

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH  
ERNAKULAM

ORIGINAL APPLICATION No. 95/2013

~~FRIDAY~~,... , this the ~~11<sup>th</sup>~~ day of September, 2015.

CORAM:

HON'BL MR.U.SARATHCHANDRAN, JUDICIAL MEMBER

V.J.Pillai, Retired 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

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| 1 | Union of India, represented by the<br>Secretary to the Government of India,<br>Ministry of Defence, South Block,<br>New Delhi -110 001. |                      |
| 2 | Chief Engineer, Southern Command, Pune -411 001.  |                      |
| 3 | Commander Works Engineer (AF), Thuruvikkal P.O.,<br>Trivandrum – 695 031.   |                      |
| 4 | Garrison Engineer (AF), Pulayanarkotta,<br>Thuruvikkal P.O., Trivandrum -695 031.   |                      |
| 5 | Garrison Engineer (I) (NW), Fort Kochi -682 001.  |                      |
| 6 | Principal CDA (Pensions), Allahabad – 211014.   | - <b>Respondents</b> |

[By. Mr. N.Anil Kumar, Sr.PCGC(R )]



This Original Application having been heard on 27.7.2015, this Tribunal on 11-09-2015 delivered the following:


ORDER

BY HON'BLE MR.U.SARATHCHANDRAN, JUDICIAL MEMBER

Applicant states that he was working as Fitter & General Mechanic (FGM) under Respondent No.4. He was residing in the official quarter. Due to some quarrel with his neighbour and colleague Shri Abraham Mathew, Respondent No. 3 initiated disciplinary proceedings against the applicant and he was imposed a penalty of 'withholding one increment' for generating complaints. The aforesaid penalty was set aside by the Chief Engineer (AF) Bangalore in 2005. Thereafter, Respondent No.4 served a 'Movement Order' on the applicant on 07.01.2005 directing him to move from Trivandrum to Fort Kochi. As applicant felt that the aforesaid transfer was in violation of the guidelines and since he was due to retire on 31.1.2006, he challenged the 'movement order' before this Tribunal in OA No. 36/2005. The Respondents opposed the said OA stating that the transfer was on administrative ground to separate the applicant from the aforementioned Shri Abraham Mathew due to the quarrel between them. This Tribunal accepted the version of the Respondents and disposed of the OA by permitting the applicant to make a request for posting him back to Trivandrum and to treat such request with sympathy. Applicant challenged the order in the High Court of Kerala without success. He sought cancellation of his transfer by submitting a representation. Respondent No.4, in total disregard of the representation, served a 2<sup>nd</sup> 'Movement Order', though the applicant was due to superannuate in 10 months, in January,



2006. He went on leave on medical ground on 28.01.2005. He sent applications to Respondent No.4 to extend the leave, with supporting medical certificates till the date of his superannuation on 31.01.2006. The 3<sup>rd</sup> Respondent forwarded the same to the 5<sup>th</sup> Respondents with direction to the applicant to approach the 5<sup>th</sup> respondent for sanction of leave. Respondent No.2 disposed of the representation with a direction to approach Respondent No.4 for relief. Since Respondent No.4 stubbornly refused the representation for cancellation of movement order, the applicant approached this Tribunal again with OA No. 743/2005. In the order dated 07.11.2005 this Tribunal directed that the applicant be examined by a duly constituted medical board to assess his fitness for the transfer, within 10 days from the date of the said order. The medical board was constituted only after 59 days. In its report dated 05.01.2006 the Board did not make any conclusive findings and viewed that cardiac information can be given only after *Holter* report from SCT. Instead of waiting for the *Holter* report, Respondent No.3 initiated disciplinary proceedings against the applicant on 19.01.2006. The applicant participated in the inquiry proceedings. He was found guilty and was imposed penalty on 10.9.2007 holding that the period of absence from 28.01.2005 to 31.01.2006 as '*dies non*'. Applicant preferred appeals before Respondent No.2. Respondent No.3 informed the applicant that his case is under consideration with higher HQs. Thereafter, Respondent No.2, without application of mind closed the appeal. During the pendency of the disciplinary proceedings Respondent No.4 sent papers for payment of provisional pension in September 2006. Applicant refused to accept the papers believing that the applicant was being victimised. Though the disciplinary proceedings were concluded in 2007 he was not granted full pension thereafter. Finally he was called to sign pension papers on 10.02.2010 by Respondent No.4.



