

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 243/92  
~~XXXXXX~~

DATE OF DECISION 13.4.92

KA Kittu

Applicant (s)

Premjit Nagendran

Advocate for the Applicant (s)

State of Kerala <sup>Versus</sup> Rep. by the  
Chief Secretary, Govt.

Respondent (s)

Secretariat, Thiruvananthapuram  
and another.

D Sreekumar

Advocate for the Respondent (s) -1

MD Nedumpara, ACGSC

Advocate for Respondent-2

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member  
and

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

Sh NV Krishnan, A.M

The applicant was a Member of the Indian Administrative Service cadre of Kerala State. While working as Secretary (Excise), Board of Revenue, he was suspended from service on 10.10.85 (Annex.A) pending an enquiry into certain allegations against him. The memorandum of charges was issued on 22.11.85 and after considering the reply dated 5.2.86 an Enquiry Authority was appointed by the order dated 13.3.86 (Annexure-B) of the first respondent.

2 During the pendency of the enquiry, the Govt. of Kerala (Respondent-1) revoked the order of suspension on compassionate grounds, without prejudice to the continuance of the disciplinary proceedings. He was, accordingly, reinstated by the order dated

13.1.87 (Annexure D) and he joined duties on the same day. He retired thereafter on superannuation on 31.1.87.

3 The aforesaid disciplinary proceedings were continued after retirement and they have still not come to an end. Therefore, except for a provisional pension, other pensionary benefits have not been sanctioned to the applicant who is now aged 63. In the circumstances, the applicant has filed this application praying for the following reliefs.

- "(i) to issue a direction to the first respondent to pass final orders on the disciplinary proceedings initiated against the applicant in the year 1985;
- (ii) to direct the respondents to pay all the retirement benefits including full pension on the basis of the revisions of pay effected from time to time, gratuity and other monetary benefits with the interest at 12% from the due date within three months from the date of the original application; and
- (iii) to declare that the applicant is in service without any break due to Annexure-A suspension order."

4 The applicant has stated that he was given a provisional pension of Rs 1592/- per month and that on the basis of the revised scale of pay which has come into force from 1.1.86, he is entitled to get a pension of Rs 2500 per month. He has, therefore, prayed by way of interim relief that the provisional pension be directed to be enhanced to Rs 2500 per month.

5 When the case was admitted, the respondents were directed to file their reply to the application. In regard to the interim relief, the matter was adjourned

to 9th March, 92 to enable Respondent-1 to make submissions.

6 Accordingly, the learned counsel for Respondent-1 filed a statement on behalf of the Respondent-1. The facts are more or less admitted. The applicant has retired on 31.1.87 and the enquiry is still to be completed. In view of the provisions of Rule-6 of All India Services (Death-cum-Retirement Benefits) Rules, 1958, Rules DCRB/ for short, the only order that can now be passed, if the applicant is found guilty of grave misconduct or negligence resulting in pecuniary loss to Government is to with-hold or withdraw the pension or any part of it, whether permanently or for a specified period. After completion of the enquiry, the State Government has tentatively come to the conclusion to reduce the pension of the applicant by Rs 200 per month. The respondent-1 has stated as follows in this connection:

and has given effect to this deduction even though final orders under Rule 6(1) have yet to be passed.

"Regarding the pensionary claims it is pointed out that according to the sub-rule (2) of the Rule 6 of the AIS (DCRB) Rules, in cases where departmental proceedings are pending, only provisional pension not exceeding the maximum pension will be sanctioned. In such cases no gratuity or DCRG will be paid till the conclusion of such proceedings. A pension of Rs 1191/- was admitted to the applicant and originally a provisional pension of Rs 850/- per mensem was sanctioned. Subsequently, the provisional pension was raised to Rs 991 with effect from 1.2.87 - which is Rs 200 less than 100 per cent pension of Rs 1191 as per G.O. RT. 991/90/Fin. dated 27.2.1990."

7 This case was heard on 9.3.92 on the question of granting interim relief. The Bench heard the learned counsel for the applicant and first respondent. There was no representation on behalf of the second respondent. After hearing the counsel and considering the circumstances

it was felt of the case and the nature of the reliefs sought, that the original application itself could be disposed of finally, even though it was listed for completion of application. pleadings on 19.3.92. Hence I proceed to dispose of this/

8 Admittedly, the pay of the applicant in the revised scale has not been fixed from 13.1.87 when he was reinstated after revoking the order of suspension. It is also admitted that only a provisional pension is being paid to him on the basis of the pre-revised pay scale.

