

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

O.A.No.240/07

Thursday this the 29<sup>th</sup> day of November 2007

**C O R A M :**

**HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN**

Azhakan,  
Rtd. TBOP, Postal Assistant,  
Mallapally West, Thiruvalla Postal Division.  
Residing at Kallolikkal House, Narakathani,  
Vennikulam, Chengannur.

...Applicant

(By Advocate Mr.V.Sajith Kumar)

**Versus**

1. Union of India represented  
by the Secretary to the Government,  
Ministry of Communications,  
Department of Posts, Government of India,  
New Delhi.
2. The Chief Post Master General,  
Kerala Circle, Trivandrum.
3. The Superintendent of Post,  
Thiruvalla Postal Division, Thiruvalla.

...Respondents

(By Advocate Mr.P.J.Philip,ACGSC)

This application having been heard on 29<sup>th</sup> November 2007 the Tribunal on the same day delivered the following :-

**ORDER**

**HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN**


The applicant, who is a retired Postal Assistant, is aggrieved by the delay in disbursing the gratuity and commuted value of pension. It is submitted that he retired from service on 31.7.2003. Though the respondents by Annexure A-1 and Annexure A-2 orders sanctioned his gratuity and commuted value of pension, the same had been withheld and he was permitted drawal of provisional pension only for the last three years. According to the applicant there was no departmental proceedings

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pending against the applicant at the time of his retirement but it is submitted that a criminal case had been initiated pursuant to a compliant raised by MPKY agent in April 1998. He was convicted and sentenced to undergo rigorous imprisonment in CC 962/98 by the Magistrate Court. The Sessions Court on appeal confirmed the conviction and sentence passed by the JFMC, Thiruvalla. And the Hon'ble High Court in RP No.1507/07 has suspended the sentence. It has been contended that the criminal case was only due to some personal animosity and pendency of a criminal compliant need not be a ground to delay the gratuity and payment of commuted value of pension. He has also relied on the judgment of the Hon'ble Supreme Court in Vijay Mehrota Vs. State of UP and others JT 2000 (5) SCC 171.


2. Respondents have filed a reply statement denying the contention of the applicant. It has been submitted that the departmental investigation by the 3<sup>rd</sup> respondent had revealed that while working as Sub Postmaster, Chathankary Post Office during the period from 9.5.1997 to 11.5.1998 the applicant had accepted a sum of Rs.9980.50 from MPKBY Agent for depositing in RD Accounts, but failed to credit the amount into the Post Office Accounts and misappropriated the Government money for personal purposes. A criminal case was registered against him under Crime No.158 of 1998 under Section 403 and 409 of the Indian Penal Code and CC 962/98 before the First Class Magistrate Court, Thiruvalla found him guilty. The judgment of the JFMC dated 9.8.2005 was confirmed in appeal by the Sessions Court in Criminal Appeal No.271/05. The applicant thereafter moved the Hon'ble High Court of Kerala by preferring Criminal Revision No.1507 of 2007 wherein there is a direction to suspend the execution of the sentence. In the above circumstances the provisional pension was



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sanctioned to the applicant in accordance with rule 69(1)(b) of the CCS (Pension) Rules. It is specifically provided in Rule 9(4) of the CCS Pension Rules that in the case of a Government Servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under Sub rule (2), a provisional pension as provided in Rule 69 shall be sanctioned. It is also specifically provided in Sub rule 1 (c) of Rule 69 that no gratuity shall be paid to the Government Servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. Again it is specifically provided in Rule 4 read with Rule 12 (v) of the Central Civil Services (Commutation of Pension) Rules, 1981 that commutation of provisional pension cannot be granted when any departmental or judicial proceedings are pending. Therefore the respondents have submitted that in the light of the clear provisions of the rules, Annexure A-1 and Annexure A-2 orders could not be given effect to and the amounts due to the applicant could not be disbursed. There is nothing deliberate in the action of the respondents. The merits of the case pending consideration before the Hon'ble High Court cannot be gone into in this proceeding. There is no inaction on the part of the respondents who had acted strictly in accordance with the rules.

3. We have heard Shri.V.Sajith Kumar, learned counsel for the applicant and Shri.P.J.Philip, ACGSC for the respondents. The counsel for the applicant reiterated the averments in the O.A and emphasized that the applicant was not proceeded against in any departmental inquiry under CCS (CCA) Rules and therefore he is entitled for the payment of gratuity and pension. He, however, confirmed that the applicant is receiving provisional pension.



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4. Admittedly the applicant has been charge sheeted in a criminal case from 1998 onwards and was facing trial at the time of his retirement on 31.7.2003. The rule provision in the CCS (Pension) Rules and CCS (Commutation of Pension) Rules, 1981 are very clear and there is no ambiguity in the matter in respect of eligibility for payment of gratuity and commutation of pension, in such cases where either departmental proceedings or judicial proceedings are pending gratuity and commutation of pension has to be withheld and only payment of provisional pension is permitted under the rules. The provisions of Sub rule 1 (c) of Rule 69 read with Rule 9(4) and Rule 4 read with Rule 12 (v) of the CCS (Commutation of Pension) Rules, 1981 in this regard are transparent and unambiguous and in the light of the above clear rule position, the reliefs in the above O.A are not liable to be granted. As rightly contended by the respondents the merits of the criminal case are not to be gone into by this Tribunal at this stage and it is to be noticed that the criminal revision petition is still pending before the Hon'ble High Court of Kerala. The decision of the Apex Court referred to by the applicant is also not applicable to this case as it only relates to the right for payment of retiral benefits in the normal course. The respondents have acted strictly in accordance with rules mentioned above. I do not see any justification for interference in the matter, therefore, the O.A is dismissed.

(Dated the 29<sup>th</sup> day of November 2007)

  
**SATHI NAIR**  
**VICE CHAIRMAN**

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