

O.A.No.576/2004.

The applicant who was superannuated from the service of the Cochin Shipyard Limited, on 28.2.1998, approached this Tribunal in O.A.693/2000, praying, inter-alia, for a declaration that he is entitled to be granted monthly pension and other retiral benefits as provided under CCS(pension) Rules, 1972.

for the service rendered by him under the 1st respondent. The applicant is presently aggrieved by the non-feasance on the part of the respondents to grant the applicant the arrears of pension and relief for the period from 1.3.1998 to 31.5.1999, in terms of Annexure A1, to allow the applicant to commute 40% of his pension, and to grant him the benefit of Medical Allowance at the rate of Rs.100/- per month under the Government of India CGHS Scheme. The applicant has filed this O.A. seeking the following main reliefs:

1. Call for the records leading to the issue of Annexure A2 and quash the same to the extent it sanctions the applicant's monthly pension only with effect from 1.6.99 as against his eligibility to receive the same with effect from 1.3.98;
2. Declare that the non-feasance on the part of the respondents to grant the applicant arrears of pension and relief for the period from 1.3.1998 to 31.5.1999, in terms of Annexure A1 is arbitrary, discriminatory and unconstitutional ;
3. Declare that the non-feasance on the part of the respondents to allow the applicant to commute 40% of his pension is arbitrary, discriminatory and unconstitutional;
4. Declare that the non-feasance on the part of the respondents to grant the applicant Medical Allowance at the rate of Rs.100/- per month, in terms of Annexure A11 is arbitrary, discriminatory and unconstitutional.

2. The respondents have filed a detailed reply statement contending that, as per para 24 of Annexure A1 order of this Tribunal the respondents are bound to pay full arrears of pension and other benefits. According to the applicant, as per para 19 of Annexure A-1 order, the arrears fall due from 1.3.1998. The claim of the applicant for entitlement of pension from 1.3.1998 will not stand hold good, since there was no direction by this Tribunal about the date from which the arrears of pension should be paid to the applicant. The Tribunal by a common order in O.A.401/2000 and O.A.693/2000 dated 2.5.2002, gave a direction in O.A.401/02 that, arrears of monthly pension would be payable to Shri Jacob Chandy (applicant in O.A.401/2000) for a period of one year counted backward from the date of filing of the O.A. The applicant in O.A.693/2000 is the same applicant in this O.A. (i.e.O.A.576/2004). It is also submitted in the reply statement that, since both the O.As. were taken together by the Hon'ble Tribunal, the same analogy was applied in the case of applicant in this O.A. also. The applicant approached this Tribunal in June 2000 and therefore, the arrears of monthly pension were granted from June, 1999.



3. Shri TC Govindaswamy, learned counsel appeared for the applicant and Shri Thomas Mathew Nellimoottil, learned counsel appeared for the respondents.

4. Learned counsel took us to the various pleadings, evidence and material placed on record. Counsel for the applicant argued that, A-2 impugned order has been passed for granting the benefits from 1.6.1999 which is based on a wrong presumption and wrong interpretation of A-1 order. The respondents on the other hand argued that, since there is no specific direction as to the date from which the arrears of pension to be granted, they have adopted the same analogy which was applied in the case of applicant in O.A.401/2000, i.e., for a period of one year counted backward from the date of filing of the O.A.

5. I have given due consideration to the arguments put forward by the counsel on both sides. So far as the reliefs 'c' and 'd' are concerned, the respondents have taken the plea in the reply statement as follows:

“The contention regarding Ground 'B': For grant of commutation of pension to the applicant the case will be processed in accordance with CCS (Pension) Rules and in consultation with the Department of Pension and Pensioners Welfare. (And)

As regards Ground 'C': it is submitted that, for grant of fixed medical allowance of Rs.100/- p.m. to the applicant, the case will be processed in accordance with CCS (Pension) Rules and in consultation with the Department of Pension and Pensioners Welfare.”

6. Learned counsel for the respondents also submitted that, with regard to the 1st relief of the applicant for granting of pensionary benefits from 1.3.1998 to 31.5.1999, the matter is under process.

