

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 342/98

Friday this the 24th day of November, 2000.

CORAM

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

H.Ganapathy Iyer
S/o Harihara Iyer
Telephone Operator
Telephone Exchange
Kochi-2(Compulsorily retired)
residing at Malikayil 44/2668A, Desabhimani Road
Kaloor P.O., Kochi-17. Applicant.

By advocate Mr.M.R.Rajendran Nair

Versus

1. The General Manager
Telecom
Ernakulam.
2. The Chief General Manager
Telecom
Kerala Circle
Trivandrum
3. Union of India represented by
Secretary to Government
Ministry of Communications
New Delhi.

Respondents

By advocate Mr. Govind K.Bharathan, SCGSC

The application having been heard on 24th November, 2000, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M.SIVADAS, JUDICIAL MEMBER

Applicant seeks to quash A6 and A9, to declare that the entire period between 28.8.91 and 7.8.95 during which he was kept out of service is liable to be treated as duty for all purposes and to direct the respondents to draw and disburse full pay and allowances due to him for the period during which he was kept out of service, with interest at 18% per annum.

2. Applicant was awarded the punishment of compulsory retirement. Against that, he moved this Bench of the Tribunal by filing OA No.795/95. The order of compulsory retirement was

quashed by order dated 3.8.95. Within a short span after the pronouncement of the order in OA 795/95, the applicant was permitted to join duty. As per A6, one of the impugned orders, he was granted only 75% of the basic pay plus allowances admissible for the period he was out of service. Aggrieved by A6 order, he preferred an appeal to the second respondent. A9 is the order passed by the second respondent. He says that the entire period is liable to be treated as duty for all purposes though A6 says that the intervening period during which he was out of service will be treated as duty for pension purpose only. He also says that denial of full pay and allowances for the period during which he was kept out of service is unreasonable. A9 order, he further says, is cryptic without containing any reason.

3. Respondents have filed a reply statement contending that the order imposing the penalty of compulsory retirement on the applicant was not set aside on the merits of the case by the Tribunal and hence the period during which the applicant was out of service was treated under FR 54 (A). It was proposed to pay wages equal to half of the basic pay plus allowances admissible to the applicant. Representation of the applicant was considered and it was decided to pay wages equal to 75% of the basic pay plus allowances admissible.

4. Respondents say that the particular provision applicable in the case is FR 54-A. Learned counsel appearing for the applicant also submitted that the relevant provision applicable is FR 54A. The argument advanced by the learned counsel of the applicant is that by virtue of FR 54-A (i) the only taboo is in granting the whole pay and allowances but it can be even a pie less than that and further that on what basis in A6 it has been fixed at 75% is not known. Learned counsel

appearing for the applicant also argued that A9, the order of the Appellate Authority, is a cryptic order containing no reason.

5... A6 says that applicant will be paid wages equal to 75% of the basic pay and allowances admissible for the period he was out of service i.e. from 29.8.91 to 6.8.95. and that the intervening period during which he was out of service will be treated as duty for pension benefits. Applicant submitted A7 appeal to the second respondent against A6 raising various grounds. From A9 it is seen that the second respondent has not considered any of the grounds raised by the applicant in his appeal and has issued an order saying that A6 is in conformity with the provisions of FR 54 and thus there is no ground for any further modification. At this juncture it is relevant to note that A4 is the notice issued to the applicant by the authority concerned in compliance with FR 54-A (2) (i). There it is stated that the said notice is issued under FR 54 (A). A9 says that A6 order is in conformity with the provisions of FR 54.

6. The appeal was filed by the applicant under Rule 23 of CCS (CCA) Rules. Rule 27 (3) says that in an appeal against any other order specified in Rule 23 the appellate authority shall consider the circumstances of the case and make such orders as it may deem just and equitable.

7. In the light of Rule 27 (3) of CCS (CCA) Rules, the appellate authority is bound to consider all the circumstances of the case and to pass orders that are just and equitable. Consideration means not a matter of passing a mechanical order as A9. Consideration means after due application of the mind considering all the relevant aspects raised in the appeal.

Here it is a case where the applicant has raised various grounds in his appeal and those grounds are left untouched in A9 appellate order. So the position is that A9 is not an order passed in conformity with the provisions contained in Rule 27 (3) of CCS (CCA) Rules. That being the position, the same is liable to be set aside.

8. Accordingly A9 is set aside and the second respondent is directed to consider the appeal preferred by the applicant and pass appropriate orders strictly in compliance with Rule 27 (3) of CCS (CCA) Rules, This shall be done within a period of three months from the date of receipt of the copy of this order.

Dated 24th November, 2000.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

aa.

Annexures referred to in this order:

- A6: True copy of order No.ETD/Disc/HGI/13 dated 1st August '96 issued by Assistant General Manager for 1st respondent.
- A9: True copy of the covering letter No.Q.299/71 dated 12.3.98 and letter No.Q.299/70 dated 14.1.98 issued by the Sub Divisional Engineer, Phones, Kochi together with the order No.STA/P-12/90 dated 24.11.97 issued by the 2nd respondent to the applicant.
- A4: True copy of the memorandum dated 12.12.95 No. ETD/Disc/HGI/10 ~~ma~~ issued by the 1st respondent to the applicant.