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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THE HONOURABLE MR.JUSTICE V.G.ARUN

and

THE HONOURABLE MR. JUSTICE T.R.RAVI

TUESDAY, THE 08TH DAY OF SEPTEMBER 2020 / 17TH BHADRA, 1942

OP(KAT).No.78 OF 2015(Z)

AGAINST THE ORDER/JUDGMENT IN OA 104/2014 OF KERALA ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM

PETITIONER:

K.CHANDRAN
AGED 58 YEARS
S/O.KUNHIRAMAN NAIR, "SUMANGALA", THOMATTUCHAL VILLAGE, VADUVANCHIL.P.O., WAYANADU, RETD. GENERAL EXTENSION OFFICER, PANAMARAM BLOCK PANCHAYAT, WAYANADU DISTRICT.

BY ADV. SRI.U.BALAGANGADHARAN

RESPONDENTS:

1 **THE SECRETARY**
LOCAL SELF GOVERNMENT DEPARTMENT, GOVERNMENT OF KERALA, THIRUVANANTHAPURAM - 695001.

2 **ACCOUNTANT GENERAL KERALA**
THIRUVANANTHAPURAM - 695001.

3 **THE PRINCIPAL SECRETARY TO GOVERNMENT**
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM

R1-3 BY SENIOR GOVERNMENT PLEADER SRI. ANTONY MUKKATH

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD ON 25-08-2020, ALONG WITH OP(KAT).428/2019, THE COURT ON 08-09-2020 DELIVERED THE FOLLOWING:

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THE HONOURABLE MR.JUSTICE V.G.ARUN

and

THE HONOURABLE MR. JUSTICE T.R.RAVI

TUESDAY, THE 08TH DAY OF SEPTEMBER 2020 / 17TH BHADRA, 1942

OP(KAT).No.428 OF 2019

AGAINST THE ORDER/JUDGMENT IN OA 300/2015 DATED 10-06-2019 OF KERALA ADMINISTRATIVETRIBUNAL, THIRUVANANTHAPURAM

PETITIONERS:

1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 001.

2 THE COMMISSIONER OF CIVIL SUPPLIES
OFFICE OF THE COMMISSIONER OF CIVIL SUPPLIES, PUBLIC OFFICE BUILDING, THIRUVANANTHAPURAM, PIN - 695 033.

3 THE DIRECTOR OF CIVL SUPPLIES
OFFICE OF THE COMMISSIONER OF CIVIL SUPPLIES, PUBLIC OFFICE BUILDING, THIRUVANANTHAPURAM, PIN - 695 033

4 THE ACCOUTANT GENERAL (A AND E)
KERALA, THIRUVANANTHAPURAM, PIN - 695 039.

BY SENIOR GOVERNMENT PLEADER SRI. ANTONY MUKKATH

RESPONDENT:

D. ALEXANDER
S/O. DAVID, FORMER TALUK SUPPLY OFFICER, RESIDING AT KUNNEL HOUSE, ELAMKULAM DESOM, KANAYANNUR TALUK, KALOOR P.O., KOCHI, PIN - 682 017.

R1 BY ADV. SRI.P.K.GEORGE
R1 BY ADV. SMT.SMITHA GEORGE

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING BEEN FINALLY HEARD ON 25-08-2020, ALONG WITH OP(KAT).78/2015(Z), THE COURT ON 08-09-2020 DELIVERED THE FOLLOWING:

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JUDGMENT

[OP(KAT).78/2015, OP(KAT).428/2019]

Dated this the 08th day of September, 2020

K.Vinod Chandran, J

The identical issue agitated in both the Original Petitions, arising from separate orders in two Original Applications, is the justification for denial of Death-Cum-Retirement Gratuity [DCRG] after retirement, for reason of a criminal proceeding initiated against the government servants/applicants while in service; having not been finalized. The petitioners before us are the State and one of the Applicants before the Tribunal.

2. The Tribunal, in its order from which O.P[KAT] No.78 of 2015 arises, declined the claim for disbursement of DCRG. The Tribunal's decision was based on the fact that the Applicant stood convicted by the Vigilance Court and he has to wait for the conclusion of the appeal filed by him. The Tribunal also held that if the Applicant is

exonerated, then he would be entitled to DCRG; which otherwise would stand permanently withheld. O.P[KAT] No. 428 of 2019 is by the State against the order of the Tribunal directing disbursal of DCRG. The reasoning of the Tribunal therein was, that the appeal against the conviction and sentence filed by the Government servant, is not a judicial proceeding against him. The vigilance proceedings initiated against both ended in conviction and in the appeals, now pending before this Court, there is an order of suspension of sentence passed, as an interim measure. The Government continues to withhold DCRG on the ground that the appeal is a continuation of the original proceeding. They rely on Rule 3A of Kerala Service Rules, Part-III-Pension (hereinafter referred to as KSR), to withhold such DCRG, till the conclusion of judicial proceedings initiated against them.

3. The matter has been placed before the Full Bench on a reference made by a Division Bench. Sri.Antony Mukkath, learned Senior Government Pleader, first emphasises the trite position that an appeal is a continuation of the original proceeding. It is argued that

normally after retirement there cannot be any proceeding continued against a government servant for reason of the employer-employee relationship not subsisting. Rule 3 as available in KSR deems continuation in service of a delinquent servant, even after his superannuation, if any departmental or judicial proceeding is initiated, for the limited purpose of its finalisation. Under Rule 3 a punishment could be imposed for a grave misconduct or negligence, which may also be the extreme one of dismissal. In the event of an order of dismissal being passed, even after retirement, as permitted, the government servant would have to forfeit his pension and DCRG. Hence Rule 3A has to be upheld insofar as the withholding of DCRG during a pending disciplinary or judicial proceeding. Reliance is placed on *Mahanadi Coalfields Ltd. v. Rabindranath Choubey 2020 SCC online SC 470* to uphold the validity of the rule, its deeming nature and the proceedings initiated. It is asserted that there is no scope for reversal of the decisions already rendered by different Division Benches. If at all, *KSEB v. K. Kesavan [2014 (3) KHC 167]* has to be found to be

wrongly decided and *sub-silentio,* for reason of Rule 3A having not been noticed. There, the Government was not a party and the employee was of the Kerala State Electricity Board, which entity had adopted the KSR for its employees.

4. Learned Counsel Smitha George appearing for the respondent in O.P[KAT]No. 428/19 argues that retirement benefits are not a bounty, graciously paid by the Government at its discretion, but is a valuable right of the government servant flowing from the service rules, attained by virtue of the long service. Gratuity has been placed at a higher pedestal than pension as is specifically discernible from the Payment of Gratuity Act, 1972 which makes such amounts payable by the employer not liable for any attachment. Gratuity is linked to period of service and last drawn pay, computed at half of such pay for the years of service rendered, subject to a maximum. The service rules as relied on by the State enables only recovery of liability fixed against the government servant, from DCRG, which has to be recovered within three years from the date of retirement. But for that there could be no forfeiture, withholding or reduction of DCRG

payable. It is admitted that proceedings could be continued judicially or departmentally after retirement (Rule 3) and even action initiated after retirement (Rule 2) for grave offences committed before or after retirement. Such action can only be as against pension and not against DCRG. The Full Bench decision of this Court in *V.K Raveendran Nair v. State of Kerala and others [2007 (1) KHC 617*] is relied on to drive home the point. It is argued that there would be no purpose in withholding DCRG since on culmination of either the departmental or judicial proceedings, there would be no consequence attached to DCRG. Another Full Bench, in *Xavier vs. KSEB 1979 KLT 80* has authoritatively held on the consequences of Rule 3 which cannot be deviated from, concludes learned Counsel.

5. Sri. U.Balagangadharan, learned Counsel appearing for the petitioner in O.P(KAT)No. 78 of 15, adopts the arguments already addressed and adds that Rule 3 speaks of only two consequences pursuant to department or judicial proceedings; one recovery of pecuniary loss and the other punishment for grave misconduct or

negligence; which can only be against the pension payable and not DCRG. It is submitted that the Tribunal in his case has completely misdirected itself in finding automatic forfeiture of DCRG, on conviction in a criminal proceeding. There is no such enabling provision and in that circumstance the withholding is of no constructive import, even if the proceedings culminate adversely to the employee.

