

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 436 of 2012

THURSDAY, this the 05th day of September, 2013

CORAM:

**HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

P.K.Surendranathan Asari
Principal Chief Conservator of Forests ((Retired))
Surasindhu, SEKT No..41, TC 9/2228, Kurups Lane
Sasthamangalam
Thiruvananthapuram – 695 010 ... Applicant

(By Advocate Mr.P..V.Mohanan)

versus

1. The Chief Secretary
Government of Kerala
Government Secretariat
Thiruvananthapuram – 695 001
- 2.. Union of India represented by Secretary
Ministry of Environment and Forests
Paryavaran Bhavan
CGO Complex, Lodhi Road
New Delhi ... Respondents

(By Advocate Mr.M.Rajeev, GP (R-1)
Advocate Mr.Sunil Jacob Jose, SCGSC (R-2))

This application having been heard on 27.08.2013, the Tribunal on 05-09-13 delivered the following:

ORDER

HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant retired on superannuation on 30.09.2004 while working as Principal Chief Conservator of Forests. He was denied full pension , Death Cum Retirement Gratuity (DCRG), and commuted value of pension on the



analogy that a final report under Section 173 of the Code of Criminal Procedure in respect of V.C. No. 16/1994 was laid before the Criminal Court, Trivandrum, on 30.09.2004. O.A. No. 904/2004 filed by the applicant was allowed by this Tribunal vide order dated 12.12.2006 directing the respondents to fix and disburse all terminal benefits including pension and DCRG payable to the applicant from 01.10.2004. But Writ Petition No. 36831/2007 challenging the above order of this Tribunal was allowed by the Hon'ble High Court of Kerala on 12.07.2010 holding that the judicial proceeding is deemed to have been instituted as on 30.09.2004 by deeming fiction and therefore, on the date of superannuation, proceeding is said to be instituted. The applicant was honourably acquitted from the charges levelled against him in C.C. No. 60/2004 (VC No. 16/1994). The Review Petition No. 1015/2010 in W.P.(C) No. 36831/2007 was disposed of by the Hon'ble High Court of Kerala clarifying that if the order of acquittal would bring any reprieve to the petitioner from disciplinary proceeding, that would not be affected by anything stated in the judgement. The representation seeking to grant full pension, DCRG, commuted value of pension etc. was replied to by the respondents stating that the same can be considered only on finalisation of vigilance cases. Aggrieved, the applicant has filed this O.A. for the following main reliefs :

- "i) To call for the records leading to Annexure A-9 and direct the respondents to sanction and disburse Full pension, DCRG with effect from 01.10.2044 and to have the pension commuted and to disburse commuted value f pension and other terminal benefits with interest at the rate of 12% per annum from 01.10.2004 till the date of payment;*
- ii) To direct the respondents to re-fix and other terminal benefits as recommended by VI Central Pay Commission including consolidation of pension and disburse the same forthwith;*



- iii) *To direct the respondents to disburse full medical benefits recommended by the VI Central Pay Commission and approved by the Government of India".*

2. The applicant contended that in view of the acquittal by the competent Criminal Court of the charges which were deemed to have laid on 30.09.2004, he is entitled to get full pension and DCRG with effect from 01.10.2004 and for commuted pension and other terminal benefits. As per Rule 6 of All India Service (Death Cum Retirement Benefits) Rules, 1958, no proceedings are initiated with the sanction of the President of India after retirement of the applicant. No proceedings have also been initiated by the Central Government under Rule 3(2) of All India Service (Death Cum Retirement Benefits) Rules, 1958. There is no finding that the applicant has caused pecuniary loss to the Central or the State Government. No departmental proceedings are initiated against him under the provisions of All India Service (Disciplinary and Appeal) Rules, 1969 at the time of retirement on misconduct for imposing a major penalty.

3. The respondents submitted that at the time retirement of the applicant, seven vigilance cases were pending against him. As of now, three vigilance cases are pending against the applicant. Further, the District Collector, Thiruvananthapuram, has been asked to take necessary action and to give instructions to the Government Pleader, Thiruvananthapuram, for filing a Civil Suit against the applicant for recovery of the loss to the tune of Rs. 12.34 lacs advanced to M/s. Suryarekha Film and Television Producers. Hence the Government is not in a position to sanction and disburse full pension to the applicant.



4. In the rejoinder statement, the applicant submitted that only in one case, i.e. C.C. No. 60/2004 (VC No. 16/1994), a final report under Section 173 of the Code of Criminal Procedure was filed on the date of his superannuation. No charges were framed against him on or before his date of retirement. The respondents have no authority and jurisdiction to institute Civil Suit against the applicant. The attempt to initiate a civil proceeding is barred by limitation. No Civil Suit has been instituted against him till date.

