

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

WP(C).No. 18797 of 2010 (Z)

AGAINST THE ORDER/JUDGMENT IN OA 116/2008 of CENTRAL
ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH DATED 17.02.2009

PETITIONER(S) : /RESPONDENTS 1 TO 4

1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY TO THE GOVERNMENT OF INDIA
MINISTRY OF INFORMATION & BROADCASTING,
NEW DELHI.
2. THE DIRECTOR, DIRECTORATE OF FIELD PUBLICITY,
MINISTRY OF INFORMATION & BROADCASTING
R.K.PURAM, NEW DELHI.
3. THE PAY & ACCOUNTS OFFICER,
PAY & ACCOUNTS OFFICE (IRLA) ,
MINISTRY OF INFORMATION & BROADCASTING,
AGCR BUILDING, NEW DELHI.
4. THE JOINT DIRECTOR, DIRECTORATE OF
FIELD PUBLICITY, REGIONAL OFFICE,
GOVERNMENT OF INDIA
MINISTRY OF INFORMATION & BROADCASTING
THIRUVANANTHAPURAM.

BY ADV. SRI.SUNIL JACOB JOSE

RESPONDENT(S) : /APPLICANT

C.GOVINDAN, AGED 65 YEARS,
S/O.K.CHANTHINAN, (RETD.REGIONAL OFFICER
DIRECTORATE OF FIELD PUBLICITY, MINISTRY OF
INFORMATION & BROADCASTING, KERALA REGION
THIRUVANANTHAPURAM) RESIDING AT TC.NO.79/152(6)
KARIKKAKOM, BEACH P.O., THIRUVANANTHAPURAM - 695 007.

BY ADV. SRI.T.C.GOVINDASWAMY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS

P1 : COPY OF ORDER DATED 17.02.2009 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH IN OA NO.116/08.

P2 : COPY OF OA NO.116/08 ALONG WITH ITS ANNEXURES FILED BY THE RESPONDENT/APPLICANT BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

P3 : COPY OF REPLY STATEMENT FILED BY THE PETITIONERS/RESPONDENTS IN O.A.NO.116/08 ALONG WITH ANNEXURES BEFORE THE HON'BLE CAT, ERNAKULAM BENCH.

RESPONDENT'S EXHIBITS

DOCUMENT NO.1 : COPY OF ORDER NO.C-13011/10/91-VIG. (VOL.III) DATED 19.06.1998 ISSUED ON BEHALF OF THE PRESIDENT.

//TRUE COPY//

PA TO JUDGE.

THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.

.....
WP(C) No.18797 of 2010
.....

Dated this the 15th day of January, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.This application under Article 227 of the Constitution of India is filed by the establishment challenging a decision of the Central Administrative Tribunal.
- 2.Heard the learned Central Government Counsel and the learned counsel for the respondent.
- 3.The respondent was on continuous unauthorised leave for a period of over 7 years. He was visited with disciplinary proceedings, which ultimately ended in presidential order of imposition of penalty of compulsory retirement. As per that order, he was also allowed full compensation pension/gratuity. The dispute, ultimately, before the Tribunal in this round was as to whether the impact of the recommendations of the Vth Central

Pay Commission has also to be taken into consideration to determine what would be payable to the respondent as the compensation component. Unfortunately, though the establishment had filed counter affidavit to the miscellaneous application seeking condonation of delay in institution of the original application before the Tribunal, it did not file any reply to the original application. This may be one of the reasons why, in our view, the Tribunal had not adjudicated the matter on the real issues arising for decision. We say this because, the presidential order of compulsory retirement was available before this Court only after an earlier interlocutory direction. We see that the said order was confirmed in an earlier round of litigation by the Tribunal. The necessary consequence is that the effect of the direction in the presidential order that the respondent herein may be allowed full compensation pension/gratuity has not been examined by the Tribunal, in accordance with the relevant statutory rules. When statutory rules directly govern a situation, it is not necessary for the parties to scout around on the basis of

clarifications and other Government Orders, unless of course those clarifications are relevant to decide any particular fact situation. In the case in hand, we say so because, Rule 40 of the Central Civil Services (Pension) Rules, 1972 deals with compulsory retirement pension. Full compensation pension or gratuity is the maximum limit that can be granted as compulsory retirement pension. Compensation pension is governed by Rule 39, and when it comes to Rule 40, compulsory retirement pension is that which would be admissible to the employee on the date of his compulsory retirement. The nice distinction, if any, between what is admissible and the concept of last pay drawn, etc. may also have to be considered. We are of the view that pointed attention of the Tribunal ought to have been obtained by the parties by placing appropriate pleadings and the relevant rules.

In the aforesaid view of the matter, this case needs to be remitted for re-consideration by the Tribunal giving an opportunity to the establishment and the applicant to place appropriate further

pleadings and materials and we do so. The establishment will place their reply to the original application before the Tribunal within a period of 45 days from today. We are sure that the Tribunal will make an earnest effort to expedite final disposal of the original application, having particular regard to the fact that the applicant is stated to be now more than 70 years old. To pave way for that, the impugned order of the Tribunal is vacated without expressing anything finally on the merits of the claims of the applicant or the defence of the establishment, however that, the condonation of delay by the Tribunal is not re-opened. Parties are directed to mark appearance before the Ernakulam Bench of the Tribunal on 03.02.2015.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(K.HARILAL, JUDGE)