

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.120/98

Friday this the 26th day of March,1999.

CORAM:

HON'BLE SRI A.V.HARIDASAN, VICE CHAIRMAN

K.G.Zacharia, aged 54 years,  
S/o late K.C.George, Assistant Engineer,  
PWD (Retd), Puthuvely PO,  
Monippally Via. Kottayam District.

..Applicant

(By Advocate Mr.P.V.Madhavan Nambiar)

vs.

1. Union of India represented by the  
Secretary, Ministry of Urban Affairs and  
Employment, Government of India,  
New Delhi.

2. The Director General of Works,  
Central PWD, Urban Affairs and  
Employment, Nirman Bhavan, New Delhi.

3. The Chief Engineer,  
Central P.W.D., Posnet Bhavan,  
Tilak Road, Hyderabad- 500 001.

4. The Superintending Engineer,  
Hyderabad Central Grade II, Central  
Public Works Department, Nirman Bhavan,  
Hyderabad -500 095.

5. The Pay & Accounts Officer,  
South Zone, Central P.W.D.  
Rajaji Bhavan,  
Basant Nagar, Madras.

..Respondents

(By Advocate Mr.Thomas Mathew Nellimootil (rep.)

The applicant commenced his service as a Junior Engineer under the respondents on 21.12.1963. He was later appointed as Junior Engineer Grade I in the scale of pay of Rs.1640-60-2600-EB-75-2900 with effect from 1.1.86 vide order dated 11.6.87. His pay was fixed at Rs.2240/- with effect from 1.1.86 giving benefit under FR 22(c) (now FR 22(1)(a)(i)) the date of next increment as 1.1.87 raising to Rs.2300/-. He was later promoted as Assistant Engineer and joined the post on 4.3.91

as Assistant Surveyor of Works in the Trivandrum Central Circle, CPWD, Trivandrum. On such promotion his pay was fixed at Rs.2675/- per month in the scale of Rs.2000-60-2300-EB-75-3200 with effect from 4.3.91(FN) under FR 22(c). A copy of the order is Annexure A.1. While the applicant was receiving pay on the basis of Annexure A1 and was drawing increments thereafter an order dated 16.6.94 was issued by the Superintending Engineer, Trivandrum Central Circle, C.P.W.D., Trivandrum, as per the directions of Internal Audit Party, retrospectively withdrawing the benefit of pay fixation under F.R.22(c) (now F.R.22(1)(a)(1)) on the ground that promotion to higher scale of Rs.1640-2900 as Junior Engineer Grade-I would be non-functional and directing recovery of the overpayments. The applicant alongwith nine others similarly aggrieved filed O.A.No.1018/94 seeking to have the order dated 16.6.94 set aside. The Tribunal by its order dated 5th July, 1995(Annexure-A2) set aside the impugned order in that case. It was observed in the order that the Tribunal did not express any opinion regarding the courses open to respondents for any future action. However, the Superintending Engineer, Central Circle, C.P.W.D, Trivandrum issued the order dated 25.7.1997(Annexure-A3) withdrawing the order dated 16.6.94 and holding that the benefit of F.R.22(i)(a)(i) (old F.R.22(c)) in the grade of JE Grade I was admissible to Sri K.G.Zacharia, the applicant and that the pay fixation order dated 13.7.1987 in respect of the applicant stood good. While O.A. 1018/94 was pending, increments due to the applicant were not drawn. While so, the applicant sought voluntary under F.R.56(k)(1) read with Rule 48 of the CCS Pension Rules. The voluntary retirement of the applicant was accepted

by the competent authority with effect from 1.5.1997 vide order dated 5.8.1997 and the applicant stood voluntarily retired with effect from 1.5.97 but his pensionary benefits were not made available to him. The applicant therefore made representations dated 30.7.1997, 3.9.1997 and 17.9.1997 to the Superintending Engineer with copy to the Chief Engineer. Though the 5th respondent requested the third respondent to forward the pension papers of the applicant by his letter dated 22.10.1997, there was no progress in the matter. The applicant kept on making representations and reminders. Finding that the matter was delaying further, the applicant sent a letter to the 3rd respondent stating that his request for disbursement of pensionary benefits remained unanswered and that if prompt settlement was not made, he would be constrained to seek legal remedy for getting the amount due to him with interest(Annexure-A7). According to the applicant the matter was delayed by the inaction of the 4th respondent for he happened to be not in the good books of the 4th respondent, for no fault of his. The leave salary paid to the applicant under order dated 7.10.1997(Annexure-A8) was also not according to his full entitlement on the basis of Annexure A1, states the applicant. The applicant has therefore filed this application for appropriate direction to respondents 3 and 4 to forward the pension papers fixing his basic pay and also the last drawn salary calculating his basic pay as Rs.3125/- at the time of retirement viz. 1.5.1997 in the light of Annexures A1 and A3 orders and to direct the respondents to disburse to him his pension, DCRG and other retiral benefits accordingly with arrears and with interest at 18% per annum for the delayed payment.

2. In the reply statement, the respondents refute the allegation that the applicant was not in the good books of the 4th respondent and that it was owing to the inaction of the 4th respondent that the settlement of the pensionary claim of the applicant was being delayed. It is contended that after acceptance of the voluntary retirement of the applicant, a clarification was sought by the 4th respondent as to whether the applicant had to be given the benefit of pay fixation under F.R. 22(1)(a)(i) while fixing the pay with effect from 1.1.1986 in the scale of pay of Rs.1640-2900 and again with effect from 1.1.1991 in the scale of 2000-3500 and that as legal opinion in the matter was being sought, the pensionary claims of the applicant could not be finalised.

They have indicated that the D.C.R.G, Provident Fund etc. have since been disbursed to the applicant and that the other retiral benefits should be settled as per rules after getting the legal opinion.

3. I have gone through the pleadings and materials available on record and have heard the learned counsel appearing for both the parties. The only reason for not finalising the pensionary claims of the applicant, according to the respondents, is that the legal opinion is awaited on the point whether the applicant was entitled to the benefits of pay fixation under F.R.22(1)(a)(i). on his promotion as Junior Engineer Grade I in the scale of Rs.1640-2900 with effect from 1.1.86 and with effect from 1.1.1991 in the scale of Rs.2000-3500. As the applicant himself has not sought fixation of pay as on 1.1.91 but claims only on his actual promotion as Assistant Engineer with effect from 4.3.91 there is no need for getting a clarification as to whether the pay fixation should be given with effect

from 1.1.91. Regarding the case of the respondents that legal opinion was considered necessary to decide whether the applicant was entitled to fixation of pay under FR 22(1)(a)(i) with effect from 1.1.86, I find that there is no reason at all for seeking such a clarification in view of the orders of the Tribunal in O.A.1018/94 and the order issued by the Superintending Engineer, Trivandrum Central Circle, C.P.W.D. dated 25.7.1997(Annexure A3) because the order dated 16.6.94 issued by the Superintending Engineer, Trivandrum Central Circle, Central P.W.D, Trivandrum, refixing the applicant's pay cancelling the benefit of fixation of pay under F.R.22(1)(a)(i) on his promotion as Junior Engineer Grade I was set aside by the Tribunal in its order in O.A.No.1018/1994 and also because in implementation of the judgment of the Tribunal in O.A.No.1018/94, Annexure-A3 order was issued by the Superintending Engineer, Trivandrum Central Circle, C.P.W.D. It is profitable to extract the Annexure-A3 order:

"Government of India  
Central P.W.D.

