

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

**/O.A.No.116/2008
Dated the 17th day of February, 2009**

CORAM :

HON'BLE Mr GEORGE PARACKEN, JUDICIAL MEMBER

C Govindan
Retd. Regional Officer,
Directorate of Field Publicity,
(Ministry of Information & Broadcasting),
Kerala Region, Trivandrum
Residing at TC No.79/152(6),
Karikkakom Beach P.O., Trivandrum-7. ... Applicant

By Advocate T C G Swamy

V/s

- 1 Union of India represented by the
Secretary to the Government of India,
Ministry of Information & Broadcasting,
New Delhi
- 2 The Director,
Directorate of Field Publicity,
Ministry of Information & Broadcasting,
R.K.Puram, New Delhi.
- 3 The Pay & Accounts Officer,
Pay & Accounts Officer (IRLA),
Ministry of Information & Broadcasting,
AGCR Building, New Delhi
- 4 The Joint Director,
Directorate of Field Publicity,
Regional Office, Government of India,
Ministry of Information & Broadcasting,
Trivandrum. ... Respondents

By Advocate Mr TPM Ibrahim Khan SCGSC

This application having been heard on 17.02.2009 the Tribunal on the same day delivered the following

(ORDER)

HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER

The issue under consideration in this OA is whether a person who has been compulsorily retired during the currency of the pay scales as recommended and accepted by the Vth Pay Commission should be paid according to the said scale or it should be according to the scale as prevalent on the basis of the IVth Pay Commission report for the reason that during the intermittent period, the applicant was out of service due to unauthorised absence.

2 The applicant has also filed MA 194/08 for condonation of delay of 1127 days in filing the present application. He has stated that he was under treatment continuously for a period from 1997 for acute diabetics, hyper tension and other related ailments and he was practically bedridden and therefore he was not able to travel freely from Trivandrum where he was staying at present to consult his lawyer in Ernakulam and file an application before this Tribunal. He has also submitted that it is a well settled law that Pension is a continuous cause of action and it is a right of an employee to get it under the rules.

3 The respondents have opposed the aforesaid application for condonation of delay stating that there is no merit in his contentions. I do not see any reasons to disbelieve the personal reasons given by the applicant for the delay caused in filing this OA. Moreover, payment of

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pension is a continuous cause of action. I, therefore condone the delay and proceed with this case on merits.

4 The facts in brief are that the applicant was working as a Regional Officer of the Directorate of Field Publicity, Kerala Region, Trivandrum under the Ministry of Information & Broadcasting. He was transferred to Delhi and relieved from his earlier post on 9.7.1990. Though the applicant was sanctioned leave from 10.7.1990 to 2.11.1990, he refused to join at Delhi. As a result he was proceeded against under CCS (CCA) Rules 1965 which culminated in compulsory retirement w.e.f 19.6.1998. Thereafter, the Ministry of Information & Broadcasting have processed his pension papers and sanctioned pension to him vide Annexure A-2 order No.PAO/IRLA/PEN/1971 dated 11.7.2001 @ Rs.4009/- p.m. taking into consideration the last pay drawn by him for the last ten months i.e. August 90 to March 91 @ Rs.3625/- and from April 91 to May 91 @ Rs.3750/-. His contention is that his pay aught to have been fixed in the revised scale as on 19.6.1998 after regularising the period of his service from May 1991 to 19.6.98 after accepting his option for pay and allowances under the Vth Pay Commission Report in accordance with the rules

5 The respondents have not considered the various representations of the applicant given to them (Annexure A 4 dated 7.8.2001, Annexure A 6 dated 1.3.2002 and Annexure A 7 dated 1.3.2002). Instead they had revised the pension and other terminal benefits by Annexure A-8 order dated 8.4.2003 reducing his pension to Rs.3827/- p.m.

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w.e.f. 20.6.98 on the ground that there was a discrepancy in the qualifying service computed for grant of pensionary benefits.

