

Memorandum of Appeal to the First Appellate Authority under section 19(1) of the RTI Act 2005

From

To



RTI Cell
scrips

P.G. Mohanan, (Pensioner)
"Devikripa" Puthiyedathu House,
Behind NES Block,
Palluruthy, P.O., Kochi -682006

The First Appellate Authority

- (1) Full Name of the Appellant : Dr. Cyril C George,
(2) Address : Deputy Chairman,
Cochin Port Trust,
Cochin – 682 009.
- (3) Particulars of Public Information officer : Sri. Jijo Thomas,
Central Public Information Officer
General Administration Dept.,
Cochin Port Trust, Cochin -9.
- (4) Date of receipt of the order appealed against : 12.06.2021
- (5) Last date of filing the appeal : 11.07.2021
- (6) Grounds for the Appeal

The Central Public Information Officer (C P I O) vide his letter dated 09.06.2021 had supplied the information sought under RTI Act 2005, is unsatisfactorily, misleading and against the purpose of the enactment of the Right to information Act, 2005, directing a citizen to search / go through the entire sections of the Payment of Gratuity Act 1972 available in the indiacode.nic.in to find out under which section of the Act Cochin Port Trust a Public Authority acted upon or taken such a decision.

The information given by CPIO is :

- (1) SI.No. A,B,C & D " The Gratuity sanctioned is under the provisions of payment of Gratuity Act, 1972 and the copies of the Act is available in the indiacode.nic.in
- (2) SI. No. E "No such communication from DCI/SCI is available in the concerned dept.
- (3) SI No. F "The details have already been communicated to the applicantg by Cochin Port Trust vide Proceeding No. D6/Ret.Claim/PGM2018/S dated 05.04.2021. (copy of the letter of CPIO dt.09.06.2021 enclosed as Annexure "A"

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It may kindly be seen that, I sought the informations from the CPIO on a particular legal requirement or a section / rule etc., relating to the particular subject matter of an Act / Rules etc., to establish the specified actions taken by the Cochin Port Trust / the Public Authority. (Enclosed a copy of the application dated 30.04.2021 as **Annexure "B"**)

As far as concerned to above **(1)** I may invite your goodself's kind attention to the proceedings dated 05.04.2021 (enclosed as **Annexure "C"**) that in the said proceeding of the Chairman, Cochin Port Trust :

- (i) in Para 6 it is specifically stated that " the above order issued as per Rule 26 of the Central Civil Services (Pension) Rules 1972" because Rule 26 of the CCS (Pension) Rules defines "Forefeiture of service on resignation" Clause (2) specifies "A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment whether temporary or permanent under the Govt. where service qualifies." That the Authority justifies that the said order is issued as per Rule 26 of the CCS (Pension) Rules 1972.
- (ii) in the Para 8 also Chairman , CoPT specifically stated that the said action taken under Sections 2 A and 4 of the Payment of Gratuity Act, 1972.
- (iii) In Para 10 clearly stated the action is under Rule (3) (g) of the CCS (Pension) Rules, 1972.

From the above it reveals that a Public Authority is duty bound to specify the provision relating to the subject matter of an Act or law relied upon for taking such an action instead directing a poor citizen to go and search the entire sections of a Statute to find out the action taken by that authority as stated the CPIO. Therefore your goodself may issue direction to provide the copies of the provision / order relied on.

(2) In Sl. No E, it is clearly stated that if the said communication is not available, alternative remedy also sought, to give relevant page of the Service Book of Capt. K.C. Thomas where the said deputation details are recorded with proper attestation as the said service book is available with concerned department till now. But the CPIO purposefully shut his eye on that aspect and left unanswered.

(3) In Sl No.F is concerned, the information stated by CPIO is totally wrong, misleading and contrary to the facts of the issue specified in Para 15 of the proceeding. For avoiding ambiguity the first portion of the proceeding reproduced hereunder "Sri. K.M. Hassan had served in the Home Department of Kerala State prior to joining of Port Service, **but the Home Department did not remit the pro-rata pension contribution amount to Cochin Port Trust, and hence his past service was not counted for pensionary benefits under CCS**"



(Pension) Rules 1972 that means as per CCS (Pension) Rules, 1972, to qualify the service, the prior employer the Home Department of Kerala State should have transfer their pensionary liability to Cochin Port Trust for counting that service along with Port service for pensionary benefits. But in contradiction to the same, the Port Trust allowed Sri. K.M. Hassen to remit the pro-rata pension contribution amount in the Cochin Port Trust and past service was counted for pensionary benefit. Hence to ascertain the transparency of the action of the Public Authority I sought information from the CPIO under which statute Cochin Port allowed K.M. Hassan to remit the pro-rata pension contribution overriding the provisions of CCS (Pension) Rules. But the information of the CPIO is misleading one.

