pension <sup>might</sup> be properly fixed taking into account of his military/war service. On receipt of this representation, the second respondent had sent a letter to the third respondent on 14.7.92 stating that the applicant was entitled to have his war/military service from 2.6.54 to 23.4.65 and 21.9.65 to 9.2.66 counted as qualifying service for pension and requesting for early issuance of correct P.P.O to avoid financial hardship to the applicant. It appears

that the 4th respondent also had addressed a letter dated 10.10.92 (Annexure-8) to the third respondent requesting to issue the correct Pension Payment Order to the applicant. In spite of these, the third respondent did not issue the correct P.P.O to the applicant so far. It is under these circumstances that the applicant has filed this application.

3. Though the application was adjourned for filing reply statement several times, the respondents did not take care to file a reply. When the application came up on 31.3.93 as there was no representation for the respondents, as a last opportunity respondents were given time to file reply and posted to this date for final hearing making it clear that no further adjournment would be given. In spite of these, I find that nobody appeared to represent the respondents. Therefore, I am left with no alternative but to hear the applicant and dispose of the application on merits on the basis of available records and pleadings.

4. I have very carefully gone through the pleadings in this case and have also heard the learned counsel for the applicant. It is borne out from the averments in the application as also from Annexures A7 and A8 which are letters written by the second and fourth respondents themselves that the applicant had opted for counting of his military/war service for civil service pension and that having refunded the retirement benefits received by him, he was entitled to have military/war service counted for pension. It is again evident from Annexures A7 and A8 that in fixing his superannuation pension the military/war

service was not taken into account. Even before the retirement of the applicant, the applicant had made a representation at Annexure-6 indicating that he ~~is~~ <sup>was</sup> entitled to have his military/war service counted for pension. In spite of this, the third respondent has not taken care to count the military/war service of the applicant for arriving at the correct amount of pension payable to the applicant. As a pensioner the applicant has to fall upon only the retirement benefits to meet his livelihood. If the officers responsible to fix the pension <sup>adopt</sup> ~~a~~ lethargic attitude as has been done in this case, it is a very sorrowful state of affairs. I am of the view that in such circumstances it is necessary in the interest of justice that the department is directed to pay penal interest for the short payment of pension from the date on which the pension has fallen due. On a careful examination of the application, and the connected records I have no doubt in my mind that the applicant is entitled to have his pension fixed taking into account the war/military service rendered by him and that this has not been done by the third respondent.

5. In view of what is stated above, I allow this application. Declaring that the applicant is entitled to count his war/military service w.e.f. 2.6.54 to 23.4.65 and 21.9.65 to 9.2.66 as qualifying service for pension, I direct the respondents to <sup>re-</sup>fix the retirement benefits of the applicant including pension counting the above service also as qualifying service and to

disburse to the applicant the difference between the retirement benefits thus arrived at and what has been paid to him, within a period of two months from the date of receipt of a copy of this order with interest @ 12 per cent per annum from 1.7.92, the date on which the pension should have been paid to him. There is no order as to costs.



(A.V. HARIDASAN)  
JUDICIAL MEMBER  
23.4.1993

ks.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.5/93

DATE OF DECISION: 09-07-93

M.O.Kochuvarkey .. Applicant

M/s A.K.Avirah &  
Sunny Joseph .. Advocate for applicant

Versus

1. Union of India represented  
by the Secretary,  
Ministry of Finance,  
New Delhi.
2. Chief Engineer,  
Dakshin Kaman Mukhyalaya,  
Engineer Sakha,  
HQ. Southern Command, Engineers Branch  
Pune-411001.
3. C.C.D.A. (Pensions)  
GI/Civil/GP-XI  
EDP Section, Draupathi Ghat,  
Allahabad-211014.
4. Garrison Engineer E/M  
Kataribagh Naval Base P.O.  
Cochin-4. .. Respondents

Mr. Kodoth Sreedharan, ACGSC .. Advocate for respondents

CORAM

THE HON'BLE MR.JUSTICE C. SANKARAN NAIR, VICE CHAIRMAN

JUDGMENT

Pursuant to the orders on M.P. 1071/93  
the judgment in O.A.5/93 is varied by deleting  
paragraph-3 thereof and maintaining the rest of  
the order.

*C. Sankaran Nair*  
C. SANKARAN NAIR (J)  
VICE CHAIRMAN

Dated the 9th day of July, 1993.