

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.545/06

Wednesday this the 23rd day of August 2006.

CORAM:

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. K.B.S.RAJAN, JUDICIAL MEMBER**

A.V.Karunakaran,
Master Craftsman, Naval Aircraft Yard,
Naval Base, Kochi-4., residing at
Anjilitharayil House, Kanjiramattom P.O.,
Ernakulam. Applicant

(By Advocate Shri Harisharma)

Vs.

1. Chief of Naval Staff,
Naval Head Quarters, New Delhi.
2. Flag Officer – Commanding – in-Chief,
Head Quarters, Southern Naval Command,
Kochi-4.
3. The Chief Staff Officer (P&A),
Headquarters, Southern Naval Command,
Kochi.
4. The Commodore Superintendent,
Naval Aircraft Yard,
Southern Naval Command,
Kochi-4. Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC.)

The application having been heard on 23.8.2006
the Tribunal on the same day delivered the following

ORDER

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

The applicant had approached this Tribunal in O.A.607/02 against the order of compulsory retirement from service due to his absence from duty which was allowed by the Tribunal and the respondents were directed to reinstate the applicant in service and to treat the period of absence between the date of compulsory retirement to the date of reinstatement as period spent on duty and to

regularise the period of leave on medical ground and to pay the applicant 50% of the arrears of pay and allowances. This order was taken in appeal before the Hon'ble High Court in W.P.(C) 1050/04 and the order of the Hon'ble High court set aside the orders of the Tribunal as under:

"18. We find that the first respondent herein has attained the age of 55. He can continue in service for another about five years if he is readmitted to duty. Taking notice of the totality of the circumstances, we direct that the punishment orders that are issued to him as confirmed by the Appellate Authority are to be recalled and he is to be reinstated in service without delay. We direct that such orders of reinstatement are to be given to the employee latest by 2nd May, 2005. Appropriate proceedings are to be drawn up and served on the employee forthwith

19. We further direct that the period from 2.6.1997 up to the date of reinstatement is to be treated as service for purposes of pension and gratuity. However, he will not be entitled to the benefit of salary, increments or any other allowances whatsoever for the above period concerned, excepting the benefit of continuity of service. Ext.P3 order of the Tribunal is set aside, for facilitating the petitioner to issue proceedings as directed above. "

2. This order of the Hon'ble High Court to the extent of the first sentence in para 19 was further modified by order at Annexure - A-3(2) on 29. the September, 2005, which reads as under:

"We further direct that the period from 2.6.1997 to 16.7.1997 will be treated as service for the purpose of pension and gratuity and rest of the period up to the date of retirement, during which period the petitioner was actually in service has to be taken as service for all purpose.."

Consequently, the respondents had reinstated the applicant by A-7 dated 29.4.05 with the condition that, "the reinstatement of Shri A.V.Karunakaran is subject to the outcome of the Special Leave Petition which is being filed before the Hon'ble Supreme Court."

3. The applicant has also filed an SLP before the Apex Court against the same order of denial of backwages and treating the period only as qualifying service. Both these SLPs are stated to be pending. In the meanwhile A-9 order has been issued by the respondents for recovery of the terminal benefits granted to the applicant as he has been reinstated in service and he could not be treated as a pensioner. The applicant has challenged the said order in this O.A.

4. We have heard the counsel on both sides. We are of the view that the orders in A-9 impugned before us are consequential orders to the reinstatement, which matter is under challenge before the Hon'ble Supreme Court. The applicant has submitted before us that he is entitled to the payment of subsistence allowance, if not salary, during the period he was out of service covered by the disciplinary proceedings and at least this amount should have been deducted from the pensionary benefits as non-recoverable. This argument is not acceptable to us. The very question of treatment of the said period is sub judice in the Hon'ble Supreme Court, and the Hon'ble High Court has held that the applicant shall not be entitled to any wages for that period and the period can be considered only as qualifying service. Therefore, the applicant, if aggrieved by the recovery orders, should agitate this matter before the Hon'ble Supreme Court where the matter has now been taken up and not before this Tribunal.

5. In the circumstances, the O.A. is dismissed.

Dated the 23rd August, 2006.


K.B.S. RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN