

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.135 of 2000.

Monday, this the 6th day of November, 2000.

CORAM:

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

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

V.K. Balakrishnan Nair,
Lower Selection Grade Sorting Assistant,
Head Record Office, RMS 'EK' Division,
Cochin - 16. Applicant

(By Advocate Shri K. Karthikeya Panicker)

Vs.

1. Union of India represented by
the Secretary,
Department of Posts,
New Delhi.
2. The Chief Postmaster General,
Kerala Circle,
Thiruvananthapuram.
3. The Senior Superintendent,
RMS 'EK' Division,
Cochin -16. Respondents

(By Advocate Shri A. Sathianathan, ACGSC)


The application having been heard on 6.11.2000, the Tribunal
on the same day delivered the following:

O R D E R

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

The applicant, a Lower Selection Grade Sorting
Assistant had submitted a notice on 13.11.98 seeking
permission to retire voluntarily under Rule 48(a) of the
Central Civil Services (Pension) Rules with effect from
1.2.1999. His request was accepted by the 2nd respondent and

he was allowed to retire with effect from 1.2.1999. However, much before the date of intended retirement, the applicant had, on 5.1.1999, submitted a request to the 2nd respondent seeking permission to withdraw his notice for voluntary retirement. However, this request was turned down and the applicant was treated as retired. Challenging this order the applicant filed O.A. 118/99. The Tribunal after hearing the rival contentions held that the refusal to accept the withdrawal of notice for voluntary retirement was unjustified and set aside the impugned order by which the applicant was treated as retired. Pursuant to the above order the applicant was taken back to service. A show cause notice was issued to the applicant directing him to explain why the period during which he was out of service should not be treated as duty for all purposes except for pay and allowances. The applicant in his explanation claimed that as he was kept out of service unjustifiably, he was entitled to pay and allowances. After considering the representation the impugned order dated 29.12.99 A-7 has been issued whereby the respondents decided to treat the period from 1.2.99 to 18.10.99 the period for which the applicant was kept out of service as duty for all purposes except for payment of salary and allowances. Aggrieved the applicant has filed this application for setting aside A-7, for a declaration that he is entitled to receive the salary and other allowances with penal interest and costs for the period from 1.2.99 to 18.10.99 and for a direction to the respondents to disburse the salary and allowances with penal interest for the period from 1.2.99 to 18.10.99.



2. The respondents resist the claim of the applicant. They contend that as the applicant was not performing duties during this period and as the non-performance of the duty during this period was not for any reason attributable to the respondents, the applicant is not entitled to the arrears of pay and allowances.

3. We have perused the pleadings and materials placed on record and have also heard the learned counsel on either side. The Tribunal has adjudicated the question whether the action on the part of the respondents in turning down the request of the applicant for permission to withdraw the notice for voluntary retirement before it took effect and had held that there was no justification in the respondents denying permission to withdraw the notice. Therefore the order of retirement was set aside. The natural and legal consequences of setting aside the order of retirement is that the applicant is to be deemed to have continued in service with all attendant benefits. Since the non-performance of the duty by the applicant between 1.2.99 and 18.10.99 was solely on account of the unjustifiable action on the part of the respondents in not accepting the request for withdrawing the notice of voluntary retirement, the respondents cannot seriously contend that the non-performance of the duty by the applicant was not on account of any lapse on the part of the respondents. On the contrary it has to be held that the non-performance of the duty by the applicant from 1.2.99 and 18.10.99 was solely on account of the unjustifiable action on the part of the respondents refusing permission to withdraw

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the notice and continue in service. The applicant cannot be made to suffer the loss for the lapse on the part of the respondents. The judgement relied on by the respondents in the reply statement has absolutely no bearing to the facts of this case.

4. In the result the application is allowed. Declaring that the applicant is entitled to get the full pay and allowances for the period from 1.2.99 to 18.10.99, we direct the respondents to disburse the applicant the entire pay and allowances for the period within a period of two months from the date of receipt of a copy of this order. No costs.

Dated, the 6th of November, 2000.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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Annexure A-7: True copy of the Memo No.TC/3/99 dated 29.12.1999 issued by the 3rd respondent.