5. We have heard Mr. P.V. Mohanan, learned counsel for the applicant, Mr. M. Rajeev, learned G.P. appearing for respondent No. 1 and Mr. Sunil Jacob Jose, learned SCGSC for respondent No.2 and perused the records.

6. The short question to be decided is whether the denial of disbursement of full pension and other terminal benefits to the applicant on the ground of pending vigilance cases is legally tenable or not. The applicant had retired on 30.09.2004. The O.A. No. 904/2004 filed by the applicant was allowed by this Tribunal as under :

"18. Having held that no chargesheet has been filed against the applicant before his retirement, the consequential conclusion would be that the applicant cannot be denied payment of pension and DCRG and other benefits. No doubt, other cases have been instituted/under investigation against the applicant subsequent to his retirement, the validity of which is also questionable in the light of the Rule position. The respondents will have to deal with them under the relevant provisions of the Rules, but they cannot deprive the applicant of his retirement benefits on that ground. The lethargy and delay in the vigilance investigations are the primary causes leading to such situations and the respondents have only themselves to blame for the state of affairs.

19. In the result, O.A is allowed. We direct the respondents to fix and disburse all terminal benefits including Pension and DCRG payable to the applicant from 1.10.2004. We are not passing any order on interest



as the applicant had approached the Tribunal soon after his retirement within 3 months and the O.A had been pending since then."

7. Hon'ble High Court of Kerala has set aside the above order of this Tribunal in Writ Petition (C) No. 36831/2007. The relevant part of the judgement is extracted as under :

"13. The Tribunal had before it, the affidavits of the Inspector of Police, Vigilance and Anti- Corruption Bureau, who submitted the final report and the Manager of the Office of the Enquiry Commissioner and Special Judge. The uncontroverted materials in terms of those affidavits were that the special investigation unit of the Vigilance and Anti-corruption Bureau had produced the charge sheet in VC.16/94 in the office of the Enquiry Commissioner and Special Judge on 30.09.2004 and the Manager of that office, being the duly authorised person to receive the same, had given a receipt under his signature, with office seal, in token of having received the final report. The Manager had said that it took three days for him to verify the voluminous records submitted by the vigilance and the said work was carried out after the two holidays that immediately succeeded the production of the records by the vigilance and after such verification, he gave the charge sheet to the inward section of the office of the Enquiry Commissioner and Special Judge on 05.10.2004 and it is hence that the said date is shown on the records. This version, on facts, is not disbelieved by the Tribunal. The Tribunal therefore erred in law in assuming that the charge sheet could be treated to have been presented only on 05.10.2004, the date on which the inward section of the office of the Enquiry Commissioner and Special Judge recorded the receipt of the charge sheet after the Manager of that office completed scrutiny of the voluminous documents presented by the investigating officer. The consequential conclusion of the Tribunal that no charge sheet was filed against the petitioner before his retirement and therefore he cannot be denied immediate payment of pension, gratuity and other benefits on a ground referable to Rule 6 of the DCRG Rules is unsustainable in law, having regard to the contents of that Rule.

14. For the aforesaid reasons, the impugned direction of the Tribunal does not stand and is liable to be set aside, being contrary to the statutory rules and therefore, having been issued in excess of jurisdiction.

In the result, this writ petition is allowed quashing Ext.P6 order. The parties are directed to bear their respective costs."

8. Hon'ble High Court has held that the conclusion of this Tribunal that no charge sheet was filed against the petitioner before his retirement and therefore he cannot be denied immediate payment of pension, gratuity and



other benefits on a ground referable to Rule 6 of the DCRG Rules is unsustainable in law. In criminal case C.C. No. 60/2004 (VC No. 16/1994), charge sheet was said to have been filed against the applicant before his retirement on 30.09.2004. The Enquiry Commissioner and Special Judge held that the prosecution has failed to prove the offences alleged against the applicant and the applicant was acquitted. There was no other vigilance cases in which charge sheet was submitted to the Criminal Court on or before the retirement of the applicant.

9. The Rule 6 of the All India Service (Death Cum Retirement Benefits) Rules, 1958, reads as under :

"6 Recovery from pension.-

6(1) The Central Government reserves to itself the right of withholding a pension or gratuity, or both, either in full or in part, whether permanently or for a specified period, and of ordering recovery from pension or gratuity of the whole or part of any pecuniary loss caused to the Central or a State Government, if the pensioner is found in a departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or a State Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement:

Provided that no such order shall be passed without consulting the Union Public Service Commission:

Provided further that-

(a) such departmental proceeding, if instituted while the pensioner was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the pensioner, be deemed to be a proceeding under this sub-rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service.

(b) such departmental proceeding, if not instituted while the pensioner was in service, whether before his retirement or during his re-employment;

- (i) shall not be instituted save with the sanction of the Central Government ;
 - (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings; and
 - (iii) shall be conducted by such authority and in such place or places as the Central Government may direct and in accordance with the procedure applicable to proceeding on which an order of dismissal from service may be made;
- (c) such judicial proceeding, if not instituted while the pensioner was in service whether before his retirement or during his re-employment, shall not be instituted in respect of a cause of action which arose or an event which took place more than four years before such institution.

