

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 32/2000

WEDNESDAY, THIS THE 20th DAY OF FEBRUARY, 2002:

C O R A M

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

Shri P.C. Yohannan
Retd. Postmaster
Head Post Office, Aluva,
residing at Cheruthottil House,
Puthencruz. P.O.

Applicant

By Advocate Mr. KRB Kaimal

Vs.

1. Union of India represented by the
Secretary to Government
Ministry of Communications
New Delhi.
2. The Deputy Director of Accounts (Postal)
Kerala Circle,
Thiruvananthapuram.
3. The Superintendent of Post Offices
Ernakulam Division, Kochi.
4. The Senior Superintendent of Post Offices
Aluva Division,
Aluva.

Respondents

By Advocate Mr. Shri Hari Rao, ACGSC

This Application having been heard on 30.1.2002 this Tribunal
delivered the following on 20.2.2002:

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant, a retired Postmaster filed this
Original Application aggrieved by A-4 order issued by the
third respondent rejecting his A-3 representation dated
21.12.98 seeking additional pensionary benefits for the
additional service of five years.

2. According to the averments of the applicant in the
Original Application he had entered service as Clerk on
10.5.1959 under the respondents and had completed 38 years of
service before retiring from service on 31.7.97. The fourth
respondent sanctioned pension and DCRG to the applicant as

per A-1 PPO dated -.7.97. His qualifying service was limited to 66 six monthly periods (33 years) even though he had a total qualifying service of 38 years. On implementation of the Fifth Pay Commission Report revised pensionary benefits were issued to him by A-2. Aggrieved the applicant preferred a representation before the Pensionary Adalat convened by the third respondent (Annexure A-3) dated 21.12.98. The third respondent rejected the claim of the applicant stating that the maximum service for calculating the pensionary benefits as per the Pension Rules is only 33 years. According to the applicant he is aggrieved by the above order and Rule 50 of the CCS (Pension) Rules limiting the gratuity to 33 years of qualifying service and hence he filed this Original Application. According to him that portion of Rule 50 of the CCS (Pension) Rules limiting the payment of gratuity to a maximum of 16 1/2 times the emoluments thereby limiting the gratuity only for 33 years of qualifying service in the place of 38 years of actual service was arbitrary, unreasonable, illegal and unconstitutional as it was violative of Article 14, 16, 21 and 300-A of the Constitution. According to him the pensionary benefits were being classified as property for the purpose of Article 300-A and hence the same could be deprived only by an authority of law. Gratuity is included in the retirement benefits of an employee. The same has been intended as a retirement benefit for long and continuous service as a provision for old age. It is not a gratuitous payment depending upon the discretion or sweet will or fancy of an employer and cannot be denuded of its efficiency by so interpreting the rules in a discriminatory manner. Hence, the denial by the 4th respondent in granting the applicant's gratuity for his entire qualifying service of 38 years was illegal and unjustifiable. There was no limitation of qualifying service fixed for computing gratuity as per the



payment of Gratuity Act of 1971 and by virtue of Section 14 of the Act no Rule can be framed inconsistent with the provisions of the Act. Hence the limitation of 33 years of qualifying service in computing the gratuity was illegal and unsustainable in law. The applicant has sought the following reliefs through this Original Application:

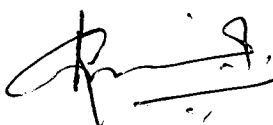
(i) an order quashing Annexure A4 as it is illegal and unconstitutional

(ii) an order quashing that portion of Rule 50(1)(a) of the CCS (Pension) Rules limiting the payment of retirement gratuity, subject to a maximum of 16 1/2 times the emoluments (33 years of qualifying service).

(iii) to quash/set aside the limitation of 38 years of qualifying service of the applicant to 66 six monthly periods and to order the 4th respondent to sanction and disburse the DCRG of the applicant taking into account his entire qualifying service as 38 years and to direct him to disburse the balance gratuity for 5 years with 18% interest. and

(iv) such other orders or direction as this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case.

3. Respondents filed reply statement resisting the claim of the applicant. They admitted that the applicant has put in 38 years 2 months and 20 days of qualifying service. according to them the pensionary benefits were paid according to the statutory rules on the subject. They averred that the recommendation of the Pay Commission regarding the additional benefits for service rendered beyond 33 years of service had not been accepted by the Government. The contention of the applicant that the Government had put an end to the discrimination based on qualifying service for the purpose of retirement gratuity was not correct. Referring to the Govt. of India Department of Pension OM dated 27.10.97 it was submitted that the maximum limit of Retirement-Cum- Death Gratuity was Rs. 3.5 lakhs. It was submitted that the said para had not taken away the maximum of 16 1/2 times of the emoluments for the purpose of grant of retirement gratuity or



death gratuity under Rule 50 of CCS (Pension) Rules, 1972. The quantum of pension and conditions for grant of pension are settled matters covered by statutory rules and it was not in public interest to unsettle settled position. The Original Application lacked merit and the same was liable to be dismissed.

4. Heard learned counsel for the parties.

5. We have given careful consideration to the submissions made by the learned counsel for the parties, the rival pleadings and also perused the documents brought on records.