6. The reference order considered the interplay of the rights of the Government and its servant and was of the opinion that as far as DCRG is concerned the right of the retiring employee prevails. *Aravindaksha Panicker v. Accountant General [2007 (4) KLT 1031]*, a decision of a learned Single Judge was noticed with approval. That decision found pension and DCRG, coming under the nomenclature of retirement benefits, having been treated differently in KSR. While KSR provides for withholding/forfeiture of pension, there is no analogous provision enabling forfeiture of DCRG. Reduction/withholding of pension for a specified period or for all times, as available in the Rules was a measure to

recompense the pecuniary loss caused to the Government or as a punishment by itself. Action against DCRG can only be for adjustment of liability fixed on the government servant and cannot be a punishment by itself, it was held. The liability fixed on a government servant could be adjusted against DCRG, only within a period of three years from the date of retirement [Note 3 of Rule 3]. *Aravindaksha Panicker* read down withholding of DCRG under Rule 3A, enabling Government to exercise right of adjustment of liability, as restricted to three years from the date of retirement.

7. The referring Bench noticed a number of Bench decisions having spoken differently; which prompted the reference. *K. Kesavan* held that the Government is not justified in withholding DCRG payable to a retired employee, for reason of an appeal pending against an order of conviction, especially when DCRG is excluded from the ambit of pension by Note 2 of Rule 3. The Division Bench agreed with *Aravindaksha Panicker* but did not notice Rule 3A of KSR. Yet another Division Bench in OP[KAT] No.4241 of 2013 dated 01.07.2014 [*A. Rajan v. State of Kerala*] on

identical fact situation upheld the action of the Government in having denied disbursement of the entire DCRG. In *State of Kerala v. Muraleedharan Nair [2015 (3) KLT 775]*, a Division Bench caused limited interference to *Aravindaksha Panicker*. It was found that since there is no ambiguity in the provision, literal construction has to be adopted and Rule 3A, contemplates a different situation from Rule 3. The reading down of the provision as was done in *Aravindaksha Panicker* was found to be improper.

8. The referring Bench agreed with the reasoning of *Aravindaksha Panicker* and also the limited interference caused in *Muraleedharan Nair*. *Muraleedharan Nair* was a case in which pending departmental proceeding involved an amount of Rs.6,50,000/-. The Division Bench opined that despite restriction of adjustment of liabilty from DCRG beyond three years, by Note 3 to Rule 3, there was no bar insofar as fixing a liability and recovering it from the government servant in a disciplinary or judicial proceeding.

9. The referring Bench clearly disagreed with *A. Rajan*. Rajan, a government servant, was accused of

manhandling a Police Constable and it was argued on the strength of Rule 28(b) of Part-III of the KSR that the offence alleged was not grave enough to invite withholding of DCRG. The Division Bench found Rule 3 to be speaking of grave misconduct or negligence; while Rule 3A speaks only of pending judicial or departmental proceeding. Finding the offence alleged also to be not one to be dismissed as trivial, the Government's decision not to disburse DCRG pending the judicial proceeding initiated, was upheld. The issue referred to the Full Bench has to be considered in the context of the specific challenge against Rule 3A, raised in the Original Application from which O.P[KAT]No. 428 of 2019 arises.

10. We extract rule 3 and 3A as it exists in KSR along with the notes and rulings, herein below:

> **Rule 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 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 proceeding, 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 cause of action which arose or an event which took place more than four years before such institution; and

(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 the 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 include 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.

RULLING NO.1

Amounts due from a Government employee [or pensioner] to Government Companies, Local Bodies, Co-operative Societies, etc., though not treated as Government dues may be recovered from the death-cum-retirement gratuity payable to him with his consent in writing.

