

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 91/2006

Wednesday this the 27 th day of September, 2006

CORAM

**HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

M.N.K.Menon
Puthezhath House, Karamuck,
Kandassankadavu, Trissur, Kerala ... Applicant

By Advocate Shri R.Muraleedharan

V/s.

- 1 Union of India,
Represented by the Secretary,
Ministry of Personnel,
Public Grievances & Pensions,
North Block, New Delhi-110 001.
- 2 Director General of Shipping,
Jahaz Bhavan,
Walchand Hirachand Marg, Mumbai – 400 038.
- 3 The Pay & Accounts Officer (Shipping)
Walchand Hirachand Marg, Mumbai – 400 038.
- 4 The Accountant General (Central),
Maharshi Karve Road, Mumbai – 400 020. Respondents

By Advocate Shri George Joseph ACGSC
& Shri TPM I Khan SCGSC

The application having been heard on 31.8.2006 the Tribunal
on 27.9.2006 delivered the following:

O R D E R

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's case is that even though the respondent No.2
has granted the fixed medical allowance at the rate of Rs.100/- to a
similarly placed pensioner who filed OA 808/2002 before this Tribunal and
got orders in his favour, he has been denied the same benefit in a

discriminatory manner.

2. The brief facts of this case are that the applicant commenced his service as a Lower Division Clerk/Stenographer in the Directorate General of Shipping on 22/2/1957. He was posted as Senior Stenographer in Cochin Shipyard project w.e.f. 19/12/1970. When the Cochin Shipyard project was converted into a company incorporated under the Indian Companies Act, 1957 in the name and style of Cochin Shipyard Limited w.e.f. 1-4-1972, the applicant resigned from Central Government Service and got himself absorbed in the service of the Cochin Shipyard Ltd w.e.f. 19/12/1973 and worked there till he voluntarily retired from there on 31/12/1992. For service rendered in Government, he was already granted the pro-rata pension, DCRG and other retirement benefits, as per the existing rules.

3 After the acceptance of the recommendations of the Fifth Pay Commission, Government of India granted fixed medical allowance at the rate of Rs.100/- p.m. to its pensioners who were residing in areas not covered under the Central Government Health Scheme. As a Central Government Pensioner, the applicant also claimed that he is entitled for the fixed medical allowance of Rs.100/- p.m. and for this purpose, he made several representations to the respondents, without any result. The applicant submitted that since his case is fully covered by the orders of this Tribunal in OA 808/2002 decided on 1/10/2003 which was unsuccessfully challenged by the respondents before the Hon'ble High Court of Kerala in Writ Petition (C) No.1160/2004, the respondents were required to grant the benefit of the said orders to him also.

4 The Respondents took the very same objections raised in

O.A. 808/2002 and stated that the applicant was not entitled for the fixed medical allowance in terms of DOPT OM 45/57/97 P & PW (C) dated 19.12.1997 as he was not a contributing member of Central Government Health Scheme at the time of resignation from service on absorption with the Cochin Shipyard Ltd, and as per the terms and conditions of his absorption, he was entitled for the pro-rata pension and other benefits only from Cochin Shipyard Ltd. They have also relied upon the following advice obtained from the Department of Pension and Pensioners Welfare as contained in the Annexure R 3 letter dated 24/6/1999

"Employees of public sector undertaking are not Central Government Employees as they are not paid their salaries from the consolidated fund of India. During the period of their services in PSUs, CGHS contributions is not deducted from their salaries and they are not members of the CGHS. Accordingly the Central Government Employees absorbed in PSUs are not entitled to the CGHS facilities while in the employment of PSUs even after they are ceased to be in the

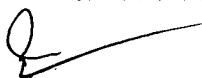
employees absorbed in PSUs who had neither drawn lump-sum payment or had pro-rata monthly pension on absorption, are not entitled to medical allowance of Rs.100/- p.m. Under the provisions of OM No.45/57/97-P&PE(C) dated 19.12.1997."

They have also submitted that "the petitioners in OA No.808/2002 and W.P.C.1160 of 2004 have misled the court and the respondents failed to furnish the fact before Hon'ble Court which led to wrong judgment.

