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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/000036/2019

Tuesday, this the 9th day of July, 2019

CORAM:

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER
HON'BLE MR.ASHISH KALIA, ...JUDICIAL MEMBER**

Dr.T.P.Senkumar IPS (Retired),
Aged 61 years,
S/o Prabhakaran,
former State Police Chief & Director
General of Police,
residing at T.C.38/976,
'Pratheeksha',
Anand Lane, P.T.P.Nagar,
Vattiyoorkavu PO,
Thiruvananthapuram-695 013. ...Applicant

(By Advocate Mr. P.Ramakrishnan)

V e r s u s

1. Union of India represented by the Secretary, Ministry of Home Affairs, New Delhi – 110 012.
2. The State of Kerala, represented by the Chief Secretary, to Government, Government Secretariat, Thiruvananthapuram – 695 001.
3. The Principal Secretary, General Administration Department, Government Secretariat, Thiruvananthapuram – 695 001.

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4. The Accountant General (A&E),
Kerala,
Office of the Accountant General,
Thiruvananthapuram-695 001.Respondents

(By Advocate Mr. M.Rajeev GP for Respondents-2&3 and Shri N.Anil Kumar, SCGSC for Respondents-1&4)

This application having been heard on 4th July, 2019, the Tribunal on 9th July, 2019 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

OA No.36/2019 is filed by Dr.T.P.Senkumar, IPS(Retd), aggrieved by the delay in disbursing cash equivalent to the commutation leave salary on the Half Pay Leave at his credit. The applicant is a former State Police Chief and Director General of Police, Kerala. He was appointed to the post from the afternoon of 31.05.2015. Subsequently, on 01.06.2016 he was transferred as Chairman and Managing Director of Kerala Police Housing and Construction Corporation. The applicant had challenged the transfer before this Tribunal by filing OA No.446/2016. This OA came to be rejected by this Tribunal as per order dated 21.07.2016. The challenge to the order of this Tribunal before the Hon'ble High Court of Kerala by OP (CAT) No.205/2016 also failed. Consequent to the orders issued by this Tribunal as well as the Hon'ble High Court of Kerala, the 2nd Respondent created an ex-cadre post of Director General of Institute of Management in Government in the apex

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scale and posted the applicant there as per GO dated 17.02.2017. The applicant challenged the dismissal of his OP (CAT) No.205/2016 before the Hon'ble Supreme Court. The Apex Court by its order dated 24.04.2017 disposed of the Civil Appeal directing the 2nd Respondent to reinstate the applicant as Director General of Police. Accordingly, the applicant was reinstated as per GO dated 06.05.2017 and went on to serve as DGP until he retired from service on 30.06.2017.

2. While in service, the applicant had availed Half Pay Leave with effect from 01.06.2016 to 31.01.2017. The Half Pay Leave for the period had been sanctioned by different orders over different segments of time, as per Annexures A1 to A6 series. The second respondent thereafter issued a GO dated 16.11.2017, whereby sanction was accorded for payment of cash equivalent to the leave salary in respect of the entire earned leave and half pay leave at the applicant's credit, subject to a ceiling of 300 days as on the date of retirement, subject to eligibility (Annexure A7). The applicant submits that he had sent a request for commuting his Half Pay Leave, since he had 619 days of HPL and 315 days of EL at his credit. But soon after his retirement, a case came to be registered against him at the Museum Police Station, Thiruvananthapuram City as Crime No.1302/2017 alleging forgery in the documents submitted for availing HPL. It was stated that the crime was registered on the direction of the then Chief Secretary, Smt.Nalini Netto and the Chief Secretary appears as an 'informant' in the FIR. This was followed

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by a complaint from A.J.Sukarno, who is also the complainant in the case before the Museum Police Station, to the Vigilance and Anti-Corruption Bureau alleging that documents submitted were forged ones. Also mentioned was a further allegation that the applicant had sanctioned loans beyond his powers while he was the Managing Director of KTDFC.

