

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 552 / 2007

Wednesday, this the 26th day of March, 2008.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE DR K.S.SUGATHAN, ADMINISTRATIVE MEMBER

K.D.Francis,
S/o K.P.Devassy,
Mailman, HRO, RMS,
Ernakulam Division.

....Applicant

(By Advocate Mr P Ramakrishnan)

1. Union of India represented by
Director General,
Department of Posts,
New Delhi.

2. The Post Master General,
Central Region,
Kochi.

3. The Senior Superintendent,
RMS Ernakulam Division,
Kochi-11.

....Respondents

(By Advocate Mr.S Abhilash, ACGSC)

This application having been finally heard on 18.3.2008, the Tribunal on 26.3.2008 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by the Annexure A-2 letter dated 24.1.2006 issued by the 3rd respondent, viz, Senior Superintendent of RMS, EK Division, Kochi denying him the back wages and other monetary benefits for the period from 14.12.1999 to 11.5.2005.



2. Brief facts of the case are that the applicant was dismissed from service on 9.3.1994. Challenging the aforesaid order of dismissal, he filed O.A.206/2000 before this Tribunal on 13.12.1999. The Tribunal, vide Annexure A-1 order dated 4.4.2002 allowed the O.A and directed the respondents to reinstate him in service. It was also held that the applicant will not be entitled to back wages and other monetary benefits for the period, from the date of his dismissal from service till the date of his filing the said O.A as he had approached this Tribunal belatedly. However, the respondents carried the aforesaid order of this Tribunal before the Hon'ble High Court of Kerala in O.P.No.21898/2002 which was finally dismissed vide judgment dated 25.2.2005. Later on, he was reinstated in service on 11.5.2005. Thereafter, the respondent No.3 gave an opportunity to submit his representation, if any, regarding the proposal of the Department to treat the period from 9.3.1994 to 13.12.1999 as eligible service for pension and the period from 14.12.1999 to 11.5.2005 as eligible service with pay limited to subsistence allowance. The applicant submitted his representation against the aforesaid proposals of the respondent but it was not accepted by them and vide Annexure A-2 impugned order dated 24.1.2006, the respondent No.3 held as under:

"Neither the Hon'ble C.A.T nor Hon'ble High Court have given any direction regarding how the period should be treated. Hence it is implied that the matter is left to the decision of the competent authority as per the rules on the subject."

Accordingly, they issued the following orders:

- (i) *The period from 9.3.1994 to 13.12.1999 will be treated as eligible service only for the purpose of pension.*
- (ii) *The pay and allowances for the period from 14.12.1999 to 11.5.2005 be limited to subsistence allowance admissible under the provision of FR 54 A (2) subject to the provision of FR 54 (7)."*

3. The applicant has challenged the aforesaid decision of the respondents on the ground that this Tribunal had only withheld the back wages and other



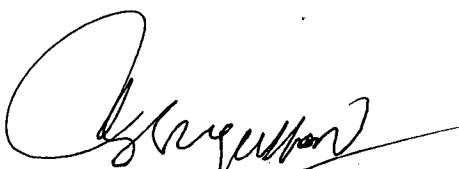
monetary benefits for the period from 9.3.1994 to 13.12.1999 which would necessarily mean that he would be treated, as if in service, except for the denial of wages and such monetary benefits for the said period. He has, therefore, submitted that he is entitled to reckon the period from 9.3.1994 to 11.5.2005 as continuous service for pay fixation and seniority and the period from 13.12.1999 to 11.5.2005 for all purposes including payment of full back wages. He has further submitted that the specific exclusion of back wages and monetary benefit for the period from 9.3.1994 to 13.12.1999 by this Tribunal in its order dated 4.4.2002 would imply that he is entitled to all other benefits for the said period. He has also submitted that as per FR 54 A(1) a Government servant whose dismissal is set aside by a court of law, is entitled for regularisation of the period of absence from duty and for payment of pay and allowances in accordance with Sub Rule (2) or (3) subject to the direction, if any of the court. Therefore, FR 54 A (2) is subject to the direction issued by the court of law while setting aside the order or dismissal. As this Tribunal has already directed in what manner the applicant's period of absence was to be treated, Rule 54 A (2) could not have been invoked by the respondents. He has, therefore, prayed for the following reliefs:

- a) Set aside Annexure A-5;
- b) Direct the respondents to refix the applicant's salary treating the period 9.3.1994 to 11.5.2005 as duty to refix his seniority as if he had never gone out of service and to grant full back wages and other benefits for the period 12.12.1999 to 11.5.2005;
- c) Direct the 2nd respondent to take up and dispose of Annexure A-6.

4. We have heard Shri P Ramakrishnan, counsel for applicant and Shri S Abhilash, ACGSC for respondents. The directions of this Tribunal in O.A.206/2000 dated 4.4.2002 was upheld by the Hon'ble High Court of Kerala in O.P.No.21898/2002. The Tribunal has set aside the order dismissing the applicant and directed the respondents to reinstate him in service. As regards



the monetary benefits were concerned, it was held clearly that the applicant was not entitled to back wages and other monetary benefits from the date of his dismissal till the date of his filing of the O.A. The respondents were not precluded from paying other benefits such as continuity in service etc. for the aforesaid period to the applicant. The back wages was denied only till he had filed the O.A. By necessary implication, it is more than clear from the order of this Tribunal that the applicant is entitled for the back wages from the date he has filed the O.A till he was reinstated. In such circumstances, there was hardly any scope for the respondents to take a fresh decision in the matter. We, therefore, allow this O.A. and quash and set aside Annexure A-2 order dated 24.1.2006 to the extent that the period from 9.3.1994 to 13.12.1999 has been treated as eligible in service only for the purpose of pension and the period from 14.12.1999 to 11.5.2005 has been treated as eligible only for the pay and allowances limiting to the subsistence allowance admissible under the provision of FR 54 A(2) subject to the provisions of FR 54 (7). To avoid any ambiguity in the matter, we hold that the applicant is entitled to all the service benefits except to back wages for the period from 9.3.1994 to 13.12.1999. As regards the period from 14.12.1999 to 11.5.2005 is concerned, he is entitled for all benefits including the full pay and allowances and all other consequential benefits as available to him under the service rules governing his appointment. The respondents shall issue necessary revised orders accordingly, within a period of one month from the date of receipt of this order. There shall be no order as to costs.


DR K.S. SUGATHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER