

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No. 441 of 2006**

Thursday, this the 28<sup>th</sup> day of September, 2006

**C O R A M :**

**HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER**

Mariamma Jose,  
Administrative Officer (Rtd.),  
Office of the Commissioner of  
Central Excise & Customs,  
Kavalakkatt Ovungal House,  
Town Hall Road, Cochin – 682 018

... Applicant.

(By Advocate Mr. C S G Nair)

**v e r s u s**

1. Pay & Accounts Officer.  
Central Excise,  
Central Revenue Buildings,  
I.S. Press Road, Cochin : 682 018.
2. Controller of Accounts,  
Central Pension Authority,  
New Delhi - 110 066.
3. Commissioner of Central Excise & Customs,  
Cochin Commissionerate,  
Central Revenue Buildings,  
I.S. Press Road, Cochin – 682 018.
4. Union of India, represented by  
The Secretary, Department of Revenue,  
Ministry of Finance, North Block,  
New Delhi : 110 001.
5. V.S. Sarasan,  
Presently working as Pay & Accounts Officer,  
Customs House, Willington island,  
Cochin – 682 009.

... Respondents.

(By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC)



The Original Application having been heard on 28.9.06, this Tribunal on the same day delivered the following :

**ORDER**  
**HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER**

The applicant, while in service, expected that as others, she too would reach the age of superannuation; she reached. Like others, she expected that she would be retiring; so did she, on 30<sup>th</sup> September, 2005. Similarly, she expected that she would be able to get the terminal benefits, pension and commutation of pension, like other retiring employees; but here her expectation did not materialize. Cheques for various amounts were eagerly expected by her but by communication dated 29<sup>th</sup> September, 2005, the respondents had made all the payments provisional and again, such amounts were to be paid only on the giving by the applicant of an undertaking vide Annexure A-6 letter dated 29-09-2005. This undertaking, according to the applicant was commanded and demanded by the fifth respondent. The applicant, having no other sources to bank upon at the evening of her life, and the terminal benefits alone being the source of survival, giving the undertaking was only the Hobson's choice for her and she did so. Fortunately the payments were made to her but, all these, including commutation of pension, were purely on provisional basis.

2. The applicant waited sanguinely hoping that the respondents would

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issue final PPO after a month or so; and waited but nothing was done for the first month, second month and even thereafter. Anxiety built up, trauma corresponded and the applicant approached the Commissioner for Customs and Excise to intervene and solve the problem. Nothing perhaps moved, save the said Commissioner making the representation of the applicant to percolate down.

3. Normally, terminal benefits on provisional basis, under Rule 64(7) of the CCS (Pension) Rules, get converted into absolute ones, but in the case of the applicant, no such conversion and the provisional basis only continued. There was, therefore, no option but to move this OA. Notice was issued to all the respondents and in respect of the fifth respondent, specific allegations were raised in the following words:-

"Certain remarks were made by the 5<sup>th</sup> respondent in his own hand stating that the payments are made provisional as on account of a Writ Petition filed against the applicant in the High Court. .... The remarks made in Annexures A4 and A5 are by the 5<sup>th</sup> respondent personally on account of his inimical attitude towards the applicant. .... It is submitted that there was some personal enmity between the applicant and the 5<sup>th</sup> respondent and the 5<sup>th</sup> respondent misused his official position to settle scores with the applicant."

4. Respondent No. 1, the successor of the fifth respondent in office filed a

reply and issue of final PPO was complete as on 01-08-2006 and it is by now that the applicant was given the pension etc., on absolute basis. The fifth respondent, who has been impleaded in his personal capacity chose not to file any counter initially and it was as late as 28.09.2006 that a reply has been furnished by him. It is worth to quote some of the portions from the reply and the same are as under:-

(a) The Commissioner of Central Excise, the Head of Department forwarded a copy of Writ Petition No. 23753/2003 in which the applicant was the 6<sup>th</sup> respondent and in case the judgement was against the interest of the sixth respondent, then the date of her promotion would have to be altered. This would result in refixation of pay to her disadvantage which in turn would have an adverse bearing on the pensionary benefits already assessed for authorisation. As Rule 70 of the CCS (Pension) Rules, 1972, lays down that pension once authorised after final assessment shall not be revised to the disadvantage of the Government servant, unless such revision becomes necessary on account of detection of a clerical error subsequently, this 5<sup>th</sup> respondent was expected to exercise to caution to avoid authorisation of excess amount or undue amount of pension. Therefore, provisional payments were proposed by this 5<sup>th</sup> respondent. The judgement in Writ Petition No. 23753/2003 was pronounced on 24.10.2005 and this 5<sup>th</sup> respondent was told that there was no necessity to reduce the amount of pensionary benefits or to recover any amount from her retirement gratuity. But a copy of the judgement had not been made available till 05.12.2005, the date on which this 5<sup>th</sup> respondent was relieved from the post of Pay and Accounts officer. Though the 5<sup>th</sup>



respondent had intimated the Head of Office of the applicant that final pension cannot be authorised, the sanction of the Head of office for payment of provisional pension was issued only on 09.01.2006, i.e., three months after the retirement of the applicant. The reason for delay on the part of the Head of Office in this respect is not known to this 5<sup>th</sup> respondent. Had the Head of Office issued the sanction for provisional pension in time, payment of provisional pension from November, 2005, when her pension for the first month after retirement fell due could have been made then and there. The fact that the pensionary benefits have been made only provisionally had been mentioned in the handing over charge note for the information and action of the successor Pay and Accounts Officer.