3. The applicant filed OP(Crl) No.535/2017 before the Hon'ble High Court against the complaint filed by Shri Sukarno. He also filed Crl.M.C.No.6076/2017 before the Hon'ble High Court challenging the proceedings in Crime No.1302/2017. By judgment dated 01.12.2017 in OP (Crl) No.535/2017, the Hon'ble High Court quashed the complaint holding the same to be a gross abuse of the process of the court. Subsequently, by order dated 13.04.2018 the Hon'ble High Court allowed Crl.M.C. No.6076/2017 by quashing the crime registered at the Museum Police Station as well. The judgments are produced as Annexure A8 and A9. Shri Sukarno filed an SLA (Crl) No.751/2018 against Annexure A8 judgment which was dismissed by the Hon'ble Supreme Court with imposing a cost of Rs.25,000/- by order dated 29.01.2018. The SLA(Crl) No.7688/2018 filed against Annexure A9 order by 2nd Respondent also came to be dismissed by the Hon'ble Supreme Court by order dated 28.09.2018.

4. After issue of Annexures A8 and A9 orders, the applicant had repeatedly requested the 2nd Respondent to disburse the cash equivalent to

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the commuted value of HPL. Initially the applicant was informed that the State Government was proposing to file an SLP against the Annexure A9 order. Upon the dismissal of the SLA (Crl) No.7688, a representation was filed by the applicant on 31.10.2018 (Annexure A10) before the 2nd Respondent for the same purpose, to which he received the reply that the documents relating to the leave application are in court custody and it would be necessary to retrieve them before processing his request (Annexure A11). Reminder sent by the applicant on 04.12.2018 received the same reply from the 3rd Respondent stating that the documents were in court custody and have to be received back (Annexure A12). The applicant attributes Annexures A11 and A12 and consequent delay in releasing his eligible HPL commuted amount to "vagaries on the part of the states' political and bureaucratic masters". The judgments of the Apex Court as well as the High Court of Kerala have been unequivocal in castigating the treatment meted out to him. When all else had failed, the 2nd Respondent by further delaying him the cash equivalent to commutation of leave salary of HPL, is prolonging his agony for malafide reasons.

5. As grounds, the applicant states that he has only sought for benefits which he is eligible for, under relevant All India Service (Leave) Rules, 1955 and he is being denied the same for extraneous and illegal reasons. Considerable delay was caused in processing his request for the benefit since early February, 2017 by false allegations and over enthusiasm exhibited

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by the 2nd Respondent to act on the same. Even after their efforts were met with disfavour by the highest judicial fora, Respondent-2 is delaying the disbursement for one reason or the other. The applicant seeks the following reliefs:

- A] Issue an order quashing and setting aside Annexure A11 and A12.
- B] Issue an order directing the 2nd and 3rd respondents to allow commutation of HPL availed by the applicant for the period 1/6/2016 to 31/1/2017 and disburse the cash equivalent forthwith.
- C] Hold that the delay in allowing commutation of the HPL due to the applicant for the period 1/6/2016 to 31/1/2017 is arbitrary, illegal and unjustifiable.
- D] Issue an order directing the 2nd respondent to pay cost for the delay in allowing commutation of HPL standing to the applicant's credit.
- E] such other order and directions as are deemed fit in the facts and circumstances of the case.

6. A reply statement has been filed on behalf of the 2nd Respondent, wherein it has been stated that the State Government has issued GO No.AIS-A2/63/2019/GAD dated 30.01.2019 allowing the benefit sought by Dr.T.P.Senkumar in full. While admitting that there has been delay in granting the eligible benefit, it is maintained that this had not been on account of deliberate lapse on the part of the Government. It is stated that the "pendency occurred in the matter due to litigation, which is beyond the control of the respondents". Thus it is maintained that the relief sought by the applicant by way of cost for the delay in granting commutation of HPL, is without any basis.

