

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.143/2007
Dated the 16th day of July, 2008

CORAM:

**HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE DR.K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

P.V.Nalinakshan Nair
Addl. Commissioner of Incometax (Retd)
Sarovaram, 6/916, Ponnalam Colony,
Thrikakara, Kochi-682021 ... Applicant

By Advocate Mr.P.Balakrishnan

V/s

- 1 Union of India represented by
Secretary, Ministry of Finance,
Department of Revenue, New Delhi
- 2 The Chairman
Central Board of Direct Taxes,
North Block, New Delhi
- 3 The Chief Commissioner of Income Tax,
CR Building, IS Press Road, Cochin
- 4 The Chief Commissioner of Income Tax,
Chennai
- 5 The Commissioner of Income Tax,
CR Building, IS Press Road,
Cochin

... Respondents

By Advocate Mr.Thomas Mathew Nellimoottil

This application having been heard on 16th July, 2008, the Tribunal on the same day delivered the following

(ORDER)

Hon'ble Mr. George Paracken, Judicial Member

The applicant is aggrieved by Annexure A-7 order dated 27.12.2006 by which the half pay leave from 17.1.2005 to 4.2.2005 already

granted to him was cancelled. He is also aggrieved by the Annexure A-8 order by which an amount of Rs.19,050/- which was already paid to him for the aforesaid period has been recovered from his salary.

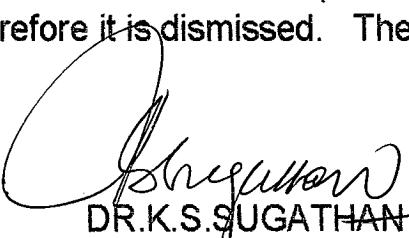
2 The brief facts of the case are that the applicant had applied for voluntary retirement under Rule FR 56(k)(1) read with Rule 48 of CCS (Pension) Rule's 1972 vide Annexure A-1 letter dated 8.10.2004. Later on, vide Annexure A-2 letter dated 12.1.2005 he requested to withdraw the aforesaid application for voluntary retirement and sought a posting in Kerala region. However, vide Annexure A-3 letter dated 17.1.2005, he was admitted to voluntary retirement with effect from 17.1.2005 and he was relieved from duty from the same date. He has, therefore, made the Annexure A-4 representation dated 23.2.2005, requesting the competent authority to review the decision and to cancel the Annexure A-3 order. During the pendency of said representation, the respondents, accepting his request for transfer, posted him in Kerala region vide Annexure A-5 letter dated 11.2.2005 but it was only vide the Annexure A-6 order dated 24.3.2005 he was permitted to withdraw his request for voluntary retirement and allowed to resume his duty with a condition that the interruption in service between 17.1.2005 till he joins duty again will not count as qualifying service. Accordingly, he rejoined duty on 1.4.2005. Thereafter, the respondents vide the impugned Annexure A 7 order dated 27.1.2006 cancelled the HPL earlier granted to him for the period from 17.1.2005 to 4.2.2005 on the ground that the said period was not allowed to be counted as qualifying service by the Annexure A-6 order. Subsequently, vide the Annexure A-8 impugned order dated 28.12.2006,



the respondents recovered Rs.19,050/- already paid from his salary allowances in the aforesaid period from 17.1.2005 to 4.2.2005.

3 According to the applicant, since he has got more than 33 years of qualifying service, which is the maximum period to be reckoned for the purpose of pensionary benefits. the respondents' decision not to count the aforesaid period as qualifying service will not affect his pensionary benefits. However, the Annexure A-7 and A-8 impugned letters have adversely effected him pecuniarily. He has, therefore, sought a direction to the respondents to quash those orders and to direct the respondents to make the payment of the pay and allowances from 17.1.2005 to 31.3.2005.

4 We have heard Advocate Mr.P.Balakrishnan for the applicant and Advocate Mr.Thomas Mathew Nellimoottil for the respondents. The fact of the matter is that the applicant did not work for the period 17.1.2005 to 31.3.2005 and, therefore, the question of payment of pay and allowances for the aforesaid period does not arise. Moreover, the applicant has also not challenged the Annexure A-6 order dated 24.3.2005 treating the aforesaid period as non-qualifying service. Without treating the said non qualifying period as duty by regularising it by grant of leave of any kind due and admissible to the applicant, no payment of salary and allowances can be made to the respondents. In the above facts and circumstances of the case, we do not find any merit in this OA and therefore it is dismissed. There shall be no orders as to costs.



DR.K.S.SUGATHAN
ADMINISTRATIVE MEMBER
abp



GEORGE PARACKEN
JUDICIAL MEMBER