

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MR. JUSTICE C. JAYACHANDRAN

MONDAY, THE 12TH DAY OF JUNE 2023 / 22ND JYAISHTA, 1945

OP (CAT) NO. 60 OF 2023

AGAINST THE ORDER DATED 22.12.2022 IN OA 180/00068/2022 OF CENTRAL
ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

PETITIONER/S:

- 1 STATE OF KERALA REPRESENTED BY THE CHIEF SECRETARY TO
GOVERNMENT, GOVERNMENT SECRETARIAT,
THIRUVANATHAPURAM, PIN - 695001
- 2 PRINCIPAL SECRETARY, GENERAL ADMINISTRATION
DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANATHAPURAM,
PIN - 695001 (CURRENTLY ADDITIONAL CHIEF SECRETARY,
GENERAL ADMINISTRATION DEPARTMENT)
- 3 ADDITIONAL CHIEF SECRETARY
FINANCE DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANATHAPURAM, PIN - 695001
- 4 ACCOUNTANT GENERAL (A& E)
KERALA, M.G. ROAD, STATUE, THIRUVANATHAPURAM, PIN -
695001
BY SRI. B. UNNIKRISHNA KAIMAL, SENIOR GOVERNMENT PLEADER

RESPONDENT/S:

- 1 VENUGOPAL P, AGED 60 YEARS
IAS (RETIRED) S/O PARAMESWARAN NAIR, FORMER
SECRETARY, FOOD, CIVIL SUPPLIES AND CONSUMER
AFFAIRS, LEGAL METROLOGY DEPARTMENT GOVERNMENT OF
KERALA, RESIDING AT
KOTTOORACHUTHOM, AYCADU, KODUMON, PATHANAMTHITTA, KERALA,
PIN - 691555
- 2 UNION OF INDIA REPRESENTED BY THE SECRETARY
MINISTRY OF HOME AFFAIRS, NEW DELHI, PIN - 110012
BY ADV P. RAMAKRISHNAN
SRI. B. UNNIKRISHNA KAIMAL - SR. GP

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 12.06.2023, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ALEXANDER THOMAS & C.JAYACHANDRAN, JJ.

OP(CAT) No.60 of 2023

*(Arising out of the impugned order dated 22.12.2022 in
O.A.No.180/00068/2022 in the files of CAT, Ekm Bench)*

Dated, this the 12th day of June, 2023

JUDGMENT

Alexander Thomas, J.

The prayers in the above captioned Original Petition filed under
Article 226 & 227 of the Constitution of India are as follows:

*“..... to issue an interim order staying all
proceedings in Exhibit P6 judgment, in O.A.(CAT).
No.68/2022 on the file of the Central Administrative
Tribunal, Ernakulam Bench, pending disposal of the
above Original Petition.”*

2. The petitioners herein (State of Kerala and other Officials
concerned) are respondents 2 to 5 in the Original Application. The 1st
respondent herein is the original applicant in the Original
Application before the Tribunal and the 2nd respondent herein is the
Union Government, who was arrayed as R1 in the Original
Application.

3. Heard Sri. B.Unnikrishna Kaimal, learned Senior
Government Pleader for the petitioners in the Original Petition and

Sri. P.Ramakrishnan, learned Advocate appearing for the 1st respondent herein (original applicant) and Sri. S. Manu, learned Deputy Solicitor General of India, appearing for R2, Union Government.

4. The prayers in the instant Original Application (Ext.P4) O.A.No.68/2022 filed by the 1st respondent herein before the Central Administrative Tribunal, Ernakulam Branch, are as follows:

“A) Issue an order directing the respondents to sanction and disburse the pension, DCRG and other retirement benefits to the applicant forthwith.

B) Hold that the delay in withholding pension, DCRG and other retirement benefits payable to the applicant is arbitrary, illegal and unjustifiable,

C) Issue an order directing the respondents to pay interest @ 18% per annum from 01/08/2021 till date of disbursement for delayed payment of pension, DCRG and other retirement benefits,

D) Issue an order directing the 2nd respondent to pay cost for the delay in sanctioning and disbursing pension, DCRG and other retirement benefits to the applicant, and

E) such other orders and directions as are deemed fit in the facts and circumstances of the case.”

