



2024/KER/29225

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

TUESDAY, THE 2<sup>ND</sup> DAY OF APRIL 2024 / 13<sup>TH</sup> CHAITHRA, 1946

OP (CAT) NO. 335 OF 2017

AGAINST THE ORDER DATED 02.08.2017 IN OA NO.569 OF 2016 OF  
CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

PETITIONER:

THE STATE OF KERALA,  
REPRESENTED BY THE CHIEF SECRETARY, GENERAL  
ADMINISTRATION SPECIAL C DEPARTMENT, GOVERNMENT OF  
KERALA, SECRETARIAT, THIRUVANANTHAPURAM 690001.

BY ADV GOVERNMENT PLEADER ANTONY MUKKATH

RESPONDENTS:

- 1 S. PULIKESHY IPS.,  
RETIRED DIRECTOR GENERAL OF POLICE, KERALA STATE,  
NOW RESIDING AT RUDRA VILLA, BHAGAVATHY NAGAR, NCC  
ROAD, PEROORKADA, THIRUVANANTHAPURAM - 695005
- 2 UNION OF INDIA,  
REPRESENTED BY ITS SECRETARY TO GOVERNMENT, PUBLIC  
GRIEVANCES AND PENSION, (DEPARTMENT OF PERSONNEL AND  
TRAINING), GOVERNMENT OF INDIA, NEW DELHI - 110 001

BY ADVS.

N.NANDAKUMARA MENON (SR.)

ALICE THOMAS

P.K.MANOJKUMAR

SMITHA S.PILLAI

M.C.SINY

SHRI.T.V.VINU, CGC

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON  
02.04.2024, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:



CR

A.MUHAMED MUSTAQUE & M.A ABDUL HAKHIM, JJ

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OP (CAT) NO.335 of 2017  
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Dated this the 02<sup>nd</sup> April, 2024

**JUDGMENT**

**M.A Abdul Hakhim, J**

1. The State of Kerala/the Respondent No.2 in O.A.No.569/2016 of the Central Administrative Tribunal Ernakulam Bench has filed this Original Petition challenging Ext-P4 Order dated 02.08.2017 in the said O.A. The said Original Application was filed by the Respondent No.1, who is a retired Director General of Police seeking reliefs including direction to pass final orders in the disciplinary proceedings and direction to grant the DCRG amount and the Commutation of Pension.

2. When the O.A was taken up for consideration the Respondent No.1 limited his prayer to Direction to respondent No.2 to grant DCRG amount and Commutation of Pension and accordingly, by the impugned Ext.P4 order, the Tribunal directed the petitioner to disburse the Commutation of Pension and DCRG as prayed for in the O.A within two months from the date of the said order, after entering a finding that the rules relating to payment of pension and other retirement benefits to the members of All India Service do not contain any provision for withholding the pension and gratuity.



3. The above Original Petition is filed challenging ExtP4 order of the Tribunal on the specific grounds in view of Rule 6(2) of the All India Services (Death cum Retirement Benefit) Rules 1958, where a departmental or judicial proceeding is instituted or the where a departmental proceeding is continued after retirement, only provisional pension is permissible after retirement till final order is passed in the departmental proceedings; that payment of DCRG and Commutation of Pension is impermissible during the pendency of the departmental proceedings; and that in view of the said specific provision the Respondent No.1 was sanctioned provisional pension to the tune of 100% of the pension.

4. We heard Sri.Antony Mukkath, Learned Government Pleader for the Petitioner and Senior Counsel Sri.Nandakumara Menon.N for the Respondent No.1.

5. It is revealed from the O.A records that as on the date of retirement of the Respondent No.1 on 13.04.2012, departmental proceedings and also criminal case as C.C.No.10/2009 before the Special Judge II, CBI Court, Ernakulam, were pending against him.

6. We find that the Tribunal passed the impugned Ext.P4 order without noticing the specific provision in Rule 6(2) of the All India Services (Death Cum Retirement Benefit) Rules, 1958. The rule reads thus:

"6. Recovery from pension:- (1) The Central Government reserves to itself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from pension of the whole or part of any pecuniary loss caused to the Central or a



State Government, if the pensioner is found in a departmental or judicial proceedings to have been guilty of grave misconduct or to have caused pecuniary loss to the Central or a State Government by misconduct or negligence, during his service, including service rendered or reemployment after retirement.

Provided that no such order shall be passed without consulting the Union Public Service commission:

Provided further that-

(a) such departmental proceeding, if instituted while the pensioner was in service, whether before his retirement or during his reemployment, shall, after the final retirement of the pensioner, be deemed to be a proceeding under this sub-rule and shall be continued and concluded by the authority by which it was commenced in the same manner as if the pensioner had continued in service:

((b) and (c) *(Omitted as unnecessary)*)

Explanation :- For the purpose of this rule:

(a) a departmental proceeding shall be deemed to be instituted which the charges framed against the pensioner are issued to him or, if he has been placed under suspension from an earlier date, on such date and

(b) a judicial proceeding shall be deemed to be instituted-

(i) in the case of criminal proceedings, on the date on which a complaint is made or a charge sheet is submitted, to the criminal Court; and

(ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a Civil Court.

