

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.20/99

Monday this the 20th day of November, 2000

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI G.RAMAKRISHNAN, MEMBER (A)

M.Georgekutty,
Technical Supervisor(Retired),
Telephone Exchange,
Edathwa(Methukalathil,
Talavadi P.O.,
Alleppey..) .. Applicant

(By Advocate Mr.M.R.Rajendran Nair)

vs.

1. The General Manager,
Telecom District, Alappuzha.
2. The Director,
Department of Telecommunications,
Trivandrum-33.
3. Union of India represented
by Secretary to Government,
Ministry of Communication,
New Delhi. .. Respondents

(By Advocate Shri Govidh K.Bharathan, SCGSC)

The Application having been heard on 13.11.2000, the Tribunal on 20.11.2000 delivered the following:-

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant while working as Technician, Telephone Exchange, Kovalam, was by an order dated 31.7.1986 of the Telecom District Manager, Alleppey, removed from service as a penalty for the alleged misconduct of absence from duty and for not appearing before the D.M.O, Alleppey for second medical examination. In an appeal filed by the applicant the second respondent by order dated 22.9.88 set aside the punishment of removal from service finding that there was no proper enquiry held, as the proceedings were held in gross violation of the principles of natural justice and directed

the reinstatement of the applicant, further ordering that the period of unauthorised absence from 2.5.83 to 25.11.84 and from 14.12.84 to the date of removal be treated as eligible leave to the extent admissible if applied in writing and the remaining period thereto as dies-non and the period during removal and reinstatement be treated as dies-non. The applicant was reinstated in service on 28.9.88, was promoted as Technical Supervisor and he retired voluntarily with effect from 1.10.98. In the pension calculation sheet the period between 31.7.86 and 27.9.88 was shown as dies-non and not treated as qualifying service for pension. Aggrieved by this the applicant submitted a representation to the first respondent requesting that the period between 31.7.86 and 27.9.88 should also be treated as qualifying service for the purpose of pension. The request of the applicant was rejected by the impugned order dated 18.11.98 on the ground that the period in question which was treated as dies-non could not be counted as qualifying service for pension and the decision of the Government of India No.14/12/82-Vig.III referred to in the representation was not applicable to the case. Aggrieved by that the applicant has filed this application praying that the impugned order Annexure A1 may be set aside, that it may be declared that the period between 31.7.86 and 27.9.88 is to be reckoned as duty for all purposes including pension and that the applicant is entitled to get full pay and allowances for the period from 31.7.86 to 27.9.88 and for a direction to the respondents to refix the pensionary benefits of the applicant and to pay him the difference as

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also the arrears of pay and allowances with interest at 18% per annum. It has been alleged in the application that there is no justification in not counting the period from 31.7.86 to 27.9.88 for the purpose of pension as the period is to be treated as duty in terms of provisions contained in FR 54.

2. The respondents contend that as the competent authority ordering reinstatement of the applicant by Annexure A2 order dated 22 September 1988 has ordered that the period from the date of removal to the date of reinstatement would be treated as dies-non and the said order has become final, the claim of the applicant that this period should be treated as qualifying service for pension is baseless and unsustainable.

3. We have heard the learned counsel on either side.

4. The short question that requires an answer in this case is whether the period between the date of removal of the applicant from service and the date of reinstatement pursuant to the appellate order Annexure-A2 is to be treated as qualifying service for pension. The relevant provisions of law in arriving at an answer to this question are FR 54 and Rule 25 of the CCS Pension Rules. The relevant part of FR 54 is extracted below for the purpose of convenience:-

"F.R.54(1) When a Government servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would

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have been so reinstated but for his retirement on superannuation while under suspension or not, the authority competent to order reinstatement shall consider and make a specific order:-

(a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority competent to order reinstatement is of opinion that the Government servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the Government servant shall, subject to the provisions of sub-rule(6), be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be:

Provided that where such authority is of opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall, subject to the provisions of sub-rule (7), be paid for the period of such delay, only such amount(not being the whole), of such pay and allowances as if may determine.

