

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No.96/1996

Tuesday, this the 31st day of March, 1998.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

HON'BLE MR S.K. GHOSAL, ADMINISTRATIVE MEMBER

P.J. Alexander,
Director General of Police (Retired),
S/o (Late) Shri P.O. Alexander Muthalaly,
Residing at 'Kripa', Belhaven,
Kowdiar, Trivandrum - 695 003.

... Applicant
By Advocate M/s M.R. Rajendran Nair & Associates.

Vs.

The State of Kerala represented by
Chief Secretary to Government of Kerala,
Secretariat, Trivandrum.

... Respondent
By Advocate Mr C.T. Ravikumar (Government Pleader)

The application having been heard on 10.3.1998,
the Tribunal delivered the following on 31.3.98.

ORDER

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to declare that he is entitled to get his pension, commuted value of pension and Death - cum- Retirement Gratuity together with interest @ Rs.18% per annum till the date of payment and to direct the respondent to disburse the pensionary benefits due to him with interest at the said rate.

2. The applicant retired from service on superannuation on 31.8.94 while he was in the rank of Director General of Police. Non liability certificate was issued by the Director General of Police on 1.9.94. The Accountant General (A&E), Kerala, as per letter dated 3.11.94 admitted a pension of Rs. 3,654/- per month to the applicant. The commuted value of pension was fixed at Rs.1,52,884/-. This is borne out by A2 dated 3.11.94. In spite of repeated representations made by the applicant, the respondent did not pay pension,

death-cum-retirement gratuity and commuted value of pension to the applicant.

3. Respondent contends that the applicant while working as Inspector General of Police on other duty as Special Officer for preparation of training manual to the Police Department was placed under suspension in view of the registration of a crime against the applicant by the C.B.I. under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988. The representation of the applicant dated 1.8.95 requesting for disbursement of pensionary claims was examined with reference to the C.B.I. case pending against him and sought advice of the Government of India as to whether the pensionary claims can be disbursed. The Government of India has advised that the post retirement benefits of the officer can be settled as per provisions enshrined under rule 6(2) of All India Services (Death-cum-Retirement Benefits) Rules, 1958. Orders have been passed granting provisional pension of Rs. 3654/- (at full pension rate) as per G.O. (Rt) No. 426/96/Fin. dated 30.1.96. It was ordered in the said G.O. dated 30.1.96 that the remaining pensionary benefits shall be sanctioned after completion of the disciplinary proceedings initiated against the applicant. As per rule 6(2) of All India Services (Death-cum-Retirement Benefits) Rules, gratuity shall not be paid to an officer until conclusion of the proceedings and issue of final orders thereof. Hence, the gratuity has not been sanctioned due to the pendency of the C.B.I. case against the applicant. As per rule 3 of All India Services (Commutation of Pension) Regulations, 1959, an officer against whom a judicial or departmental proceedings has been instituted or continued, shall not be allowed to commute any part of his pension during the pendency of such proceedings. If after retirement,

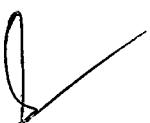
the pensioner is convicted of a serious crime or is guilty of grave misconduct the government is competent to withhold or withdraw the pension or any part of it for a specified period or indefinitely and so, there was no avoidable delay in sanctioning the post retirement benefits to the applicant.

4. The applicant has filed a rejoinder highlighting the hollowness of the pleas raised by the respondent in the reply statement.

5. The prayers of the applicant include disbursement of his pension, commuted value of pension and death-cum-retirement gratuity. In the reply statement it is stated that as per G.O. (Rt) No.426/96/Fin. dated 30.1.96 provisional pension of Rs. 3654/- (at full pension rate) has been granted to the applicant. This is not denied in the rejoinder filed by the applicant. So, now only the question of non-disbursement of commuted value of pension and death-cum- retirement gratuity of the pensioner remains.

6. It is specifically admitted in the reply statement that no disciplinary action was initiated against the applicant. The respondent is resisting the claim of the applicant relying on rule 6(2) of All India Services (Death-cum-retirement Benefits) Rules, 1958, in respect of payment of gratuity and on the proviso to rule 3 of All India Services (Commutation of Pension) Regulations, 1959, for not allowing to commute any part of pension on ground of pendency of C.B.I. case against him.

7. Learned counsel appearing for the applicant submitted that there was no judicial proceeding pending against the applicant on the date of his retirement, and therefore, the provisions contained in rule 6(2) of All India Services (Death-cum-Retirement Benefits) Rules, 1958, have no application in this case. As per rule 6(1) of the All India Services



(Death-cum-Retirement Benefits) Rules, 1958, the Central Government reserves to itself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specific period, and the right of ordering the recovery from pension 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.

Explanation to the said rule says when the departmental and judicial proceedings shall be deemed to be instituted.

The explanation reads thus:

"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."

8. Rule 6(2) of All India Services (Death-cum-Retirement Benefits) Rules, 1958, relied on by the respondent reads thus:

"(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 proceedings, 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 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 thereof.

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 Services (Discipline and Appeal) Rules, 1969, for imposing any of the penalties specified in Clauses (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.

(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."

9. Proviso to Rule 3 of All India Services (Commutation of Pension) Regulations, 1959, reads thus:

"Provided that a member of the Service, against whom judicial or departmental proceeding has been instituted or a pensioner against whom any such proceeding has been instituted or continued under sub-rule (1) of Rule 6 of the Retirement Benefits Rules, shall not be permitted to commute any part of his pension during the pendency of such proceeding."