Respondent No.6 thereafter finalised the pension on 08.08.10 after reckoning the period of absence from 29.01.2005 to 31.01.2006 as '*dies non*'. Therefore, the applicant seeks relief as under:

- (A) To direct the respondents to pay interest to delayed retirement benefits such as leave encashment of Rs. 18,994/- insurance benefit of Rs. 22,597/- and gratuity of Rs. 1,35,487/- at the rate of 16%.
- (B) To direct the respondents to allow interest at the rate of 16% from the date of superannuation for the pension amount of Rs. 4,32,420/- which disbursed on 19.09.2011.
- (C) To quash Annexure A3
- (D) To grant such other reliefs as may be prayed for and the Hon'ble Tribunal may deem fit to grant.

2. Respondents filed a reply stating that the applicant's transfer from Trivandrum to Fort Kochi was on administrative grounds. His leave was not sanctioned by the respondent officials at Trivandrum on the ground that as he had been relieved from duty there only the receiving authority could sanction leave to the employee. Applicant's intention was to prolong moving from Trivandrum by sending leave applications. He not only refused to report for duty at Fort Kochi but also absented from duty till his retirement. Though a medical board was constituted on 22.11.2005 as per order in OA No. 743/2005, the opinion of the Board was released only on 5.1.2006 finding that the applicant was fit to travel to Kochi. Therefore, as the applicant was found to have exhibited misconduct or misbehaviour in not reporting for duty at Fort Kochi, he was proceeded against under CCS (CCA) Rules, 1965 and was awarded punishment of treating his absence as '*dies non*'. The applicant did not co-operate with the respondents in processing his pension claim in spite of requests



and reminders from time to time. Applicant did not submit his pension papers within sufficient time prior to his retirement. A Board of Officers was constituted to get the pension papers signed from the applicant. The Board of Officers visited applicant's residence on 7.8.2008 and advised him to hand over his pension papers duly signed by him and his wife. Applicant refused to do so unless his demands have been settled. Thereafter, the respondents published a Press advertisement on 14.6.2009 in a local daily and also in 'The Hindu' daily, advising the applicant to submit the pension document already sent to him. Finally, on 13.12.2010 the applicant filed his pension papers to Respondent No.4. The pension document of the applicant have been settled after reckoning his period of absence from 28.1.2005 to 31.1.2006 as '*dies non*'. Payment of terminal benefits was delayed only due to non cooperation of the applicant. Respondents pray for dismissing the OA.

3. A rejoinder was filed by the applicant producing Annexure A/5 to A/12 and stating that he was being victimised while transferring him to Fort Kochi on account of the complaint of aforesaid Abraham Mathew. Applicant has produced documents to indicate that there had been complaints by other employees relating to the misconduct and misbehaviour of Abraham Mathew with other residents of the official quarters also. Applicant has also produced document to show that the aforesaid Abraham Mathew was also charge-sheeted under CCS(CCA) Rules, 1965 and only a penalty of 'censure' was awarded to him. According to applicant, the disciplinary proceedings initiated against the applicant in September 2006 were conducted without giving sufficient opportunity to him to defend the case. He states that though certain information was sought for by him for defending his case, respondents refused to grant it stating that matter has already been discussed in the on-going inquiry. Applicant did not sign the provisional pension papers because

respondents have enclosed Annexure A/12 statement along with the pension papers indicating that he is involved in a disciplinary case. Therefore, the applicant was reluctant to sign the pension papers. Even after completion of disciplinary proceedings in 2007 respondents did not issue the pension papers without enclosing afore mentioned Annexure A/12 certificate.

4. Applicant filed an affidavit along with Annexure A/14 statement indicating the dates and events relating to this case. Respondents have also produced Annexure A/15 true copy of the Order dt. 15.12.2007 and A15/2 copy of order dt 10 September 2007 imposing penalty of break in service treating "The entire period of absence from 28.1.2005 to 31.1.2006 be treated as BREAK IN SERVICE under Sub Rule (iii) of FR Rule 17 A and will not be counted for pensionary benefits."

5. Heard learned counsel appearing for both sides. Perused records.

6. Mr. Sunil Mauryan, learned counsel for the applicant referring to *A.J.M. Prasada Rao v. Chairman, Visakhapatnam Port Trust and Ors* ( Writ Petition No. 34784/98 of High Court of Andhra Pradesh) and *S.K.Dua v. State of Harayana and Anr.* in AIR 2008 SC 1077, submitted that the retired employees are entitled to claim interest on the delayed payment of pensionary benefits. In the aforesaid decision of the Andhra Pradesh High Court, it was held that the pendency of minor disciplinary proceedings after retirement do not have effect on pension and the respondent authorities were directed to release full pension with interest of 12%.

