

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No.106/2000

Tuesday, this the 1st day of February, 2000.

CORAM:

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

Sri.S. Damodaran,
T.S.Bhavan,
T.C. 2/497,
Medical College P.O.,
Thiruvananthapuram - 11.

..Applicant

By Advocate Mr. M. Rajasekharan Nayar

Vs.

1. Union of India represented by the Secretary,
Ministry of Defence, New Delhi.
2. Controller of Defence Accounts,
Southern Command No.1,
Finance Road, Pune - 1,
Maharashtra.
3. Controller General,
Defence Accounts,
West Block-5, R.K. Puram,
New Delhi - 110 066.
4. Chief Controller of Defence Accounts (P),
Allahabad.

..Respondents

By Advocate Mr. Govindh K. Bharathan, SCGSC

The application having been heard on 1.2.2000, the
Tribunal on the same day delivered the following:

ORDER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A-1 and to direct the
respondents to fix the service pension (compassionate allowance)
to him from the date of his removal from service and also to pay
arrears of service pension with interest at 12% per annum.

2. The applicant was working as Auditor in the Defence
Accounts Department. He had put in 19 years and 10 months of
service. He was dismissed from service on account of the fact

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that he was convicted in Sessions Case No. 46/1980 on the file of Sessions Judge, Kanyakumari. He was sentenced to death. Death penalty was later modified to imprisonment for life. He has undergone the imprisonment. Subsequently, he applied for compassionate allowance. He was informed by the 4th respondent that his claim was allowed for the purpose of grant of compassionate allowance to take effect from 1st of December, 1981. The matter was referred to the 3rd respondent by fax message dated 2.4.98 from the office of the 4th respondent. Later on, as per the impugned order, sanction of compassionate allowance was set aside by the 3rd respondent.

3. One of the grounds raised by the applicant is that dismissal from service was for conviction for which he was sentenced by the Sessions Court and confirmed with a modification by the High Court and that will not take away his right to get service pension for 19 years and 10 months rendered by him as permanent Auditor. So, it is clear that this ground raised is to the effect that he is entitled to pension for the period of service rendered by him under the respondents. It is the admitted case of the applicant that he was dismissed from service due to the fact that he was convicted by the Court of Sessions and was awarded death penalty though death penalty was modified to life imprisonment by the Appellate Court. I asked the learned counsel for the applicant under what legal provision, a dismissed employee is entitled to pension. It was submitted that what is meant is not pension but compassionate allowance. There is a difference between pension and compassionate allowance. One cannot be confused with the other. Since in the ground, it is specifically

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stated that the applicant is entitled for service pension inspite of the fact that he was dismissed on account of conviction and imposition of sentence on a grave charge, it has to be seen what are the provisions contained in the CCS (Pension) Rules as to the payment of pension in such a situation.

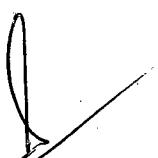
4. Rule 24 of CCS (Pension) Rules clearly says that "dismissal or removal of a Government servant from a service or post entails forfeiture of his past service." So, it clearly means that such a Government servant is not entitled to any pension.

5. Rule 41 (1) of the CCS (Pension) rules says that " a Government servant who is dismissed or removed from service shall forfeit his pension and gratuity." The wordings are clear and leaves no ambiguity. So, it is clear that a Government servant who is dismissed from service is not entitled to pension.

6. Rule 8(1)(a) of the CCS (Pension) Rules says that " future good conduct shall be an implied condition of every grant of pension and its continuance under these rules." Sub Rule (2) of Rule 8 says that "where a pensioner is convicted of a serious crime by a Court of Law, action under sub-rule (1) shall be taken in the light of the judgement of the court relating to such conviction."

7. Sub Rule (1)(b) of Rule 8 says that "the appointing authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if a pensioner is convicted of a serious crime or is found guilty

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of grave misconduct." So, the appointing authority has got the right and authority to withhold or withdraw pension in full or in part if the pensioner is convicted of a serious crime. It cannot be doubted for a moment that the applicant was convicted of a serious crime.

8. Proviso to Rule 41(1) of the CCS (Pension) Rules says that "the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension."

9. The applicability of proviso to Rule 41(1) of the CCS (Pension) Rules arises only if the case is deserving of special consideration. As per A-1, the authority concerned has found that the applicant is not entitled to compassionate allowance for the reason that he was convicted for a grave offence.

10. It is stated in the O.A. that the applicant is poor. Poverty is not an essential condition precedent to the grant of compassionate allowance. It is admitted by the applicant that his wife is employed under the State Government.

11. In the O.A., it is stated that the applicant was informed by the 4th respondent that his claim was allowed and for the purpose of grant of compassionate allowance to take effect from the 1st of December, 1981, the same has been referred by the 4th

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respondent to the 3rd respondent and A-3 is the true copy of the fax message. On a reading of A-3, it is very much clear that no compassionate allowance was allowed as per the same. It only says that his case has been recommended for grant of compassionate allowance. Recommending for grant of compassionate allowance is different from allowing or granting compassionate allowance. What is stated in the O.A. is not what is contained in A-3 but something more than that.

12. If at all the applicant is claiming not pension but compassionate allowance, it could only be under the proviso to Rule 41(1) of the CCS (Pension) Rules. For that purpose, the case should be deserving of special consideration. It cannot be granted as a matter of course. When discretion is vested with the authority, that discretion is to be exercised in a judicious manner and not according to his whims and fancies. The authority concerned, as per A-1, the impugned order, after exercising his discretion in a judicious manner has come to the conclusion that the applicant is not entitled to compassionate allowance for the reason that he is convicted of a grave offence. The ground relied on in A-1 is admitted.

13. One of the prayers is to direct the respondents to pay service pension (compassionate allowance) and to direct the respondents to pay arrears of service pension with interest. It seems that the applicant is taking pension as synonymous to compassionate allowance. It is not so. The direction sought is not for compassionate allowance but for service pension for which he is not entitled to as per the rules in force.

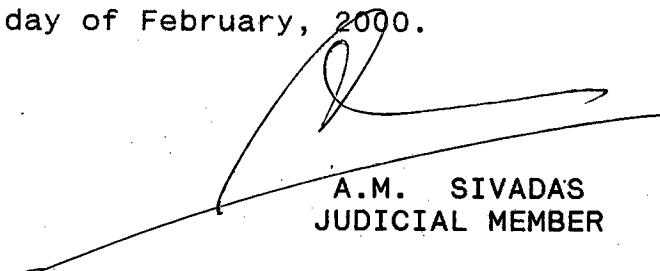
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14. I do not find any merit to admit the O.A.

15. Accordingly, the O.A. is dismissed.

Dated this the 1st day of February, 2000.


A.M. SIVADAS
JUDICIAL MEMBER

nv/2/2/2000

LIST OF ANNEXURES REFERRED TO IN THIS ORDER

1. Annexure A-1: True copy of the letter No. AN/111/4039/PF dated 13.12.99 issued on behalf of the 3rd respondent to the applicant.
2. Annexure A-3: True copy of the FAX message of the 3rd respondent dated 2.4.1998.