

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.531/2000

Thursday this the 25th day of January, 2001

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HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

N.C.Gopalan,
S/o Chothi,
Chief Engineer Grade II (Retd)
Fishery Survey of India,
Zonal Office, Cochin
residing at Vysakham,
Perumpadanna, North Parur,
Kerala State.Applicant

(By Advocate Mr. V.R.Ramachandran Nair)

v.

1. Union of India, represented by the Secretary, Ministry of Agriculture, Department of Animal Husbandry & Dairying, New Delhi.
2. The Director General, Fishery Survey of India, Botawala Chambers, Sir.P.M.Road, Mumbai.I.
3. The Zonal Director, Fishery Survey of India, Cochin Base, kochangadi, Cochin.5.
4. The Pay & Accounts Officer, Ministry of Agriculture, Botawala Chambers, Sir P.M.Road, Mumbai.I.Respondents

(By Advocate Mr. K.R.Rajkumar)

The application having been heard on 25.1.2001, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant who was Chief Engineer Gr.II in the Fishery Survey of India sought retirement on invalid ground and he was allowed to retire on 25.3.99. While he was in

service there was an agitation during the period 11.5.93 to 30.6.93. The applicant had been given a show cause notice on 26.5.93 (Annexure.A8) in which he was informed that it was proposed to take action against him under Rule 11 of the CCS (CCA) Rules, that the days on which work was not performed by him ie., from 11.5.93 would be treated dies non ie., the days would neither count as service nor be construed as break in service. He was asked to submit his representation within two days on receipt of the Memorandum informing him that it would be presumed that he had no representation to make and orders would be passed against him ex parte if the representation was not received. The applicant made a representation on 29.5.93 and Annexure A.9 order dated 31.5.93 was passed informing the applicant that it had been decided by the competent authority that the period from 11.5.93 would be treated as dies non under the provisions of CCS (CCA) Rules in his case and that he would not be entitled to salary for the said period. On his medical invalidation, the applicant submitted the necessary pension papers immediately thereafter. However, the pension papers were returned for two reasons; (i) the medical certificate of incapacity was not in proper form and (ii) absence of the applicant from duty termed as agitation period from 11.5.93 to 30.6.93 has not been regularised. Finding that the applicant was not given the invalid pension, gratuity and other retiral benefits, the applicant has filed this application under Section 19 of the

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Administrative Tribunals Act, for a direction to the respondents to grant the applicant invalid pension, group insurance amount and all other retirement benefits with eighteen percent interest/penal interest for the delayed payment of pension, gratuity and computation of pension from the due date of payment till the date of actual payment.

2. The respondents in their reply statement contend that the pension case of the applicant was processed without delay but as the period between 11.5.93 to 30.6.93 was not regularised, as the applicant had submitted the appeal against the order of dies non pursuant to the order of the Tribunal in OA. 309/95 on 31.3.2000, that after the disposal of the appeal only the period was regularized by grant of leave and that therefore, the delay in finalisation of the applicant's pension claim was not culpable but happened in the circumstances as explained. The respondent contend that therefore the applicant is not entitled to any relief.

3. When the application came up for final hearing, learned counsel for the applicant states that the applicant has been by order dated 31.7.2000 paid pension and gratuity withholding Rs.50000/-. A copy of the order has been submitted for the perusal of the Bench, which is kept on record. The counsel states that regarding the withheld amount of Rs.50,000/- the respondents may be directed to make final adjustments and pay the balance amount due giving

liberty to the applicant to challenge the adjustments at the appropriate time. Therefore, the counsel stated that the liability of the respondents to pay interest may be considered and an order passed in that regard.

4. I have gone through the pleadings and have heard Shri VR Ramachandran Nair, learned counsel for the applicant and Shri K.R.Rajkumar, learned counsel for the respondents. In view of the development that had taken place after filing of this application and the payments made by the respondents, the short question that has to be decided in this application is whether there has been avoidable and culpable delay on the part of the respondents in settling the pension claim of the applicant. Since the medical certificate produced along with the pension papers were not found to be in order, the applicant had submitted a proper certificate on 16.10.99. What remained was the regularisation of the period of dies non. This according to the respondents caused the delay and the delay was unavoidable. I am not in a position to agree with this argument. There was no occasion for the pension sanctioning authority to delay the finalisation of pension of the applicant, because there was no unauthorised absence which was not condoned by the competent authority. In Annexure A8 show cause notice the applicant was told that action was being taken under provisions of CCS (CCA) Rules and that the period of his absence from 11.5.93 to 30.6.93 would neither count as service nor be construed as break in service. This

shows that the competent authority had decided that the applicant would ^{not} be entitled to pay and allowance or any other benefit for the period between 11.5.93 and 30.6.93 and that this absence of the applicant would not constitute a break in service. In the order passed (Annexure.A9) after considering the representation of the applicant in reply to Annexure.A8 the applicant was told that the period has been treated as dies non and the applicant would not be entitled to his salary for the said period. The only consequence of the absence of the applicant during the period from 11.5.93 to 30.6.93 as decided by the competent authority under the provisions of CCS (CCA) Rules was that the applicant would not be entitled to pay and allowance for this period. It had already been decided by the competent authority that the absence would not constitute break in service. In the light of Annexures.A8 and A9 whether the applicant has filed an appeal or not against A9 order the pension sanctioning authority need not have waited for disposal of appeal to be filed by the applicant. It is pertinent to note that the Government of India instruction No.1 under Central Civil Services (Pension) Rules it is incumbent on the competent authority to pass appropriate orders without waiting for a representation to be made by the pensioner with a view to avoid difficulty for the retired persons. Since the period of absence between 11.5.93 and 30.6.93 has been treated as dies non clearly stipulating that it would not be treated as a break in service by the competent authority under CCS (CCA) Rules, there was no need for the pension sanctioning

authority to delay the matter further after receipt of proper medical certificate on 16.10.99. At least within three months from 16.10.99 the pension and other retiral benefits due to the applicant should have been made available to him.

5. In the light of what is stated above, the application is disposed of with the following directions:

- (a) Since the pension of the applicant should have been paid latest by 16.1.2000 the respondents shall pay to the applicant interest on the delayed payment at the rate of 12 percent per annum from 16.1.2000 to the date of payment. This shall be done within two months from the date of receipt of a copy of this order.
- (b) Regarding the withheld amount of Rs.50,000/- the respondents shall make necessary adjustments and issue an order making payment of balance, if any and giving details of the adjustments as expeditiously as possible at any rate not later than a period of six weeks from the date of receipt of a copy of this order.

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(c) If the applicant is aggrieved by the adjustments made, it shall be open to him to challenge the same.

(d) No order as to costs.

Dated the 25th day of January, 2001



A.V. HARIDASAN
VICE CHAIRMAN

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List of annexures referred to:

Annexure A8: True copy of Memorandum No.F.1-4(2)/92 dated 26.5.1993 issued by the Senior Fishery Scientist, Porbandar Base, to the applicant.

Annexure A9: True copy of Memorandum No.F.1-4(2)/92 dated 31.05.1993 issued by the Senior Fishery Scientist, Porbandar Base to the applicant.