7. In the instant case, the penalty imposed on the applicant vide Annexure A/15 order was indeed a minor penalty. Though disciplinary proceedings were initiated against the applicant prior to retirement on superannuation(31-1-2006), the proceedings came to a close only in September 2010. The applicant admit that



even during the pendency of the disciplinary proceedings pension papers for granting provisional pension were handed over to him by the respondents but he refused to sign them believing that he was being victimised in the disciplinary proceedings. According to him, it was due to the presence of Annexure A/12 certificate in the pension papers indicating disciplinary proceedings he refused to sign the pension papers. Mr. Sunil Mauryan relying on the afore mentioned order of the Andhra Pradesh High Court submitted that pendency of proceedings for minor penalty was not a bar to grant full pension.

8. This Tribunal is not inclined to accept the aforesaid arguments because the proceedings initiated against the applicant in September 2006 was under Rule 14 of CCS (CCA) Rules, 1965 intended for imposing major penalties. Only after the disciplinary authority takes a decision it could be ascertained as to whether the penalty would be major or minor. However, if the disciplinary proceedings had been initiated under rule 16 of the CCS (CCA) Rules, it could be presumed that it would result in a minor penalty.

9. Nevertheless, it is clear from the pleadings and record that the respondents indeed had taken steps for processing pension papers for granting provisional pension to the applicant during the pendency of the aforesaid disciplinary proceedings. However, applicant's apprehension was that since he was feeling that he is being victimised by the inclusion of Annexure A/12 certificate in his pension papers.

10. There is nothing to indicate the reason as to why the applicant did not sign the pension papers even after the conclusion of disciplinary proceedings on 10.9.2010. It appears that the applicant had been in the process of sending

representations on his grievances and avoiding filing of pension papers. It further appears that he was feeling aggrieved against the action of the respondents in transferring him from Trivandrum to Fort Kochi. He filed two OAs before this Tribunal, ie. OA No. 36/2005 and OA No. 743/2005. Order passed by this Tribunal in OA 743/2005 directed the respondents to examine the medical condition of the applicant by a Board. According to respondents, report of the Medical Board indicated that the applicant is fit for undertaking travel from Trivandrum to Kochi. It is at that stage respondents seem to have initiated the disciplinary proceedings against the applicant for not complying with the order for reporting for duty at Fort Kochi. The applicant may have personal grievances against Mr. Abraham Mathew. Though the applicant produced document to show that the aforesaid Abraham Mathew also subjected to disciplinary action, he feels that he alone was victimised by the respondents in the matter of transfer to Kochi. Initiation of disciplinary proceedings for not reporting for duty at Fort Kochi has aggravated the applicant's feelings. However, all these matters were not sufficient reasons for his refusal to sign the pension papers given to him by the respondents. His refusal to sign the pension papers - be it the papers for provisional pension during the pendency of disciplinary proceedings or the papers for full pension after conclusion of the disciplinary proceedings - has indeed resulted in delayed payment of pension.

11. Respondents contend that as the applicant did not submit pension papers even after conclusion of disciplinary proceedings, they constituted a Board of Officers to visit the applicant's residence and to request him to submit pension papers. On their visit to his residence the applicant again refused to sign the papers. According to applicant, due to the presence of Annexure A/12 certificate in those papers it made him apprehensive of not getting full pension and hence refused to

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sign the pension papers. This again indicates that the delay in processing the pension papers was due to the fault of the applicant. Finally, respondents published a notification in the newspapers advising the applicant to submit the pension papers. Only after that the applicant has submitted his papers for regular pension.

12. In this OA applicant is not challenging the disciplinary action against him. His only grievance is that due to the fault of the official respondents he could not submit the pension papers. However the record in this case shows that it was primarily due to refusal on the part of the applicant, delay has occurred in sanctioning pension. He signed the pension papers only on 10.12.2010, ie.six months after the notice published by the respondents in the newspaper.

13. In the above circumstances, this Tribunal is of the view that the delay in sanctioning the pension was not on account of the fault of the respondents, but was definitely on account of the defiant and stubborn attitude of the applicant. Applicant might have had grievances against the disciplinary proceedings against him by the respondents. However, that shall not be a ground for his refusal to sign and submit the necessary papers in time for processing the pension. This Tribunal is of the view that respondents were not at fault in the delayed payment of pension and other retiral benefits to the applicant.

14. In the result, the OA is dismissed. No order as to costs.

  
(U.SARATHCHANDRAN)  
JUDICIAL MEMBER

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