RULLING No.2

According to proviso (a) under this rule, 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. A doubt was raised as to whether in the case of an employee whose case falls

within the purview of the proviso and proceedings against whom were instituted by an authority subordinate to Government, order for withdrawal/withholding of pension can be passed by the subordinate authority on the conclusion of the proceedings. The function of the Disciplinary Authority is only to reach a finding on the charge and to submit a report recording its findings to the Government. Government will then consider the findings and take a final decision. In case Government decide to take further action under Rule 3 the Government will serve the person concerned with a show-cause notice specifying the action proposed to be taken under this rule and the person concerned will be required to submit his reply to the show-cause notice within such time as may be specified by the Government. The Government will consider the reply in consultation with the Public Service Commission and pass necessary orders in the name of the Governor.

The above procedure in regard to the issue of show-cause notice will also apply to a case where the Governor functions as the Disciplinary Authority]

RULLING No.3

The Note 2 above does not mean that the employee's [or pensioner's] consent should be obtained for recovering the liabilities from the death-cum-retirement gratuity payable to him. What is contemplated is only a communication of such liabilities to him so as to enable him to submit his explanation before the recovery is effected. It should be specifically stated in the communication that if no reply is received within 30 days of its issue, it will be presumed that employee [or pensioner] has no explanation to offer and that further action will be taken on that basis.

Rule 3A(a). Where any departmental or judicial proceeding is instituted under Rule 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.

(b) Payment of provisional pension made under clause(a) shall be adjusted against the final retirement benefits sanctioned to such employee upon conclusion of the aforesaid proceeding, but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.

Note:- The grant of pension under this rule shall not prejudice the operation of Rule 59 when final pension is sanctioned upon conclusion of the proceeding.

11. *Mahanadi Coalfields Limited* considered different rules in different establishments where the continuation of a disciplinary proceeding after superannuation was permissible. The Conduct Discipline and Appeal Rules, 1978 as applicable to the appellant company, in that decision, by Rule 34.2 provided for continuation of disciplinary proceedings instituted against the employee while he was in service, before his retirement or during his re-employment, to be continued after final retirement, deeming it to be one continued and concluded

by the employer against the employee as if he had continued in service. Rule 34.3 also provided for withholding of gratuity, while the proceeding is continued, for ordering recovery of the whole or part of any pecuniary loss caused to the company. The manner in which the rule was framed was one empowering the authority, on conclusion of disciplinary proceedings, to impose any of the penalties provided under Rule 27 including an order of dismissal. We have to immediately say that in the KSR there is no such rule available.

12. We extract Para 44 of *Mahanadi Coalfields Limited* which referred to *State of West Bengal v. Pronab Chakravarthi 2015 2 SCC 496.*, considering in *pari materia* provisions. We extract para 44 without the rule, which as noticed is in *pari materia* to Rule 3 extracted herein above.

> **44. In *State of West Bengal* v. *Pronab Chakraborty* (2015) 2 SCC 496, right of the Governor to withhold the pension in certain circumstances under rule 10 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 came up for consideration. Rule 10(1) provides for two kinds of punishments. Firstly, the right of withholding or withdrawal of pension. Secondly, the right to order the recovery from the pension of the whole or part of any pecuniary loss caused to the Government. It was held that the employee could be proceeded against after the date of his retirement on account of grave misconduct or negligence. Even in the absence of any pecuniary loss caused to the Government, it is open to the employer to continue the departmental proceedings after the employee has retired from service. It was observed:**

4. The State of West Bengal has assailed the order passed by the High Court on 22-12-2010 by asserting that Rule 10 of the 1971 Rules had been incorrectly interpreted by the High Court. Therefore, the solitary issue that arises for our consideration in the present appeal is the interpretation of Rule 10 of the 1971 Rules. Rule 10(1) aforementioned is extracted hereunder:

"10. *Right of the Governor to withhold pension in certain cases-*

xxx { in pari materia Rule not quoted } xxx

A perusal of Rule 10(1) extracted hereinabove reveals, that two different kinds of punishments are contemplated thereunder. Firstly, "… the right of withholding or withdrawing a pension …" which the delinquent employee is entitled to, permanently or for a specified period. And secondly, "… the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Government …". The above two punishments can be inflicted on a delinquent, even after he retires on attaining the age of superannuation, provided he is found guilty of "… grave misconduct or negligence …" during the period of his service.

