

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.564/09

Friday this the 9th day of July 2010

C O R A M :

**HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

K.B.B. Nair,
S/o. Late Krishnan Nair,
Ex-Head Light Keeper (Senior Scale),
Residing at Krishna Vilas, Iringole P.O.,
Perumbavoor, Ernakulam.

...Applicant

(By Advocate Mr.T.A.Rajan)

V e r s u s

1. Union of India, represented by the Secretary, Government of India, Ministry of Shipping, Road Transport and Highways, New Delhi.
2. The Director General, Directorate General of Light Houses and Light Ships, Deep Bhavan, A-13, Sector 24, Noida, Utterpradesh.
3. The Executive Officer, Directorate General of Light Houses and Light Ships, Deep Bhavan, A-13, Sector 24, Noida, Utterpradesh.
4. The Director, Department of Light Houses and Light Ships, Deep Bhavan, Gandhi Nagar, Kadavanthra, Kochi.

Respondents

(By Advocate Mr.Millu Dandapani,ACGSC)

This application having been heard on 9th July 2010 this Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

This is 4th round of litigation by the applicant seeking compassionate allowance under Rule 41 of the CCS (Pension) Rules, 1972 which reads as follows :-



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41. Compassionate allowance

(1) A Government servant who is dismissed or removed from service shall forfeit his pension and gratuity :

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two - thirds of pension or gratuity or both which would have been admissible to him if he had retired on [compensation pension].

(2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the amount of [Rupees three hundred and seventy-five] per mensem.

2. The brief facts of the case are that the applicant was appointed initially as Assistant Light Keeper (Senior Scale) in 1966. He was later promoted as Head Light Keeper (Senior Scale) in 1978. Due to his involvement in a criminal case on 23.3.1994, the Court of Special Judge, Ernakulam convicted him for the offences charged under Section 7 and 13 (1) (d) of Prevention of Corruption Act and Section 120 B of Indian Penal Code. However, the Hon'ble High Court of Kerala, while upholding the conviction, reduced the term of punishment to one year as against two years ordered by the Special Judge. As a result of the conviction in the said criminal case, he was dismissed from service on 26.12.1997 by order dated 22.10.1999 of the Director, Department of Light Houses and Light Ships, Kochi. The appeal filed against the aforesaid order was also dismissed. Thereafter, the applicant made representation to grant him compassionate allowance under Rule 41 of the CCS (Pension) Rules, 1972 as extracted above. But by order dated 23.2.2004, the Director, Department of Light Houses and Light Ships rejected his representation stating that there was no merit in the same. Against the same, he filed OA 159/04 before this Tribunal and the same was disposed of vide order dated 5.3.2004 directing the respondent to consider his representation in a fair and just manner. However, the respondents, after re-consideration of the

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case, again rejected his case, vide order dated 23.4.2004. He challenged the said order before this Tribunal in OA 515/04 and vide order dated 29.9.2005 this Tribunal set aside the order of the respondents dated 23.4.2004 and directed them to consider his case afresh keeping in mind the relevant rules on the subject and to pass appropriate orders. After re-consideration, the respondents again rejected his claim for compassionate allowance by order dated 9.1.2006. Challenging the aforesaid order he approached this Tribunal for the 3rd time in OA 425/06 but the same was dismissed with liberty to him to approach the higher authority. Thereafter, the applicant filed appeal dated 25.9.2007 and the appellate authority vide Annexure A-1 order dated 14.2.2007 rejected his appeal on the ground that there was no merit in his case. Again, the applicant made Annexure A-2 representation dated 25.9.2007 to the 1st respondent, namely, the Secretary, Government of India, Ministry of Shipping, Road Transport and Highways, New Delhi detailing the hardship being suffered by him and his family for having denied the compassionate allowance. The respondents did not entertain the said representation and informed the applicant vide impugned Annexure A-4 order dated 14.5.2008 that since the appellate authority has already considered his case it does not call for any further consideration.

3. Counsel for the applicant, Shri.TA Rajan, has contended that under Rule 88 of CCS (Pension) Rules, 1972, the Ministry/Department of the Government is to consider his representation in relaxation of rules, taking into consideration the hardship suffered by him. He has, therefore, submitted that his aforesaid Annexure A-2 representation could not have been rejected at a lower level on the ground that the appeal has been

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decided by the appellate authority. The said Rule 88 of CCS (Pension) Rules, 1972 reads as under :

88. Power to relax

Where any Ministry or Department of the Government is satisfied that the operation of any of these rules, causes undue hardship in any particular case, that Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner :

Provided that no such order shall be made except with the concurrence of the Department of Personnel and Administrative Reforms.

4. Counsel for the respondents has submitted that the applicant's Annexure A-2 representation has already been considered at the Ministry level and then only the same has been rejected by Annexure A-4 order dated 14.5.2008. He has also submitted that the Annexure A-2 representation does not contain any explicit request on the part of the applicant to consider his case in terms of the aforesaid Rule 88 of CCS (Pension) Rules and no ground to that effect is taken in the OA.

5. We have heard the learned counsel for the parties and considered their submissions. In terms of Rule 41 of the Pension Rules (supra), it is for the authority concerned to grant compassionate allowance which shall not exceed two thirds of pension or gratuity or both to a Government servant who is dismissed or removed from service if his case is deserving of special consideration. It is true that while dismissing the applicant from service, the disciplinary authority has not found his case as deserving for special consideration for grant of compassionate allowance. He has, therefore, made appeal against the said decision of the disciplinary

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authority but the same was rejected. However, Rule 88 of the Pension Rules (supra) clearly provides that the Ministry/Department of the Government has power to relax for the reasons to be recorded in writing and relax if it is satisfied that in a particular case the individual Government servant is suffering undue hardship because of their particular order. The applicant, therefore, has the right to invoke the aforesaid rule and to make a representation seeking relaxation of the rules in his case. It is true that while making Annexure A-2 representation, he has not made any specific request for invoking of Rule 88 (ibid). Therefore, we do not find anything wrong on the part of the respondents in rejecting his aforesaid Annexure A-2 representation dated 25.9.2007 addressed to the Secretary to Government of India, Ministry of Shipping, Road Transport & Highways, New Delhi. However, in the facts and circumstances of this case, we give liberty to the applicant to make a specific request to the aforesaid authority under Rule 88 of the CCS (Pension) Rules 1972, if so desires, detailing the hardship being suffered by him due to the order of dismissal imposed upon him by the respondents. If such a representation is received by the aforesaid authority, the same shall be considered in terms of the aforesaid rules and instructions issued thereunder by the Government of India from time to time and dispose it of with a reasoned and speaking order, within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 9th day of July 2010)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

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GEORGE PARACKEN
JUDICIAL MEMBER