5. Counsel for the applicant submitted that it is for the first time in the reply that the reason for not granting absolute pension and payment of terminal benefits on provisional basis have been spelt out. None of the reason could be fitted within any of the rules and regulations. No provision exists in the Pension rules to pay provisional pension when there is a case pending relating to seniority. Nowhere is there any provision for payment of Provisional Commuted value of pension. These are the laws, perhaps, introduced by the fifth respondent, to be applied to the applicant alone! The counsel argued that the extent of anxiety that the applicant had to suffer due to the harassment meted to her and her having been forced to move this Tribunal for justice readily warranted heavy cost in her favour and against the fifth respondent. It is the case of the applicant that the case of the applicant

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is not one where delay was anticipated and hence provisional pension was granted. Anticipation of delay would be in such cases where the service particulars etc., are not fully available or yet to be verified and the like. According to the applicant's counsel, the fifth respondent has no business to deny pension and make it only provisional pension and thus, responsibility is entirely upon him for the delayed payment of pension.

6. Counsel for the respondents has submitted that now that the final PPO has been issued, the matter may be closed.

7. Arguments were heard and documents perused. The extent of mental agony suffered by the applicant could well be imagined. Incidentally, this order is being written at such a juncture when the Government observed "senior citizens' day". Retirement from service is not a happy occasion, as the main bread winner has henceforth to depend upon the pension and other lumpsum payment, the latter to meet certain expenditure for performing social obligation such as marriage of dependents, or to have a roof one's own, while the former serves as the lone source of income for survival. Under these circumstances, such payment without any rider would be a consoling factor. Making the payment as conditional or 'provisional' would naturally lead to various anxieties. For, the word, "Provisional" is geneflecting, as such payment on provisional basis legally permits the employer to suddenly stop the payment of pension and not only the same,

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even recovery could be ordered of the past payments, since such payments were only provisional. It is on account of such mental trauma, coupled with the applicant's compulsion to move the tribunal that the applicant claims cost. The counsel would have certainly charged his fees, hefty or of a softy, in lumpsum or in piece-meal. This amount has to be paid from the amount received as terminal benefits or pension, which means some reduction in ~~his~~ terminal benefits! If the cost is borne by the respondents, there may not be the reduction in the terminal benefits would remain intact. The anguish of the applicant, therefore, is understandable and claim for cost justifiable. The applicant is, therefore, entitled to cost.

8. The question then is what is the quantum of cost and who is to bear the brunt. The counsel for the applicant argued that levy or cost is claimed not to bulge the purse of the applicant but to reduce ~~his~~ burden in prosecuting this OA and more than that to ensure that such cost is deterrent so that the very fifth respondent, who has one more year for superannuation, does not repeat the same blunder which he has committed and also that others in such position are dissuaded from making the lives of other retirees miserable as the fifth respondent did in respect of the applicant. Even if no amount is awarded as compensation for mental agony and trauma, as costs, a sum of Rs 3,000/- quantified would be reasonable.

9. The next question is as to who is to pay this cost under such

circumstances- the official respondents or those responsible for such a situation? Reply to this question is available in the decision of the Apex Court in the case Lucknow Development Authority v. M.K. Gupta, (1994) 1 SCC 243, which reads as under:-

**11. Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socio-economic outlook. The authority empowered to function under a statute while exercising power discharges public duty. It has to act to subserve general welfare and common good. In discharging this duty honestly and bona fide, loss may accrue to any person. And he may claim compensation which may in circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose? In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system. Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same. It was never more necessary than today when even social obligations are regulated by grant of statutory powers. The test of permissive form of grant is over. It is now imperative and implicit in the exercise of power that it should be for the sake of society. When the court**

*directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries.*

10. Undoubtedly, it is the fifth respondent who is out and out responsible for demanding the undertaking and introducing "provisional character" to the pension and other terminal benefits when such a situation was not warranted. His action has no legal sanction nor did he consult the higher authorities in this regard. The whim and fancy of the fifth respondent alone is the cause for such a situation. In any event, when the civil writ petition was dismissed and there was no possibility of any adverse impact on the seniority of the applicant, about which the said fifth respondent came to know as early as on 24<sup>th</sup> October, 2005 and final PPO was got prepared by the section almost by then, as stated by the counsel at the time of final hearing, the fifth respondent ought to have immediately acted in signing and sending the final PPO; but the said respondent failed to do so. He is inventing some other reason that he was waiting for the copy of the order and thereafter he had been transferred in December, 2005. A clear afterthought! This shows only his biased attitude towards the applicant. He



should be suitably warned in this regard. It is also not known as to what prevented the other respondents not to act upon the representation filed by the applicant on 14-12-2005 and to release the final PPO at least immediately on getting the aforesaid representation. Respondent No. 3, the Commissioner of Central Excise and Customs, Cochin Commissionerate, shall conduct an investigation in this regard and fix the responsibility upon the erring individual. A sum of Rs 2,000/- should be, after notice to the said fifth respondent, be recovered from him. As regards the balance, the same is payable by that official who would be held responsible for delay in issue of final PPO as and when such a responsibility is fixed and if according to the second respondent, none is responsible, the amount should be paid from the exchequer.

11. Thus, the OA is allowed. As the other reliefs have been already granted, it is the cost which is to be paid to the applicant. Respondents are directed to pay a sum of Rs 3,000/- as costs within a period of two months from the date of communication of this order and as stated in the preceding para, this amount should be realized from the fifth respondent and any other official having been found responsible for delay in issue of PPO.

(Dated, the 28<sup>th</sup> September, 2006)

  
K B S RAJAN  
JUDICIAL MEMBER

CVR.