9 I am of the view that in so far as the period of suspension is concerned i.e., the period from 10.10.85 to 12.1.87 the relief, if any, will have to be granted only alongwith the final order that has to be passed in the disciplinary proceedings against him. However, I have no doubt, in my mind, that in view of his reinstatement on 13.1.87, the applicant is entitled to fixation of his pay, from that date in the revised pay scale, which in the nature of things, will be provisional and tentative as it might undergo a drastic change if the period of suspension is finally counted as duty for all purposes.

10 Likewise, the pension has been calculated earlier, on the basis of the pre-revised pay scale. I am clear in my mind that the pension too, should be calculated on the basis of the revised pay ~~xxxxx~~ as mentioned above.

11 The other question is whether w.e.f. the date of his retirement, that is, from 1.2.87, the Respondent-1 can limit the Provisional pension to an amount which is less than the full pension by Rs 200/- per month even though the disciplinary proceedings are still pending and final orders are yet to be passed. The learned counsel for respondent-1 relies on Rule 6(2) of the DCRB Rules. Rule 6(2) and Rule 6(3) are reproduced below:

"(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 proceeding, 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, proceeding 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 thereon

Provided that where disciplinary proceedings 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 proceedings, 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." (emphasis supplied)

12. It is clear that the State Government has decided tentatively that an amount of Rs 200 should be with-held from the applicant's pension permanently. This decision can be given effect to only if a final order is passed in the disciplinary proceedings after the necessary clearance are obtained from the Govt. of India and the Union Public Service Commission in the matter.

13. The learned counsel for Respondent-1 readily admitted that any such final order in the disciplinary proceedings will have effect only either from the date on which the order is passed or from any prospective date indicated therein. It cannot have retrospective effect. In other words, if a final order is passed to-day in the disciplinary proceedings, withholding Rs 200 from the applicant's pension, it will be effective in respect of the pension payable to the applicant commencing from the month of March, 92 and thereafter. It will not be effective for the pension paid from 1.2.87 onwards.

The learned counsel for Respondent-1, however, insisted that the State Government is competent to withhold Rs 200 from the pension even from 1.2.87 even though the final order --as indeed it has done, as can be seen / has not yet been passed/ In other words, the extraordinary claim of the State Government is that by way of an interim

from the reply  
extracted in  
para 6 (supra)

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order - which is what it really is - they can make a recovery which admittedly, the <sup>Central Government</sup> cannot recover if a final order is passed to-day by them under Rule 6(1).

14 I have examined the legal position at some length. I am satisfied that Rule 6(2) of the DCRB Rules cannot be interpreted in such a manner as to authorise the appropriate government to reduce the provisional pension by a certain amount from the date of retirement - or from any specified date - pending the final decision of the Central Government in the departmental proceedings under Rule 6(1) to withhold or withdraw the pension.

15 Rule 3(2) of the DCRB Rules contains a similar provision authorising the Central Government to withhold or withdraw the pension or any part of it if, after retirement, the pensioner is convicted of a serious crime or is held guilty of grave misconduct and on that ground a reference is received from the State Government. This can be done only after consulting <sup>to be taken</sup> the UPSC. Pending a final decision on a reference from a State Government, the Rule does not authorise the Central Government to reduce the pension provisionally.

16 Rule 6 applies where the departmental or judicial proceedings, commenced before the person retired but continued after his retirement, or subject to the restrictions mentioned therein, instituted after the retirement ends in a finding that, while in service, the pensioner was either guilty of misconduct or he had

caused pecuniary loss to Government by negligence.

It is only when such a final decision is taken in accordance with law, the powers under Rule 6 to withhold or withdraw any part of the pension can be invoked by the Central Government. It is to be noted that Rule 6 does not specifically authorise the Central Government to withdraw or withhold the pension from a retrospective date. Any order passed by the Central Government under Rule 6(1) - on the conclusion of the disciplinary or judicial proceedings- shall have prospective effect only.

17 That being the case, it is extraordinary to contend that until such an order is passed the State Govt. can provisionally reduce the pension from the date of retirement.

18 This can be demonstrated <sup>to be baseless</sup> by two illustrations:  
under Rule 16 of the CCA Rules, 1965

(i) If proceedings are initiated to recover from an employee a sum of Rs 20000/- on the ground that he has caused loss to this extent by his negligence - in a case where a Government servant is still in service - under the provisions of the relevant rules, the Government cannot, pending a decision in the proceedings, recover from the salary of the employee, on a provisional basis, an amount of, say, Rs 200/- p.m. For, there is no specific permission authorising this recovery.