10. According to respondent, there is a judicial proceeding. It is the admitted case of the respondent that the C.B.I. has filed the charge-sheet before the Court of the Special Judge, C.B.I., Ernakulam only on 10.11.95. The averment in the O.A. that the applicant retired on superannuation on 31.8.94 is admitted in the reply statement. So, by the admitted case of the respondent there was no charge-sheet filed by the C.B.I. against the applicant on the date of his retirement or before that i.e., while he was in service. As per explanation (b) to rule 6(1) of All India Services (Death-cum-Retirement Benefits) Rules,

1958, a judicial proceedings shall be deemed to be instituted 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 in the case of civil proceedings on the date on which the claim is presented or as the case may be, an application is made to a Civil Court. The learned counsel appearing for the applicant argued that on a plain reading of rule 6 of All India Services (Death-cum-Retirement Benefits) Rules, 1958, it is evident that death-cum-retirement gratuity can be withheld only in respect of those persons against whom the charge is submitted or a complaint is made to the Criminal Court in respect of cause of action or an event which took place not more than 4 years before such submission of charge-sheet or making of complaint.

11. Learned counsel appearing for the applicant further argued that the crime was registered by the C.B.I. against the applicant on 12.9.91 and it relates to the period between 30.4.80 and 20.9.91. This is not disputed by the learned counsel appearing for the respondents. Admittedly, the applicant retired from service on 31.3.94 and the charge-sheet was filed by the C.B.I. before the Court of Special Judge, C.B.I., Ernakulam only on 10.11.95. So it is clear that the judicial proceeding was instituted against the applicant more than 4 years after occurrence of the cause of action. That being so, this case falls outside the scope of rule 6(2) of All India Services (Death-cum-Retirement Benefits) Rules, 1958.

12. It is obvious that a judicial proceeding can commence under the explanation referred to above only when a charge-sheet is submitted to the criminal court. The first information report is not a complaint and therefore, forwarding first information report by the Police to the criminal court will not and cannot amount to making a



complaint before the criminal court. It is for the reason that at the stage of FIR the Police Officers act only on information. The FIR is only put the law in motion. It is not an encyclopedia of all the events. A report is to be sent to the Court as per the provisions contained in Section 157 of the Criminal Procedure Code. Charge-sheet referred to in the explanation referred to above can only be taken and understood as the final report forwarded by the Police Officer under Section 173(2) of the Criminal Procedure Code. There is no case for the respondent that apart from C.B.I. case there is any private complaint filed before any Criminal Court by anybody against the applicant. Therefore, according to us no judicial proceedings can be deemed to be instituted in this case on the date of retirement of the applicant or prior to that i.e., during his service.

13. With regard to the claim of the applicant for interest, the stand taken by the respondent is that it is necessary to know the final outcome of the C.B.I. case before sanctioning of the pensionary benefits since future good conduct is an implied condition for grant of pension, and if after retirement, the pensioner is convicted of a serious crime or is guilty of grave misconduct, the Government is competent to withhold or withdraw the pension or any part of it for a specified period or indefinitely. The right of the appointing authority to withhold or withdraw the pension or part thereof whether permanently or specified period thus arises only if the pensioner is convicted of a serious crime or is found guilty of grave misconduct. So, it is only after the pensioner is convicted and not in anticipation of a conviction. Mere filing of a charge-sheet will not justify to arrive at a conclusion that the accused



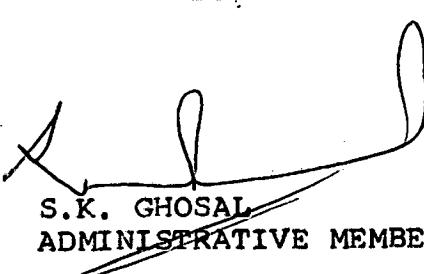
will be found guilty and will be convicted. After the trial the accused may be convicted or acquitted. Before conclusion of the trial it is not possible to anticipate and it will not be justifiable to anticipate that the accused will be found guilty and will be convicted. In this case the Court has not convicted the applicant. One cannot predict whether a pensioner will on a future date be convicted by a court. So, the stand taken by the respondent for nonawarding of interest cannot be accepted.

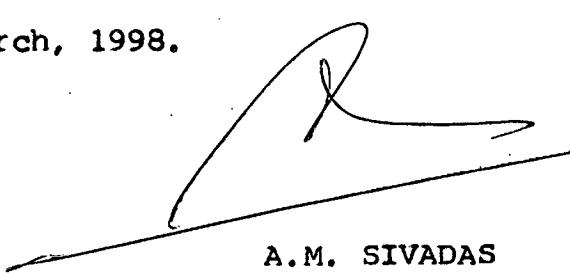
14. The necessity for prompt payment of the retirement dues to a government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay interest on the dues at the current market rate should commence at the expiry of a reasonable period from the date of retirement.

15. Accordingly, the respondent is directed to pay the commuted value of pension and death-cum-retirement gratuity to the applicant with 12% interest per annum from 1.12.94 till the date of payment. This shall be done within two months from the date of receipt of a copy of this order.

16. The Original Application is disposed of as above.
No costs.

Dated the 31st of March, 1998.


S.K. GHOSAL
ADMINISTRATIVE MEMBER


A.M. SIVADAS
JUDICIAL MEMBER