

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.190/2000

Friday this the 5th day of April, 2002

C O R A M

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR K.V. SACHIDANANDAN, JUDICIAL MEMBER

P.T.Joseph,
(Retired Deputy Conservator of Forests),
Kurisummoottil House,
Nellimala Road,
Moovattupuzha,
Ernakulam District

: Applicant

[By Advocate Mr.P.Sanjay]

Vs.

1. The Chief Secretary to
Government, State of Kerala,
General Administration (Special-C),
Department, Government Secretariat,
Thiruvananthapuram - 695 001.
 2. The Commissioner & Secretary to Government,
Forest & Wild Life Department,
Secretariat,
Thiruvananthapuram.
 3. The Principal Chief Conservator of Forest,
Vazhuthacadu,
Thiruvananthapuram.
 4. The Union of India represented by
the Secretary,
Ministry of Forest & Environment,
Paryavaran Bhawan,
New Delhi - 1
- : Respondents

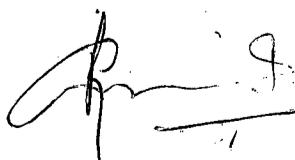
[By Advocate Mr.Renjith A, GP (R1-3)
Advocate Mr.K.R.Rajkumar, ACGSC (R-4)]

The application having been heard on 5th April, 2002, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

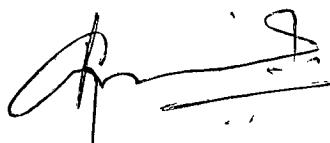
The applicant, an officer of Indian Foreign service who
retired from Kerala Cadre on 30.11.94 has filed this Original
Application aggrieved by A-5 letter of the 1st respondent
rejecting his request for interest on the delayed payment of



Death-cum Retirement Gratuity and other pensionary benefits to him. The facts which are not in dispute are that applicant retired as Deputy Conservator of Forests on 30.11.94 on superannuation. A disciplinary action was pending against him at the time of his retirement. The disciplinary proceedings were finally dropped by A-2 order dated 2.11.99 passed by 4th respondent. Thereafter, the applicant made A-3 representation to the 1st respondent seeking early payment of his benefits. He received A-4 communication whereby pension of Rs.2,132/- per month and DCRG of Rs.85,635/- were sanctioned. Further, he received A-5 communication from the 1st respondent in which it was stated that the government was not inclined to accept his request for payment of interest. Alleging that the contention of the 1st respondent that the applicant was not entitled to interest as arbitrary and illegal, he filed this Original Application seeking the following reliefs:

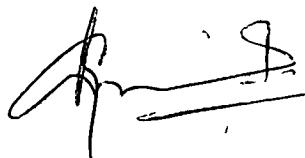
- (i) to direct the respondents to disburse the full pension and DCRG to the applicant taking note of the qualifying service of 38 years.
- (ii) to direct the respondents to pay full pensionary benefits w.e.f. 1-12-94 with interest at rate of 18% per annum.
- (iii) Any other appropriate order or direction as this Hon'ble Tribunal deems fit.

According to the applicant the pensionary benefits were a matter of right and not gratis or bounty. The respondent could not deny the pensionary benefits to the applicant. They should not have delayed pensionary benefits to the applicant. Respondents were liable to compensate for the delay which have taken place. The applicant could not be held liable for the



delay as he had been promptly replying and responding to the charges levelled against him. In various decisions of the Hon'ble Supreme Court it had been held that where there was inordinate delay in payment of pensionary benefits, the beneficiary was entitled to interest on the same.

The respondents 1 to 3 filed reply statement. It was submitted that the applicant was not entitled to the reliefs sought for in the Original Application. According to them the pensionary benefits including Death-cum-Retirement Gratuity were sanctioned to the applicant as per Government's A-4 order dated 1.1.2000. The non-liability certificate of the applicant was issued on 23.3.2000 and the same had been sent to the Sub Treasury Office, Muvattupuzha enabling the applicant to withdraw the amount under Government Order dated 1.1.2000. As regards the surviving question of payment of interest because of pendency of disciplinary action against the applicant, the retirement benefits could not be released. On the basis of the finding in the enquiry Government decided to impose a minor penalty of recovery of 5% of the loss sustained by the Government from the applicant and the same was referred to the Union Public Service Commission for their advice vide communication dated 31.8.94. Union Public Service Commission returned the case records for rectification of certain defects pointed out on 18.10.94. When the case was resubmitted to the UPSC by the State Government after rectification of the defects, UPSC pointed out certain infirmities and requested the State Government to re-examine the case vide their communication dated 5.10.96. When the matter was