(ii) In the above case the Government could certainly suspend the employee and pay him only



subsistence allowance, which will be less than the salary. That, however, is not by way of recovery. It is an interim measure authorized by the Rules. After one has retired from Government, he cannot be suspended. But that does not mean that recovery can start before Central Government takes a final decision.

19 In the circumstance, I am somewhat preplexed by the phrasceology of Rule 6(2) of the DCRB Rules, which undoubtedly, could be construed to mean that the State Government has the power of paying a reduced amount of pension, purely on provisional basis till a final order is passed under Rule 6(1) thereof.

I am satisfied for the reasons already given that the State Government cannot do provisionally, what cannot be done finally by the Central Government under Rule 6(1) of the DCRB Rules.

20 A comparison with the powers of Government under the CCS (Pension Rules) 1972 - Pension Rules, for short - will be instructive. Provisions corresponding to Rule 3 and 6 of the DCRB Rules are contained in Rule 8 & 9 respectively of the Pension Rules. Rule 9(4) of the Pension Rules directs that a provisional pension should be paid as provided in Rule 69 pending completion of the departmental or judicial proceedings and final orders thereon. It is significant to note the provisions of Rule 69 which of the Pension Rules is extracted below from "Swamy's Pension Compilation (Eleventh Edition):

" 69. Provisional Pension where departmental or judicial proceedings may be pending.

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(1) (a) In respect of a Government servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorise the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service upto the date of retirement of the Government servant, 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.

(b) The provisional pension shall be authorised by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority."

21 I, therefore, notice that there is substantial difference between the provisions of Rule 6(2) of the DCRB Rules and Rule 69 of the CCS(Pension) Rules. This is to the detriment of the All India Service Officers if the provisions in Rule 6(2) of the DCRB Rules are interpreted in the manner in which it has been interpreted by the Govt. of Kerala in this case. This has to be set right by the Government of India.

22 That takes us to another discrepancy in the published texts of Rules and instructions. The learned counsel for the respondent relies on the Department of Personnel & Administrative Reform's letter No.25011/5/79-AIS-II dated 31.8.79 (published at page 153 of "The All India Services Manual (Fifth Edition) Part-I - The All India Services ( Death-cum-Retirement Benefits) Rules 1958" issued by the Department of Personnel and Administrative Reforms for the contention that Rule

6(2) of the DCRB Rules gives a discretion to the State Govt. to pay as provisional pension - pending an order under Rule 6(1) thereof - an amount less than the maximum pension. The text of that letter is ~~xxxxxx~~ reproduced below:

" The Ministry of Finance (Department of Expenditure) have issued orders in the case of Central Government servants to the effect that retired Central Government servants against whom departmental/judicial proceedings are pending under rule 65 and 74 of the C.C.S (Pension) Rules, 1972 shall be sanctioned 100 per cent of the pension normally admissible to them as provisional pension vide their OM No.4(1)E(V) (A)/78, dated the 28th February, 1978, copy (annexed).

2 Under sub-rule (2) of rule 6 of AIS(DCRD) Rules, 1958, the State Government is competent to sanction provisional pension to an All India Service Officer against whom departmental / judicial proceedings under sub-rule (1) of this rule, are instituted/continued by them and in cases where such proceedings are instituted/continued by the Central Government, the Central Government is the competent authority to sanction provisional pension. The State Government may like to follow the instructions contained in the Ministry of Finance O.M., dated 28th February, 1978, referred to above while granting provisional pension to All India Services Officers against whom departmental/judicial proceedings are instituted/continued by them. It has been decided that the instructions contained in the said O.M. will be applied while dealing with the cases of All India Service Officers against whom departmental/judicial proceedings are initiated/continued by the Central Government.