7. The contention of the respondents that no specific direction was given by this Tribunal in the common order in O.A.401/2000 & 693/2000 as to, from what date the arrears of pension to be calculated in the case of applicant in O.A.693/00 (the same applicant in the case on hand). Therefore, the respondents have adopted the same analogy which was applied in the case of applicant in O.A.401/2000 and calculated the arrears of pension for a period of one year backward from the date of filing of the O.A. I find that, the applicant in O.A.693/2000 is the same applicant in this O.A. In O.A.693/00 the claim of the applicant was for granting of



pensionary benefits and other retiral benefits as provided under CCS(Pension) Rules, 1972 for the service rendered by him. In para 19 of the common order in O.As. referred to above, the Court observed as follows:

“We find from the extract of the O.M. Referred to by the Hon'ble Supreme court in Tiruvengadam's case that the pro-rata pension, gratuity etc. Admissible in respect of the services rendered under the Government was to be disbursed only from the date the govt. servant superannuate had he continued in service. In this case the applicant in O.A.401/2000 superannuated on 28.2.1994 and the applicant in O.A.693/2000 (applicant in this O.A) superannuated on 28.2.1998. Learned counsel for the applicant relied on the judgment of the Hon'ble Supreme Court in State of Punjab and Others Vs. Bawa Singh Harijan (1995 31 ATC 199) and submitted that the limitation in such cases would not arise and as the applicant is entitled to pension on the basis of Rules and every time he is not paid the pension amount the cause of action rises. While we find considerable force in these submissions, we are of the view that the bar of limitation would arise in O.A.401/2000 as regards payment of gratuity for the period of the applicant's (Not the applicant in this O.A.) Government service.

In paragraph 21 of the said order this Court has observed that:

“The second respondent disbursed the applicants' retirement benefits including for their periods of Government service without obtaining any option from them. Therefore, in order to enable the applicants to remit the proportionate retiral benefits for their government service, received by them from the second respondent, the second respondent has to intimate the applicants the value of the proportionate retiral benefits granted to them. We direct the second respondent to do so within one month of the date of receipt of a copy of this order.”

In para 24, this Court has further observed as follows:

“a) We set aside and quash A-4 letter dated 3.1.2000.

b) We declare that the applicant is entitled to the grant of monthly pension and other retiral benefits as provided under the CCS(Pension) rules, 1972 for the service rendered under the first respondent subject to the condition that he remits the proportionate retiral benefits received by him from the second respondent for his Government service within one month from the date of receipt of the intimation of the value of the proportionate retiral benefits, from the second respondent, under advice to both the respondents.

c) As soon as the applicant remits the proportionate retirement benefits and advises the same as in (b) above, first respondent shall issue necessary orders sanctioning retiral benefits to the applicant for his Government



service.

d) We direct the first respondent to arrange payment of his monthly pension as in (c) above regularly.

e) We further direct the first respondents to disburse the arrears arising out of (b) and (c) above including gratuity within two months of the date of sanction referred to in (c) above.

8. From the above finding it is very clear that this Court has accepted the retirement of the applicant as on 28.2.1998 thereby the applicant is entitled to get arrears with effect from 1.3.1998. This Court also observed that in O.A.401/00 the applicant is not entitled to get arrears of benefits. However, the applicant in O.A.693/00 (i.e. the applicant herein) is entitled to get the benefits from the next date of retirement i.e., 1.3.98.

9. In the above circumstances, I am of the view that, sanctioning arrears from 1.6.99 is not in conformity with the orders of this Tribunal and therefore, I declare that the applicant is entitled to get the benefit from 1.3.1998.

10. So far as the other reliefs are concerned, since those are already under process, this Court directs the respondents to complete the process and take a decision as expeditiously as possible.

11. Regarding the arrears, this Court already declared that the applicant is entitled to get the arrears from 1.3.1998 and the amount which has not been paid up to 31.5.99 be given to the applicant. The entire exercise shall now be completed and grant all the benefits flowing out of this order to the applicant, within a period of two months from the date of receipt of a copy of this order.

12. O.A. is allowed to the extent indicated above. In the circumstances no order as to costs.

Dated the 11th August, 2005.



K.V.SACHIDANANDAN
JUDICIAL MEMBER