

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION No. 94 of 2013.

FRIDAY, this the 8th day of August, 2014.

CORAM :

HON'BLE MR. B.V.RAO, JUDICIAL MEMBER

V.J. Pillai, Retd FGM, HS, MES, Trivandrum,
s/o R.Vasu Pillai, aged 66 years,
Sri Krishna Nilayam, Kanjanam,
Vilakkadu, Madavoor Post,
Trivandrum -695602.

.... Applicant

(By Advocate Mr. S.Sunil Mauryan)

Versus

- 1 Union of India, represented by
The Secretary to the Government of India
Ministry of Defence, South Block,
New Delhi -110 001.
 - 2 Chief Engineer, Southern Command,
Pune -411 001.
 - 3 Commander Works Engineer (AF),
Thuruvikkal P.O.,
Trivandrum -695 031.
 - 4 Garrison Engineer (AF), Pulayanarkotta,
Thuruvikkal P.O.,
Trivandrum -695 031.
 - 5 Garrison Engineer (I) (NW), Fort Kochi -682 001.
 - 6 Principal CDA (Pensions),
Allahabad -211 014.
- Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

This Application having been heard on 8.8.2014, this Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. B.V.RAO, JUDICIAL MEMBER

The applicant retired on superannuation on 30.01.2006, aggrieved by the delay in grant of commutation, has filed this OA



seeking the following reliefs:


(A) To direct the respondents to provide application Form -2 to the applicant;

(B) To direct the respondents to process the commutation without unreasonable delay,


(C) To grant such other reliefs as may be prayed for and the Hon'ble Tribunal may deem fit to grant.

2 Briefly, the facts of the case are that the applicant entered the service of the 1st respondent, viz. Ministry of Defence as Mazdoor (Casual) on 17.07.1970 in Pathankot, Punjab and his services regularised in February 1973. He was re-designated as Pump Operator in 1982. He was transferred on compassionate grounds to Kochi in March 1987 and later to NAD, Alwaye in 1990. Again on compassionate grounds, he was transferred from Kochi to his home town viz. Trivandrum and posted with the 4th respondent viz. Garrison Engineer (AF), Pulayanarkotta, Trivandrum where he stayed in an official quarter.

3 He states that while staying in the official quarter, he was compelled to lodge a complaint against one of his colleagues and neighbour namely one Mr. Abraham Mathew. The authorities, however, initiated disciplinary proceedings against the applicant and imposed penalty for generating the complaints and subsequently he was transferred to Kochi. The applicant states that the transfer is in violation of the guidelines for transfer of civilian employees in Defence Establishments which stipulates that a civilian employee should be



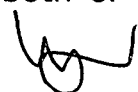
retained in his home town in the last three years of service. Though he filed an OA in this Tribunal against his transfer, he failed to get a favourable order. His appeal in the Hon'ble High Court of Kerala against the Tribunal's Order was also not successful. The applicant states that he was served with a second Movement Order when he was left with 10 months to superannuate in January 2006. According to the applicant, this was a shock to him which resulted in hypertension and uneasiness in the heart necessitating immediate medical attention. The applicant proceeded on leave on medical grounds and remained on leave till his date of superannuation on 31.01.2006. Since the 3rd respondent was refusing to consider the representations for cancellation of the said transfer and movement orders and the application for leave on medical ground, the applicant approached the Tribunal for relief through OA 743/2005. The Tribunal in its order directed the the respondents to constitute a medical board to assess his medical fitness or otherwise. The medical board after examining the applicant submitted its report on 05.01.2006. The report, according to the applicant was not a conclusive finding, which states: " final cardiac opinion can be given only after Holter Report from SCT". In the meanwhile, the applicant retired on superannuation on 31.01.2006. The applicant further submits that the 3rd and 4th respondents had an obligation to sanction and regularise the leave on medical grounds as per Rules when the applications have been duly supported by bona fide medical certificates. In failing to sanction and regularise the leave, the 3rd and 4th respondents have acted arbitrarily and treated the applicant spitefully and with unjust discrimination. Instead of waiting for the 'Holter Report', the authorities in an act of vendetta, initiated disciplinary proceedings against the applicant on 19.01.2006 and found guilty and imposed a penalty on 10.09.2007 by which the period



of absence from 28.01.2005 to 31.01.2006 was treated as 'dies non'.

