

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE**

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYASHTA, 1937

WA.No. 1396 of 2010

AGAINST THE JUDGMENT IN W.P.(C).NO.23882/2007, DATED 19-05-2010

APPELLANT(S)/RESPONDENTS IN W.P.(C) :

- 1. STATE OF KERALA, REPRESENTED BY THE SECRETARY,
DEPARTMENT OF FOREST, THIRUVANANTHAPURAM.**
- 2. THE DIVISIONAL FOREST OFFICER,
FOREST DIVISION, IDUKKI.**
- 3. THE ACCOUNTANT GENERAL OF KERALA,
THIRUVANANTHAPURAM.**

BY SPL.GOVERNMENT PLEADER SMT.GIRIJA GOPAL

RESPONDENT(S)/PETITIONER IN W.P.(C) :

**R.MURALEEDHARAN NAIR, S/O.RAMAN PILLAI,
AGED 59 YEARS, EDATTU HOUSE, POONJAR POST,
PANICHIPARA, KOTTAYAM DISTRICT, (FORESTER RETIRED),
PONMUDI SECTION, IDUKKI DISTRICT.**

**BY ADVS. SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD
ON 20-05-2015, ALONG WITH WA.NO.326 OF 2011, THE COURT
ON 19-06-2015 DELIVERED THE FOLLOWING:**

Msd.

“C.R.”

ASHOK BHUSHAN, CJ
&
A.M. SHAFFIQUE, J.
=====

W.A.Nos. 1396 of 2010 & 326 of 2011
=====

Dated this, the 19th day of June, 2015

J U D G M E N T

Shaffique, J

Since common questions arise for consideration in these appeals, the same are decided together.

2. The issue involved is regarding the application of Rule 3A(a) of Part III Kerala Service Rules (for short KSR) and the correctness of the judgment in **Aravindaksha Panicker v. Accountant General** (2007 (4) KLT 1031).

3. Writ Appeal 1396/2010 arises from the judgment dated 19/5/2010 in WP(C) No.23882/2007. Writ petition is filed by the respondent in the appeal, (hereinafter referred to as the petitioner), claiming payment of Death cum Retirement Gratuity (for short DCRG). He retired from service on superannuation on 31/12/2002. DCRG was not paid on the ground that disciplinary proceedings were pending against him. He submitted that though

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he was placed under suspension on 22/6/1999, he was reinstated on 29/12/1999. No enquiry was conducted and no report was available. It was his contention that by virtue of Note 3 to Rule 3 of Part III KSR, as no liability has been fastened on him after a period of three years from the date of retirement, he was entitled to the DCRG amount along with 12% interest.

4. Statement was filed on behalf of 2nd respondent contending that an amount of ₹1,62,848/- was sanctioned by the Accountant General as early as on 10/12/2002 towards DCRG. However, when non liability report was called for, the same was not made available. The Divisional Forest Officer, Munnar informed that disciplinary case against the petitioner was pending finalisation in which an amount of ₹6,50,000/- was involved. It is therefore contended that the cases against the petitioner having not been finalised, the liability could not be assessed and that it will be finalised within two months. The learned Single Judge observed that since the liability has not been fixed within the time permitted, petitioner is entitled for the DCRG which has to be paid within two months from the date of production of a copy of the judgment.

5. Writ Appeal No.326/11 arises from the judgment dated 10/12/2009 in WP(C) No. 21122/06. Petitioner in the case retired on 28/4/2006 as an Agricultural Officer. He was suspended from service on 18/8/2001. Suspension was revoked on 11/12/2003. He also submitted that the vigilance department has conducted a detailed enquiry into the allegations raised against him and though it was found to be false, no proceedings were issued in that regard. Petitioner sought for treating the period of suspension as duty. It was finally allowed as per order dated 22/3/2006. Petitioner further submits that after he retired on 28/4/2006, he received a communication dated 8/5/2006 along with a Demand Draft for ₹13,338/-, being the last salary of the petitioner. He was again served with another order dated 28/4/2006 suspending him from service on 28/4/2006. It is contended that the suspension order is *mala fide*, arbitrary and illegal and therefore, the writ petition is filed seeking to quash the order of suspension and direction to the respondents to disburse pension and other terminal benefits to the petitioner.