Cochin Port Trust being a Public Authority should be transparent in its every functions and actions and is bound to provide the information sought by a citizen of India under the Right to Information Act, 2005. But the original authority had by the above conduct made the system of law (RTI Act) a mockery.

On a bare perusal of the question at Sl. No A to F, it will be very clear that the same are specific and the authorities who had extended the benefits involved in the above questions are bound to extend the same supported by provision of law. To the question which is said provision of law and therefore the original authority in law (RTI Act) bound to disclose the source behind the authority for extending the benefit. Therefore instead of furnishing the details, the original authority has directed the appellant to search and findout from relevant Act at india.nic.in.

In consideration of the above, your goodself may direct the CPIO to provide the specific informations sought in the RTI application dated 30.04.2021 at the earliest.

Thanking you,

Palluruthy,
25.06.2021

Yours faithfully,

(P.G. MOHANAN)

email : mohanangandh@gmail.com
Mob No. 9495602077
"Devikripa" Puthiyedathu House,
Behind NES Block, Palluruthy P.O.,
COCHIN - 682 006.

Enclt. No. RTI Cell / Appeal / 248 / PGM / 2021 - S Dt: 30/06/2021

Copy of RTI appeal is forwarded to CPIO/Dy. C, Marine Dept. & DP10, 'D' Section for furnishing the details sought by the appellant on or before 05/07/2021 PL.


AP10 (GAD)

सुगामा डाक
SPEED POST



कोचिन पोर्ट ट्रस्ट

COCHIN PORT TRUST

W/Island, Cochin-682009.

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Email: deputychairman@cochinport.gov.in

Website: www.cochinport.gov.in



No. RTI Cell/Appeal/PGM/248/2021-S

Dated: 29th July, 2021

Sub:- Information under the RTI Act, 2005- reg.

Ref: - Your appeal dated 25.06.2021 received by this office on 30.06.2021

I have considered your RTI appeal dated 25.06.2021. The information requested at Sl. No. A, B, C, D & E has already been provided vide letter dated 09.06.2021.

As regards the information at Sl.No. F a copy of the relevant portion of Proceedings No. D6/Ret.Claim/PGM2018/S Dated 05.04.2021 is enclosed.

The appeal is disposed off as above.

It is also informed that a Second Appeal, if any, against the above decision shall lie within ninety days from the date of receipt of this communication, with the Chief Information Commissioner. The name and address of the Chief Information Commissioner are given below:

Shri. Y.K. Sinha
Chief Information Commissioner
Room No. 401, IVth Floor, CIC Bhawan
Baba Gangnath Marg
Munirka, New Delhi - 110 067

Yours faithfully,


Dy. Chairman &
First Appellate Authority

To

Shri. P.G. Mohanan, (Pensioner)
"Devikripa" Puthiyedathu House
Behind NES Block
Palluruthy P.O
Kochi - 682006





कोचिन पोर्ट ट्रस्ट COCHIN PORT TRUST

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सुगमानी डाक
SPEED POST



No.D6/Ret.Claim/PGM2018/S

Dated : 05.04.2021

PROCEEDINGS OF CHAIRMAN, COCHIN PORT TRUST

Present : Dr. M.Beena, IAS

Sub : Compliance of Judgment dated 22.12.2020 in W.P.No.28837 of 2020 filed before Hon'ble High Court of Kerala by Sri. P.G. Mohanan, Retired Law Officer-Gr.II.

The Hon'ble High Court of Kerala vide judgment dated 22.12.2020 in W.P.No. 28837 of 2020 filed by Sri. P.G. Mohanan, Law Officer Gr. II (retired) against Cochin Port Trust & others, directed 1st Respondent, Chairman, Cochin Port Trust to take up and consider Ext.P6 representation submitted by Sri. P.G. Mohanan and dispose of the same, after affording him an opportunity of being heard, either physically or through video conferencing, and communicate the resultant order to the petitioner, as expeditiously as is possible, but not later than two months from the date of receipt of a copy of the judgment. Accordingly, a personal hearing of Sri. P.G. Mohanan was held on 25.02.2021 at 3.30PM through Video Conferencing. Subsequently, the Hon'ble High Court of Kerala was pleased to extend the time frame in the judgment for compliance of directions until 05.04.2021, vide Order dated 17.03.2021