6. We find from A-3 representation dated 21.12.98 that the applicant has only relied on the recommendation of the Fifth Pay Commission for his claim. In A-4 impugned reply dated 4.1.99, respondents have stated that the said recommendation had not been accepted by the Government. Applicant has no case that the said recommendation had been accepted by the Government.

7. The main ground raised by the applicant is that Rule 50 of the CCS (Pension) Rules being Rule limiting the payment of gratuity to the maximum of 16 1/2 of the emoluments thereby limiting the gratuity to only for 33 years of qualifying service in the place of 38 years of actual service of the applicant was arbitrary, unreasonable, illegal and unconstitutional as it was violative of Article 14, 16, 21 and 300-A of the Constitution. In support of this he relied on R-1(a) OM dated 27.10.97. According to him by implementing the Fifth Pay Commission Report by the said OM, the Govt. had taken away the limitation of 33 years for the



maximum pension of 50% of the average emoluments and that as per the new order the pension should be calculated as 50% of average emoluments in all cases and hence there is no limitation of 33 years of qualifying service for pension. The Govt. had put an end to the discrimination based on the qualifying years of service for pension and hence continuation of the limitation of 33 years of service with reference to retirement/death Gratuity was discrimination, as an employee with 38 years of service was treated in parity with an employee having 33 years of qualifying service for the purpose of payment of gratuity and hence was illegal, arbitrary, unreasonable and unconstitutional as it was violative of Art. 14 of the Constitution. Other than averments applicant has not annexed any of the orders/OMs of Government of India.

8. In R-1(a)OM dated 27.10.97 para 5 and 6 read as under:

PENSION

5. Pension shall continue to be calculated at 50% of average emoluments in all cases and shall be subject to a minimum of 1275/- and maximum upto 50% of highest pay in the Government (The highest pay in the Govt. is Rs. 30,000 since 1.1.1996). Accordingly the provisions of clauses (a) and (b) of sub-rule (2) of rule 49 of the Pension Rules shall stand modified. The other provisions contained in Rule 49 shall continue to apply.

RETIREMENT GRATUITY/DEATH GRATUITY

6. The maximum limit of retirement/death gratuity shall be Rs. 3.5 lakhs. Accordingly first proviso under Rule 50(1)(b) of Pension Rules shall stand modified to the effect that the amount of retirement gratuity or death gratuity payable under this Rule shall in no case exceed Rs. 3.5 lakh.



9. From "Swamy's Pension Compilation incorporating CCS Pension Rules- 15th Edition 2000" we read Rule 49 which is as follows:

49. Amount of Pension

(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service.

2(a) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of not less than thirty three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem

(b) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (a) and in no case the amount of pension shall be less than Rupees three hundred and seventy five per mensem.

(c) notwithstanding anything contained in Clause (a) and Clause (b) the amount of invalid pension shall not be less than the amount of family pension admissible under sub rule (2) of Rule 54.

(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service.

(4) The amount of pension finally determined under Clause (a) or Clause (b) of sub rule (2) shall be expressed in whole rupees and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee.

10. The Government of india's decision (4) appearing in Page 92 of the above book reads as follows. We find that this is on the basis of OMs dated 27.10.97 and 17.12.98.

(4) Minimum and maximum amount of pension enhanced from 1.1.1996.



Pension shall continue to be calculated at 50% of the average emoluments in all cases and shall be, subject to a minimum of Rs. 1,275 per month and a maximum of upto 50% of the highest pay applicable in the Central Government, which is Rs. 30,000 per month since 1st January, 1996, but the full pension in no case shall be less than 50% of the minimum of the revised scale of pay introduced with effect from 1st January 1996 for the post last held by the employee at the time of his retirement. However, such pension will be suitably reduced pro rata, where the pensioner has less than the maximum required service for full pension as per the Rule (Rule 49 of CCS Pension Rules, 1972) applicable to the pensioner as on the date of his/her superannuation/retirement and in no case it will be less than Rs. 1,275 p.m. Accordingly, the provisions of Clauses (a) and (b) of sub rule (2) of Rule 49 of the Pension rules shall stand modified. The other provisions contained in Rule 49 shall continue to apply.

The revised provisions as per these orders shall apply to Government servants who retire on or after 1.1.1996.

(G.I.Dept. of Pen & P.W OM NO. F.45/86-97-P & P.W(A) Part-I dated the 27th October, 1997 and OM No. 45/10/98-P & PW (A) dated the 17th December, 1998).

We find from a reading of the above that apart from enhancing the minimum and maximum amount of pension it is laid down that the amount of pension should continue to be calculated as 50% of the average emoluments but the full pension for a qualifying service of 33 years and above, w.e.f. 1.1.96 would not be less than 50% of the minimum of the scale of pay introduced w.e.f. 1.1.96

11. Rule 50 of the Pension Rules reads as under:

50. Retirement/Death Gratuity.

(1)(a) A Government servant, who has completed five years' qualifying service and has become eligible for service gratuity or pension under Rule 49, shall on his retirement, be granted retirement gratuity equal to one fourth of his emoluments for each completed six monthly period of qualifying service, subject to maximum of 16 1/2 times the emoluments.