5. The O.A was filed on 11.02.2022. After filing the O.A., respondents 2 to 5 in the O.A. (State Government and others) have apprised the Tribunal that the pensionary benefits of the original applicant are duly sanctioned on 19.03.2022, and that the matter of

issue has become infructuous. The original applicant contended that the case cannot be treated as infructuous, as one of the vital prayers, i.e., prayer No. C of the O.A., was for grant of interest for the delay in paying the pensionary benefits and the said prayer is alive. The Tribunal, after hearing both sides, found that the pensionary benefits could have been easily disbursed to the petitioner much earlier and accordingly ordered that the above said pensionary benefits would carry interest at the rate of 9% per annum from 01.08.2021 (one day after the date of retirement of the applicant on 31.07.2021) up to 19.3.2022 (the date of actual payment of the pensionary benefits). The State of Kerala and others, being aggrieved thereby, has filed the instant O.A., contending that the interest should not have been awarded on the delay of pensionary benefits in the instant case and that the case should have been closed as infructuous, on account of the subsequent payment of the due amounts. The above said pleas of the learned Senior Government Pleader have been seriously opposed by Sri. P.Ramakrishnan, learned Counsel appearing for R1 herein, who is the original applicant. We have given our anxious consideration to the rival pleas and have gone through the pleadings

and materials on record.

6. A brief recital of the facts of this case would be pertinent. The original applicant, who was a member of the Indian Administrative Service, was holding the post of Secretary to Government of Kerala and retired from service on 31.07.2021, consequent to the attainment of superannuation at the age of 60 years. At that time, he was working as Secretary to the Government in the Food & Civil Supplies and Consumer Affairs Department.

7. The main grounds urged by the petitioners for justifying the delay in payment of the pensionary benefits was on account of the time taken for verification of the liabilities of the original applicant and for issuance of the formal non-liability certificate. The details in that regard are as follows: (a) Ext.P3 notices dated 29.4.2021 and 04.12.2021 were issued, whereby, the Government had sought vigilance status of a case in which the original applicant was arrayed as an accused. It was verified that no proceedings are pending against him and the Director of Vigilance and Anti Corruption Bureau had also furnished a Vigilance Status Report in favour of the applicant, stating that one Vigilance Case V.C.No.11/2013/KKD,

registered on 17.07.2013 was early pending and the name of the applicant herein was excluded from the accused array and that he did not have to face prosecution; (b) further that, yet another Vigilance Case, registered as V.C.No.7/2013/KKD, was initiated on 06.03.2013 against the applicant and the then Secretary of the Kozhikode Municipal Corporation. That vigilance case was completed and report was submitted to the Government, recommending departmental action against the original applicant. Final report was submitted before the court of the Enquiry Commission, Special Judge stating that "Further Action Dropped". The said court has accepted the report on 17.07.2019. It is common ground that thereafter, nothing has happened and even the departmental action was not initiated at all; (c) Vigilance Case V.C.No.2/2018/SIU was registered on 17.01.2018, on certain allegations regarding the incumbents who were holding the post of District Collector, Alappuzha, for the period from 2010-2012, who were the accused officers and during the said period, the original applicant was also one among the incumbents who was posted as District Collector, Alappuzha. Vigilance Case investigation was completed and further proceedings are in progress

and after verification, the Government found that no further action remains against the original applicant herein. Later, the Director, Vigilance and Anti Corruption Bureau also completed the enquiry in Vigilance Case No.2/2018/SIU and submitted a report to the Government, stating that the case is one involving “mistake of fact.” But the court of the Enquiry Commission, Special Judge had not taken a formal decision on the said report submitted by the Vigilance Bureau.