No.8/20/TCC/97/EI/3146

Dt.25.7.1997

Office Order

(a) In view of the judgment of O.A.No.1018/1994 of Hon'ble CAT,Ernakulam Bench and O.M.No.C-18013/6/96/EC-VI/255 dt. 10.4.1997 of the Directorate General(Works), Central P.W.D.,New Delhi, the re-refixation of pay of Shri K.G.Zacharia, Assistant Engineer(then Junior Engineer) in the grade of Junior Engineer Grade.I under F.R.22(i)(a)(ii) issued under No.8/20/TCC/94/EI/2572 dt. 16.6.1994 by the Superintending Engineer,Trivandrum Central Circle, Central P.W.D,Trivandrum is hereby withdrawn. The benefits of F.R.22(i)(a)(i) (old F.R.22(c)) in the grade of JE I is admissible to Shri K.G.Zacharia, AE(then JE) only. The pay fixation order No. 9/15/87/CLTCD/1220 dt. 13.7.1987 in respect of Shri K.G.Zacharia only stands good.

(b) The pay fixed in respect of Shri B.K.Nair,Assistant

Engineer (then Junior Engineer) vide the said O.O.No. 8/20/TCC/94/EI/2572 dt. 16.6.1994 stands good.

Superintending Engineer,  
Trivandrum Central  
Circle, Central P.W.D.,  
Trivandrum-695 522."

In the light of Annexure-A3 order, it is seen that future action as observed in the order of the Tribunal in O.A.1018/94 had been taken by the respondents and it was held by the respondents that the applicant was entitled to benefits of F.R. 22(1)(a)(i) in the grade of J.E. and that the fixation of his pay giving that benefit made on 13.7.1987 would stand. The effect is that the fixation of pay given to the applicant on his promotion as Assistant Engineer with effect from 4.3.91 by Annexure-A1 also stands good. The further pay of the applicant was to be regulated giving the applicant the benefit of increments for the succeeding years. While the matter stood so, concluded by the order dated 25.7.1997 (Annexure-A3), I find no justifiable reason why the 4th respondent should entertain a doubt as to whether the applicant was to be given the benefit of pay fixation under F.R.22(1)(a)(i). The delay in finalisation of the pensionary benefits of the applicant, therefore, is absolutely unjustifiable. Even after a notice was issued by the applicant to the Chief Engineer on 16.11.97 requesting for early settlement and notifying that legal action would follow in case of non-settlement, prompt action was not taken by the respondents to have the matter settled and payment made to the applicant. The necessity to make available the retiral benefits of a pensioner at the earliest cannot be over-emphasised. It is well-settled by now that pension is not a bounty but a property which an employee has earned on account of long years of service. I am therefore of the considered view that the applicant is

perfectly justified in praying that the respondents have to be directed to make available to him the pensionary dues fixing his pay in accordance with the Annexure-A1 and Annexure-A3 orders and to pay him interest on the delayed payment.

4. In the light of what is stated above, the application is allowed. Respondents 3 and 4 are directed to forward the pension papers of the applicant fixing his pay on the basis of Annexures A1 and A3 giving due increments and the respondents are directed to issue orders sanctioning the due pension to the applicant and to make available to him the monetary benefits flowing therefrom. For the delayed payment of D.C.R.G, pension and other retiral benefits, the respondents are directed to pay interest at 18% per annum with effect from 1.10.97 to the dates of payment. These directions should be complied with by the respondents within 2 months from the date of receipt of a copy of this order. No costs.



A.V. HARIDASAN  
VICE CHAIRMAN

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List of annexures referred to in the Order:

1. Annexure A.1 True copy of Order No.9(15)/TCC/91/1538 dt.8.4.1991 by the 4th respondent.
2. Annexure A.3 True copy of Order No. 8/20/TCC/97/EI/3146 dt.25.7.97 by the 4th respondent.
3. Annexure A.2 True copy of Order dated 5.7.95 in O.A.No.1018/94.
4. Annexure A.7 True copy of representation dated 16.11.1997 by the applicant to the 3rd respondent.
5. Annexure A8: True copy of Order No.8(2)97/HCC II/1169 dated 7.10.97 by the 4th respondent.

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