

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 489/2008.

this the 31st day of July, 2009

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HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Pushpavally K.N. W/o S. Thankappan
Retired Assistant Post Master (Lower Scale Grade)
residing at Kailas, 49/695, Rajeev Nagar
Elamakkara, Kochi-682 026

.. Applicant

By Advocate M/s Dandapani Associates

Vs

- 1 Union of India represented by the
Secretary to Government,
Ministry of Communications
New Delhi-110 001
- 2 The Chief Postmaster General
Thiruvananthapuram
- 3 The Postmaster General
Central region, Tharakandam Building
Kochi-682 018
- 4 The Director of Accounts (Postal)
Kerala Circle
Thiruvananthapuram
- 5 The Senior Superintendent of Post Offices
Ernakulam Postal Division
Kochi-682 011

.. Respondents

By Advocate Mr. M.H. Saidu Muhammed ACGSC

The Application having been heard on 21.7.2009 the Tribunal delivered the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The Applicant, a retired Assistant Postmaster challenges Annexure A-4 and A-6 orders dated 1.5.2008 and 23.5.2008 respectively authorising provisional pension of Rs. 5344/- to her instead of granting regular pension and other reitiral benefits.

2 The grievance of the applicant an Assistant Postmaster retired on superannuation on 30.4.2008 is that she has been granted only provisional pension and Gratuity and such other terminal benefits have not been disbursed so far. She asserts that there is no disciplinary proceedings either contemplated or pending or culminated with penalty nor there exists any criminal proceedings against her to deny these benefits. However, she submitted that such a recourse is adopted due to the pendency of an O.P. filed by her regarding the Caste status of the applicant.

3 According to the applicant, she belongs to Malai Arayan community which is a notified Scheduled Tribe Community as per Presidential order. She had submitted necessary documents in support of her claim. The caste certificate submitted by the applicant has been verified by the competent authorities at the time of initial appointment and also during promotions when it is sought to be made against reserved community. The Postal Department has never raised any objection at any point of time. The applicant and other family members have been enjoying the benefits of ST community. While so,

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the Scheduled Castes & Scheduled Tribes Development Department of Government of Kerala issued a show cause notice dated 20.10.2005 requiring the applicant to show cause why ST claim as a member of Malai Arayan community should not be refused to her (A-1). According to the notice the applicant does not belong to Malai Arayans which is a S.T. Community whereas she does not belong to that community. The applicant challenged Annexure A-1 in I.A. No.1073/2006 before the High Court of Kerala which stayed the impugned order and the I.A is still pending. Therefore, the applicant challenges Annexures A-4 and A-6 orders on the grounds that (i) the impugned orders are per se illegal in the light of the stay of the High Court in I.A. 1073/06 and MFA No. 107/06, (ii) no departmental proceedings are pending/contemplated against her, therefore, invoking Rule 69 is unsustainable (iii) withholding of gratuity arises only in the event of judicial /departmental proceeding (iv) the question of provisional pension arises only if there is a hurdle or difficulty in getting the regular pension sanctioned as enumerated under Rule 59 (v) even otherwise the provisional pension has to be revised after six months (vi) the sister of the applicant who retired from the same Department and was facing similar notice on caste status was granted regular pension and other benefits by the Tribunal (A-7). Hence she filed this O.A. to quash A-4 and A-6 and to direct the respondent to issue Pension Payment order and disburse regular pension, Gratuity, commutation of pension, GPF and other terminal benefits.

4 The respondents in their reply statement submitted that the applicant had secured job as Clerk in the Department of Posts in ST quota and that the Govt. of Kerala Scheduled Castes, Scheduled Tribes

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Development department by memo dated 1.4.1997 pronounced that the applicant does not belong to Malaya Araya community and that she had secured job in the department producing a bogus caste certificate. The applicant challenged this order through OP No. 6361/97 before the High Court and obtained stay of the proceedings of the Scrutiny Committee until further orders and the High Court disposed of the OP by order dated 2.8.2005 remitting the matter to the Scrutiny Committee, appointed under the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of issue of Community Certificate Act, 1996. They submitted that the final outcome of the MFA is still awaited hence, provisional pension was paid to the applicant.

5 We have heard learned counsels appearing on both sides and perused the records carefully.

6 Rule 69 under which the provisional pension etc. are granted is extracted below:

69 Provisional pension where departmental or judicial proceedings may be pending

(1)(a) In respect of a Government servant referred to in sub rule (4) of Rule 9, the Accounts Officer shall authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant, 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

(b) The provisional pension shall be authorised by the Accounts Officer during the period commencing from the date of retirement upto and including the date on which, after the

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conclusion of departmental or judicial proceedings, final orders are passed by the Competent Authority.

© No gratuity shall be paid to the government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:

Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorised to be paid to the Government servant.

(2) Payment of provisional pension made under sub rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings 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.

GOVERNMENT OF INDIA'S DECISION

Grant of cent per cent provisional pension under Rule 69 is mandatory even if departmental or judicial proceedings are continued. It has come to the notice of Finance Ministry that some of the administrative authorities are not following Rule 69 of the CCS (Pension) Rules, 1972 which provide that Government servant who has retired and against whom any departmental or judicial proceedings are instituted or are continued, shall be paid provisional pension. The payment of provisional pension under these rules is mandatory. But some administrative authorities appear to be under the impression that 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 under Rule 9 of the CCS (Pension) rules, 1972, even the provisional pension need not to be sanctioned. This view is against the letter and spirit of the rule. The Ministry of Home Affairs, etc."