2. During the hearing Sri. P.G. Mohanan submitted the following ;

a) that he joined the service of Cochin Port Trust as Lower Division Clerk on 06.02.1998 and retired on 28.02.2019 as Law Officer Gr. II. Prior to the above period he had worked as Mazdoor in the Mechanical Engineering Department of the Cochin Port Trust from 14.01.1994 to 24.11.1996 and Kerala State Government as Live Stock Inspector from 25.11.1996 to 05.02.1998 and again he joined Port service as Lower Division Clerk w.e.f. 06.02.1998.

b) that the State Government had transferred his GPF accumulation and pensionary liabilities during State service to Cochin Port Trust and CoPT issued order counting past service rendered by him in Cochin Port Trust and in the Government of Kerala for the purpose of continuity and pensionary benefits in the Cochin Port Trust. On his retirement his prior service from 14.01.1994 to 05.02.1998 was counted for gratuity as per CCS (Pension) Rules, 1972 but it is not considered for calculation of gratuity under Payment of Gratuity Act, 1972. If the net qualifying service of 25 years is counted under Payment of Gratuity Act, 1972, the Gratuity amount payable to him would be more by Rs. 1,07,416/-.

c) that there are several cases in Cochin Port Trust wherein intermittent casual service was counted along with regular service for payment of gratuity under Payment of Gratuity Act, 1972. For eg. Sri. K.M Hassan, had filed Writ Petition No. 36327 of 2009, before the Hon'ble High Court of Kerala for counting his prior service rendered in the Home Department of Government of Kerala for pensionary benefits and Cochin Port Trust had counted past service and paid gratuity under the Payment of Gratuity Act, 1972.



As (D)

15. Sri. P.G. Mohanan also referred to the case of Sri. K.M. Hassan, Manager (Retired) from Cochin Port Trust, who had preferred Writ Petition No. 36327 of 2009 before the Hon'ble High Court of Kerala. Sri. K.M. Hassan had served in the Home Department of Kerala State prior to joining of Port Service, but the home Department did not remit the pro-rata pension contribution amount to Cochin Port Trust, and hence his past service was not counted for pensionary benefits under CCS Pension Rule, 1972. Sri. K.M. Hassan filed W.P. (C) 36327 of 2009 for counting the past service for pensionary benefits. While Writ Petition was pending the Port Trust allowed Sri. K.M. Hassan to remit the pro rata pension contribution amount and past service was counted for pensionary benefits. However from the records it is found that, even though he was eligible only for gratuity under the provisions of CCS (Pension) Rules, 1972, Sri. K.M. Hassan, had been paid with gratuity under the Payment of Gratuity Act, 1972 on 24.6.2010. This is an apparent error/omission and incorrect application of the provisions of the Payment of Gratuity Act, 1972. However, Sri.F.G.Mohanan cannot claim and compel that the erroneous/ incorrect application of the provisions of the Payment of Gratuity Act, 1972 once committed be extended to him.



पुनगामी डाक
SPEED POST



AN ISO-9001:2015
ISPS COMPLIANT PORT

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दिनांक: 09.06.2021

संख्या /No. GAD/RTI Cell/PGM/1398/2021-S

सेवा में/To

Shri. P.G. Mohanan
"Devi Kripa" Puthiyedathu House
Behind NES Block
Palluruthy P O – 682 006

Sir,

विषय /Sub : Information under the RTI Act, 2005- reg.
संदर्भ /Ref : Your application dated 30.04.2021 received by this office on
07.05.2021

Kindly refer to the above.

The information is given below.

Sl.No. A, B, C & D: The Gratuity sanctioned is under provisions of Payment of Gratuity Act, 1972 and copies of the Act is available at indiacode.nic.in
Sl. No. E : No such communication from DCI/SCI is available in the concerned dept.
Sl. No. F : The details have already been communicated to the applicant by Cochin Port Trust vide Proceeding No. D6/Ret.Claim/PGM2018/S dated 05.04.2021

The details of the Appellate Authority under the RTI Act for Cochin Port Trust are given below.

Dr. Cyril C. George
Dy.Chairman
Cochin Port Trust
Cochin – 09

Yours faithfully,

(Jijo Thomas)
Central Public Information Officer
General Administration Department



6/35/2021 (DC)
27/05
From

P.G. Mohanan
(Pensioner, Cochin Port Trust)
"Devi Kripa" Puthiyedathu House,
Behind NES Block,
Palluruthy P.O.,
COCHIN - 682 006.



