

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 252/2004

MONDAY THIS THE 5th DAY OF JUNE, 2006

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

K.V. Narayana Iyer S/o late K.N. Vasudeva Iyer
Retired Senior Private Secretary to the Chairman
Cochin Shipyard, Kochi
residing at 'Sree Lakshmi" No. 34/1271
Pius Road, Edappally, Kochi-24

..Applicant

By Advocate Mr. TC Govindaswamy

Vs.

- 1 Union of India represented by
the Secretary to the Government of India
Ministry of Shipping
Transport Bhavan,
New Delhi-110 001
- 2 Cochin Shipyard Ltd., Kochi
Through its Chairman & Managing Director
Kochi-682 015.

.. Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC for R-1
Advocate Mr. P. Ramakrishnan for R-2

O R D E R

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant in this case was initially appointed as a Typist on 25.1.1962 in the Second ShipYard which was then under the administrative control of the Port of Cochin under the Ministry of Shipping and Transport, Government of India. The Second Shipyard was converted into Cochin Shipyard Ltd., a Government of India Enterprise w.e.f. 1.4.1972 and the applicant was absorbed in the said

organisation w.e.f. that date. The applicant retired on superannuation on 30.4.2002. But he has not been granted monthly pension reckoning his service under the first respondent. He approached this Tribunal in O.A. 874/2003 pointing out that the Tribunal in identical cases in O.A. 401/2000 and 693/2000 had granted pension to similarly placed employees w.e.f. 1.5.2000 for the services rendered by them under the Ministry of Shipping. The Application was disposed of directing the respondents to consider the representation of the applicant keeping in view the orders of the Tribunal in O.A. 401/2000 and 693/2000 and to give the applicant appropriate reply within two months from the date of receipt of the order. The applicant has now approached this Tribunal aggrieved by the orders in Annexure A-3 and A-7 by which he has been informed that his pension case will be considered after he remits the proportionate gratuity for the period in question to the Cochin Shipyard Ltd. The applicant has also disputed the amount of Rs. 87,500/- directed to be remitted in this behalf and contended that proportionate gratuity proposed to be paid back to the Cochin Shipyard Ltd. according to him is only Rs. 13,781/- He has disputed the claim through a Lawyer's notice dated 15.1.2004 (A-4). In response to the Lawyer's notice the applicant has received letter at Annexure A-7 insisting on him to pay back the amount fixed. The applicant has submitted that the above calculations are clearly arbitrary, discriminatory, contrary to law and unconstitutional and he is not liable for such payment. He has sought the following reliefs:

(a) Declare that the applicant is liable to receive an amount of Rs. 3,36,219/- (Rupees three lakh thirty six thousand two hundred and nineteen only) from the Cochin Shipyards Ltd. towards retirement gratuity for the services rendered by the applicant under the second respondent Cochin Shipyard Ltd.

(b) Declare that the applicant is liable to remit back to the Cochin Shipyard Ltd. Only an amount of Rs. 13,781/- (Rupees thirteen thousand seven hundred and eighty one only) as the amount of retirement gratuity received in excess by the applicant from the Cochin Shipyard Ltd. For the service rendered by the applicant under the Government of India.

© Call for the records leading to the issue of Annexure A-3 and A-7 and quash the same to the extent they direct the applicant to remit an amount of Rs. 87,500/- (Rupees eighty seven thousand and five hundred only) to the Cochin Shipyard Ltd. towards the proportionate gratuity, as against the actual amount of only Rs. 13,781/- (Rupees thirteen thousand seven hundred and eighty one only)

(d) Direct the respondents to refund the excess amount of Rs. 73719/- (Rupees seventy three thousand seven hundred and nineteen only) being remitted by the applicant provisionally with 12% interest calculated from the date of remittance till the datesd of full and final settlement.

(e) Award costs of and incidental to this application.

(f) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

2 The contention of the first and second respondents is that in Annexure A-1 order in O.A. 401/2000 and 693/2000, this Tribunal

had directed payment of pension to the applicants therein on condition that they remit back the proportionate retiral benefits received by them from the Cochin Shipyard Ltd for their Government of India service and the respondents have only applied the said principle in asking the applicant to remit an amount of Rs. 87,500/- The applicant was paid gratuity for 40 years of service including the 10 years service rendered by him under the Second Shipyard and his service under the second Shipyard had been taken into account for fixation of pay and promotion as well. The applicant claimed that gratuity should be calculated separately for the period of service under the 2nd respondent is clearly unsustainable as he has been paid the maximum amount of Rs. 350,000/- as gratuity and that the method of calculation of proportionate gratuity has been done as per the formula for computation of pro-rata gratuity which has been confirmed by the Department of Pension and Pensioners' Welfare.

