

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.236/2008
Dated the 13th day of May, 2008

CORAM :
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

P.Krishnan Chettiar,
Retd. Divisional Forest Officer,
Lions Nagar, Mundakkal, Kollam
now residing at
4A, Pittapillil Enclave, Panchavadi Colony,
Vytilla, Ernakulam. ... Applicant

By Advocate Mr.K.G.Radhakrishnan

V/s.

- 1 The Union of India
represented by the Secretary
to Government of India,
Ministry of Forests,
New Delhi
- 2 The Chief Secretary to Govt. of Kerala,
Government Secretariat,
Thiruvananthapuram
- 3 The Chief Conservator of Forests (Admn),
Thiruvananthapuram
- 4 The Accountant General, Kerala,
Thiruvananthapuram
- 5 The Vigilance Director, Kerala,
Thiruvananthapuram ... Respondents

By Advocate Mr.TPM Ibrahim Khan SCGSC(R-1)
Mr.R.Premsankar, G.P. (R 2-5)

The application having been heard on 13.05.2008, the Tribunal on the
same day delivered the following



13/5/08
13/5/08

(ORDER)

Hon'ble Mr.George Paracken, Judicial Member

The grievance of the applicant in this OA is that the respondents have not released the balance amount of Rs.1,34,927/- payable to him on account of DCRG.

2 The applicant belonged to the IFS cadre of the Government of Kerala and he was working under Respondent No.3, namely, the Chief Conservator of Forests (Admn), Thiruvananthapuram. He retired from service on 31.12.1997. At the time of his retirement, three vigilance cases namely, C.C.No.11/2000, C.C. No.12/2000 and C.C. No.29/2000 and they were pending against him before the Enquiry Commissioner and Special Judge, Thrissur, Kerala. Later on, was been acquitted from all those cases by the aforesaid Enquiry Commissioner, Thrissur vide order dated 27.9.2005.

3 However, in view of the aforesaid pendency of the vigilance cases, the respondent State Government had sanctioned only the provisional pension, that is full pension, of Rs.5,984/- p.m., at the time of his retirement and the DCRG amount of Rs.2,34,927/- payable to him was not released. He has, therefore, approached the Hon'ble High Court of Kerala vide Writ Petition No.23310/2006 and the High Court, vide order dated 18.1.2007 (Annexure A-1), directed the respondent State government to pay full pension with arrears to the petitioner as an interim measure. By a subsequent order dated 4th May, 2007 (Annexure A-2), the



High Court modified its earlier order dated 18.1.2007 and directed the respondents to release Rs,1,00,000/- also from his admissible amount of DCRG, within two weeks in view of the fact that he required money for the treatment of his heart ailment. Thereafter, the respondent State Government paid him Rs.1,00,000/- as part payment of DCRG. At the stage of final hearing of the aforesaid Writ Petition, the respondents raised the question of jurisdiction of the High Court to entertain the Writ Petition itself. Consequently, the Hon'ble High Court vide its judgment dated 2.4.2008 closed the petition with liberty to the petitioner to move this Tribunal. Accordingly, this OA has been filed before this Tribunal.

4 The applicant has submitted that he is suffering from heart ailment and is undergoing treatment from the Department of GI Surgery, Amrita Institute of Medical Science at Kochi. He has also submitted that he is legally entitled to get the pensionary benefits with interest considering the long pendency of his legal right. He has, therefore, sought a direction to respondents to take immediate action to disburse the arrears of pensionary benefits due to him without further delay alongwith interest.

5 When this OA was initially heard on 5.5.2008, notices were issued to both the counsel for the Union Government and the counsel for the State Government and they were directed to file their respective replies within a short period so that the interim relief sought by the applicant could be considered. Today, when the matter was taken up, counsel for Union Government submitted that they are only a formal party in this matter and no reply is necessary from their side. The counsel for the State



Government has, however, submitted that though the Court of enquiry and Special Judge in its order dated 27.9.2005 acquitted the petitioner in all the three vigilance cases pending against him, the Government has filed appeal against those orders before the Hon'ble High Court and they are still pending. They have, therefore, submitted that the balance amount of DCRG has not been paid to the Applicant.. The applicant on the other hand, relied upon the judgment of Kerala High Court in the matter of Aravindaksha Panicker N Vs The Accountant General, (A&F), Kerala and other (2007 (4) KHC 764 in which it has been held that mere pendency of departmental or judicial proceedings is not a ground for Government to withhold DCRG due to a Government servant beyond 3 years after retirement. The operative part of the order reads as under:-

