

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 19.7.93

O.A. 45/92

A.R. Purushothaman
Deepti, No. 32/2097
Palarivattom, Kochi-25

Applicant

VS.

1. Union of India represented by its
Secretary, Ministry of Finance
Deptt. of Revenue, Govt. of India,
New Delhi

2. Office of the Collector of
Central Excise and Customs,
West Bengal, Calcutta

3. The Chairman,
Cochin Port Trust, Kochi

Respondents

M/s Sukumaran & Usha

Counsel for
applicant

Mr. TPM Ibrahim Khan, ACGSC

Counsel for
R 1 & 2

Mr. Antony Dominic

Counsel for
R-3

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THE HON'BLE MR. N. DHARMADAN JUDICIAL MEMBER

JUDGMENT

MR. N. DHARMADAN JUDICIAL MEMBER

A retired employee from the Port Trust, Kochi, who has prior service in the Collectorate of Central Excise, Calcutta is aggrieved by the denial of fixation of pension after taking into consideration the total service rendered by him in the Central Excise Department, Calcutta.

2. The applicant was originally appointed as Engineer (Mechanical) in Vessel M.V. Vidyudi under the first respondent. He worked in that post from 15.9.54 to 24.3.1958. He was transferred to the office of the second respondent w.e.f. 25.3.1958. While working under the second respondent he applied for the post of Engineer in Cochin Port Trust through proper channel. Later he resigned from the service

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of the second respondent and joined the Cochin Port Trust w.e.f. 25.6.69. Annexure-B has been produced by the applicant to show that applicant resigned from the office of the second respondent and it was accepted by the second respondent w.e.f. 1.10.69. According to applicant, he worked as Marine Engineer in the Cochin Port Trust from 26.7.69 till he retired on 30.6.84. Even though applicant is eligible for full pensionary benefits taking into consideration his past service in the Excise Department, respondents didnot fix the pensionary benefits in accordance with law. The period of service rendered by the applicant under the second respondent from 15.9.54 to 26.7.69 was not taken into consideration in fixing the pension. Applicant relied on O.M.No. 28/10/84 dated 29.8.84 and also Rule 26(2) of the CCS (Pension) Rules 1972 in support of his contentions. The matter was being agitated by the applicant by filing OP 11254/90 before the High Court of Kerala. In that O.P. all the respondents were parties. The Cochin Port Trust filed a detailed counter affidavit virtually admitting the claim of the applicant but contended that they are handicapped in making the fixation of the proper pension and payment thereof on account of the refusal of the Central Excise Department to share the burden legally casted on them. However, relying on the statements contained in the reply statement, applicant withdrew the O.P. Applicant also submitted a representation Annexure-C to the second respondent. However, the Under Secretary, Ministry of Finance, Deptt. of Revenue sent a letter to the applicant on 7.3.89 (Annexure-D). It reads as follows:

62 " I am directed to refer to your letter dated 20.4.88 on the subject cited above and to say that it has been reported by the Collector of Central Excise, Calcutta-II that necessary instruction has already been issued to Cochin Port Trust for allowing you pro-rata retirement benefits as per Rule 26(2) of CCS (Pension) Rules 1972 for the service rendered by you in Central Excise Deptt. It is requested you may please contact to Cochin Port Trust in this regard."

Annexure-E is another letter sent by the same authority to the applicant. It is also extracted below:

" I am directed to refer to your letter dated 15.9.89 on the subject cited above and to say that the Collector of Central Excise, Calcutta-II has already given no objection to allow the pro-rata retirement benefits as are admissible for the service rendered in the Central Excise Department vide his letter No. II(3)31-ET/WB/83 dated 15.2.89 and also clarified the position in regard to the date of your resignation from the post of Inspector of Central Excise w.e.f. 1.10.69 and leave granted for the period 14.7.89 vide his letter dated January, 1989 (copy enclosed). You are therefore requested to take up the matter with Cochin Port Trust if necessary."