4 During the pendency of the disciplinary proceedings, the 4th respondent sent to him papers for payment of 'Provisional Pension' in September 2006 which the applicant refused to accept. According to the applicant, the respondents should have initiated the proposal for payment of pension in January 2004. The 3rd respondent consciously chose to ignore this obligation by delaying the sanction of the leave on medical grounds because of which the total qualifying service was not calculated in time and intimated to him. Though the disciplinary proceedings concluded in 2007 and in spite of repeated requests from the applicant, the respondents did not initiate the process for payment of full pensionary benefits till 10.12.2010. The applicant submitted pension documents including application for commutation. The 6th respondent thereafter finalised the pension on 08.08.2011 without processing the application for commutation and after reckoning the period of absence from 28.01.2005 to 31.01.2006 as 'dies non'. Finally after his representation, vide letter dated 03.07.2012 of the 4th respondent, he was informed to submit the commutation application in Form 2 (with medical) to claim the commutation. Thereon the applicant vide his letter dated 20.08.2012 requested a copy of application Form -2 (with medical). Subsequently he submitted several requests, but the authorities have not sent Form 2 to him so far. Hence he filed this OA.

5 In the reply statement, the respondents have denied the averments made by the applicant and stated that the official was in the habit of getting into frequent quarrel with his neighbour Shri Abraham Mathew. In order to create a congenial atmosphere in the residential complex, the competent authority decided to post both of



● them outside Trivandrum. Accordingly movement orders were served on both the officials. While Shri Abraham Mathew moved as per the posting orders, the applicant preferred to contest the transfer in this Tribunal by filing OA No. 36/2005. The Tribunal did not allow the OA stating that "The guidelines which are to be followed in routine transfers in normal situation cannot be and need not be followed in a situation like the present one". Though he filed a Writ Petition in the Hon'ble High Court of Kerala against the orders of the Tribunal, the High Court also upheld the Tribunal's order. The applicant again approached the Tribunal by filing OA No. 743/2005 on the plea that the respondents have not considered the applications submitted by him on medical grounds. On the directions of the Tribunal, a medical board was constituted who after examination opined that "there is no orthopedic or physical or cardiac or surgical grounds to state that he is unfit to travel to Kochi". Accordingly another movement order was issued to him making him Struck Off Strength with effect from 28 January 2005. However, he never reported to his new unit at Fort Kochi till the date of his superannuation. As per the departmental norms, once an individual is relieved off from his duties, the receiving authority only can grant sanction of any kind of leave to an employee under transfer. The wilful intension of the applicant was to prolong the delay in moving from Trivandrum by sending leave applications. A Charge Memo was issued on 19 January 2006 and an inquiry was conducted. On finalization of the inquiry on 15 December 2007 an order of penalty was issued. Since the disciplinary action was in progress the document for normal pension could not be progressed. The case for provisional pension was progressed and the applicant was asked to attend the office of the respondent no.4 along with next of kin to sign the pension documents. However, on his visit to the Office on 30.3.2006 the applicant refused to sign the documents.



Subsequent requests for signing the pension documents were also not heeded to by the applicant. The applicant finally completed and submitted the pension documents only on 13 December 2010 which were immediately progressed to PCDA (Pension) Allahabad and pension/ gratuity were paid to him. However, his commutation of pension could not be granted for want of medical examination which is a mandatory requirement. The applicant has not yet submitted Form 2 along with requisite medical certificate to resubmit documents to the 6th respondent for commutation of pension. Claim for commutation is to be submitted along with Form 2 with medical examination as per Rule 13 (2) CCS (Commutation of Pension) Rules 1981, if claimed after one year of retirement. The applicant who retired on 31 Jan 2006, evaded submission of pension claim in time and submitted the same only on 13 Dec., 2010. The 6th respondent while granting his full pension did not admit the commutation of pension amount, as the commutation application along with medical certificate was not submitted, which was mandatory.

6 After having heard the counsel for both the parties and perusing the material on record, the respondents are directed to issue Form-2 to the applicant within a period of 2 weeks from the date of receipt of a copy of this order and the applicant after receipt of Form- 2 re-submit the same along with required documents and certificates to the respondents within a period of three weeks thereafter and on receipt of Form -2 and other documents from the applicant, the respondents shall consider the case of the applicant for commutation of pension and pass a reasoned and speaking order within a period of three weeks and communicate the results to the applicant within a period of three weeks thereafter.



7 With the above directions, O.A. is disposed of. No order as to costs.

(Dated, this the 8th August, 2014)



B.V.RAO
JUDICIAL MEMBER

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