

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 509 / 2008

Thursday, this the 5th day of February, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

T.Karunakaran,
Assistant Superintendent of Posts,
Kannur Sub Division,
Kannur (under suspension)
Payangadi – 670 303, Kannur.Applicant

(By Advocate Mr P.K.Shaju)

v.

1. The Chief Post Master General,
Kerala Circle,
Thiruvananthapuram-695 033.
2. The Director General of Posts,
Dak Bhavan, Sansad Marg,
New Delhi-110 001.Respondents

(By Advocate Mr TPM Ibrahim Khan, SCGSC)

This application having been finally heard on 8.1.2009, the Tribunal on 5.2.2009 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant having been arrested and detained in custody for more than 48 hours, in terms of sub rule (2) of Rule 10 of CCS(CCA) Rules, 1965 the Respondent No1, vide the Annexure A-1 order dated 1.5.2007, placed him under deemed suspension with effect from 27.4.2007. It reads as under:

"WHEREAS a case against Shri T Karunakaran, ASPOs, Kannur Sub Dn, Kannur in respect of a criminal offence is under investigation.

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AND WHEREAS the said Shri T Karunakaran was detailed in custody on 27.4.2007 for a period exceeding forty eight hours.

NOW THEREFORE, the said Shri T Karunakaran is deemed to have been suspended with effect from the date of detention i.e. the 27th April 2007 in terms of sub rule (2) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) rules, 1965 and shall remain under suspension until further orders."

In terms of the provisions contained in sub rule (6) of the aforesaid rules, the applicant's suspension was extended for a further period of 180 days with effect from 26.7.2007 vide the Annexure A-2 letter dated 23.7.2007. Vide the Annexure A-3 letter dated 18.1.2008, the period of suspension was further extended for another 180 days with effect from 22.1.2008 and by Annexure A-1 letter dated 1.5.2007 the period of suspension was again extended till 31.12.2008 i.e the date of his retirement. He has, therefore, sought the following reliefs in this O.A:

- i) To issue a declaration that Annexure A-4 order is violative of principles of natural justice, arbitrary and discriminatory.
- ii) To set aside Annexure A-4 order by the 1st respondent as it negates the retirement benefits of the applicant.
- iii) To direct the respondents to reinstate the applicant in service as it is only four months remains for his retirement on superannuation.

2. During the aforesaid period of his suspension, the CBI had filed a charge sheet against him before the Court of Special Judge, Ernakulam on 24.10.2007 under Section 120 B r/w Section 7 and 13(2) r/w 13(1)(d) of PC Act, 1988. The charge against him was that while he was working as Assistant Superintendent of Post Offices, Kannur Sub Division, entered into a criminal conspiracy with Shri C Balan who was working as the Mail Overseer in the said office and demanded and accepted illegal gratification from one Shri Sandeep Vazhayil by abusing their official positions as public servants, for appointment to the post of 'Gramin Dak Sevak Mail Deliverer' at Mowancherry Post Office. An amount of



Rs.10,000/- from Shri Sandeep Vazhayil was received by them on 27.4.2007.

3. The contention of the applicant is that the extension of suspension till his retirement on superannuation was absolutely the negation of principles of natural justice and prejudicial to him to the extent he would not get his retirement benefits on due dates. According to him, there was no justification on the part of the respondents to continue the suspension of the applicant as the investigation of the charge of corruption against him has already been completed and only the trial is pending before the CBI Court. He has also submitted that the extension of suspension till the retirement is highly arbitrary, unjustified and illegal. Further, there is no chance of apprehension of tampering with the witness or documents, if he is reinstated and posted in another station during the pendency of the trial.

4. The respondents in their reply have submitted that the applicant was placed under suspension in accordance with the rules and the same was also being reviewed periodically. The applicant was released on bail by the Special Judge, CBI Court on 7.5.2007 on condition that he should report before the CBI as and when called. They have also submitted that in case the criminal proceedings are not finalised before 31.12.2008, applicant will be granted the provisional pension as per Rule 69 of CCS (Pension) Rules, 1972 which provides as under:

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

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(c) 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."

5. Since the learned counsel for the applicant was not present in the court to argue the matter even on the second call, we have proceeded to decide the matter in accordance with Rule 16 of CAT (Procedure) Rules. We heard the learned counsel for respondents and also perused the entire documents on records. Admittedly, the applicant was placed under deemed suspension after his arrest and detention as provided in sub rule (2) of Rule 10 of CCS(CCA) Rules, 1965. He continued to remain under custody till 7.5.2007 the CBI has filed the charge sheet against him on 24.10.2007 and now the trial is to be completed. The punishment, if any, to be awarded to the applicant in terms of the misconduct under CCS(CCA) Rules, 1965 can be determined by the disciplinary authority only on the basis of the sentence which may or may not be awarded to him by the Criminal Court. His retirement during the pendency of the criminal case only an incident in his career and it is not reason for ^{to} revoke the suspension before the trial is over. Sub rule 1(b) of Rule 10 of the CCS(CCA) Rules, 1965 clearly states that the competent authority may place Government servant under suspension where a case against him in respect of any criminal offence is under investigation, inquiry or trial. The respondents themselves have submitted that he will be granted provisional pension if the criminal proceedings are not over before his retirement on superannuation on 31.12.2008.



6. In the above facts and circumstances of the case, we do not find any merit in the case and therefore, the O.A is dismissed. There shall be no order as to costs.


K NOORJEHAN

ADMINISTRATIVE MEMBER


GEORGE PARACKEN

JUDICIAL MEMBER

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