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7 It is a fact that at the time of initial induction of the applicant in service in the Department of Posts on 8.7.1969 and at the time of grant of HSG the competent authority had verified the caste certificate of the applicant and was satisfied with the cast status of the applicant. For the first time a doubt was raised by the Govt. Of Kerala SC/SST Development (G) Department, vide show cause notice dated 20.10.2005 and order of the Scrutiny Committee dated 18.4.2006 about the caste status of the applicant. The applicant along with similarly situated persons had challenged the show cause notice / order and obtained a stay until further orders and the High Court disposed of the OP remitting the matter to the Scrutiny Committee.

8 The learned counsel for the applicant brought to our notice the order of this Tribunal in O. A. 711/1999 filed by the sister of the applicant on the very same issue of caste status of her. The Tribunal held as follows:

"6 What is the effect of the finding of the Scrutiny Committee appointed by the Government of Kerala for verification of SC/ST claims and what is the legal position as regards to the stay granted by the High Court in the OP filed by the applicant are not considered in A-7. There is absolutely no case for the respondents that any action was taken against the applicant on the basis of the report of the Scrutiny Committee appointed for verification of SC/ST claims. It is undisputed that the applicant retired on superannuation. Her claim for pension is kept in abeyance only because of the pendency of the OP filed by her before the High Court. What are the circumstances under which pension can be withheld and what are the circumstances under which atleast provisional pension is to be paid are covered by CCS (Pension) Rules. There is absolutely no mention of any of the provisions of the CCS (Pension) Rules in A7 and it appears that A7 has been passed without advertizing to the relevant provisions contained in the

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CCS (Pension) Rules. I asked the learned counsel appearing for the respondents, what is the legal basis on which the retiral benefits of the applicant is kept in abeyance. The learned counsel for the respondents did not enlighten me on this aspect and submitted that since the OP is pending before the High Couirt the retiral benefits could not be disbursed to the applicant.

7 When an order is passed by an authority that order should be after due application of mind and adverting to the relevant rules on the subject and not in a mechanical way without adverting to the relevant rules on the subject.

8 Since A7 order is without adverting to the relevant provisions regarding grant of pension, the same is liable to be set aside and the 4th respondent is to be directed to consider afresh the claim of the applicant in the light of the relevant rules relating to the subejct under the CSS (pension) rules.

9 Accordingly, A-7 is set aside. The 4th respondent is directed to consider afresh the claim of the applicant for retiral benefits in the light of the relevant provisions contained in the CCS(Pension) Rules and pass a reasoned order within two months from the date of receipt of a copy of this oder. The 4th respondent shall also afford an opportunity of personal hearing to the applicant, if so desired by the applicant.

10 The Original application is disposed of as above. No costs."

9 The order of the Govt. of Kerala SC ST Development department is stayed until further orders. The DOP has not taken any decision on the caste status of the applicant. The OP filed by the applicant against the orders of the SC ST Development Department of Govt. Of Kerla and the Scrutiny Committee was finally disposed of by the High Court by its order dated 2.8.2005 remitting the matter to the Scrutiny Committee.

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10 The Department of Posts has not taken any follow up action on the show case notice issued to the applicant by the SC/ST Development (G) department, Govt. of Kerala or the order of the Scrutiny Committee. Therefore, according to me the DOP cannot take advantage of the OP filed by the applicant and similarly placed persons against the Govt. Of Kerala and Others as a judicial proceeding pending against the applicant for denial of full pension and other retiral benefits to the applicant. The DOP has not impleaded themselves as a party to the proceedings. In the circumstances, the DOP cannot be heard to say that provisional pension has been granted to the applicant in view of the judicial proceedings pending against her.

11 Regarding the benefits granted to the sister of the applicant, the learned counsel for the respondents brought to our notice the decision of the Apex Court in (2009) SCC L&S 1018) which inter alia observed that:

"Merely because the respondent authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat the illegality over again and again. The illegal/unwarranted action must be corrected if it can be done according to the law a indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law-but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition...."

In my view, this decision is not applicable in the case of the applicant. In the case on hand, there is no final decision on the caste status of the applicant which issue is remitted to the Scrutiny Committee for reconsideration and that the finding of the Scrutiny

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Committee is stayed until further orders. The finding in the order in O.A. 711/99 has not been reviewed/overruled/quashed/stayed. The sister of the applicant having been granted the benefits, the applicant in the present O.A. cannot be denied similar benefits.

The counsel also cited the Ummar Vs. State of Kerala (2009 (2)ILR 796) in which it was observed that "the Government cannot relax any condition unless a specific provision exist in the Act." In the present case there is no relaxation of any condition.

In Union of India and Ors. Vs. Shinu V.A. And two others (WP (C) 14575) the High Court of Kerala observed that:

".....Annexures A-6 to A-8 confer only a right to be considered in the sportsmen quota on the applicants. The Writ Petitioners might have been generous beyond the requirement of law in the past. But the Court is not justified in asking them to repeat that conduct again. So, the direction of the Tribunal to consider the applicants in the eight vacancies available as a result of the interim order of the CAT cannot be upheld...."

In the case on hand, I am not adjudicating on the cast status of the applicant which is a matter to be decided by the competent authority. The question that comes up consideration in this O.A. is whether the applicant is entitled to all benefits on her superannuation or can it be kept pending till a decision is taken by the competent authority. In my view, in the absence of any order staying the pension and pensionary benefits to her, she is entitled to the reliefs prayed for

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in this O.A.

12 In the result, as things stand now, there is no judicial / departmental proceedings pending against the applicant warranting grant of provisional pension and withholding of other retiral benefits. Therefore, following the observations of the Tribunal in O.A.711/1999 and that benefits have been granted to similarly situated sister of the applicant, I am of the view that this O.A is to be allowed. Accordilngly, Annexure A-4 and A-6 are quashed. The respondents are directed to issue PPO for regular pension and disburse other retiral pension to the applicant within three months from the date of receipt of this order. There shall be no order as to costs.

Dated 31st July, 2009


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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