

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.247/2000

Thursday this the 4th day of April, 2002

C O R A M

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR K.V. SACHIDANANDAN, JUDICIAL MEMBER

P.D.Chidambaram,
Oilman (under suspension),
Central Marine Fisheries Research Institute,
Cochin
residing at :
Mattummal House,
Thevarcadu
Varapuzha P.O.

: Applicant

[By Advocate Mr P.V.Mohanan]

Vs.

1. The Director,
Central Marine Fisheries Research Institute,
Cochin : Respondent

[By Advocate Mr.P.Jacob Varghese]

The application having been heard on 4th April, 2002 the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant commenced his service as Oilman-cum-Deck hand in the Central Marine Fisheries Research Institute (CMFRI for short) on 1.9.1981. He was arrested on 10.2.1988 and was detained in police custody in connection with Crime No.28/88 of Ernakulam Town North Police Station for offence punishable under Section 143, 147, 148, 149, 323, 307 and 302 of Indian Penal Code. He was placed under suspension by the respondent by order dated 25.2.88 with effect from 10.2.88 under Rule 10(2) of CCS(CCA) Rules, 1965.(Annexure A-1). Applicant stated that he had been paid subsistence allowance till December, 1991 and no subsistence

..2/-

allowance was paid after December, 1991. The Criminal case was charged against the applicant before the Sessions Court, Ernakulam as SC No.38/89 and by judgment dated 21.12.1991 the applicant was convicted and sentenced to undergo imprisonment for life. The said imprisonment for life was confirmed by the Hon'ble High Court of Kerala in Criminal Appeal No.63/92 by judgment dated 21.6.1995. The appeal filed before the Supreme Court was dismissed. The applicant was released before the date of expiry of life sentence and after undergoing nominal period of imprisonment on condition of executing bond in accordance with an order No.GO(MS) 121/99 dated 7.7.1999 issued by the Government of Kerala. After release the applicant filed a representation dated 12.11.1999 to the respondent requesting for review of order of suspension and for reinstatement. Not receiving any response, applicant filed this Original Application seeking the following reliefs :-

- (i) To call for the records leading to Annexure A-1 order of suspension of the applicant and direct the respondent to review the suspension and reinstate the applicant.
- (ii) To direct the respondent to pay the arrears of the subsistence allowance to the applicant from December 1991 till the date of reinstatement in service as envisaged under Fundamental Rule, 53.
- (iii) To direct the respondent to cancel Annexure A-1 order of suspension and reinstate the applicant as Oilman in Central Marine Fisheries Research Institute forthwith.
- (iv) Any other appropriate order or direction as this Hon'ble Tribunal may deem fit in the interest of justice.

The applicant has advanced number of grounds in support of the reliefs sought by him.




Respondent filed reply statement resisting the claim of the applicant.

Heard the Learned Counsel for the parties.

Learned counsel for the applicant commencing the arguments submitted that on date in view of the respondent having passed an order on 16.8.2000 dismissing the applicant from service with effect from 10.2.1988, he is not pressing the 1st relief sought for by him and the only claim of the applicant through this Original Application is regarding payment of subsistence allowance with arrears from December, 1991 onwards till the date of reinstatement in service of the applicant. He relied under FR 53 for the relief claimed by him. He sighted the judgment of the Hon'ble Supreme Court in the case of O.P.Gupta Vs. UOI & Others reported in AIR 1987 SC 2257. According to him he continued to be a member of the service inspite of the order of suspension. He submitted that he continued to be a member of the government service but he was not permitted to work. His right to life is deprived by non-payment of subsistence allowance.

Learned counsel for respondent submitted that as the applicant after December, 1991 had not furnished any non-employment certificate the department could not pay him the subsistence allowance. Since the applicant was undergoing imprisonment and he could not produce the certificate, he was not paid the subsistence allowance. As far as the departmental action is concerned, on the basis of the conviction or otherwise by the court, he could have

..4/-



served a copy of the order to the administrative authority which was not done by him. As the applicant was undergoing imprisonment the question of revoking the suspension during such time did not arise. He further submitted that considering the gravity of criminal charges and misconduct, the disciplinary authority came to a provisional conclusion that the penalty of dismissal from service with effect from 10.2.1988 may be imposed on the applicant, for which R-5 show cause dated 20.7.2000 has been served to the applicant. He further submitted that the applicant had been dismissed from service by an order dated 16.8.2000.

On a careful consideration of the submissions made by the Learned counsel for parties as well as the rival pleadings and on perusal of the documents brought on record we find that the applicant is not entitled for the reliefs sought for by him for the following reasons :-

The relief which is pressed by the applicant now is " to direct the respondent to pay arrears of the subsistence allowance to the applicant from December, 1991 till the date of reinstatement in service as envisaged under Fundamental Rule, 53."

During the course of arguments learned counsel for applicant submitted that the applicant has been dismissed from service by an order dated 16.8.2000 with effect from 10.2.1988. If the applicant had been dismissed from service with effect from 10.2.1988, he is no longer in service on date and the order of dismissal from service is not under challenge in this Original Application. When

..5/-



applicant is no longer in service by an order which is not under challenge in this Original Application, the judgment of the Supreme Court relied on by the learned counsel for applicant is not applicable to the facts and circumstances of the case. Even according to the said judgment, a person who is in service is eligible for subsistence allowance. In this case, by the learned counsel for the applicant's own submissions, the applicant having been dismissed from service with effect from 10.2.1988, cannot be held to be in service from that date.

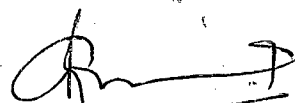
Further the applicant has also no case that he has furnished the non-employment certificate to the respondent for the period from December, 1991 onwards. He has also not filed any rejoinder contesting the claim of the respondent that he had not furnished the non-employment certificate. This would indicate that he has accepted that for receipt of subsistence allowance furnishing of non-employment certificate is a necessary pre-requisite. Therefore the claim fails.

In the light of the above, we dismiss this Original Application with no order as to costs.

Dated the 4th April, 2002.



K.V.SACHIDANANDAN
JUDICIAL MEMBER



G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

vs

A P P E N D I X

Applicant's Annexures:

1. A1: True copy of the Proceeding No.9-1/88-Adm dated 25.2.1988.

Respondent's Annexures:

1. R-1: Copy of the letter dated 12.11.99 from applicant.
2. R-2: Copy of letter No.9-1/88-Adm dated 7.3.94 issued to the Supdt. of Police, Ernakulam.
3. R-3: Copy of letter No.D1-11334/94/EC dated 23.3.94 from Commissioner of Police, Kochi City.
4. R-4: Copy of the letter No.9-1/88-Adm dated 9.12.99 issued to the Commissioner of Police, Kochi.
5. R-5: Copy of the Memorandum No.9-1/88-Adm dated 20.7.2000 issued to the applicant.

* * * * *