5. It is therefore apparent, that it is not only for pecuniary loss caused to the Government that proceedings can continue after the date of superannuation. An employee can be proceeded against, after the date of his retirement, on account of "… grave misconduct or negligence …". Therefore/, even in the absence of any pecuniary loss caused to the Government, it is open to the employer to continue the departmental proceedings after the employee has retired from service. Obviously, if such grave misconduct or negligence entails pecuniary loss to the Government, the loss can also be ordered to be recovered from the employee concerned. It was therefore not right for the High Court, while interpreting Rule 10(1) of the 1971 Rules to conclude that proceedings after the date of superannuation could continue only when the charges entailed pecuniary loss to the Government."

(emphasis supplied)

13. Rule 10 in the West Bengal Rules, as found in the aforesaid decision and Rule 3 of Kerala Service Rules;

enables the Government to withhold or withdraw a pension or any part of it permanently or for a specified period as recovery of the whole or part of a pecuniary loss caused to the Government or as a punishment. This right can be exercised only, if in a departmental or judicial proceedings, the person is found guilty of grave misconduct or negligence during the period of his service or his re-employment. The proviso in clause (a) permits any such departmental proceeding instituted while the employee is in service or during re-employment, to be continued, after final retirement deeming it to be a proceeding as if the employee remained in service. The deeming provision only applies insofar as the continuation of the departmental proceeding for the purposes of concluding it, if need be by imposition of a punishment as spoken of in Rule 3. In other words the employer-employee relationship subsists only for the purpose of continuation and conclusion of the disciplinary proceeding. The punishment or recovery of loss, also, can only be as provided in the rule ie: Rule 3.

14. On conclusion of such proceedings, if the

delinquent employee is found guilty of grave misconduct or negligence then, the consequence could only be on the pension as is discernible from Rule 3. It could either be recovery of loss caused as quantified in the proceedings or as punishment for the misconduct proved. A finding of guilt against the delinquent employee for grave misconduct or negligence in a disciplinary proceeding, continued after retirement on the strength of the deeming fiction, clothes the Government with the power to either punish him with withholding, withdrawing or reducing, for a specified period or permanently, the pension payable or to order recovery for any pecuniary loss; again only from the pension as spoken of in Rule 3. This does not create any consequence on the DCRG payable. The *in pari materia* rule available in KSR (Rule 3) and applicable in the State Of West Bengal (Rule 10), as found by their Lordships of the Hon'ble Supreme Court, does not enable the Government to impose any penalty as permissible under the Control Discipline and Appeal Rules; which in *Mahanadi Coalfields Ltd.* was enabled by the rule itself. Hence we reject the submission of the leaned Government Pleader that in the

proceeding continued as per the deeming fiction in the proviso to Rule 3 there could even be a dismissal of the retired employee. The consequences as found in *West Bengal v. Pronab Chakraborty (2015) 2 SCC 496* is what has been found in *Xavier,* by a Full Bench of this Court. A Full Bench of this Court, in *Xavier* authoritatively found Rule 3 as not authorising continuance of disciplinary proceedings; as it can be proceeded with against an employee in service. It was found to permit only a limited type of enquiry for withholding or withdrawing pension or ordering recovery from pension for misconduct or negligence.

15. When we understand Rule 3 as above, Rule 3A has to necessarily concede to that interpretation. Rule 3A is for effective implementation of Rule 3 and the provisions cannot be seen as bringing in consequences distinct and different, as has been held in *Rajan.A*. In the circumstances of a departmental or judicial proceeding instituted under Rule 3 and continued under Clause (a) of the proviso, Rule 3A enables payment of a provisional pension from the date of retirement not exceeding the

maximum pension payable. The provisional pension so sanctioned shall also be not less than one-third of the pension originally sanctioned, since one-third pension is even saved from an eventual withholding of pension; as evident from Note 1 to Rule 3. However such a restriction does not apply when eventually there is a withdrawal effected of pension. The qualification insofar as the pension being provisional not exceeding the maximum, permits the government to fix an amount lesser than that actually due, subject to a minimum (1/3rd). There can be no quarrel raised to Rule 3A in operation of its first limb, which is perfectly in order; since the consequence spoken of in Rule 3 operates squarely against the pension payable.