7. We have heard Shri P.Ramakrishnan, learned Counsel for the applicant

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and Shri M.Rajeev, GP representing the respondents. Shri Ramakrishnan maintained that the applicant had been harassed on many counts through willful actions of some quarters in the Government, particularly Smt.Nalini Netto, the then Chief Secretary. The fact that he had to rush to various courts of law to get redressal of his grievance on several occasions is an indication of the rancour and ill will that he had been subjected to. The respondents were willfully delaying the grant of his eligible benefits for one reason or the other and would have continued with their intransigence, but for the fact that he had chosen to approach this Tribunal by filing the OA. He had filed the OA on 14.01.2019 and anticipating yet another set back, the respondents have reluctantly issued the GO dated 30.01.2019 granting him the benefits. Shri Ramakrishnan pleads strongly that exemplary cost may be imposed on the 2nd Respondent for their various acts of omission and commission resulting in the long delay in granting the benefits due to a retired employee.

8. Shri Rajeev, on behalf of the respondents submitted that the reliefs sought in the OA have been granted to the applicant and the delay in disbursement of benefits was due to delay in getting documents from the courts.

9. We have considered the OA in detail. Due consideration was also given to the oral pleadings made before us by the contesting Counsel. From the

facts of the case, it is clear that the applicant had been the victim of certain unfortunate circumstances. He was removed from the post of Chief of State Police and was restored to the position only by the intervention of the Apex Court. During the period of his legal struggle and afterwards he had to subject himself for a prolonged medical treatment. He applied for commutation of his HPL to the admissible extent through a representation he made to the 2nd Respondent in February, 2017. But due to a complaint that the accompanying documents submitted by him were forgeries, the Police registered a case. Intriguingly the informant in the FIR registered in the Museum Police Station is the Chief Secretary of the State. Again Dr.Senkumar had to rush to the Hon'ble High Court for relief in respect of the FIR as well as the complaint filed by Shri Sukarno before the Vigilance and Anti-Corruption Bureau. The orders of the Hon'ble High Court in OP (Crl) No.535/2017 leaves little to the imagination in respect of the forces arrayed against Dr.Senkumar.

12. Some forces have been at work against the petitioner since his becoming the State Police Chief. The 4th respondent is only a tool in their hands. The court will be failing in its duty if it does not quash Ext P9 complaint which has been filed only to make sure that the petitioner is not appointed a member of the Kerala Administrative Tribunal. The court will be doing a disservice to the cause of justice if it does not put an end to the complaint which is a gross abuse of the process of the court. The earlier the better.

In the result, this Original Petition is allowed. Ext P9 complaint is quashed and Ext P12 order is set aside.

10. The Hon'ble High Court is even more categoric in commenting on the

circumstances behind filing of the FIR.

6. It was to the Director of the Vigilance & Anti-corruption Bureau, Thiruvananthapuram Sukkarno sent the complaint and not to the Station House Officer of the police station where the case was registered. Sukkarno never appeared before the Station House Officer. The Vigilance & Anti-Corruption Bureau found that the provisions of the Prevention of Corruption Act were not attracted. But it was of the opinion that there were sufficient grounds to suspect commission of the offence of forgery and some offences related to it. Apparently, the Bureau sent the complaint to the Government. On 14.8.2017 the Chief Secretary sent a letter to the Director General of Police and State Police Chief requesting him 'to take action' under the Criminal law, forthwith. From the office of the State Police Chief a letter dated nil was sent to the Inspector General of Police (N/C), Thiruvananthapuram Range requesting him to take action under the Criminal law as directed by the Government. This letter reached the Station House Officer, Museum Police Station where the case was registered. The informant is shown as the Chief Secretary. The reason is obvious. The complaint was not addressed the Station House Officer. The person who prepared the complaint never appeared before the Station House Officer. He was not sure about the identity of the person who wrote the complaint. He had every reason to think that there was an order from the State Police Chief to register a case. It is true that the letter sent by the Chief Secretary to the State Police Chief there was no direction to register a case. But the latter was requested to 'report compliance'. The message was loud and clear. The direction was to register a case. Neither the Chief Secretary, nor any other officer of the State has the power to direct the police officer to register a case. That power has been conferred by the Cr.P.C only on the Magistrate. The direction issued by the Chief Secretary through the District Police Chief was illegal.