6. Counter affidavit and additional counter affidavit was filed by the respondents, who are the appellants herein, *inter alia*

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stating that the petitioner was suspended with effect from 28/4/2006 and his normal date of retirement was 30/4/2006. He superannuated on 28/4/2006 as 29th and 30th were holidays. Further, it is stated that petitioner was involved in certain misconducts and investigation was under progress. Criminal case No.VC 3/2001 was registered by the Vigilance and Anti Corruption Bureau alleging misappropriation of Government money in which the petitioner was exonerated. Another vigilance case 2/2004 registered alleging misappropriation of Government money to the tune of ₹1,50,00,000/- is pending investigation.

7. In the additional counter affidavit, it is stated that two prosecution cases are pending against the petitioner as VC 2/2004 and VC 16/2003 before the Enquiry Commissioner and Special Judge, Kozhikode.

8. The learned Single Judge by the impugned judgment directed payment of the entire benefits due to the petitioner after regularising the suspension period. However, there was a direction that the respondents will be entitled to recover any amount due from the petitioner in accordance with law.

9. While impugning the aforesaid judgments, the learned

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Special Government Pleader Smt. Girija Gopal appearing on behalf of the State contends that Rule 3 of Part III KSR and Rule 3A(a) of Part III KSR operates on different fields and therefore the Government is entitled to withhold DCRG even if no liability had been fixed in terms of Note 3 of Rule 3, i.e, within a period of three years from the date of retirement. She submits that the judgment in **Aravindaksha Panicker's case** (supra) which lays down a different proposition requires reconsideration especially since two Division Bench judgments of this Court had taken note of the statutory prohibition under Rule 3A(a) and had observed that when a departmental or judicial proceeding is pending, the retired employee is not entitled for gratuity or DCRG whereas he is entitled only for provisional pension.

10. The first judgment relied upon is **State of Kerala and Ors. v. G. Kuttan Pillai** (CDJ 2003 KER HC 324). That was a case in which the Division Bench held that when departmental proceedings are pending, going by Rule 3A(a), the pensioner is only entitled for provisional pension and is not entitled to gratuity or DCRG till the proceedings are finalised. That was a case in which the employee retired from service on 31/8/1999 and he was

placed under suspension even before retirement on 14/8/1998. An enquiry by Vigilance and Anti Corruption Bureau was pending against him. The case was decided on 24/6/2003. The learned Single Judge directed disbursement of pensionary benefits to the petitioner. While setting aside the said judgment, the Division Bench directed the vigilance enquiry to be completed within a specified time limit.

11. The other judgment relied upon is **A. Rajan v. State of Kerala & Ors.** in OP(KAT) No.4241/2013. In that case, the Division Bench was considering an original petition filed against an order passed by the Kerala Administrative Tribunal. The employee concerned was an accused in a criminal case. He was convicted by the Magistrate Court and in an appeal, his conviction and sentence was suspended. He claimed DCRG and other terminal benefits. The Tribunal relying upon Rule 3A(a) of Part III KSR and also after reference to Rule 3 rejected the claim. The Division Bench observed that Rule 3A(a) applied to the factual circumstances involved in the matter and the Department was justified in rejecting the request for DCRG and full pension as found by the Tribunal. It is held that if judicial proceedings reveal

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grave misconduct of delinquents during the period of service, Rule 3A(a) is clearly attracted and therefore the direction sought to give the full pension is misconceived.

12. Further reference has been made to the Full Bench judgment in ***Raveendran Nair v. State of Kerala*** (2007 (1) KLT 605) (F.B). That was a case in which the Full Bench was considering the conflict between two Division Bench judgments on the interpretation of Rule 3 of Part III KSR on the question as to whether the Government can withdraw or withhold pension as a punishment on a retired Government servant even if the misconduct proved does not involve pecuniary loss to the Government. After referring to Rule 3 and the corresponding provision in the CCS (Pension) Rules, the Full Bench held at paragraph 11 that the Government has the right to impose on a pensioner the punishment of withholding or withdrawing pension or any part of it, if in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, even if the misconduct and negligence do not involve pecuniary loss to the Government. Para 11 is relevant, which reads as under:-

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"11. Accordingly, we hold that the Government has the right to impose on a pensioner the punishment of withholding or withdrawing pension or any part of it either permanently or for a specified period, if in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, even if the misconduct and negligence do not involve pecuniary loss caused to the Government and that in a case of grave misconduct involving pecuniary loss to the Government, Government can exercise both the rights of withholding/withdrawing pension as punishment and recovering the pecuniary loss from the pension. While confirming the decision of the Division Bench in Jayarajan's case we also make it clear that we do not subscribe to the passing reference made by the earlier Division Bench in Parameswaran Nair's case regarding the interpretation of R.3 to the contrary which in any event, cannot be held to be a decision laying down the law relating to interpretation of R.3 as that question never arose for consideration in that case."

