

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

O.A. No. 61/436/2021

This the 07th day of May, 2021

**HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. ANAND MATHUR, MEMBER (A)**

Buta Ditta Retired Head Constable, Age: 62 years, S/o Late Sunder Dass, R/o Village Mehlowlal Tehsil R S Pora District Jammu.

.....Applicants

(Advocate:- Mr. M A Bhat)

Versus

1. Union Territory of Jammu and Kashmir through Principal Secretary to Government Home Department, Civil Secretariat, Srinagar/Jammu-180001.
2. Director General of Police, J&K, Srinagar/Jamu-180001.
3. Additional Director General of Police, JKAP, APHQ, Srinagar/Jammu-180001.
4. Inspector General of Police, JKAP Jammu Gulshan Ground Jamm-180004.
5. Deputy Inspector General of Police, AP/IRP Jammu, Gulsha Ground-180004.
6. Commandant 18th Bn. IRP, District Police Lines, Jammu-180004.

.....Respondents

(Advocate: Mr. Rajesh Thappa, learned D.A.G.)

O R D E R

[O R A L]

(Delivered by Hon'ble Mr. Anand Mathur, Member-A)

The applicant Bua Ditta through the medium of the instant O.A. seeks redressal of his grievance of not being paid his monthly pension/pensionary benefits like gratuity/commutation pension/leave salary or even the provisional pension by the respondents as per the provisions of the Article 168/168A etc. of J&K Civil Service Regulations during the pendency of criminal proceedings and the departmental proceedings pending against him. The applicant is without any pension or pensionary benefits for last more than two years and the respondents despite repeated requests have



not sanctioned either the pension or the provisional pension in favour of the applicant and have not even paid the pensionary benefits like gratuity, commutation pension, leave salary or General Provident Fund.



2. Learned counsel for the applicant vehemently argued that notwithstanding the fact that departmental action against the applicant is pending, Rule-168, especially Rule 168-D categorically deals with matters of this nature and mandates that provisional pension be paid in such cases irrespective of the outcome of the proceedings pending against the employee/ex employee.
3. Learned D.A.G. states that the appointment of the applicant itself is under question and his service itself may be held illegal, thereby depriving him of any action of settlement of dues or pension.
4. We have heard Mr. M.A Bhat, learned counsel for the applicant and Mr. Rajesh Thappa, learned D.A.G. for the respondents and perused the records.
5. The applicant has submitted that withholding of pension and not processing the same is a complete breach of the provisions of the J&K Civil Service Regulations. He has relied upon Rule 168, especially Rule 168-D which reads as under:-



“168-D(1) Where any departmental or judicial proceeding is instituted under Art. 168-A or where departmental proceeding is continued under clause (a) of proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceedings final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement or if he was under suspension on the date of retirement, up to the date immediately preceding the, date on which he was placed under suspension, but no gratuity or death-cum-retirement gratuity shall be paid to him until the conclusion of such proceeding and the issue of final orders thereof.

(2) Payment of provisional pension made under clause (1) above shall be adjusted against the final retirement benefits sanctioned to such officer upon conclusion of the aforesaid proceeding but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced, withheld either permanently or for a-specified period. Note.- The grant of pension under this Article shall not prejudice operation of Articles 233 and 234, when final pension is sanctioned upon conclusion of the proceeding.

Government Instruction No. 1—(i) The payment of provisional pension is mandatory. Even in cases where the departmental proceedings instituted against a Government servant were for a major penalty and in which ultimately no pension might become payable on the conclusion of the proceedings after his retirement

the provisional pension cannot be denied to the retired Government servant till conclusion of proceedings.

(ii) Provisional pension paid under these rules will remain provisional so long as the departmental proceedings are not finalized.

(iii) In the case of provisional pension. Pension sanctioning authority has no discretion to pay less than the maximum pension, which would otherwise be admissible to the Government servant. In all such cases hundred percent pension which would be admissible to the Government servant had he retired in the normal course should be authorized Death-cum-Retirement Gratuity will remain stopped till conclusion of the proceedings. Pending cases if any shall be decided accordingly.

Government Instructions No. 2 – Where a retired Government servant who is in receipt of provisional pension dies before the conclusion of the departmental/judicial proceeding instituted against him he should be treated as if exonerated of all charges leveled against him, and the period of suspension, if any preceding his retirement shall be treated as period spent on duty, and Death-cum-Retirement Gratuity and the arrears pay/cash in lieu of leave salary or increase in pension as a result of treating the period of suspension as duty or any other benefit if any due, shall be released in full, in the same manner in which it would have been granted had the person retired in the normal course without there having been any departmental/judicial proceedings instituted against him.”



6. Learned counsel for the applicant pleaded that the applicant would be satisfied, if a direction is given to the respondents to take a decision on his representation dated 06.03.2020 in view of the relevant rules.



7. Accordingly, we dispose of the O.A. with direction to the respondents to thoroughly examine the representation dated 06.03.2020 in terms of rules and regulations on the subject, especially Rule 168-D of the J&K Civil Service Regulations and take a decision by passing a reasoned and speaking order within a period of two months from the date of receipt of certified copy of this order. The averments made in the O.A. may also be kept in view while arriving at a decision.

8. We have not entered into the merits of the case.

9. There shall be no orders as to cost.

(ANAND MATHUR)
MEMBER (A)

Arun

(RAKESH SAGAR JAIN)
MEMBER (J)