8. The original applicant attained superannuation at the age of 60 years in the All India Service, in July 2021 and therefore, going by the statutory rules, he had to retire from service, consequent to his superannuation on 31.07.2021. After the factual verification as to whether there are liabilities pending against the applicant on account of the above said aspects, it was ultimately found by the Government that there were no liabilities against him and formal sanction was given for disbursal of the pensionary benefits and he received the pensionary benefits. In fact, the OA was filed on 11.02.2022. The pensionary benefits was actually sanctioned to the applicant only on 19.03.2022. One of the main grounds cited as justification by the

petitioners is that the Criminal Court concerned had not taken a final decision on the report submitted by the Vigilance Bureau in Vigilance Case No.2/2018 /SIU stating that the allegations are one of mistake of fact. Later, the Government obtained legal opinion, as per Annexure A4 dated 23.06.2021, issued by the Law Secretary, State Government, opining that no report under Section 173 Cr.P.C has been filed against the applicant and that judicial proceedings are not pending against him so as to withhold the DCRG etc. As a matter of fact, Annexure A4 was already obtained by the Secretary to the Government as early as on 23.06.2021, which is much prior to the date of retirement of the applicant. Therefore, going by the above said factual aspects, it can be seen that the factual verification could have been easily completed by the State Authorities atleast two or three months prior to the retirement of the applicant. Going by the norms, the authorities concerned should have taken all steps to verify as to whether the liabilities or other legal proceedings are pending against the incumbent, and those proceedings could have been started atleast one year prior to the date of retirement of the incumbent. Going by the factual elements in this case, it can be seen

that these factual aspects could have been easily verified much before the retirement of the applicant. Hence, there is no justification for the petitioners to justify the withholding of the pensionary benefits of the applicant. True that the benefits were paid after filing the OA. All what the Tribunal has now ordered was to grant interest at the rate of 9% for the period immediately after the date of retirement up to the date of actual disbursal.

9. After hearing both sides, we are of the view that the rate of interest of 9% could be slightly modified and could be lowered to 7% per annum. So also, the interest period could be postponed to atleast two months after the date of retirement instead of one day after the date of retirement. Accordingly, it is ordered that the above said pensionary benefits shall carry interest at the rate of 7% per annum for the period from 01.10.2021, i.e., two months after the date of the retirement of the applicant, up to 19.03.2022, the date of sanction of the pensionary benefits. We are told by Sri. P.Ramakrishnan, learned Counsel appearing for the original applicant, that though the pensionary benefits were sanctioned in favour of the applicant on 19.03.2022, the said amounts were actually disbursed to him only

much later.

10. No other orders are called for. The impugned directions of the Tribunal will stand modified to the limited extent as above. The above said interest amount shall be paid by the petitioners to the 1st appellant within a period of one month from the date of receipt of a copy of this judgment, failing which, the interest rate awarded by the Tribunal will stand restored automatically.

With these observations and directions, the above Original Petition will stand disposed of.

Sd/-

**ALEXANDER THOMAS
JUDGE**

Sd/-

**C. JAYACHANDRAN
JUDGE**

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13.06.2023

APPENDIX OF OP (CAT) 60/2023

PETITIONER ANNEXURES

Annexure A-1	TRUE COPY OF THE SAID REPORT DATED 03.03.2021 OF THE 5 TH RESPONDENT
Annexure A-2	TRUE COPY OF THE SAID NOTE DATED 23.03.2021
Annexure A-3	TRUE COPY OF THE SAID NOTE DATED 04-12-2021
Annexure A-4	TRUE COPY OF THE EXTRACT OF THE NOTE NO.34 DATED 23.06.2021 SUBMITTED BY THE SECRETARY TO GOVERNMENT , LAW DEPARTMENT, GOVERNMENT OF KERALA
Annexure5	TRUE COPY OF THE SAID REPRESENTATION SENT BY THE EMAIL DATED 06.01.2022 .
Exhibit P1	A TRUE COPY OF THE REPORT DATED 03.03.2021
Exhibit P2	A TRUE COPY OF THE NOTICE DATED 23.03.2021
Exhibit P3	A TRUE COPY OF THE NOTICE DATED 29.04.2021 AND 04.12.2021
ExhibitP4	TRUE COPY OF THE OA 68/2022
ExhibitP5	G.O(RT)NO 2058/2022/FIN DATED 19.03.2022 TO DISBURSE THE PENSIONARY BENEFITS TO 1ST RESPONDENT
ExhibitP6	TRUE COPY OF THE ORDER DATED 22.12.2022 IN O.A NO.180/00068/2022.