13. On the other hand, learned counsel appearing on behalf of the respondents placed reliance on **Aravindaksha Panicker's case** (supra), and also two other Division Bench judgments in **Pappachan v. State of Kerala and Ors.** (2008 (4) KHC 74) and **Kerala State Electricity Board, Tvm and Or. v. K. Kesavan** (2014 (3) KHC 167) (DB).

14. First, we shall refer to the Division Bench judgments. In **Pappachan's case** cited supra, while referring to Rule 3 Part III KSR, read with Ruling Nos. 5 and 6 of Rule 116 of Part III, the Division Bench held that there is a time limit fixed for fixation of liability under Rule 3 against the pensioner. Ruling No.5 of Rule 116 indicates that, if the liability of a pensioner is not fixed within one year of his retirement, the DCRG, if any, withheld shall be released. As per Ruling No.6, if the amount is released under ruling No.5 and if action under Rule 3 cannot be initiated due to expiry of time limit, the retired employee can be proceeded against in Civil Court for recovering pecuniary loss caused to the Government. It therefore held that DCRG due to the petitioner should have been released after one year from the date of retirement. However, in this judgment, the effect and implication of Rule 3A(a) has not been considered by the Division Bench.

15. In **K.Kesavan's case** (supra), the question involved was whether Kerala State Electricity Board (KSEB) was liable to disburse the DCRG irrespective of the fact that the delinquent employee was convicted in a criminal case. The facts disclose that the employee while working as Assistant Engineer was involved in

vigilance and anti corruption case and a crime was registered against him under the Prevention of Corruption Act alleging demand of bribe. He was suspended from service on 21/4/2001 and reinstated on 30/2/2002. He retired on superannuation on 31/3/2003. Provisional pension was paid to him. However, his DCRG was withheld. Alleging that no liability was fixed against him and that DCRG was unlawfully withheld, he had filed the writ petition. The learned Single Judge after referring to Notes 2 and 3 of Rule 3 Part III KSR directed disbursement of DCRG on the ground that the 3 year outer time limit expired on 31/3/2006. In the appeal filed against the aforesaid judgment, the Division Bench held that as there was no disciplinary proceedings pending against the petitioner prior to his retirement, Note 3 of Rule 3 applies to the facts and circumstances of the case. Perusal of the aforesaid judgment would show that the scope and effect of Rule 3A(a) has not been considered. Though the Division Bench referred to **Aravindaksha Panicker's case** (supra), the case seems to have been decided on the basis of the findings in respect of Rule 3 of Part III KSR. In fact, the Board had a case that the delinquent being convicted in a criminal case, there was no

obligation to pay the DCRG. But, having considered the scope and effect of Rule 3 Part III KSR and Note 2 and 3 thereof, the Division Bench held that the decision of the learned single Judge need not be disturbed. Paragraphs 8 and 9 of the judgment in **K.Kesavan's case** (supra) are relevant, which reads as under;

8. *The Supreme Court has clearly held in D.S.Nakkara's case reported in (1983) 1 SCC 350, para 20, that the antiquated notion of retiral or pensionary benefits being a bounty or a gratuitous payment depending upon the sweet will or grace of the employer, not claimable as a right and, therefore, no enforceable right to such benefits, has been swept under the carpet by the decision of the Constitution Bench of the Apex Court in Deoki Nandan Prasad's case reported in (1971) 2 SCC 330 and by the subsequent rulings as in Iqbal Singh's case reported in (1976) 2 SCC 1, etc. It has to be borne in mind that in view of the well settled position that a retiral benefit like gratuity being a property right as enshrined in Article 300A of the Constitution, the right to gratuity or pension can be deprived or forfeited or withheld only by a statutory prescription. Therefore, we have no hesitation to hold that DCRG cannot be withheld by the appellant Board on account of the judicial proceedings referred to in Rule 3 Part III KSR, as by virtue of Note 2 of Rule 3, the rule making authority has consciously excluded DCRG from the purview and ambit of 'pension' referred to in Rule 3, in contradistinction to the definition of 'pension' contained in Rule 12 (24) of KSR Part I.*
9. *The learned Senior Counsel for the appellant also placed reliance on the judgment of the Division Bench in the case*