(DP&AR letter No.25011/5/79-AIS(II) dated the 31st August, 1979)

23 In so far as the legal issue whether under Rule 6(2) of the DCRB Rules, the State Governments have powers to provisionally reduce the pension, pending a final decision under Rule (1) thereof, we have already held that the State Governments do not have such powers. dated 31.8.79

The aforesaid letter/does not examine whether the date alone on which/an order passed under Rule 6 (1) of the DCRB

Rules can become effective does not itself curtail the powers of the State Governments under Rule 6(2) *ibid*. On the contrary, it informs the State Governments that a decision taken by the Central Government in regard to the Central Civil Services has been extended to the All India Services also, where the Central Government is the appropriate government to sanction provisional pension under Rule 6(2) of the DCRB Rules. In this connection, reference to Rule 65 and 74 of the Pension Rules has been made both in the letter dated 31.8.79 extracted above as also in the letter dated 28.2.78 referred to therein and which is also reproduced on the same page of the aforesaid publication. Para-2 of the letter dated 28.2.78 is reproduced below:

" Rule 65 and 74 *ibid*, *inter-alia*, provide that the provisional pension in such cases should not exceed the maximum pension which would have been admissible on the basis of the qualifying service upto the date of retirement of the Government servant. It has been reported that the discretion vested in the Heads of Offices by these rules which lay down the ceiling for provisional pension, it being used by them to pay less than 100 per cent of the admissible pension. The matter has been considered and it has been decided that even in cases covered by the above mentioned rules 100 per cent pension, which is otherwise admissible to the Government servants should be authorised as provisional pension, as in cases of normal retirement. No gratuity shall however be paid at this stage."

24      The point I would like to make is that a reference to Swamy's Pension Compilation shows that

u      Rule 65 and Rule 74 of the Pension Rules do not provide

that provisional pension should not exceed the maximum pension as stated in para 2 of the letter dated 28.2.78. They cover entirely different matters viz 'Authorisation of pension and gratuity by the Accounts Officer' and the 'Date of retirement to be notified'. The appropriate rule is Rule 69 of the Pension Rules which I have extracted in para 20 supra. That Rule specifically directs that the provisional pension shall be equal to the maximum pension and that there is no discretion in fixing the quantum of provisional pension below such maximum.

Unless it is established, on verification by the Ministry of Finance, that the Pension Rules published in 'Swamy's Pension Compilation' is full of mistakes, it appears that the letter dated 28.2.78 of the Ministry of Finance is based on a misunderstanding of the rules. This is another matter to which the attention of the Ministry of Finance has to be drawn to issue necessary corrections to avoid confusion hereafter.

25 I had to take pains to point out to these discrepancies because these are the texts which are referred <sup>to</sup> ~~in~~ deciding the applications filed before the <sup>Tribunal.</sup> ~~the~~

It is necessary to ensure that these texts are

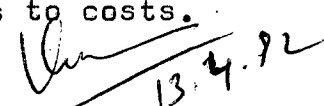
absolutely correct so that there is no mistake in knowing

what exactly is the Rule and what are the instructions.

26. For these reasons, I dispose of this application with a direction to the first respondent to fix the pay of the applicant provisionally in the revised pay scale-- which had come into force from 1.1.86--with effect from 13.1.87, on which date he was reinstated and on his retirement on 31.1.87, to grant him from 1.2.87 the full pension due to him on the basis of the revised pay for the month of January, 1987 in accordance with law, without effecting any deduction therefrom, as a provisional pension under Rule 6(2) of the All India Services (Death cum Retirement Benefits) Rules 1958. I also direct that the arrears due to the applicant on these two counts shall be paid to him within one month from the date of receipt of a copy of this judgement. The respondents 1 and 2 are directed to take expeditiously all steps needed to complete the long pending disciplinary proceedings and the second respondent is directed to pass final orders under Rule 6(1) ibid within four months from today.

27. A copy each of this judgement be sent to the Secretary to the Government of India, Ministry of Personnel, Public Grievances and Pension and to the Secretary to Government of India, Ministry of Finance for such action as they consider necessary in the light of the observations made in para 21 and 24 respectively.

28. There will be no order as to costs.

  
(N.V. Krishnan)  
Administrative Member

N. Dharmadan, M(J)

29. I have gone through the judgment written by my learned brother and I agree with his conclusions. However, I add my reasons.

30. A retired IAS officer filed this application raising following two contentions viz. (i) failure of the first respondent to pass final orders on the disciplinary proceedings initiated against him in 1985 even after lapse of 5 years of his retirement on 31-1-87 is illegal and arbitrary (ii) non-payment of full pension and other monetary benefits due to him is illegal and also violative of Article 41 of the Constitution of India.

