

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No.161/2011

Wednesday, this the 6th day of July, 2011.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

Dr.P.Latheefa Beebi,
W/o late K.B.Abdul Hameed IAS,
Residing at 43/1750 B, Pottakuzhi Road,
Pachalam.P.O., Ernakulam-12.Applicant

(By Advocate Mr Shafik M Abdulkhadir)

v.

1. Union of India represented by the Secretary
to Government of India,
Ministry of Personnel & Public Grievances and Pensions,
New Delhi-110 001
2. State of Kerala represented by
its Chief Secretary,
Thiruvananthapuram-695 033.
3. The Principal Secretary,
Finance(Pension) Department,
Thiruvananthapuram-695 033.Respondents

(By Advocate Mr Sunil Jacob Jose, SCGSC for R.1)

(By Advocate Mr N.K.Thankachan,G.P for R.2&3)

This application having been finally heard on 28.6.2011, the Tribunal on 6.7.2011 delivered the following:

ORDER

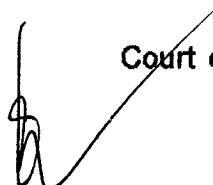
HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The applicant is the spouse of late K.B.Abdul Hameed (an IAS officer when he was alive). The said officer was tried in a Criminal Case No.1/1991 and the Special Court convicted and sentenced him with imprisonment for a period of two years and also imposed a fine of Rs.25,000/-. During his life time the said officer paid 50% of the fine and appealed against the order of conviction and

sentence and the appeal was admitted. The said late Abdul Hameed superannuated on 30.4.1988 and later expired on 10.9.2004. Thus the demise of the said officer was when the Criminal Appeal No.515/2002 was pending before the Hon'ble High Court. The applicant herein stepped into the shoes of the appellant before the High Court for which leave was granted by the High Court.

2. In the instant O.A the claim of the applicant is that the applicant's husband was paid only provisional pension and that too only 50% of the regular entitled pension, due to the pendency of criminal proceedings. As per Pension Book of late Abdul Hameed, a sum of Rs.1200/- had been sanctioned as provisional pension as per G.O.(Rt)4894/88 dated 29.12.1988 by the second respondent. This was revised in the wake of the recommendations of the 5th Central Pay Commission and acceptance thereof by the Government but the enhancement was based on the provisional 50% pension. Letter dated 28.7.1999 refers.

3. After the demise of the said Abdul Hameed on 10.4.2004, the applicant submitted a representation dated 30.8.2005 and the Government of Kerala sanctioned Family Pension to the applicant as per G.O.(Rt)No.1191/06/Fin dated 21.2.2006 based on the provisional pension drawn by her late husband. Annexure A-4 refers. The applicant submitted innumerable representation for release of arrears of the full pension and other retirement benefits like DCRG, Provident Fund etc. By the communication dated 17.12.2009 the respondents indicated that her claim was being considered and would be settled immediately on receipt of details called for from the General Administration Department is received. Annexure A-5 and A-6 refer. As no intimation was thereafter received, the applicant who by then became an octogenarian moved the High Court of Kerala by filing Writ Petition(C)No.8545/2010. However, the same had



been withdrawn with liberty to approach the Tribunal vide Annexure A-7.


4. According to the applicant, as per rules relating to Payment of Pension as well as other terminal benefits, there is no provision for withholding the retirement and pensionary benefits including the gratuity and Provident Fund with respect to an employee against whom the departmental/vigilance/judicial proceedings have been finalised and settled. According to the applicant, as per a catena of decisions, the Apex Court and other judicial forums including the Tribunal have declared that pensionary benefits are the rights of the pensioner or his dependent family and withholding the same without any rhyme or reason entails interest at the rate of 18% per annum payable by the respondents.

5. Adducing a number of grounds vide para 5 of the O.A, the applicant has sought for the following reliefs:

- i) To call for the records leading to the issue of Annexure A-1 to Annexure A-6 and to direct the respondents to release pension arrears, retirement/pensionary benefits including provident fund death cum Retirement Gratuity etc of the deceased husband to the applicant with 18% interest;
- ii) To issue such other appropriate orders or directions this Tribunal may deem fit, just and proper in the circumstances of the case.