3. In the light of these two letter, applicant again represented the matter before the Port Trust. In spite of Annexure D and E, the applicant was not given the pro-rata pension. Hence, he filed this application under section 19 of the Administrative Tribunals' Act for a direction to the second respondent to remit the pro rata pension legally due to the applicant for his past service in the Central Excise Department from 15.9.1954 to 26.7.69 by one time payment to the Cochin Port Trust without further delay. He also prays for a further direction to the Cochin Port Trust to disburse to him the arrears of pension legally due to him in accordance with law.

4. Respondents 1 & 2 and 3rd respondent have filed detailed reply.

5. On 18.3.93, after elaborate hearing of learned counsel for both parties, this Tribunal passed an order to the effect that learned counsel for R-3 expressed willingness to pay the pension on the condition that the Central Excise Department will pay pro rata pension as per instruction issued by the Ministry of Finance as contained in Annexure-D and E extracted above. Learned counsel for R 1 & 2 submitted before this Tribunal on 18.3.93 when the above said order was passed that xx² the Last Pay Certificate submitted by the applicant is ⁴not available and the case is ⁶belated one. However, learned counsel will check up the position from the Department and submit further details on the next posting.

Even after two further postings, learned counsel for R 1 & 2 did not produced the LPC and other details as per the order. But a letter from the Deputy Collector sent to the learned ACGSC was produced before me in which it was submitted that on scrutiny of the available records revealed that the applicant had drawn leave salary of Rs. 1611.20 for the period from 14.6.69 to 30.7.69 paid under cheque No. 132557 dated 22.9.72. He has also produced Annexure-A letter from the Deputy Collector of Central Excise, Calcutta dated 15.2.88 in which objection in regard to the grant of pro-rata pension and retirement benefits was raised on the ground that the appointment of the applicant in the Cochin Port Trust was based on the application submitted by the applicant directly pursuant to a notification and not on the basis of the application forwarded by the Central Excise Department.

6. It is after adverting to these technical objections that the first respondent has issued two letters Annexure-D and E in which there is a unequivocal statement that the Central Excise Department has no objection to allow pro-rata retirement benefits as admissible for the service rendered by the applicant in the Central Excise Department prior to his joining the Cochin Port Trust. Hence, I do not see any justification on these technical objections at this stage. However, learned counsel for applicant fairly agreed that the sum of Rs. 1611.20 which has been received by the applicant as leave salary can be deducted from the pensionary benefits after proper fixation of the same. In the light of the offer I am satisfied that the submission can be accepted ^{for} by granting relief to the applicant.

7. Respondents 1 & 2 have agreed as early as in 1989 itself that the pro-rata retirement benefits due to the applicant under Rule 26(2) of CCS Pension Rule for the service rendered by him in the Central Excise Department will be paid at the appropriate time and it is for the Cochin Port Trust to take


further action in this behalf. It appears that the Cochin Port Trust did not take effective steps to finalise the matter in consultation with the Central Excise Department. No correspondence in this behalf has been brought to my notice.

8. However, having regard to the facts and circumstances of the case, I am satisfied that the applicant is entitled to the reliefs. Accordingly, I direct respondents 1 & 2 to grant pro-rata pension legally due to the applicant for the period of service rendered by him in the Central Excise Department from 20.9.54 to 26.7.69 by one time payment to the Cochin Port Trust, within a period of four months from the date of receipt of this judgment after deduction of a sum of Rs. 1611.20 from that amount towards leave salary already drawn by him. The third respondent will fix the pension of the applicant as per the claim made in the original application taking into consideration the past service rendered by the applicant from 20.9.54 to 26.7.69 within a period of two months from the date of deposit of pro-rata pension by the first respondent as per the above direction. The arrears shall be disbursed to the applicant within the aforesaid period.

9. The question of grant of interest can be separately agitated by the applicant if so advised.

10. The decision in this case is based on the admitted facts and submissions and it shall not be quoted as a precedent.

11. There shall be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER
19.7.93

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List of Annexures

1. Annexure-B : Order of the Assistant Collector (HRS)
West Bengal, Calcutta dated 26.7.71
accepting resignation of applicant
2. Annexure-C : Representation of applicant dated
19.9.89
3. Annexure-D : letter issued from Ministry of Finance,
Deptt. of Revenue dated 7.3.89
4. Annexure-E: -do- dated 19.12.89