(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 up to the date of retirement, or if he was under suspension on the date of retirement, up to the date immediately preceding 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 proceeding has been instituted against a member of the Service before his retirement service under R.10 of the All India Service (Discipline and Appeal) Rules, 1969, for imposing any of the penalties specified in Clauses(i), (ii) and (iv) of sub-rule (1) of R.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) *(Omitted as unnecessary).*

7. In view of the above Rule, particularly Rule 6(2), when a departmental proceeding or a judicial proceeding is pending at the time of retirement of an employee, it is permissible to sanction only provisional pension not exceeding the maximum pension admissible to him during the pendency of such proceedings. Rule 6(2) deals with orders to be made with respect to Pension and DCRG during the pendency of departmental or judicial proceedings. The last limb of Rule 6(2) would disclose that no DCRG shall be paid to the employee until conclusion of departmental or judicial proceedings and issuance of final orders thereon. When Rule 6(2) says only Provisional Pension is permissible until conclusion of departmental or judicial proceedings, by necessary implication, it prevents sanctioning of Full Pension. Though Rule 6(2) does not specifically refer to Commutation of Pension, the Commutation of Pension is also a part of Pension which could be sanctioned when Full Pension is sanctioned.

8. The Hon'ble Supreme Court had occasion to consider Rule 6 in the decision *State of Orissa and Others v. Kalicharan Mohapatra and others [ 1995(6) SCC 105]*. In that case, the Tribunal had that State of Orissa is justified in withholding the gratuity



amount and in not sanctioning the final pension only if the charge against the employee is with respect to one causing pecuniary loss to the Government by misconduct or negligence within the meaning of Rule 6 (1). The Hon'ble Supreme Court held that the reading of the Rule by the Tribunal is unsustainable and incorrect and held that where proceedings are pending against the petitioner for grave misconduct, the Government is entitled to withhold DCRG and is also entitled to sanction provisional pension for the period of pendency of such proceedings. It is also held that departmental proceeding or judicial proceeding should relate to charge of causing pecuniary loss to the Government by misconduct or negligence during his service.

9. In view of the above, we hold that Rule 6(2) of the All India Services (Death Cum Retirement Benefit) Rules, 1958 squarely applies to the case of the Respondent No.1. He is not entitled get Commutation of Pension and DCRG before culmination of Departmental and Judicial Proceedings. Accordingly, Ext.P4 Order of the Tribunal is set aside.

10. Since there occurred inordinate delay in completing the departmental proceedings on account of the delay in disposal of the criminal case, this Court passed an Order dated 29.2.2024 directing the Registry to get instructions as to the present status of the said criminal case and also to ascertain the time required for the disposal of the said case. Pursuant to the said Order, the Special Judge II, CBI Court, Ernakulam furnished his Written Remarks dated 27.03.2024 addressed to the Registrar of this



Court stating that the criminal case is posted for scheduling on 11.4.2024 and for the reasons stated therein, a period of 12 months is required to dispose of the said criminal case.

11. Taking into account of the fact that the Criminal case is of the year 2009 and the Written Remarks furnished by the Special Judge II, CBI Court, Ernakulam, we direct the Special Judge II, CBI Court, Ernakulam to expedite the trial of C.C.No.10/2009 pending before it and dispose of the same within a period of Nine months from the date of receipt of copy this judgment.

12. We further direct the petitioner to complete the departmental proceedings initiated against the Respondent No.1, thereafter without further delay taking note of the judgment that would be passed by the Special Judge II, CBI Court, Ernakulam in C.C. No.10/2009.

The Original Petition is disposed of as above.

Sd/-

**A. MUHAMED MUSTAQUE**  
**JUDGE**

Sd/-

**M.A.ABDUL HAKHIM**  
**JUDGE**

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APPENDIX OF OP (CAT) 335/2017

## PETITIONER ANNEXURES

- ANNEXURE A1 THE PHOTOSTAT COPY OF THE ARTICLES OF CHARGES NO.4821/SPL.A3/2009/GAD DATED 01.10.2009 ISSUED BY THE GT.TO THE APPLICANT.
- ANNEXURE A2 THE PHOTOCOPY OF THE VOVERING LETTER SENT ALONG WITH ANNEXURE AI NO.4821/SPL.A3/2009/GAD DATED 12.10.2009 ISSUED BY THE GT.TO THE APPLICANT.
- ANNEXURE A3 THE PHOTOSTAT COPY OF THE REPLY STATEMENT DATED 26.10.2009 SUBMITTED BY THE APPLICANT TO THE CHIEF SECRETARY TO GT.TVM.
- ANNEXURE A4 THE PHOTOSTAT COPY OF THE REPRESENTATION DATED FEBRUARY, 2014 SUBMITTED BY THE APPLICANT TO THE CHIEF SECRETARY TO GT.TVM.
- ANNEXURE A5 THE PHOTOSTAT COPY OF THE REPRESENTATION DATED 17.03.2014 SUBMITTED BY THE APPLICANT TO THE HON'BLE CHIEF MINISTER OF KERALA TVM.
- ANNEXURE A6 THE PHOTOSTAT COPY OF THE COMMUNICATION NO.83409/SPL.C3/2014/GAD DATED 26.11.2014 ISSUED BY THE UNDER SECRETARY AND STATE PUBLIC INFORMATION OFFICER TO THE APPLICANT.
- ANNEXURE A7 THE PHOTOSTAT COPY OF THE COMMUNICATION NO.DP/CHN/2016/21003/23(A)/2007/SPE/KER DATED 09.03.2016 ISSUED BY THE HEAD OF BRANCH, CBI,ACB, COCHIN, CHIEF SECRETARY TO GT.GENERAL ADMINISTRATION (SPECIAL C) DEPARTMENT, TVM.
- EXHIBIT P1 PHOTOCOPY OF THE O.A.NO. 569/2016 ALONG WITH ITS ANNEXURES.
- EXHIBIT P2 TRUE COPY OF THE REPLY STATEMENT FILED FOR AND ON BEHALF OF THE 2ND RESPONDENT IN THE O.A.
- EXHIBIT P3 TRUE COPY OF THE REJOINDER STATEMENT DATED 04.01.2017.
- EXHIBIT P4 TRUE COPY OF THE ORDER DATED 02.08.2017 IN OA NO.180/00569/2016.