

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 369/91
XXXXXX

199

DATE OF DECISION 24-7-1992

P Vasudevan Nair _____ Applicant (s)

Mr G Sukumara Menon _____ Advocate for the Applicant (s)

The Administrative Officer
Office of the Deputy Collector
of Central Excise and Customs,
PVS Sadan, II Floor, Mangalore-3
and others.

Mr NN Sugunapalan, SC GSC _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. PS. Habeeb Mohamed, Administrative Member
and

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

Shri N Dharmadan, J.M

A retired Government employee who has repeatedly approached this Tribunal for settlement of his terminal gratuity payable by the respondents has filed this application under Section 19 of the Administrative Tribunals Act of 1985 with the following prayers:-

"(a) to direct the 1st respondent to pay the applicant the terminal gratuity/service gratuity, death-cum-retirement gratuity, balance amount of GP Fund account and CGEIS account and other claims as particularised in Annexure-L Statement with interest thereon beyond 31.11.1990 in implementation of the Annexure-C orders;

"(b) to award the cost in these proceedings; and

"(c) to grant such other and further reliefs as this Hon'ble Tribunal may deem fit and proper in the circumstance of the case."

2 The applicant's relief in this application is based on Annexure-C judgment, the operative portion of which is

extracted below:

" We would direct the respondents to furnish to the applicant immediately a statement showing how much had been recovered from him upto the date of retirement from the pay and allowances due to him and how much was still due to be set off against the terminal benefits due to him. The amount found due should be paid to the applicant within one month of the receipt of this order. The matter has been delayed already long and the applicant is undergoing hardship by not having been paid any salary for the last year or so of his service and his terminal benefits like provident fund balance, Insurance etc. have not been received by him even though three years passed after his retirement. As regards Provident Fund and gratuity, if any amount is found, the applicant should be paid interest thereon at the rates applicable to the Provident Fund for the period for which the payment has been delayed."

3 Respondents though filed a statement have not clearly satisfied the Tribunal as to what is the exact amount due to the applicant based on his claim and what exactly the amount ~~is~~ due to the Department towards terminal gratuity from the applicant.

4 After hearing the parties on 17.7.92, we directed the respondents to file a detailed statement disclosing the amount due to the applicant towards terminal gratuity and the corresponding amount that is due to the Department from the applicant. Accordingly, the learned counsel for the respondents filed a statement. The relevant paras are extracted below:

" On the date of his retirement on superannuation, the dues from the Government to the applicant was Rs 38, 648.60 as detailed below:

Pay for 8/82 to 10/82	Rs 3,000.75
ADA from 6/82 to 10/82	Rs 300.00
Messing Allowances	Rs 8.00
Tavelling allowance	Rs 145.25
GPF 1st instalment	Rs 20,709.00
GPF 2nd instalment	Rs 285.00
Rewards	Rs 1,500.00

CGEGIS	Rs 1,154.00
Interest on GPF from 12/83 to 1/84 and upto 1/87	Rs 7,066.00
Terminal gratuity admissible as per Rule 10(1)(a) of CCS(TS) Rules 1965	Rs 3,932.00
Pay for 11/82, 8/83 and Addl. DA arrears for 8/83	Rs 548.60
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Total:	Rs 38,648.60
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"4. Of the total amount of Rs 38,648.60 due from the Govt. to the applicant, Rs 34,168.00 was paid by the department to Shri PV Nair, Rtd. Skipper except the Terminal Gratuity and ADA arrears from 8/83 and pay for 11/82 & 8/83 as detailed below:

(1) Terminal Gratuity	Rs 3,932.00
(2) (a) Pay for 11/82	Rs 321.50
(b) Pay for 8/83	Rs 206.80
(c) ADA arrears for 8/83	Rs 20.30
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Total: Rs 4,480.60

5 Even though, the applicant has claimed that he is entitled to a sum of Rs 7,020/- being terminal gratuity due from the Department, we have examined the same and decided to accept the statement given by the respondents as correct and the actual amount due to the applicant be Rs 4,480.60.

6 Respondents further submitted that a sum of Rs 23,684.50 is still pending to be recovered from the applicant. The learned counsel for the respondents submitted that this has to be either adjusted or recovered from the applicant. No provision has been brought to which our notice/authorised the respondents to make the adjustment towards the amount of Rs 4,480.60.

7 Learned counsel for the respondents submitted that they have got the right to make adjustment from the terminal gratuity and that according to Rule 73 of

of the Central Civil Service (Pension) Rules 1972 the Government is empowered to assess the dues recoverable from a Government Servant and adjust the same from the dues payable to the applicant. The learned counsel has thus relied on Rule 73 of the CSS (Pension) Rules 1972.

Clause 2 & 3 are relevant and extracted below:

"(2) The assessment of Government dues referred to in sub-rule (1) shall be completed by the Head of Office eight months prior to the date of the retirement of the Government servant.

"(3) The dues as assessed under sub-rule (2) including those dues which come to notice subsequently and which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of death-cum- retirement gratuity becoming payable to the Government servant on his retirement."

8 The learned counsel for the applicant submitted that the amount of Rs 4480.60 is terminal gratuity and will not come under the definition of gratuity under Rule 3(j) which is extracted below:

" Rule 3(j) 'gratuity' includes-

- (i) 'service gratuity' payable under sub-rule (1) of Rule 49;
- (ii) 'death-cum- retirement gratuity' payable under sub-rule (1) or sub-rule (3) of Rule 50; and
- (iii) 'residuary gratuity' payable under sub-rule (2) of Rule 50. "

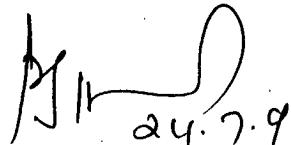
~~XXXXXX~~ Terminal gratuity is not included within the definition and hence, according to us, Rule 73 cannot be invoked for the purpose of adjusting/recovering the amount due from the applicant at this stage. However, we make it clear that if there any other enabling provisions or authority under the relevant instructions is available not barred ~~XXXX~~ by limitation, the respondents are free to initiate proceedings against the applicant.

9 In this view of the matter, we direct the respondents to disburse the amount of Rs 4480.60 admitted by them as the terminal gratuity amount due, to the applicant. This shall be done within a period of one month from the date of receipt of a copy of this order, after obtaining a proper receipt from the applicant.

10 The application is allowed as above. There will be no order as to costs.


24.7.92

(N Dharmadan)
Judicial Member


24.7.92

(PS Habeeb Mohamed)
Administrative Member

24-7-1992