3 At the outset it has to be clarified that the applicant in this case had approached this Tribunal in O.A.874/2003 and it had not been considered on merit and disposed of directing the respondents to consider his representation keeping in view the directions issued by this Tribunal in O.A. 401/2000 and 693/2000. This was done on the averment of the counsel for the applicant that the applicant was similarly situated as the applicant in O.A. 693/2000 and that O.A. has been disposed of directing the respondents to consider the representation of the applicant in the light of the decision in O.A.

401/2000 and 693/2000. It is therefore strictly not correct on the part of the respondents to take the stand that this Tribunal has directed that the applicant would be eligible for grant of monthly pension and other benefits only on the condition that he remits proportionate retiral benefits. It will be therefore relevant to extract the specific directions of this Tribunal in O.A. 401/2000 and 693/2000. The applicants in the above OAs were LDCs who were initially appointed like the applicant herein in the Second Shipyards and ordered to be transferred to the Cochin Shipyard Ltd. w.e.f. 1.4.1972 and had superannuated from the services of the Cochin Shipyard Ltd. Thereafter the Tribunal found that the cases of the applicants were covered by the memorandum of the Ministry of Finance dated 16.6.1967 relating to the pro-rata pension admissible to Government servants absorbed in public sector undertakings and also Rules 37 and 49 of the CCS Pension Rules 1972 and held that the applicants are entitled to get the retiral benefits and to an option for pro-rata benefits for the services rendered by them for the period under the Central Government. In para 16 of the judgment the Tribunal observed as under:

"In view of the above the plea taken by the respondents that as the applicants had received their Gratuity for the periods of service under the Central Government they were not entitled for pensionary benefits for the said service cannot be accepted. Further, we find that the Gratuity received by the applicants was under the Payment of Gratuity Act. The applicants are prepared to return the amounts received by them as pensionary benefits for the period of service rendered by them under the Central Government."

4 In the alight of the above view the following directions were given:

"23(a) We declare that the applicant is entitled to be granted monthly pension as provided under the CCS (Pension) Rules 1972 for the service rendered under the first respondent subject to the condition that he remits the proportionate retiral benefits received by him from the second respondent for his Government service within one month from the date of receipt of the intimation of the value of the proportionate retiral benefits, under advice to both the respondents."

The above directions have to be read together with the findings in the earlier para extracted above and not independently. When the terminology used in the order of the Tribunal is 'retiral benefits' the respondents should have kept in view these aspects before applying the principle contained in the general directions of the Tribunal in the case of the applicant in this case. Both the pension and gratuity are retiral benefits but stand on different footing. The Courts have consistently held that pension is a legal right and the grant of pension does not depend upon an order being passed by the authorities to that effect. The right to pension is not a bounty payable on the sweet will and pleasure of the government and on the other hand the right to pension is a valuable right vesting in a Government servant, whereas 'Gratuity' is a gratuitous amount paid for the service rendered by the Government servant, at the time of retirement. This Tribunal in their judgment had rightly held that the plea taken by the respondents that the fact that the gratuity has been received by the applicant for the period covered by Central Government service does not dis-entitle them for pensionary

benefits. The question of settlement of pension on conversion of a Government department into an autonomous body or a public undertaking has been determined in the Department of Pension and Pensionary Welfare OM NO. 4/18/87-P & PW dated 5.7.1989 order NO. 12 at page 443 of Appendix 11 of Swamy's Pension Compilation. Para 3 of sub para (d)(ii) thereof refers to (i)entitlement of pension and (ii)entitlement of retirement gratuity. In an earlier OM No 28/10/89 -Pension dated 29.8.1984 the Government have also given detailed guidelines regarding settlement of retiral benefits to Central Government servants who have been absorbed in Central Government Undertakings and vice versa. According to para 3(b) of the above provision such Government employees will be eligible for pro-rata retirement benefits in terms of Govt. of India OM dated 8.4.1976. The OM dated 8.4.1976 provided for the procedures for drawal of pro-rata retirement benefits. In terms of the above OMs there is no doubt that the applicants in this OA and the earlier OAs are entitled to pension. In these instructions no conditions have been given and the applicants had approached for grant of their pension only after their normal retirement from the service of the Public Sector Undertaking. The respondents chose to deny the grant of these benefits on the ground that the applicant was given the benefit of his service rendered under the Central Government for fixation of his pay, etc. In none of the orders referred to above such conditions are mentioned and the benefit of service given for fixation of pay does not exclude similar benefits being granted for payment of