5 We have heard Shri R Muraleedharan, Advocate for the applicant and Shri George Joseph ACGSC, Advocate, for the respondents on 4/8/2006. As Shri George Joseph has informed that the directions of this Tribunal contained in the aforesaid OA No.808/2002 was complied with by the Respondents in respect of the applicant therein, the case was reserved for passing detailed orders on similar lines. However, we observed that the reply affidavit on behalf of the respondents was filed by one Shri Prabodh Kumar Majumder, Principal Officer(In-charge), Mercantile Marine



Department, Cochin who was not a Respondent in the OA at all and inspite of the fact that the directions of this Tribunal in OA 808/2002 upheld by the Hon'ble High Court of Kerala was admittedly implemented by the Respondents, the submission in the reply affidavit filed by the said Shri Majumder was that "the petitioners in OA 808/2002 and WP(C) 1160/2004 have misled this Court and respondents failed to furnish the fact before Hon'ble Court which led to wrong judgment." Therefore this case was ordered to be relisted on 31/8/2006. Shri George Joseph, submitted that the aforesaid submissions contained in the reply affidavit was filed under the authority of the second respondent, namely, Director General of Shipping, Jahaz Bhavan, Walchand Hirachand Marg, Mumbai and on his request, the second respondent was permitted to file the authority letter authorising Shri Majumder to file reply statement on behalf of the respondents. Thereafter, One Shri Padmanabha Hari Krishnan working as Deputy Director General of Shipping, Mumbai filed affidavit through Shri TPM Ibrahim Khan, SCGSC stating that the reply statement was filed by Shri Majumder as per his directions. They have also enclosed a copy of the letter dated 16/6/2006 by Shri Padmanabha Hari Krishnan, Dy. Director General of Shipping, addressed to the Mercantile Marine Department, Wellington Island, North End, Cochin in which it has been stated : "you are hereby authorised to sign and file the affidavit in the CAT, Ernakulam Bench." Even though the letter was not addressed to Shri P.K.Majumder, it was mentioned therein "Kind Attn:Shri P.K.Majumder, Principal Officer (I/C)." We observe that the reply affidavit has been filed on behalf of the Respondents in a very casual and irresponsible manner. The Deputy Director General of Shipping under whose authority the said reply affidavit has been filed should not have made such a statement that the petitioner in OA 808/2002 and WP(C) 1160/2004 had misled the Court when they



themselves have not taken any action available to them to challenge those orders. Moreover, even in the present OA also the Respondents have not given any additional facts or grounds to defend their position. On the other hand, what was submitted on their behalf during the argument was only that the present OA is also similar to that of OA 808/2002 and the orders of this Tribunal in that OA was implemented after the Writ Petition filed by them before the Hon'ble High Court of Kerala against the same was dismissed. The second respondent has also even shirked its responsibility to file a proper reply affidavit and left it to a non-party who is not at all concerned with the facts, with a vague authorisation, to file the reply on their behalf. When the respondents have stated in their affidavit that they failed to furnish the facts before the Hon'ble High Court and did not submit any additional facts in this case also, it speaks volume about the lack of supervision at higher levels of administration of respondents. This is further evident from the casual manner in which the affidavit has been filed by him in the present case also.

6 As far as the merits of the case is concerned, we respectfully follow the order of coordinate Bench of this Tribunal in OA 808/2002 dated 1/10/2003 upheld by the Hon'ble High Court vide its order dated 13/1/2004 in WP(C) No.1160/2004. In the said order dated 1/10/2003, this Tribunal has held and directed the respondents as under:-

"13. In the light of the above discussion we find that the denial of the benefit of fixed Medical Allowance of Rs.100/- to the Public Sector Absorbees who had commuted their entire pension but had got 1/3rd pension restored like the applicant is not sustainable in law and that the applicant is entitled to the reliefs sought.

14. In the result, the application is allowed. Annexure A-3 to the extent it denies the fixed Medical Allowance to the applicant and the adjustment of the amount paid under it from 1.12.1997 as also Annexure A5, A8 and A10 are set aside. Declaring that the applicant is entitled to fixed Medical Allowance of Rs.100/- p.m. w.e.f. 1/12/1997 we direct the



respondents to pay to the applicant the amount that has been adjusted/withheld from the arrears or otherwise due to the applicant within two months from the date of receipt of this order with interest at 6% per annum and also to continue to pay the said allowance to the applicant. There is no order as to costs."

7 We, therefore, allow the present OA and declare that the applicant is also entitled for payment of the fixed Medical Allowance of Rs.100/- p.m. as recommended by the Fifth Pay Commission w.e.f. 1/1/1993 i.e. from the date of his voluntary retirement from the Cochin Shipyard Ltd. However, the actual financial benefits will be admissible to him only from 1/7/2004, i.e. the subsequent month from which he made the first representation dated 16/6/2004 to the second respondent received by it on 21/6/2004 as evidenced from the Annexure A-3 receipt of the Postal Department. The respondents shall pay the arrears of fixed Medical Allowance @ Rs.100/- p.m. from 1/7/2004 to the applicant, within a period of two months from the date of receipt of this order, failing which, they shall pay interest @ 8% per annum for the period of delay of each month till the payment is made. The Respondent shall also pay a cost of Rs.2000/- (Rupees two thousand) to the applicant within the aforesaid period of two months.

Dated this the 27 th day of September, 2006.


GEORGE PARACKEN
JUDICIAL MEMBER


N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

abp