(3) In a case falling under sub-rule(2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

(4) In cases other than those covered by sub-rule(2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-compliance with the requirements of Clause (1) or Clause (2) of Article 311 of the Constitution and no further inquiry is proposed to be held) the Government servant shall, subject to the provisions of sub-rules (5) and (7), be paid such amount(not being the whole) of the pay and allowances to which he would have been entitled,

had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving, notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

(5) In a case falling under sub-rule (4), the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be treated so for any specified purpose."

5. Sub-rule (3) of F.R. 54 provides that in cases where the Government servant has been fully exonerated, the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement as the case may be, shall be treated as a period spent on duty for all purposes. The case on hand does not fall in that category. It falls under the category of sub-rule(4) because the removal from service of the applicant was set aside by the appellate authority solely on the ground of non-compliance of the requirements of Clause 2 of Article 311(2) of the Constitution. Regarding such cases in sub-rule(4) it is provided that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement as the case may be shall not be treated as period spent on duty, unless the competent authority specifically directs that it shall be treated so for any specified purpose. In this case the applicant was directed to be reinstated by the appellate authority and in the order(A2), it was specifically ordered that the period from the date of removal to the date of

reinstatement would be treated as dies-non. There was no specific order that the period should be treated as duty for any purpose including for the purpose of qualifying service for pension. Learned counsel of the applicant argued that under sub-rule(4) of F.R. 54 before passing an order regarding the treatment of the period between removal and reinstatement and determining the quantum of amount to be paid towards pay and allowances for the period, there is a requirement of giving a notice to the Government servant and that no such notice having been given to the applicant, and no specific order having been passed under the said sub-rule, the provisions contained in Annexure-A2 order that the period from the date of removal to the date of reinstatement would be treated as dies-non is non-est under law as the same has been passed in excess of jurisdiction and without following the mandates of the provision. We are not at all impressed with this argument of the learned counsel. The requirement of issuing an order after giving a notice is only for the purpose of determining the quantum of pay and allowances to be paid to the Government servant during the period between removal from service and reinstatement. If such an order was not passed and if the applicant had a claim for pay and allowances for that period the applicant cannot at this distance of time put forth any such claim because that arose in the year 1988. The claim if at all the applicant had has been barred by limitation. Now coming to the order of treatment of the period as not spent on duty, there is no provision in F.R. 54 to give any notice. What is provided in sub-rule (5) of F.R. 54 is

that in case falling under sub-rule(4) (as in this case) the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement as the case may be, shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be treated so for any specified purpose. In this case the competent authority has not passed any order that the period between removal from service and reinstatement should be treated as duty for any purpose, on the other hand, it has been stated that the period would be treated as dies-non, meaning thereby that the period would not count for anything.

6. Rule 25 of the CCS Pension Rules reads as follows:-

"25. Counting of past service on reinstatement

- (1) A Government servant who is dismissed, removed or compulsorily retired from service, but is reinstated on appeal or review, is entitled to count his past service as qualifying service.
- (2) The period of interruption in service between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement, and the period of suspension, if any, shall not count as qualifying service unless regularised as duty or leave by a specific order of the authority which passed the order of reinstatement."

Since the competent authority in Annexure-A2 order has not directed that the period between removal from service of the applicant and reinstatement should be treated as duty for any purpose in view of sub-rule(2) of Rule 25 the applicant

is not entitled to claim that the period during his removal from service and reinstatement is to be counted as qualifying service for pension.

7. In the conspectus of facts and circumstances and the position of law as explained above, we find no merit in this application. Therefore, we dismiss the application leaving the parties to bear their respective costs.



(G. RAMAKRISHNAN)
MEMBER (A)



(A.V. HARIDASAN)
VICE CHAIRMAN

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List of annexures referred to:

Annexure.A1:True copy of the Memo dated 18.11.98 No.Q1213/Pen/II/65 issued by the Accounts Officer, office of the 1st respondent.

Annexure.A2:True copy of the Order dated 22.9.88 No.AMS/54-143/88 issued by the 2nd respondent.

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