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Pappachan v. State of Kerala, reported in 2008 (4) KLT 676. On a reading of the said Bench decision, it is evident that it was a case wherein liabilities were alleged as outstanding against the pensioner therein and the Bench held that the long delay on the part of the petitioner therein in approaching the court dissuaded the court from exercising its discretionary jurisdiction in his favour on account of such delay and laches and that if the petitioner therein had chosen to approach the court earlier, the court would have normally ordered to pay DCRG due to him. On this basis, the Bench gave liberty to the authorities concerned to institute a civil suit for recovery of the alleged loss caused by the retired Government servant etc. This decision has no application to the facts of this case, since there is no allegation of any pending or non-finalised liabilities against the writ petitioner. The above said Pappachan's case was not dealing with the question of the power to recover DCRG on account of the institution of departmental or judicial proceedings as envisaged in Rule 3.

16. Now coming to the judgment of the learned single Judge in **Aravindaksha Panicker's case** (supra), the question under consideration was whether the DCRG could be withheld after retirement and even after the three year period mentioned in Note 3 of Rule 3, even in the event of a situation as envisaged under Rule 3A(a) of Part III KSR. Though the learned Single Judge correctly interpreted both the statutory provisions to have effect in two different situations, formed an opinion that Rule 3A(a)

should not be applied in a pedantic literal manner and it is susceptible of a more reasonable view. Thereafter, referring to Rule 116 and rulings 5 and 6, Rule 59B of Part III KSR and certain provisions of the Kerala Civil Services (Classification, Control and Appeals) Rules, held that Rule 3A(a) will have to be suitably construed or read down, and should be restricted to cases where the Government is in a position to exercise the right of adjustment of liability of a Government servant. Paragraphs 21 and 22 are relevant, which reads as under;

"21. If this view is accepted, then the last portion of R.3A (a) will have to be suitably construed or read down, and should be restricted to cases where the Government is in a position to exercise the right of adjustment of liability of a Government servant from the DCRG payable to him. In other words, the interdiction against payment of DCRG as contemplated by R. 3 A(a) will apply only for a period of 3 years from the date on which the Government servant becomes a pensioner as contemplated under Note 3 R. 3. Of course, if within the period of 3 years the liability is quantified, determined and intimated to the Government servant after complying with the procedure contemplated by the Rules, then it is open to the Government to adjust such quantified liability from the DCRG payable to the Government servant. As mentioned above, the right of the Government

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servant to get the DCRG and the right of the Government to adjust the liability of the Government servant from the DCRG is not necessarily related to the departmental proceedings or judicial proceedings as contemplated by Rule 3 of the Rules. Of course, if in departmental proceedings or judicial proceedings it is found that any loss has been caused to the Government by the Government servant, then it can, of course, be used as a material to fasten the liability on the Government servant. But, this is, of course, subject to the compliance with the principles of natural justice, as contemplated by Note 2 to R.2 of Part III of the Rules. What, we are concerned in this case is essentially as to the question whether the pendency of the judicial proceedings beyond a period of 3 years from the date of retirement of the Government servant can be a reason for withholding the DCRG, otherwise due and admissible to the Government servant. In my view, it cannot be. The last portion of R.3 A(a), as mentioned above, will have to be restricted in its operation for a period of 3 years from the date of retirement of the Government servant.

22. There is yet another reason, why this interpretation is to be adopted. If the Rules do not provide for forfeiture of the DCRG, as a punishment, unlike in the case of pension, then what is the purpose that could be achieved, by withholding the DCRG beyond the period of 3 years from the date of retirement of the Government servant? As mentioned above, it is the property of the

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Government servant. It is not vulnerable to forfeiture or reduction and therefore, the Government would be exposing itself to an action of unjust retention of a property due to a citizen. In such circumstances, it would be in public interest the Government disburses the DCRG. if liability has not been determined within a maximum period of 3 years from the date on which the Government servant becomes a pensioner."