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again taken up by communication dated 15-3-97 with the UPSC to recover 5% of the total loss sustained by the Government from the applicant. UPSC returned the case records on 14.5.97 stating that the Central Government should pass order for the recovery from the pension under Rule 6 of the All India Service (Death-cum Retirement benefits) Rules. According to them only in those cases in which President of India had reached a tentative conclusion that a cut in pension was warranted, should be referred to UPSC for advice. The State Government submitted the proposal to the Central Government on 8.8.97. Government of India by letter dated 18.6.99 sought for certain clarifications. The said clarifications were given on 1.7.99 and the Government of India vide the letter dated 2.11.99 held that the action against the applicant be dropped and the case closed. Immediately thereafter the State Government issued GO dated 1.1.2000 and non-liability certificate was issued on 23.3.2000. It was submitted that as per Rule 6(2) of All India Service (Death cum Retirement Benefits) Rules, whenever disciplinary action was pending, Death cum Retirement Gratuity could not be released. Since the action of withholding of DCRG was as per rules, the applicant was not entitled to claim interest for the same. It was submitted that there was no delay on the part of the 1st respondent in disbursing the gratuity due to the applicant. He was not entitled for any of the reliefs claimed in the Original Application.

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Even though notice was given to the 4th respondent - the Union of India - and notice was taken by the Senior Central Government Standing Counsel, no reply statement was filed on their behalf. Today when the case was taken up none appeared for the Union of India.

Heard the Learned counsel for the applicant and Respondents 1 to 3. In this Original Application what is under challenge before us is the order issued by the 1st respondent rejecting the request of the applicant for payment of interest on the delayed payment of Death cum Retirement Gratuity and other pensionary benefits. According to the 1st respondent's statement in A-5 as the applicant had been let off from the charges on procedural irregularities in conducting the inquiry and also considering that the impugned events took place long ago and the applicant has retired nearly before five years, the State Government had not accepted his request for interest. We find that the Central Government had decided to drop the case against the applicant by their communication in A-2. A-2 reads as under:

No.19033/1/97-AVV
Government of India
Ministry of environment & Forests

SEAL

Paryavaran Bhavan,
Lodi Road, CGO Complex,
New Delhi - 110 003

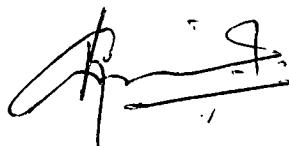
2-11-1999

To

The Chief Secretary,
Govt. of Kerala,
Thiruvananthapuram.

(Attention Shri K. Mukundan, Dy. Secretary)

Subject:- Disciplinary proceedings against Shri P.T. Joseph
(Retd) under AIS (D&A) Rules.



Sir,

I am directed to refer to your letter No.36736/spl CI/GAD dated and subsequent correspondance on the above subject.

2. The disciplinary case against Shri P.T. Joseph has been carefully examined by the Central Government in consultation with Central Vigilance Commission (CVC). The CVC has observed that from the proceedings of the Court case it was seen that the Court had dismissed the case because prosecution witness could not identify accused Shri Thundathil kunjettan as the person who took part and put his signature on behalf of Shri Mani. The court had also not concluded that Shri P.T. Joseph did not sent notice to Shri Mani or that the prosecution fell apart because he did not sent notice. The conduct of Shri Joseph is not producing required documents had contributed to bery limited extent in the acquital of the case. The conclusions of the Court were not based on the fact that Shri P.T. Joseph did not produce Forest Code but on the fact that prosecution could not muster evidence to prove that it was Shri Thundathil kunjettan and not Shri Mani who participated in the Original auction. The Commission has further observed that the inquiry suffers from serious defect in that the copy of the presenting officers brief was not supplied to the charged officer and to that extent charged officer was not given adequate opportunity to defend himself. Considering the fact that the impugned events took place nearly a decade ago and the charged officer retired nearly 5 years ago the Commission has advised against holding a fresh inquiry. The Commission taking an .. view of the facts of case, has advised dropping of the charges against Shri P.T. Joseph.