11. The Hon'ble High court concluded:

10. I have no doubt that the registration of the case was illegal. The Station House Officer was compelled to register a case by persons who had no authority to compel him. So the Station House Officer registered the case even though the letter which apparently was the basis for registration of the case did not disclose commission of any offence. This is a fit case to quash the proceedings in relation to the case registered against the petitioner.

In the result, this Crl.M.C is allowed. The proceedings in Crime No.1302 of 2017 of Museum Police Station, Thiruvananthapuram City are quashed.

12. Shri Sukarno's attempt to challenge the order of the High Court before the Hon'ble Supreme Court ended in dismissal with an order to pay

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Rs.25,000/- as cost.

12. Dr.Senkumar had applied for commutation of leave salary on the HPL to his credit in February, 2017. Following registration of a case against him at the Museum Police Station and the complaint registered at the Vigilance and Anti-Corruption Bureau, he had to fight legal battles before the Hon'ble High Court of Kerala and the Hon'ble Supreme Court of India. While the OP (Crl) No.535/2017 was allowed by judgment dated 01.12.2017, the Hon'ble High Court allowed Crl. M.C.No.6076/2017 quashing the crime registered before the Museum Police Station by order dated 13.04.2018. The Hon'ble Supreme Court rejected the SLA(Crl) No.751/2018 filed against OP (Crl) No.535/2017 by order dated 29.01.2018 with cost and the SLA (Crl) No.7688/2018 filed by the 2nd Respondent against the Annexure A9 order also met with the same fate by the order of the Apex Court dated 28.09.2018. To any dispassionate observer, there is absolutely no reason why the authorities should have waited further in disbursing the claim which they did only after they received notice of filing of this OA.

13. It is not possible to view the unusual delay in granting the retired officer the benefits sought, divorced from the prism of the events that took place towards the fag end of his service. The circumstances and personages responsible for instituting the two cases against the officer after retirement have been criticized in very strong language by the Hon'ble High Court. And

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both cases taken up before the Apex Court against the orders of the High Court ended in set backs for the State Government. All challenges against the claim of the applicant came to an end with the orders of the Apex Court on 28.09.2018. Once they had exhausted all the weapons in its armory, it is not known why Respondent-2 refused to disburse the benefits for a further period of 5 months. Having got a sense of the mind of the highest court in the land, one would have expected the State Government to act with alacrity. The argument that the benefits could not be granted because the records were in the custody of the courts is specious as we have nothing on record to prove that any of the relevant documents were even filed before the courts. On a consideration of all factors and with a view to ensure that administration moves in more responsible ways in matters such as this, we direct a sum of Rs.5,000/- to be paid to the applicant in the OA as cost for unacceptable delay in disbursing the benefits mentioned in the OA. This shall be done as expeditiously as possible and within 30 days of receipt of this order. OA stands disposed of.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/0036/2019

- 1. Annexure A1:** True copy of Government Order dated 8/7/2016.
- 2. Annexure A2:** True copy of Government Order dated 4/1/2017.
- 3. Annexure A3:** True copy of Government Order dated 29/9/2016.
- 4. Annexure A4:** True copy of Government Order dated 2/12/2016.
- 5. Annexure A5:** True copy of Government Order dated 6/1/2017.
- 6. Annexure A6:** True copy of Government Order dated 31/1/2017.
- 7. Annexure A7:** True copy of Government Order dated 16/11/2017
- 8. Annexure A8:** True copy of judgment dated 1/12/2017 in OP[Crl] No..535/2017.
- 9. Annexure A9:** True copy of order dated 13/4/2018 in Crl. M.C. No.6076/2017.
- 10. Annexure A10:** True copy of representation dated 31/10/2018 submitted by the applicant before the 1st respondent.
- 11. Annexure MA-1:** True copy of GO (Rt) No.377/2019/GAD dated 21/1/2019.