17. Having regard to the factual and legal issues involved in the above appeals, the question to be considered is the correctness of **Aravindaksha Panicker's case** (supra). Though **Aravindaksha Panicker's case** (supra) was referred to by the Division Bench in **K.Kesavan's case** (supra), the correctness of the same has not been considered. Therefore, as rightly contended by the learned Government Pleader, the impact of Note 3 of Rule 3 on Rule 3A(a) is required to be considered for deciding the cases on hand.

18. Rule 3 and 3A(a) of Part III reads as under;

"3. The Government reserve to themselves 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 a pension of the whole or part of any pecuniary loss caused to Government, if in a departmental or judicial proceeding, the pensioner is

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found guilty of grave misconduct or negligence during the period of his service, including service rendered upon re-employment after retirement:

Provided that -

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

b) such departmental proceeding, if not instituted while the employee was in service, whether before his retirement or during his re-employment,-

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the employee during his service;

c) no such judicial proceedings, if not instituted while the employee was in service whether before his retirement or during his re-employment, shall be instituted, save with the sanction of the Government, in respect of a cause of action which arose or an event which took place more than four years before such institution; and

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d) the Public Service Commission shall be consulted before final orders are passed.

Explanation: For the purpose of this rule -

a) a departmental proceeding shall be deemed to be instituted on the date on which the statement of charges is issued to the employee or pensioner or if the employee 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 a criminal proceeding, on the date on which the complaint or report of police officer on which the Magistrate takes cognizance is made; and .*

(ii) in the case of a civil proceeding, on the date of presentation of the plaint in the Court.

Note 1.- As soon as proceedings of the nature referred to in this rule are instituted the authority which institutes such proceedings should without delay intimate the fact to the Audit Officer. The amount of pension withheld under this rule should not ordinarily exceed one-third of the pension originally sanctioned. In fixing the amount of pension to be so withheld, regard should be had to the consideration whether the amount of the pension left to the pensioner in any case would be adequate for his maintenance.

Note 2.- The word 'pension' used in this rule does not death-cum-retirement gratuity. Liabilities fixed against an employee or pensioner can be recovered from the death-cum- retirement gratuity payable to him without the departmental/judicial proceedings referred to in this rule, but after giving the employee or pensioner concerned a reasonable opportunity to explain.

Note 3.- The liabilities of an employee should be quantified either before or after retirement and intimated to him before retirement if possible or after retirement within a period of three years on becoming pensioner. The liabilities of a pensioner should be quantified and intimated to him."

"3-A.(a) *Where any departmental or judicial proceeding is instituted under R.3 or where a departmental proceeding is continued under clause (a) of the proviso thereto, against an employee who has retired on attaining the age of compulsory retirement or otherwise, he shall be paid 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 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 proceeding and the issue of final orders thereon."*

19. Rule 3 apparently relates to right of the Government to withdraw or withhold pension and the right of ordering recovery from pension, the whole or part of any pecuniary loss caused to the Government, if in a departmental or judicial proceedings, he is found guilty of grave misconduct or negligence during the period

of his service. Explanation (a) indicates that the departmental proceeding is deemed to be instituted on the date on which statement of charges is issued to the employee or when he is placed under suspension on such date. Note 2 of Rule 3 indicates that pension under the Rule does not include DCRG and further states that liabilities fixed can be recovered from DCRG without the departmental/judicial proceedings referred to in the Rule (Rule 3), but after giving the employee or pensioner a reasonable opportunity to explain. Note 3 of Rule 3 further indicates that the liabilities of an employee should be quantified either before or after retirement and if it is after retirement, within a period of three years on becoming pensioner. Note 2 and Note 3 were added as per SRO dated 31/3/1986.

20. Rule 3 only suggests the right of Government to recover any amount from the pension which does not include DCRG. Note 2 gives an added power to the Government to recover any amount from DCRG even without departmental/judicial proceedings. But in such an event, the employee/pensioner should be given a reasonable opportunity to explain. Therefore, as per Note 2, recovery can be made from

DCRG even if no departmental or judicial proceedings has been taken against the employee/ pensioner. However, such recovery could be made only after giving the employee or pensioner a reasonable opportunity to explain. Note 3 is apparently a continuation of Note 2 which indicates that the liabilities of the employee should be quantified before or after retirement, if possible, and, if it is after retirement, within a period of three years on becoming pensioner. Therefore, fixation of liability in terms of Note 3 is with reference to Note 2 where specific provision is made to recover the liability, even in the absence of departmental or judicial proceedings.