3. The Central Government has carefully considered the advice of CVC in the light of the facts and circumstances of the case and has decided the charges may be dropped and the case closed. Pensionary benefits as is entitled to Shri P.T. Joseph may be released in accordance with the relevant rules.

4. The records of the case as per list enclosed are returned herewith receipt of which may please be acknowledged.

Yours faithfully,

Encl: As per list

Sd/-
(G. DEVAMANI)
Under Secretary, Vigilance

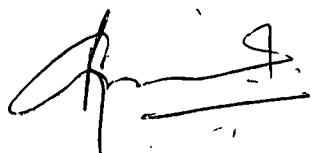
What we find from above letter is that the reason given by the State Government for rejecting the request of the applicant for payment of interest is not in tune with what is stated in the above letter. On going through the above communication we get an impression that the Central Government had not approved the



action of the State Government in continuing the proceedings against the applicant after retirement.

From the reply statement we find that the State Government's plea was that the applicant was not entitled for interest as disciplinary proceedings were pending against him. But the fact remains that the applicant retired on 30.11.94, in the normal course he should have received the retirement benefits at the most within three months of his date of superannuation whereas now he is getting it after more than five years. From the details of the communications between the State Government and the Union Public Service Commission as given in the reply statement we also find that the State Government, when the rules required for imposing the cut in pension with the approval of the Central Government, without obtaining the same referred the matter to the UPSC. To that extent, the delay could have been avoided if the State Government had acted in accordance with the rules. By denying the interest to the applicant we are of ~~their~~ ^{our} view that the State Government is in effect imposing a punishment on the applicant even though the Central Government has dropped the case.

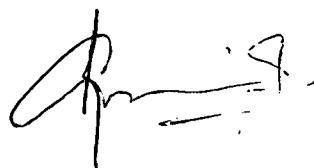
Learned counsel for applicant during the course of the arguments drew our attention to the judgment of the Hon'ble High Court of Kerala in Kesavan Vs State Government reported in 1989 (1) KLT 135 and submitted that the applicant's case is similar to the petitioner in that case and that the disciplinary proceedings against the applicant was illegal and for the delay the applicant

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was not responsible and as held by the High Court of Kerala in that judgment, the applicant herein entitled for interest. Learned counsel for respondents submitted that the said judgment covers a case where the disciplinary proceedings was held as illegal. Here in this case the disciplinary proceedings against the applicant had been initiated and continued in accordance with the rules, with proper sanction and could not be held as illegal and hence interest is not admissible in this case.

After considering rival submissions and keeping all the aspects in view as brought out in the foregoing paras we hold that the applicant is entitled for interest on the delayed payment of Death cum Retirement Gratuity due to him. On a specific query to the learned counsel for applicant he submitted that the applicant has been getting his pension in the form of provisional pension and we also find the same to be so from A-4 dated 1.1.2000. So the applicant is entitled for interest only for the Death cum Retirement Gratuity due to him. However, as the State Government is not only responsible for the delay in releasing the Death cum Retirement Gratuity we order only payment of 12% interest. The same shall be paid from the date of three months after the date of retirement to the date of payment of Death cum Retirement Gratuity.

As already held by us, in this case, the challenge is against the State Government's order A-5. The reason given by the State Government for refusal of the request of the applicant for payment of interest is not found to be in order as held by us

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from the contents of A-2. Accordingly A-5 is set aside and quashed. The first respondent is directed to grant interest to the applicant at the rate of 12% per annum from three months after the date of superannuation of the applicant to the date of actual payment of Death cum Retirement Gratuity to him.

The Original Application stands allowed to the above extent. No order as to costs.

Dated the 5th April, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

vs

A P P E N D I X

Applicant's Annexure:

1. A-1: True copy of the judgment in OA 1769/98 of this Hon'ble Tribunal.
2. A-2: True copy of the order dated 2.11.99 issued by the 4th respondent.
3. A-3: True copy of the representation made to the 1st respondent on 14.12.99.
4. A-4: True copy of the order No.GO(RT) No.30/2000-Fin dated 1.1.2000.
5. A-5: True copy of the order dated 25.1.2000 issued by 1st respondent.