To

The Central Public Information Officer,
General Administration Department,
COCHIN PORT TRUST,
Willington Island,
COCHIN - 682 009.

Sir,

Sub : Request to provide following informations/ documents -
Under the Right to Information Act,2005.

Ref : 1). Proceedings of the Chairman, Cochin Port Trust, No.D6/Ret.Claim/PGM2018/S.
dated 05.04.2021.

2). Instances of payment of Gratuity to S/Sri. Goutam Gupta, who retired as Traffic
Manager from Cochin Port Trust, 30-11-2019, Sri. Gouri Prasad Biswal, Deputy
Conservator, who superannuated on 28.02.2018, Capt. K.C. Thomas, who retired as
Deputy Conservator of Cochin Port Trust, on 31-07-2005, Sri.Hassan..... etc..

Name of the applicant : P.G. Mohanan
Address : "Devikripa", Puthiyedathu House,
Behind NES Block, Palluruthy P.O.,
COCHIN - 682 006.

Inviting your attention to the above, in order to further agitate the matter, if necessary, I need to have the following information and copy of the Act and Rules that the Cochin Port Trust relied upon to disburse Gratuity benefits to the cited employees above.

(A) Please give photo copy of the relevant portion of the Act/Rules etc., under which the Cochin Port Trust sanctioned gratuity under the Payment of Gratuity Act, 1972 to Sri. Goutam Gupta for the service rendered in the Kolkotta Port Trust along with the service rendered for the period of 2 years 6 months and odd days (i.e from 02.05.2017 to 30.11.2019) in the Cochin Port Trust.

(B) Please give copy of the relevant portion of the Act/Rules etc., which authorises Cochin Port Trust to sanction gratuity under the Payment of Gratuity Act, 1972 for the service rendered

Cont. 2

by Capt. Gouri Prasad Biswal in the Paradip Port Trust (different employer) alongwith the service rendered from 08.06.2015 to 28.02.2018 in the Cochin Port Trust.

- (C) Please issue the relevant portion of the Act/ Rules etc., based on which the Cochin Port Trust exempted the above mentioned Sri. Goutam Gupta and Capt. Gouri Prasad Biswal from the basic requisite of uninterrupted minimum service of 5 years for earning gratuity.
- (D) It is requested to give the photo copy of the relevant portion of the Acts/Rules etc.under which the Cochin Port Trust sanctioned the gratuity under the Payment of Gratuity Act, 1972 to Capt. K.C. Thomas for the period of his deputation in the DCI/SCI, where the provisions of the Payment of Gratuity Act, 1972 is not applicable.
- (E) Whether the Dredging Corporation of India/Shipping Corporation of India has discharged their pro-rata / pensionary liability for the period of deputation in their organization for counting that service in the Cochin Port Trust? Please give copy of the communication of DCI/SCI addressed to Cochin Port Trust in this regard or relevant page of the service book of the employee/Officer where it is recorded on proper attestation.
- (F) Please issue a photo copy of the relevant portion of the Act/Rules etc., under which the Cochin Port Trust allowed Sri. Hassan to remit the pro-rata pensionary liability in contravention of the reason stated in the begining part of the para 15 of the proceedings 05.04.2021. And, Issue to me copy of the relevant proceedings authorising and disbursing payment of Gratuity to the employees mentioned in the cited reference above.

I shall remit the requisite fee for the photo copy of all the documents requested for under the RTI Act on intimation from that end.

I state that the imformation sought for does not fall within the restrictions contained in Section 8 and 9 of the Right to Information Act, 2005, to the best of my knowledge; it pertains to your organisation.

This is to certify that I, P.G. Mohanan, S/o. K.V. Gandhi, resident in the above address, am a citizen of India.

Cochin-6.

30.04.2021

Encl: Postal Order No.109364 dt.30/4/21
for Rs.10/- in favour of FA & CAO,CPT.

Signature:


30/4/21

E-mail: mohanangandh@gmail.com


Mob. No. 9495602077.

“Devikripa” Puthiyedathu House,
Behind NES Block, Palluruthy P.O.,
COCHIN – 682 006.

5759/2021

Encl. No. RTI Cell/1398/PGM/2021-S Dated 07.05.2021

Copy of RTI request is forwarded to DPIO, D' Section, GAD, COPT for furnishing the details sought for by the applicant subject to the provisions under RTI Act, 2005 to the RTI cell on or before 12/05/2021 Pl.


DPIO (GAD)
JMS