21. Rule 3A(a) takes care of a different eventuality where any departmental or judicial proceeding is instituted in terms of Rule 3 and continues against an employee who has retired. The rule permits grant of provisional pension from the date of his retirement to the date on which final orders are passed in such proceedings. Rule further indicates that during the pendency of any such proceedings, no gratuity or DCRG shall be paid to him until the conclusion of such proceedings.

22. A bare reading of the aforesaid statutory provisions

clearly indicates that it operates in two different fields. Rule 3 is clearly concerned with recovery of amount from pension after departmental or judicial proceedings, whereas Rule 3A contemplates a situation of payment of provisional pension during pendency of departmental or judicial proceedings against a pensioner. Further, Note 2 of Rule 3 permits the employer to recover any amount from the DCRG of an employee/pensioner even in the absence of a departmental or judicial proceeding, after giving the employee or pensioner a reasonable opportunity to explain, whereas Rule 3A takes care of a situation where a departmental/judicial proceeding is pending against the pensioner, during which time DCRG is not payable. This apparent difference in the statutory provision though taken note of by the learned Single Judge in **Aravindaksha Panicker's** case (supra), proceeded on the basis that if the liability is not quantified within a period of three years in terms of Note 3 to Rule 3, the DCRG payable to the pensioner could not be withheld even if departmental or judicial proceeding is pending. However, it is stated that the Government can quantify the liability even after a period of three years by taking recourse to proceedings before a

Civil Court. It is found that beyond the period of three years from the date of retirement, DCRG payable to the pensioner becomes inaccessible to the Government for the purpose of recovery or adjustment. Hence, it was found that the last portion of Rule 3A (a) will have to be suitably read down and restricted to cases where the Government is in a position to exercise the right of adjustment of liability of a Government servant from the DCRG payable to him. It is clarified that the interdiction against payment of DCRG as contemplated by Rule 3A(a) will apply only for a period of three years from the date on which the Government servant becomes a pensioner as contemplated under Note 3 of Rule 3. This finding of the learned Single Judge with due respect cannot be accepted as good law on account of the discussion that follows:

23. It is a settled principle of statutory interpretation that the literal meaning of the statute has to be considered by the Court. A statutory provision can be read down or construed in a different manner only if there is any ambiguity in the statute or in its plain and literal meaning [***Delhi Transport Corporation v. D.T.C. Mazdoor Congress*** (1991) Supp.(1) SCC 600)]. It will be

useful to refer to the following judgments with reference to the Rules of Interpretation of the Statute. In ***Bengal Immunity Co. Ltd. v. State of Bihar*** (AIR 1955 SC 661), a Constitution Bench of the Supreme Court held that the Court should not be called upon to discard the cardinal rule of interpretation for mitigating the hardship. In ***Tata Consultancy Services v. State of A.P*** [(2005) 1 SCC 308], another Constitution Bench held that a statute must be literally construed and such a literal construction would not be denied only because the consequences to comply with the same may lead to penalty. The Courts should not be overzealous in searching for ambiguities or obscurities in words which are plain. Only when an expression is capable of more than one meaning, the court would attempt to resolve that ambiguity in a manner consistent with the purpose of the provisions and with regard to the consequences of the alternative constructions. When a natural meaning is available and when law is certain, a strange meaning should not be given. In ***Girdhari Lal & Sons v. Balbir Nath Mathur*** (1986) 2 SCC 237, while considering the question relating to the basis of plain meaning rule, it is held by the Supreme Court in para 16 as under;

"16. Our own court has generally taken the view that ascertainment of legislative intent is a basic rule of statutory construction and that a rule of construction should be preferred which advances the purpose and object of a legislation and that though a construction, according to plain language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices or absurdities, vide K.P. Varghese v. ITO, State Bank of Travancore v. Mohd. M. Khan, Som Prakash Rekhi v. Union of India, Ravula Subba Rao v. CIT, Govindlal v. Agricultural Produce Market Committee and Babaji Kondaji v. Nasik Merchants Coop. Bank Ltd."

24. In the case on hand, we do not find any anomaly, injustice or absurdity or even ambiguity in order to consider whether the scope of Note 3 can be attracted to Rule 3A(a) of Part III KSR. Note 3 apparently is intended only in a situation which calls for fixation of liability in cases involved in Note 2 of Part III KSR, which cannot have application to other provisions of the statute.

