

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 526 OF 2009

Monday, this the 6th day of June, 2011

CORAM:

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Sri Chandran V Menon
Nandanam, Kolazhy
Thrissur – 680 010

... Applicant

(By Advocate Mr.K.B.Arun Kumar)

versus

1. The Comptroller and Auditor General of India
Commercial Audit Wing
Indraprastha Bhavan
10, Bahadurshah Zaffar Marg
New Delhi
2. The Principal Director Commercial Audit & Ex-officio
Audit Board – II
Internal Audit and Accounts Department
Kolkata
3. The Pay and Accounts Officer (Audit) Pension
Office of the Principal Accountant General (A&E)
West Bengal, Treasury Building
2 Government Palace West, Kolkata
4. Union of India represented by its Secretary
Ministry of Finance
Government of India
New Delhi ... Respondents

(By Advocate Mr.V.V.Asokan (R1-3)
Advocate Mr.Thomas Mathew Nellimoottil (R-4))

The application having been heard on 06.06.2011, the Tribunal
on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant was in the service of 1st respondent from 1963 to



1982. Consequent on his absorption in the service of Kerala Tourism Development Corporation, a State Government undertaking , he submitted his resignation before 1st respondent and accordingly that was accepted with effect from 25.07.982. He had 14 years of service with the 1st respondent, the date on which his resignation came into effect, qualifying him for pro-rata pension and other retirement benefits. He retired from KTDC on 30.11.2003. Since he was not paid pro-rata retirement benefits by 1st respondent for the service he had rendered upto 26.07.1982, he approached this Tribunal by filing OA 459/07. That was disposed of by order dated 29.11.2007, a copy of which is produced as Annexure A-1. By a consent order, the OA was disposed of by directing the respondents, viz., the Comptroller and Auditor General of India, Principal Director,Internal Audit & Accounts Wing, Kolkatta and Union of India represented by the Secretary, Ministry of Finance to comply with payment of pro-rata pension and other dues after calculating details from KTDC in the shortest time as the matter has already been delayed. In case the payment is not made to the applicant regarding surrender leave and other dues, the applicant is at liberty to approach this Tribunal was reserved. According to the applicant, though retirement benefits were subsequently paid no interest was paid on the pro-rata retirement benefits along with gratuity from 26.07.1982 to 05.02.2008. He made a representation in that behalf. Subsequently, by Annexure A-6 letter, 3rd respondent informed that the applicant is not entitled to the fixed medical allowance from 26.07.1982 in the absence of provision of law for the fixed medical allowance retrospectively. However, the present OA is filed mainly for the fixed medical allowance from 26.07.1982 to 05.02.2008. and also for interest on the other retirement benefits already paid to him including interest on gratuity.



2. Respondents have filed reply statement wherein among other things, they have stated that during the pendency of the OA, they have paid leave encashment in the year 2009 vide Annexure R-1(d). What remains to be considered is regarding the claim for interest on the various retirement benefits already paid to the applicant and also for the fixed medical allowance for the period from 26.07.1982 to 05.02.2008.

3. The specific contention of the respondents is that in the absence of any provision for payment of fixed medical allowance retrospectively, the applicant is not entitled for the same. According to them, no interest is also payable, as claimed by the applicant.

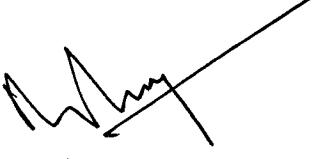
4. We have heard both parties. As regards claim for interest is concerned, admittedly, the various retirement benefits were paid to the applicant based on a consent order vide Annexure A-1 order. The same was disposed of in November, 2007 and undisputedly payment was effected in 2008 except leave encashment which was paid in the year 2009. If the applicant is entitled to interest on the principal amount he ought to have raised that claim in the earlier OA. In the absence of which he cannot claim interest on the ground of belated payment as on date on which the application was disposed of. Perhaps he could have raised a claim for interest for the period after the disposal of the OA and not before the final order is passed in the OA. But soon after the order in the earlier OA benefits have been paid. In such circumstances, we hold that the applicant is not entitled to any interest either on law or on facts.

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5. Regarding fixed medical allowance, admittedly, the fixed medical allowance is paid as retirement benefits along with pro-rata pension. They have paid this amount for the period from 05.02.2008. According to the respondents, the applicant has exercised his option to pay the fixed medical allowance from that date onwards. But we are unable to accept this contention. Admittedly when they have paid retirement benefits, they have included the claim for fixed medical allowance also as it is evident from the statement filed by the respondents. However, during the period when he was in service he has already opted to be paid at fixed rate. There is no case for respondents that he had changed his option at any subsequent period. They also have no claim that he had claimed the medical allowance by way of reimbursement on the actual amount incurred by him towards medical expenses. In the circumstances, there is no justification for denying him the medical allowance for the period from 26.07.1982 to 05.02.2008 at fixed rate. He had resigned from the Office of the 1st respondent in 1982 and he joined at KTDC and he was paid medical benefits as per law applicable to that Establishment and he retired from KTDC in November, 2003. Accordingly, we declare that the applicant is entitled for the fixed medical allowance for the period from November, 2003 to 05.02.2008. The same shall be calculated within a period of three months from today, and in case the aforesaid amount is not paid, the applicant is entitled to interest at 6% on the said amount payable. OA is allowed to the limited extent as above. No costs.

Dated, the 6th June, 2011.


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R.RAMAN
JUDICIAL MEMBER