"23 Counsel on either side referred to several decisions of this Court touching upon Rule 3 Part III of the Rules. For the sake of completion, I shall now refer to the same in George v. Tahsildar, Cochin 1992 (2) KLT 919, the Court held that the misconduct alleged against the Government servant is not one causing a pecuniary, cannot be treated as a proceedings coming within the purview of Rule 3 Part III of the Rules. In Karunakaran Pillai v. State of Kerala 1994 (1) KLT 78, it was held that the Government has no authority to withhold the pensionary benefits payable to the pensioner on the sole ground that a criminal case of misappropriation is pending against him. The Government's right to fix the liability and recover the same from the gratuity, in terms of the Rules, was at the same time, recognized in Jayarajan v. State of Kerala 2001 (3) KLT 929, a Division Bench of this Court recognized the right of the Government to continue the proceedings under Rule 3 Part III of the Rules even in the absence of an allegation of pecuniary loss to the Government. In the decision reported in Sreepath Bhatt v. Tahsildar, 2004 (3) KLT SN 17, Case No.22 it was held that inspite of the pendency of the Vigilance enquiry, provisional pension and other terminal benefits can be paid and bar is against the payment of DCRG. A Full Bench in Raveendran Nair v. State of Kerala 2007 (1) KLT 605 FB held that



recovery from pension can be ordered even if no pecuniary loss as such is caused to the Government. The question as to how far the interdiction against the payment of DCRG on account of the pendency of a judicial proceeding can be exercised did not come up for consideration of this Court in Sreepath Bhatt's case. In Sugathan v. Cochin Devaswom Board 2005 (1) KLT 46, a Division Bench of this Court held that a portion of DCRG cannot be withheld after retirement without initiating any departmental proceedings while in service. In the said case, the Bench of this Court issued a mandamus, for disbursal of the withheld portion of the DCRG finding that quantification and recovery has not taken place within a period of one year. In Bhaskara Hegde v. State of Kerala 2005 (2) KLT SN Page 10 Case No 9 this Court held that mere pendency of a criminal case is not a ground to hold full pension or DCRG to the pensioner.

24. None of the judgments of this Court have taken a view inconsistent with the scope and ambit of Rule 3A(a) of Part III of the Rules, as had been delineated above. Nor has this Court held that the Government has a right to retain the DCRG even after a period of 3 years from the date of retirement, without the determination and quantification of the liability and intimation of the same as contemplated by Note 3 of Rule 3 of Part III of the Rules.

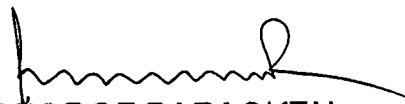
25. For all the reasons mentioned above, I am of the view that the petitioner is entitled to succeed. The 2nd respondent is directed to take appropriate steps to see that the DCRG found admissible and due to the petitioner by the Accountant General is disbursed to him within a period of two months from the date of receipt of a copy of the judgment. I make it clear that it is without prejudice to the right of the Government to initiate appropriate proceedings for recovery of loss, if any, caused to it by the petitioner, by recourse to the Civil Court. In the facts and circumstances of the case, there will be no orders as to costs."

6. In my considered opinion, the present case is fully covered by the aforesaid judgment of Hon'ble High Court of Kerala. It is an admitted fact that the applicant retired from service on 31.12.1997 and it is more than 10 years now that he has not received the full DCRG admissible to him. Moreover, the Enquiry Commissioner and Special Judge, Thrissur, Kerala acquitted him from all the three vigilance cases pending before

them vide order dated 27.9.2005. Filing an appeal against the said order is not a good and sufficient reason for the respondent State Government to withhold the DCRG, particularly when the applicant is suffering from heart ailment and he requires the money urgently to meet the immediate medical expenses.

7 In the aforesaid circumstances, I allow the OA and direct the State Government to disburse the balance amount of DCRG amounting to Rs.1,34,927/- with interest as admissible under the rules within a period of thirty days from the date of receipt of a copy of this order. As regards the other pending pensionary benefits, including commutation of pension, the applicant may make a detailed representation to the respondents who in turn shall consider the same in accordance with the rules and pass a reasoned order within two months of receipt of the same.

9 There shall be no orders as to costs.



GEORGE PARACKEN
JUDICIAL MEMBER

abp