31. The above two contentions are opposed by the State Government on the ground that the State Govt. came to the conclusion that "the officer deserved punishment and tentatively decided to impose a penalty of reduction of pension of Rs.200/- per mensem on the applicant". No such order has been produced for our perusal by the learned State Govt. Pleader nor was <sup>it</sup> served on the applicant. But there is a statement in the reply that as per G.O. R.T. 991/90/Fin. dated 27-2-90, the provisional pension was fixed at Rs.991/- with effect from 1-2-87 which is Rs.200/- less than 100% pension of Rs.1191/- and this has been issued under Rule 6(2) of the All India Service(Death-cum-Retirement Gratuity) Rules 1968.

32. Rules 6(2) has been quoted by my learned

brother in his judgment at para-11. It deals with power of fixing provisional pension pending disciplinary action. A reading of this rule makes it crystal clear that it confers on the Govt. which instituted the disciplinary proceedings against the delinquent, the power to fix 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.. On the other hand <sup>2</sup> Sub-rule (1) of the Rule 6 <sup>Central</sup> gives powers to the Govt. for 'withholding or withdrawing a pension or any part thereof.... or ordering recovery from the pension..' of a delinquent employee: No such power is in the sub-rule (2) While sub rule 6(1) deals with the penal <sup>any penal aspect.</sup> It contemplates <sup>2</sup> power, sub rule 6(2) makes no mention of the normal situation <sup>part of it.</sup> However, both the sub rules appear to be <sup>2</sup> operative from the date of service of an order. Since no such order had been served on the applicant it is pre-mature to interpret this provision and <sup>take a</sup> final decision <sup>2</sup> on this <sup>2</sup> ~~case.~~ <sup>2</sup> ~~aspect.~~ In the reply there is only a statement that the State Govt. had tentatively decided to impose a penalty of reduction of pension of Rs.200/- per month and it should be withheld permanently from the pension. This order containing the tentative decision of the State Govt. was neither communicated to the applicant before implementing the same nor was it produced before the Tribunal for our perusal at the time of hearing. The applicant did not get an opportunity to understand the scope of the decision of the Govt. and attack the same in case it is necessary. Without seeing the wording it would be difficult to come to a conclusion and give an opinion in this behalf. Hence, I am of the view that the deduction

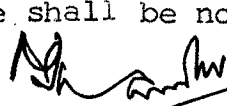


of the amount of Rs.200/- from the pension of the applicant on the basis of the tentative conclusion of the Govt. as indicated in the reply affidavit is illegal and cannot be implemented at this stage.

33. Regarding the undue delay in completing the disciplinary proceedings no satisfactory and convincing explanations have been furnished by the respondents in the reply except stating that the UPSC is not in a position to tender its advice due to absence of English translation of the documents. No details about the steps taken by the State Govt. or relevant date are furnished to verify whether this reason is genuine or not. However, the long delay remains unexplained and the respondents are bound to complete the proceedings within four months from today.

34. Accordingly, this application can be disposed of in the interest of justice with appropriate directions. First respondent should fix the provisional pension of the applicant in the revised scale with effect from 1-3-87 i.e. the date on which he retired ~~xxxxxx~~<sup>4</sup> and grant him pension (provisional), due to him on the basis of the revised pay scales. The applicant shall be entitled to arrears thereto. The first respondent shall finalise the disciplinary proceedings within a period of 4 months from the date of judgment.

35. The Original Application is allowed to the extent indicated above. There shall be no order as to costs.


  
(N. Dharmadan)  
Member(Judicial)


ORDER OF THE BENCH

36. For the reasons given in our judgements, we dispose of this application with the following directions:-

- (i) The first respondent is directed to fix the pay of the applicant, provisionally, in the revised pay scale, which had come into force from 1.1.86, with effect from 13th January, 1987, i.e. the date on which he was reinstated.
- (ii) The first respondent is directed to grant to the applicant the provisional pension, pending the completion of the disciplinary proceedings, which should be equal to the full pension due to him in accordance with law, without effecting any deduction therefrom.
- (iii) The arrears due to the applicant on account of these directions shall be paid to him within a period of one month from the date of receipt of a copy of this judgment.
- (iv) The respondents are directed to take expeditiously all steps needed to complete this long pending disciplinary proceedings and the first respondent is directed to pass final orders under Rule 6(1) of the All India Services (Death Cum Retirement Benefits) Rules, 1958, within 4 months from the date of this judgement.

37. The OA is allowed to the extent indicated above. There shall be no order as to costs.

  
(N. Dharmadan)  
Judicial Member

  
13.4.92  
(N. V. Krishnan)  
Administrative Member

13.4.1992