Explanation:- For the purpose of this rule

(a) a departmental proceeding shall be deemed to be instituted when the charges framed against the pensioner are issued to him or, if he has been placed under suspension from an earlier date, on such date and

(b) a judicial proceeding shall be deemed to be instituted-

(i) In the case of criminal proceedings, on the date on which a complaint is made or a charge-sheet is submitted, to the criminal court; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made to a civil court.

Note-1- Where a part of the pension is withheld or withdrawn the amount of such pension shall not be reduced below the amount of rupees one thousand two hundred seventy five per mensem.

Note-2- Where Central Government decides not to withhold or withdraw pension but orders recovery of any pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of the member of the service.

6(2) Where any departmental or judicial proceeding is instituted under sub-rule (1), or where a departmental proceeding is continued under clause, (a) of the proviso thereto against an officer who has retired on attaining the age of compulsory retirement or otherwise, he shall be sanctioned by the Government which instituted such proceeding, during the period commencing from the date of his retirement to the date on which, upon conclusion of such proceeding final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service upto the date of retirement, or if he was under



suspension on the date of retirement, upto 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 proceedings and the issue of final orders thereon.

Provided that where disciplinary proceeding has been instituted against a member of the Service before his retirement from service under rule 10 of the All India Service (Discipline and Appeal) Rules, 1969, for imposing any of the penalties specified in clause (i), (ii) and (iv) of sub-rule 1 of rule 6 of the said rules and continuing such proceeding under sub-rule (1) of this rule after his retirement from service, the payment of gratuity or death-cum-retirement gratuity shall not be withheld.

6(3) Payment of provisional pension made under sub-rule (2) shall be adjusted against the final retirement benefits sanctioned to the pensioner 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 or withheld either permanently or for a specified period."

10. A reading of the above rule shows that unless disciplinary/judicial proceedings have been instituted against the applicant while in service, the payment of DCRG and retirement benefits cannot be withheld. Further, after his retirement no proceedings can be instituted in respect of a cause of action which arose more than four years before such institution. Of the three vigilance cases pending against the applicant, investigation is not completed in two cases. In the third case, he is charge sheeted in CC No. 10/2011 on 24.02.2011 which is more than 06 years after his retirement. From this, it is evident that no judicial proceeding was initiated while the applicant was in service, before his retirement, except CC No. 60/2004 in which he stands acquitted. There is no provision in the rule for withholding of pension or gratuity when judicial proceedings are instituted long after retirement or when investigations into vigilance cases are going on.

11. As far as the Civil Suit against the applicant is concerned, the



respondents have no case that it is instituted. Whether such institution so late as now, will entail withholding of retirement benefits, in accordance with the All India Services (Death Cum Retirement Benefits) Rules, 1958, or not does not arise here for consideration.

12. The only legal impediment in making the payment of retiral benefits to the applicant was the institution of CC No. 60/2004 against him before his retirement on 30.09.2004. That impediment got removed with his acquittal in the said case on 24.06.2011. Hence he is eligible to be paid his retiral benefits with effect from 01.10.2004. Pending investigation into vigilance cases or institution of CC No. 10/2011 after his retirement for which cause of action arose beyond four years before such institution is not a legal bar under Rule 6 of the All India Services (Death Cum Retirement Benefits) Rules, 1958, against payment of retiral benefits to the applicant. The stand of the respondents as evident from Annexure A-9 letter dated 1.05.2011 that disbursing of pension and other benefits to the applicant can be considered only on finalisation of vigilance cases is not in accordance with any rule in the aforesaid Rules. It is unjustified, illegal and arbitrary. Hence the O.A succeeds.

13. We declare that the applicant is entitled to get all retirement benefits including full pension, DCRG and commutation of pension etc. The respondents are directed to fix and disburse all terminal benefits including pension and DCRG payable to the applicant as prayed for in the O.A with effect from 01.10.2004. The commuted value of pension and other terminal benefits should be paid with interest at the rate of 9% per annum with effect



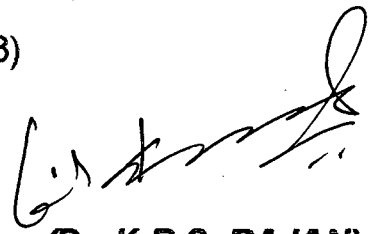
from 01.10.2004 till the date of payment after adjusting the payment already made by way of provisional pension. Appropriate orders should be issued and amount payable to the applicant should be paid within 03 months from the date of receipt of a copy of this order.

14. The O.A is allowed as above with no order as to costs.

(Dated, the 05th September, 2013)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(Dr. K B S RAJAN)
JUDICIAL MEMBER

CVR.