25. There is no ambiguity in the statutory provisions under Rule 3 and Rule 3A on account of the following reasons;

(i) Rule 3 primarily concerns recovery of amount from

the pension of an employee which does not include DCRG when there is a departmental or judicial proceeding pending against him. Note 2 of Rule 3 permits the Government to recover any liability fixed on the employee from the DCRG even without a departmental or judicial proceeding. This process can be done after giving notice to the employee/pensioner. Such fixation of liability in terms of Note 3 has to be done before retirement or within three years from the date of retirement.

(ii) Rule 3A contemplates a different situation where the departmental or judicial proceeding is pending against a pensioner at the time of his retirement. He is given provisional pension till the conclusion of proceedings. But, DCRG will not be paid till conclusion of the said proceedings.

(iii) It is therefore apparent that both the provisions contemplates different situations as stated above. Further, there is no reason for the courts to take a different view from the literal construction given to the

words in the statute.

(iv) As far as Ruling No.5 in Rule 116 is concerned, it contemplates a situation different in which no departmental/judicial proceeding is pending against the pensioner.

(v) Rule 59B of Part III also operates in a different field where the Government is given a right to reduce the pension if the service of the employee was not found to be satisfactory.

26. All these statutory provisions operate in different fields and cannot be the basis for overlooking a specific statutory provision which permits withholding of DCRG during the pendency of departmental or judicial proceedings.

27. It might be true that there might be considerable delay in completing either departmental or judicial proceedings pending against a pensioner. But when the Rule clearly indicates that DCRG need not be paid, issuing a mandamus will be against the said statutory provision. A pensioner can claim the DCRG amount under normal circumstances immediately after retirement. But if he is involved in a disciplinary proceedings which is continued

even after retirement or any judicial proceeding while he is a pensioner, the statute prohibits payment of DCRG.

28. In fact, the Full Bench judgment in ***Raveendran Nair's case*** (supra), while interpreting Rule 3 of Part III KSR, held that the Government had the right to impose on a pensioner the punishment of withholding or withdrawing pension either part of it or permanently or for a specified period if in a departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service even if the misconduct and negligence do not involve pecuniary loss to the Government.

29. A question may arise as to why the DCRG is not paid during the pendency of disciplinary proceedings or judicial proceedings. Only after completion of departmental or judicial proceeding, the Government will be in a position to take a decision as to whether any recovery could be made from the DCRG or not. There is no statutory provision which prohibits the Government from recovering or adjusting any amount from the DCRG. If the pension could be recovered or denied in the case of grave misconduct, similarly, the loss suffered by the Government

could also be recovered from DCRG. But, computation of the loss may arise only after culmination of departmental or judicial proceedings, as the case may be. It is in that background that the rule making authority had made such a statutory provision, which cannot be ignored.

30. As far as the judgment in **K.Kesavan's case** (supra) is concerned, though it was a case in which the petitioner was convicted by the criminal court under the provisions of Prevention of Corruption Act, a contention was raised by the appellants that as DCRG is part of pensionary benefits, it can be withheld under Rule 3 of Part III KSR. The Division Bench noticed the difference in language in Note 2 and 3 and found that DCRG cannot be recovered, whereas it has to be paid to the employee concerned as no liability has been fixed or quantified. In fact, the said judgment does not indicate a consideration of Rule 3A though reference is made to **Aravindaksha Panicker's case** (supra). In fact, when the Division Bench considered the case, the judicial proceeding ended in conviction. Therefore, the said facts will not apply to the factual situation in the present case.

31. In WA No. 1396/10, the learned Government Pleader

submits that the departmental proceedings have already been completed during the pendency of the appeal. In such circumstances, in the absence of any fixation of liability, the appellant is liable to pay the DCRG amount to the respondent. It is pointed out by the learned counsel for petitioner that the DCRG amount is not paid so far. In such an event there is no necessity to modify the judgment.

32. In WA No.326/11, it is submitted that a vigilance case is pending against the respondent. Having regard to our finding that Rule 3A(a) of Part III KSR, applies to such a situation, the judgment of the learned Single Judge is liable to be set aside.

In the light of the aforesaid discussions, WA No. 1396/2010 is dismissed, and WA No.326/2011 is allowed setting aside the judgment of the learned Single Judge and the writ petition stands dismissed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp