

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM EBNCH**

O.A.No. 79 of 2007

Wednesday, this the 10th day of October, 2007

CORAM :

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

V Radhakrishnan,
S/o K Narayanan Nair,
Fitter,
Central Institute of Fisheries, Nautical
and Engineering Training,
Koch-16. : Applicant

(By Advocate Mr TC Govindaswamy)

Versus

1. Union of India represented by
The Secretary to Government of India,
Ministry of Agriculture,
Department of Animal Husbandry,
Dairying & Fisheries,
Krishi Bhavan,
New Delhi-110 001.
2. The Director,
Central Institute of Fisheries, Nautical
and Engineering Training,
Koch-16. : Respondents

(By Advocate Mr George Joseph, ACGSC)

The application having been heard on 3.10.2007, the Tribunal on 10.10.07 delivered the following:

ORDER


HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER

The facts in brief are as follows: The applicant was a Casual Labourer under the 2nd respondent during 1985. He was posted as ad hoc Fitter and later regularised with effect from 30.1.1987. Thereafter his services were terminated with effect from 3.6.1987. Challenging the aforesaid termination he filed

O.A.K.84/1988 which was allowed by the Tribunal vide order dated 4.12.1989 which reads thus:

"Hence the application is allowed and the respondents are directed to reinstate the applicant back to service. In the circumstances, we also direct that the applicant will be entitled to all consequential benefits flowing from his reinstatement except that he will not be entitled to any wages for the period he was out of service."

The applicant was reinstated into service by an office order dated 5.7.1990 (A-2). No action was, however, taken to fix the applicant's pay, taking into consideration the intervening service between the date of termination and date of reinstatement. Hence the applicant made a representation to which he got a reply dated 3.4.1991 (A-3) informing that the intervening period of termination and reinstatement from 3.6.1987 to 11.2.1990 would be treated as '*dies non*' since the Tribunal had not granted any wages for this period. Being aggrieved, the applicant made another representation and he was informed by an order dated 29.9.1993 (A-4) that the period of service between 3.6.1986 and 2.6.1987 would be taken into consideration for all purposes. The respondents did not draw any increments for the service between 3.6.1987 and 11.2.1990 thereby the applicant was to lose perpetually three increments. The applicant became due for his first financial upgradation under the ACP as on 9.8.1999. Prolonged representation resulted in the applicant being granted the first financial upgradation only with effect from 11.2.2002 ignoring the three years' service between 3.6.1987 and 11.2.1990. Highlighting the above facts the applicant made A-6 representation dated 18.8.2005 followed by a reminder dated 28.9.2005 (A-7). Finding no response to these representations the applicant approached the Tribunal O.A.868/2005 claiming that the period of applicant's service between 3.6.1987 to 11.2.1990 is entitled to be



treated as duty for all purposes. That O.A was disposed of by order dated 15.9.2006 (A-8) directing the respondents to consider A-6 and A-7 representations on merits and to take a decision in the light of the order of the Tribunal in O.A.K. 84/1988. In purported compliance with the aforesaid directions the applicant received an order dated 8.1.2006 (A-9) rejecting the claim of the applicant on the ground:

"As per Rule 13 of CCS (Pension) Rules, the service counted for pension only when ad hoc/temporary service is followed without interruption by substantive appointment. In the instant case, the ad hoc services of the applicant were terminated w.e.f. 3.6.87 and he was reinstated w.e.f. 12.2.90, hence, there was an interruption of more than three years."

According to the applicant, the reason stated is ex-facie illegal and contrary to the findings and directions in the order in O.A.K.No.84/88 and also in A-8. Annexure A-9 therefore is liable to be set aside as being illegal and arbitrary.

2. Respondents have filed a reply statement. They contended that in compliance of this Tribunal's order dated 4.12.1989, vide office order dated 6.2.1990, the applicant was directed to join the post of Fitter and he reported as Fitter on 12.2.1990. Thus he was reinstated in service on 12.2.1990 (FN) as Fitter as per the directions of this Tribunal in O.A.K.84/88 and the applicant will be entitled to all consequential benefits flowing from his reinstatement except that he will not be entitled to any wages for the period he was out of service. The only consequential benefit available to the applicant by the said order was to allow the continuity of service during the termination period i.e. From 3.6.1987 to 11.2.1990 which can be made only by treating the termination period as Dies Non since the Tribunal had not ordered how to treat the termination period. That was

why the whole period was treated as Dies Non in order to allow the continuity in service. The competent authority after careful consideration vide order dated 29.9.1993 has also agreed to condone 2 days break from 1.3.1987 to 2.3.1987 under Rule 28 of Pension rule and to count the whole period of ad hoc service from 3.12.1987 to 2.6.1987 except for the break of 2 days which was condoned, to be counted towards his continuous service from 12.2.1990. In order to count his previous service, the period he was out of service was regularised as Dies Non and at the same time as per the rules, the periods treated as Dies Non will not be countered for leave, increment, pension and ACP etc. With regard to annual increment, he was reinstated on continuous service with effect from 12.2.1990. The qualifying period of earning next annual increment is 1.2.1991. But as per the rules, the periods treated as Dies Non will not be counted towards increment. For the purpose of arriving at the date of next increment, the total of all such periods as do not count for increment shall be added to the normal date of increment. The date of next increment may fall on any date in a month, but it will be drawn from the first of that month. Accordingly the date of next increment has arrived by advancing 6 months i.e. From 3.12.1986 to 2.6.1987.

3. Respondents have further contended that the applicant has not become due for financial upgradation under ACP as on 9.8.1999, the date of introduction of ACP as he has not got the requisite period of 12 years of regular service as on that date. As per the ACP rules only regular service would be counted for the purpose of ACP and he became a regular employee with effect from 5.7.1990 only as per A-2 order dated 5.7.1990 and ACP was granted as per A-5 order with effect from 11.2.2002 is a mistake occurred due to oversight while putting up the papers before the screening committee; whereas the applicant was due for the first ACP with

effect from 5.7.2002 only. A-6 representation was under consideration of respondents and the comments of the second respondent were to be sent to the 1st respondent for consideration but the predetermined and hasty applicant filed the O.A before the Tribunal for redressal of his grievances.

4. In the rejoinder filed by the applicant, it is stated that it was inevitable that the respondents treat the intervening period of termination and reinstatement as duty for all purposes, except back wages in the light of the directions by this Tribunal.

5. Counsel for the applicant argued that the import of the earlier order of the Tribunal which provided for all consequential benefits, save pay for the period the applicant was out of service is that the applicant should be treated to have been in service and all the benefits of service would be available, save back wages. Counsel for the respondents however reiterated the contentions as contained in the reply, extracted above.

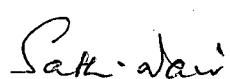
6. Arguments were heard and documents perused. In so far as consequential benefits are concerned, certain benefits were not linked with the actual duties while certain aspects are directly related to the duties performed. For example, bonus is directly related to the number of days of work performed. If there was no pay for any period in a year, then, obviously, there would be no bonus for the period the individual did not participate in the working of the organization. Save such concessions/benefits which are directly related to duty/pay, the applicant is entitled to get all other benefits by virtue of the earlier order of this Tribunal. Any interpretation other than this of the said order dated 04-12-1989 in OA K No. 84/1988, would be erroneous. Viewed from the same, the period

from 03-06-1987 to 11-02-1990 qualifies to be treated as period of regular service, consequent to which, the applicant is entitled to have the same treated for the purpose of working out 12 years of service for ACP purposes. In fact, if some of the juniors of the applicant were considered for regular promotion, the applicant too would have become eligible to be considered for such promotion. He is entitled to notional increments as well. Interpretation of the respondents that the applicant is not entitled to such benefit has to be struck down as untenable.

7. In view of the above, the OA succeeds. It is declared that the period from 03-06-1987 to 11-02-1990 during which the applicant was out of service, shall be treated as regular service for all purposes, including for grant of notional increments, for working out 12 years of regular service for ACP purposes and fixation of pay. Thus, Annexure A-4 and A-9 which do not conform to the above are liable to be quashed and we accordingly order. The respondents shall work out the pay of the applicant from 1990 onwards, consider the applicant for ACP from the date the applicant completed 12 years of service or 09-08-1999 whichever is later and such amounts due to the applicant shall be duly paid to the applicant within a period of four months from the date of receipt of a certified copy of this order.

8. Under the circumstances, there shall be no order as to cost.


K.B.S. RAJAN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN