

CENTRAL ADMINISTRATIVE TRIBUNAL  
MADRAS BENCH

ORIGINAL APPLICATION NO.76/87

V.J. Antony, Skipper under the  
Collector of Customs and Central  
Excise, Cochin (Retd).

- Applicant

Versus

1. Union of India, represented  
by Secretary to Government,  
Ministry of Personnel, Public  
Grievances & Pension Deptt.,  
Secretariat, New Delhi.
2. The Collector of Central Excise,  
Ernakulam, Cochin.31.
3. The Assistant Collector,  
Special Customs Preventive Divn.,  
Kozhikode.5.
4. The Joint Director(Marine),  
Customs Marine Head Quarters,  
Hotel Walderf, 2nd floor,  
Arthur Bunder Road, Colaba,  
Bombay-400 005.

-- Respondents

M/s M.R.Rajendran Nair,  
Mary Isabella & P.V.Asha

-- Counsel for Applicant

Mr. P.V.Madhavan Nambiar,  
SCGSC

-- Counsel for  
Respondents

CORAM

Hon'ble Shri S.P.Mukerji - Admve.Member  
&

Hon'ble Shri G.Sreedharan Nair- Judicial Member

O R D E R

(Pronounced by Hon'ble Admve.Member Shri S.P.Mukerji)

The applicant has moved the Tribunal with the  
application dated 6.1.87 praying that the respondents  
be directed to pay the terminal gratuity on the basis  
of his actual pay without deducting the pension or  
pension equivalent of gratuity with 12% rate of interest.

The admitted facts are as follows:

The aplicant who retired as Skipper under the

Collector of Customs and Central Excise, Cochin on 31.5.85 was appointed as such in the scale of Rs. 840-1000 on 23.12.74. He was an ex-serviceman and drawing a pension of Rs.324. The pension equivalent of gratuity that he had received from the Army was Rs.63.55. On his appointment as Skipper, in accordance with the extant instructions, his pay was fixed on Rs.840/- reduced by Rs.337.55 after ignoring Rs.50/- from his pensionary entitlement. Since he was appointed in a temporary capacity he is not entitled to any pension as Skipper but he is entitled to terminal gratuity in accordance with Rule 10 of Central Civil Services (Temporary Service) Rules of 1965. He could not be paid this terminal gratuity as a certificate of satisfactory service by the appointing authority is required under the aforesaid Rule and this certificate could not be given by the respondents because the applicant's CCR for the period 1981 to 1984 are still awaited from the Joint Director (Marine), Bombay. The respondents have stated that further action in this regard is in progress and the terminal gratuity can be paid only in accordance with the aforesaid Rule.

We have heard the arguments of the learned

counsel for both the parties and gone through the documents carefully. It is surprising that even after the lapse of more than 2½ years after the retirement of the applicant the respondents could not so far take a decision about the issuance of a certificate of satisfactory service. If the CCR for the period 1981 to 1984 had not been forthcoming from Bombay, it was not because of any lapse or fault on the part of the applicant. During the course of the arguments it was stated that no adverse report had been communicated to the applicant. In any case, there is no averment by the respondents to make us believe that the service of the applicant had at any time been adjudged ~~adjust~~ to be unsatisfactory. It may be recalled that Rule 6 of CCS(Pension) Rules was deleted and the certificate of satisfactory service for grant of pension was done away with in 1980. As a result, vide Department of Personnel's O.M.No.31(2)-PEN(A)/80 dated 29th August, 1980 it is no longer necessary to go through the exercise of determining whether any part of the qualifying services of the retiring government servant ~~was unsatisfactory~~ <sup>indisposability</sup> was unsatisfactory. Thus the ~~inevitability~~ <sup>of</sup> the certificate of satisfactory service for grant of terminal gratuity to temporary government servants in the circumstances of the case like the one before us cannot

be pressed beyond a certain limit. In plethora of cases the Supreme Court has held that pension is not a bounty payable on the sweet will and pleasure of the government but the pensioner has a right of property in it. Delayed payment of pension has been visited with grant of market rate of interest in the ruling of the Supreme Court in State of Kerala & Others Versus M. Padmanabhan Nair, AIR 1985 SC 356. In ~~A. R.~~ Despande Versus Union of India, 1972 Labour (IC) 516 it has been held that pension includes gratuity payable to the pensioner.

In the facts and circumstances we allow the application to the extent of directing the respondents to give a decision about the issuance of the certificate of satisfactory service within a period of one month from the date of communication of this order. If no decision is taken within that period or a certificate of satisfactory service is issued within that period the respondents are liable to pay the terminal gratuity to the applicant on the basis of his actual pay without deducting the pension or pension equivalent of his Army gratuity, with interest @ 12% per annum. The interest will be reckoned with effect from the date of

on  
applicant's retirement. We advisedly directing that  
the terminal gratuity should be based on unreduced  
notional pay because during re-employment one is  
supposed to draw the basic pay of the post to which  
one is re-employed, while his pension is kept in  
abeyance during the period of re-employment. Alter-  
natively if pension is allowed to be drawn by the  
re-employed person to that extent his basic pay is  
reduced. Thus for the purpose of terminal gratuity  
the pay scale attached to the post of Skipper should  
be taken into account, unreduced by the applicant's  
pension or pension equivalent of gratuity.

The respondents are directed to fully comply  
with this order within a period of two months from  
the date of communication of this order. There will  
be no order as to costs.

*G. Sreedharan Nair*  
(G. Sreedharan Nair)  
Judicial Member  
26-2-1988

*S.P. Mukerji*  
(S.P. Mukerji)  
Admve. Member  
26-2-1988

Index: Yes No

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