6. The respondents have contested the O.A. The facts are not disputed by them. However, in regard to the legal issue, they have stated as under:

"As per Rule 6(1) of the AIS (Death-cum-Retirement benefits) Rules 1958, 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 of 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 State Government by misconduct or negligence, during his service including the service rendered or re-employment after retirement."



According to the respondents, since the legal heirs of the accused officer are pursuing the appeal which is pending, RRA cannot be issued by the 2nd respondent.

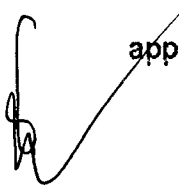
7. Counsel for the applicant referred to the All India Services (Death-cum-Retirement benefits) Rules 1958 especially the Government of India Decision dated 28.2.2008 wherein para 2 thereof it has been stated:

"The matter has been considered and it has been decided that even in cases governed by the above mentioned rules 100% pension, which is otherwise admissible to the Government servant should be authorised as provisional pension, as in cases of normal retirement. No gratuity, shall, however, be paid at this stage."

8. Counsel for the respondents invited our attention to Rule 6(1) of All India Service (Death-cum-Retirement benefits) Rules 1958 as extracted above.

9. Arguments were heard and documents perused.

10. The rules are specific that when an individual is under cloud or departmental or criminal proceedings are pending, the individual, on retirement, is entitled only to provisional pension and at the discretion of the employer, gratuity could also be withheld if the charges are grave or that the charges if proved, would result in loss to the exchequer. In the instant case, the charges though not may involve any loss to the government, they are grave enough for the Apex Court has in the case of **Banshi Dhar v. State of Rajasthan, (2007) 1 SCC 324** held that "the criminal charge against the applicant under the Provisions of Prevention of Corruption Act, has been considered by the respondents as 'grave' ". Thus, the action on the part of the respondents in not releasing the DCRG is well justified. However, the question is as to the quantum of provisional pension. The claim of the applicant is that the applicant is entitled to full family pension whereas it has been truncated to 50%.



The basis of reducing it to 50% has not been explained anywhere in the submission of the respondents or in the documents annexed.

11. The applicant's husband was under suspension when he superannuated. Thus, during his lifetime itself he was paid only 50% of the pension. At the time of his retirement, pension was based on 10 months' average salary. In this case since the applicant's husband was on suspension at the time of superannuation, he would have been paid prior to his retirement only subsistence allowance and not salary. Of course, the same was for a period of three months only. If average ten months' salary has to be worked out, the same should take into account the the three months' subsistence allowance and seven months actual salary drawn by the husband of the applicant prior to suspension. It is only after the acceptance of the recommendations of the sixth Pay Commission that pension formula has been revised. It is not known as to under what authority 50% of pension was paid instead of 100%. It appears that in applying the formula, the respondents have followed the earlier 50% of the pension. The question that arises for consideration is whether the respondents could be permitted to do so when the entire formula has been revised.

12. To reiterate, earlier, when the pension was worked out, the same was on the basis of average of 10 months salary and because of the suspension of the applicant's husband, there could be a depletion in the quantum of pension. The same is not the case from 1.1.1996 as the formula for calculation of pension had since then been revised vide Annexure A-3, based on pay scale. The respondents should have worked out only the pension on the basis of revised formula with half the minimum of the pay scale subject to maximum 33 years of service (66 half yearly service) having been rendered. As the applicant's husband had superannuated, he had the full tenure of service. As such we are



of the view that the respondents should not have restricted the pension at 50% of the full pension.

13. In view of the above, the O.A is allowed to the following extent:

- a) Respondents shall work out full family pension on the basis of revised pension that was applicable to the applicant's husband and start paying the same. This part of the order shall be complied with, within two months from the date of communication of this order.
- b) Respondents shall also work out the arrears of pension applicable to the applicant's husband from 1.1.1996 till the date of his demise and also work out the extent of enhanced family pension from 2004 till date and make the arrears of pension to the applicant accordingly. This part of the order shall be complied with within four months from the date of communication of this order.

14. While passing the above order we take into consideration the decision of the respondents that the case was under consideration and till now was not decided by the department due to the pendency of the appeal before the Criminal Court. This stand of the respondents meets the point of limitation, if any, in respect of arrears of pension.

15. Under the above circumstances, there shall be no order as to costs.


K NOORJEHAN
ADMINISTRATIVE MEMBER


Dr K.B.S. RAJAN
JUDICIAL MEMBER