

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O.A. No. 164/91  
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199

DATE OF DECISION 8-7-1991

N Sreedharan Nair Applicant (s)

Mr M Rajagopalan Advocate for the Applicant (s)

Versus

The Flag Officer Commanding in Respondent (s)  
Chief. Southern Naval Command,  
Cochin-4 and others.

Mr K Prabhakaran, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

The Hon'ble Mr. AV Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

Mr NV Krishnan, A.M

The applicant is reemployed as a Telephone Operator under the 1st respondent. He retired from this post on superannuation on 31.8.90. His qualifying service has been reckoned from 9.10.80, the date of his regular appointment. On that basis he has completed 9 years, 10 months and 22 days of qualifying service. As this is less than 10 years, the Annexure A3 order dated 3.12.90 has been issued by Respondent-2, restricting the pensionary benefits to death-cum-retirement gratuity under Rule 50 of the CCS(Pension) Rules 1972- Rules, for short and to service gratuity under

Rule 49(1).

2 The applicant has <sup>the</sup> alternate submissions.

(a) He had earlier been appointed from 7.7.80 and this appointment continued till 6.10.80 only.

There was an artificial break of 2 days i.e., on 7th and 8th October, 1980 before he was regularly appointed on 9.10.80. He contends that his earlier service should also be considered and should be taken into account for reckoning the qualifying service. This is necessary in the light of the decisions rendered by a Full Bench in DA 434/89 and DA 609/89.

(b) During the course of arguments it was submitted that even according to the Rules, the qualifying service rendered by him should be rounded off to 10 years - Rule 49(3) states that in calculating the length of qualifying service, fraction of year equal to 3 months and above shall be treated as a completed one half year and reckoned as qualifying service. In either case, he would have at least ten years qualifying service and he would be entitled to pension under Rules.

3 The respondents have filed a reply which states that the applicant has a qualifying service of

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only 9 years 10 months and 22 days, the Annexure A3 order has been correctly passed. The reply does not answer the two claims made by the applicant as in para 2.

4 We have heard the counsel of both sides. The learned counsel for the respondents has found it difficult to repel the contentions based on Rule 49(3).

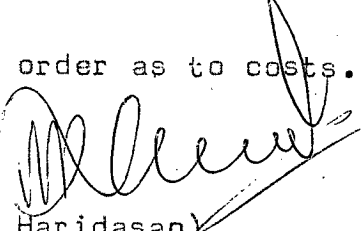
5 Rule 49(3) is clear and unambiguous. We are of the view that the period of 10 months and 22 days in excess of 9 years has to be rounded off to one year. For, 10 months and 22 days really means  $\sim \frac{1}{2}$  year + 4 months and 22 days. The period of 4 months and 22 days should be treated as a complete half year under Rule 49(3). Therefore, the period of 10 months and 22 days will really be  $\frac{1}{2}$  year +  $\frac{1}{2}$  year. Thus the applicant should be treated as having a full 10 years of qualifying service (i.e., 9 years + 1 year under Rule 49(3)).

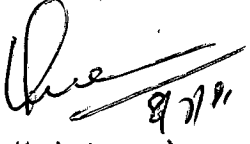
6 In this view of the matter, we allow the application and direct Respondent-2 to treat the applicant as having a qualifying service of full 10 years and grant him pension and retirement gratuity under Rule 49(2) *(b)* and Rule 50 respectively, within a period of 3 months from the date of receipt of this order. The service

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gratuity granted under Rule 49(1) by the Annexure A3 order is not admissible to the applicant in the new circumstances and it should be adjusted against any payment due to him or got refunded in accordance with such orders as may be passed by the second respondent.

7 The application is disposed of as above. There will be no order as to costs.

  
(AV Haridasan)  
Judicial Member

  
(NV Krishnan)  
Administrative Member

8-7-1991