(b) If a Government servant dies while in service, the death gratuity shall be paid to his family in the manner indicated in sub-rule (1) of Rule 51 at the rates given in the table below, namely:

Length of qualifying service	Rate of death gratuity
(i) Less than 1 year	2 times of emoluments
(ii) One year or more but less than 5 years	6 times of emoluments
(iii) 5 years or more but less than 20 years	12 times of emoluments
(iv) 20 years or more	Half of emoluments for every completed six monthly period of qualifying service subject a maximum of 33 times of emoluments

Provided that the amount of retirement gratuity or death gratuity payable under this rule shall in no case exceed two lakh and fifty thousand rupees.

Provided further that where the amount of retirement or death gratuity as finally calculated contains a fraction of a rupee, it shall be rounded off to the next higher rupee.

(2) If a Government servant, who has become eligible for a service gratuity or pension, dies within five years from the date of his retirement from service including compulsory retirement as a penalty and the sums actually received by him at the time of his death on account of such gratuity or pension including ad hoc increase, if any, together with the retirement gratuity admissible under sub-rule (1) and the commuted value of any portion of pension commuted by him are less than the amount equal to 12 times of his emoluments, a residuary gratuity equal to the deficiency may be granted to his family in the manner indicated in sub-rule (1) of Rule 51.

(3) deleted

(4) deleted

(5) The emoluments for the purpose of gratuity admissible under this rule, shall be reckoned in accordance with Rule 33.

Provided that if the emoluments of a Government servant have been reduced during the last ten months of his service otherwise than as a penalty, average emoluments as referred to in Rule 34 shall be treated as emolument.



(6) For the purposes of this rule and Rules 51, 52 and 53, 'family' in relation to a Government servant, means-

(i) wife or wives including judicially separated wife or wives in the case of a male government servant.

(ii) husband, including judicially separated husband in the case of a female Government servant.

(iii) sons including stepsons and adopted sons,

(iv) unmarried daughters including stepdaughters and adopted daughters.

(v) widowed daughters including stepdaughters and adopted daughters

(vi) father] including adoptive parents in the case of individuals whose personal law permits adoption.

(vii) mother]

(viii) brothers below the age of eighteen years including stepbrothers,

(ix) unmarried sisters and widowed sisters including stepsisters,

(x) married daughters, and

(xi) children of a pre-deceased son.

12. On a reading of the Pension Rules 49 and 50 and the Govt. of India's instructions contained in OMs dated 27.10.97 and 17.12.98, all reproduced above, we do not find any basis for the applicant's claim that the stipulation of 33 years of service for grant of full pension at 50% of the average emoluments had been removed. What is laid down is that the full pension shall not be less than 50% of the minimum of the revised scale. We do not find any inconsistency between the rule for the purpose of pension and the rule for the purpose of retirement/death gratuity. In both the cases the maximum service is limited to 33 years for full pension and full gratuity. In view of the above we reject the above ground advanced by the applicant.

13. The next ground advanced by the applicant is that as per Article 300-A a person can be deprived of his property only by an authority of law and gratuity being a property,



the same could be deprived only by an authority of law. The applicant who was serving in the Postal department was a civil servant he is governed by the service conditions laid down in the form of Rules framed by the Government of India. Thus, the pensionary benefits to which the applicant is entitled to are governed by the Central Civil Services (Pension) Rules, 1972. He can get the said benefits only in accordance with the above Pension Rules. While the above rules themselves prescribe 16 1/2 times the emoluments as the maximum limit for retirement/death gratuity, he is not deprived of any property. Under such circumstances, there is no merit on this ground.

14 The next ground advanced by him is that there is no limitation of qualifying service for payment of gratuity under the Payment of Gratuity Act and as per Section 14 of the Act no rule could be framed inconsistent with the provisions of the Act. The Gratuity Act itself fixes maximum limit in payment of gratuity. Similar is the case in the CCS (Pension) Rules. Therefore, we are of the view that the Payment of Gratuity Act will be of no assistance to the applicant for the reliefs sought for by him.

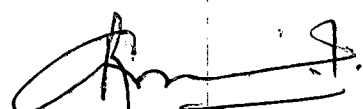
15. In the result we do not find any merit in this Original Application and hold that the applicant is not entitled for any of the reliefs sought.

Accordingly we dismiss this Original Application with no order as to costs.

Dated the 20th February, 2002.



K. V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

APPENDIXAPPLICANT'S ANNEXURE

- A1 True copy of the order NO. PPO No. 7442/LPS/Tvm dt. 7/97 issued by the 2nd respondent.
- A2 True copy of Order No. Pen 6/Revn/CASE NO. 104/Vp, MP/869/97-98
- A3 True copy of the representation submitted by the applicant before the 3rd respondent dated 21.12.1998.

Respondents' Annexure

- R1(a) True copy of OM No. F. No. 45/86/97-P&PW(A) -Part-I dated 27.10.97 issued by the 1st respondent.