6 The respondents in their reply has submitted that the applicant's pension and other terminal benefits were calculated and sanctioned in accordance to the rules and regulations and there is no room for his grievance. They have also submitted that because of his unauthorised absence from 1990, he was imposed the penalty of compulsory retirement which was unsuccessfully challenged by him in OA 1077/98 and it was dismissed on 21.2.2000. They have also submitted that the pension which was authorised by the Pay & Accounts Office on 2.7.2001 was subsequently revised from 2003 due to discrepancies found in computing his qualifying service. Applicant's last salary was disbursed by the PAO up to October 1990 only and pension is calculated on the average pay of 10 months he was drawing. As such, there is no merit in the applicant's various representations for revising his retirement benefits by taking into account the unauthorized absence of duty i.e. from 3.11.1990 to 19.6.1998. As per rules and regulations, pension benefits can only be given by taking into account the pay scales applicable at the time of retirement. According to them, since the applicant was on unauthorized absence from duty from 3.11.1990 to 19.6.1998, his retirement benefits can be fixed only according to the pay scale granted to him on the basis of the Fourth Pay Commission Report. Therefore, the applicant's request for revising his pension as per the recommendations of the Fifth Pay Commission w.e.f 1.1.1996 cannot be accepted.

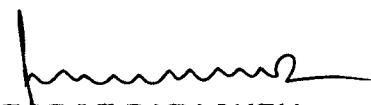


7 I have heard Advocate Mr T C G Swamy for the applicant and Advocate Mr M L George for Mr TPM Ibrahim Khan SCGSC for the Respondents. It is an undisputed fact that the applicant has been compulsorily retired from service w.e.f. 19.6.1998 and consequently he was in service up to that date. Applicant was on unauthorized absence from duty w.e.f 3.11.90 to 19.6.98. Since the compulsory retirement has been given with prospective effect, the applicant has to be treated as in service up to 19.6.98. The respondents ought to have first of all regularized the service up to 19.6.1998 in accordance with the rules. As the retirement is effective from 19.6.1998, he was also entitled to get his pay fixed in the revised scale which had already come into existence w.e.f. 1.1.1996. This Tribunal in earlier order in OA 138/98 dated 11.7.1996 - P N Pillai V/s Union of India & 2 Ors considered a similar question. In the said OA, the applicant therein was placed under suspension from 15.3.84 and reinstated in service on 1.2.85 and compulsorily retired on 25.5.85. He challenged the compulsory retirement before this Tribunal vide OA 2204/93 which was disposed by quashing his compulsory retirement and with a direction to treat him as retired on superannuation from 31.10.1994 and the period from 25.5.85, ie the date from which he was compulsorily retired from service to 30.10.1994 ie the date of his superannuation to be deemed as suspension period which will not be counted for pensionary benefits. There was also a direction to refix the pensionary benefits in terms of the Railway Services (Revised Pay) Rules 1986 and pay the arrears.

8 The same issue was considered in the order of this Tribunal in OA 691/2006 - K P Prabhakaran V/s Union of India & Ors, decided on 25.4.2008. The applicant in the said case was under suspension w.e.f 27.11.1995 to 16.10.1996 and he was finally dismissed from service on 16.10.1996. He was

granted compassionate allowance from 17.10.1996 His grievance was that the compassionate allowance was fixed on the basis of Rs.1900/- in the scale of Rs.1600-2660 which he was drawing at the time of suspension w.e.f. 27.11.1995. The said scale was revised to Rs 5500-9000 and the corresponding stage in the revised scale was Rs.6025/-. Considering the facts and circumstances of the aforesaid case, we directed the respondents to re-calculate the compassionate allowance admissible to the applicant under the Railway Services (Revised Pension) Rules 1997 and pay the arrears to him within three months from the date of receipt of this order.

9 In my considered opinion, the ratio in the aforesaid two cases are squarely applicable in this case also. When the applicant has been compulsorily retired from service on 19.6.1998 during the currency of the recommendations of the Vth Central Pay Commission, the pay of the applicant should have been determined as on that date in the revised payscale as per revised pay scales effective from 1.1.1996. I, therefore, allow this OA and direct the respondents to re-calculate the applicant's pension and retirement benefits by applying the pension rules as applicable on the date of his retirement i.e. 19.6.98 and grant all consequential benefits thereof including arrears. In the facts and circumstances of the case, no interest can be paid to the applicant. With the aforesaid direction, the OA is disposed of. The respondents shall comply with the aforesaid direction within a period of four months from the date of receipt of copy of this order. There shall be no orders as to costs.


GEORGE PARACKEN
JUDICIAL MEMBER

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