pension and gratuity. The entitlement of pension and gratuity as stated earlier also have to be determined separately. As far as pension is concerned, the service in the Cochin Ship Yard Ltd. was not a pensionary employment as there was no pension scheme under this company. Therefore, the question of the applicant having received any retirement benefits in terms of pension from the Company does not arise and the stand of the respondents in Annexure A-3 that the entitlement of the pensionary benefits from the Government of India depends on the applicant paying back proportional pension received already is clearly untenable. The applicant has to be given pro-rata pension for the period of service rendered in the Central Government in accordance with the instructions referred to above.

5 As regards payment of gratuity it is not disputed that the applicant has been paid gratuity of Rs. 350000/- by the Cochin Shipyards Ltd. taking into account the total service of 40 years rendered by him including 10 years service rendered by him in the Government of India. The only contention of the applicant is that the amount arrived at for remittance in Annexure A-7 order of the Ministry of Shipping as Rs. 87,900/- is not correct as he would have been eligible to the payment of an actual amount of Rs. 3,36,490/- from the Cochin Shipyard for the 30 years of service rendered by him in the Cochin Shipyard and therefore according to the applicant he is eligible to refund only Rs. 13,781/- (Rs. 3,50,000-3,36,490). If the

applicant is required to remit Rs. 87,500/- to the Cochin Shipyard Ltd. the Cochin Shipyard will be unlawfully enriching itself by Rs. 72,000/-. In the second reply statement the respondents stated that the applicant had received Rs. 3,50,000/- the maximum amount payable as gratuity reckoning the entire service. The determination of gratuity only with regard to the service rendered by the applicant in the Cochin Shipyard Ltd. could not be taken up now. The first respondent has contended that the determination of gratuity is per the provisions of Payment of Gratuity Act, 1972 and that the applicant is now estopped from being paid gratuity for the specific period after having received the gratuity for the full service. The contention and rival contentions in this regard are not relevant to the issue in dispute though they are ^{only} partly correct on the stand taken. The applicant cannot claim gratuity from Government of India and the Cochin Shipyard for the same period of service. For payment of gratuity under the service of the Government of India, he will become eligible only if he does not receive the same benefit from the Cochin Shipyard Ltd for that period. Since the respondents have stated that the payment is made under the Gratuity Act of 1974 and the maximum amount of gratuity payable is Rs. 3,50,000/- which has been received in full by the applicant. Whether the period is taken in full or part, the applicant can get only upto the ceiling limit of Rs. 3,50,000/-. Hence it is for the Government and the Cochin Shipyard Ltd. to arrive at the respective share payable to the applicant. The share of the Government of India and the Cochin Shipyard Ltd. can

be determined by mutual agreement and book adjustment made. In the alternative, if this procedure is not acceptable there is much weight in the proposal made by the applicant that the Cochin Shipyard Ltd. may determine the gratuity payable to him for the 30 years of service (which according to the applicant is Rs. 3,36,219/-) and on settlement of the above, the excess amount paid if any can be returned by the applicant and the Government of India would determine its liability which shall be paid to the applicant. The applicant has provisionally paid Rs. 87500/- which fact has been confirmed by the respondents and if that is the amount confirmed by the Government of India which the applicant is entitled for 10 years of service under the Government of India that amount will have to be paid to the applicant by the Government. Either way, the applicant shall not be deprived of his full amount of gratuity payable to him for the 40 years of service.

6 Accordingly I direct the respondents to settle the matter expeditiously between themselves taking into account the provisional payment made by the applicant and make the payment to the applicant duly apportioning the payments for the period of service rendered under Government of India and the Cochin Shipyard Ltd. separately so as to avoid any ambiguity in the matter. I also direct that pro rata pension for the Government of India service shall be determined and paid to the applicant without reference to the payment of gratuity in accordance with instructions referred to in para

4 above. Both these exercises shall be complied within a period of three months from the date of receipt of this order.

Dated 5th June, 2006.

Sathi Nair
SATHI NAIR
VICE CHAIRMAN

kmn