16. Rule 3A does not stop with the power to disburse pension, provisionally, but in the second limb speaks of gratuity or DCRG being withheld till the conclusion of such proceedings. To what end; was the question posed in the reference order, to which our definite answer is, to NO END; as perceivable from the Rules. The withholding is without any consequence on the

DCRG; arising on conclusion of the departmental/judicial proceeding against the delinquent employee/ defendant/accused. In that event the employee is unnecessarily penalized by depriving him of the DGRG for long years when a judicial or departmental proceeding drags on endlessly. The deprivation also assumes onerous proportions when the proceeding ends in total exoneration; for which no recompense is provided when DCRG is paid after a long period of time.

17. The consequence; of a finding of guilt in (i) a criminal action or (ii) a departmental action for grave misconduct or negligence, with quantification of pecuniary loss due to negligence or (iii) a quantification of pecuniary loss caused, in a civil judicial proceeding, is only on the pension and not at all in any other manner, least of all as a recovery from or withholding of DCRG. In such circumstances we do not find any reason to permit the second limb of 3A to be continued in the rule book so as to penalize a retired employee, who may or may not be exonerated or convicted in a judicial or disciplinary proceeding; by depriving him of the DCRG during the period

of continuation of such proceeding.

18. *Aravindaksha Panicker* read down Rule 3A, so as to enable retention of DCRG for three years on the premise that it would facilitate recovery of a liability fixed. Recovery of a liability fixed is enabled by Note 2 of Rule 3 even without departmental or judicial proceedings referred to in Rule 3. The requirement is only reasonable opportunity to be afforded to explain the liability proposed to be fixed. The DCRG would not also be disbursed unless a Non Liability Certificate is issued to the retiring employee. Here we have to take note of the Rulings extracted; which shed relevant light on the distinct nature of an action against pension, contemplated in Rule 3 and the recovery of liability from DCRG, as spoken of in Note 2 & 3.

19. Note 2 and 3 of Rule 3 and Rulings 1 & 3 under Rule 3 are a code by itself providing the situations under which recovery could be made from DCRG. Ruling No. 1, which is not very germane to decide the issue here, requires a consent from the employee to recover from DCRG, dues of the retiring employee to Government Companies,

Local Bodies, Co-operative Societies etc. A situation in which such consent is required would be the dues in a loan availed from an Employee's Co-operative Society. Ruling No.2 clarifies a doubt expressed as to whether on conclusion of a proceeding as per the proviso to Rule 3, the disciplinary authority could impose the punishment ie: of withholding or withdrawing a pension or any part of it, permanently or for a specified period. It was clarified that insofar as proceedings continued and concluded after retirement of an employee the disciplinary authority is only to reach a finding on the charge framed against the employee and to submit a report to the Government. The Government could either decide not to proceed under Rule 3 or if further action is proposed the retired employee should be issued with a show-cause notice specifying the action proposed, and his reply considered. Any action taken under Rule 3 would also have to be after consultation with Public Service Commission. The Government thus was quite conscious of the deleterious and pernicious effect the punishment would have on a pensioner and wanted a decision to be taken by the highest

hierarchical authority after consultation with an independent constitutional body like the PSC.

20. Ruling No.3 specifies that insofar as Note 2 is concerned there is no consent required from the employee; as is mandatory in Rule 1, to recover the liabilities fixed, from DCRG. What is contemplated is only a communication of liability attempted to be fixed, so as to enable an explanation and consideration of the same. The fixation of liability is not by way of a departmental or judicial proceeding, as contemplated in Rule 3. The recovery of liability from DCRG under Note 2 of Rule 3 is a procedure normally initiated one year prior to retirement and unless a Non Liability Certificate is issued there could be no disbursal of DCRG. However,if within three years no liability is fixed or the entire liability is not fixed, the pensioner would have to be disbursed DCRG. An elaborate procedure for disbursement of DCRG with or without fixation of liability is available under Rule 116 of Part-III-KSR; which also contemplates withholding of DCRG under Rule 3A.

21. Here we have to reiterate that Note 2 under Rule

3 excludes death-cum-retirement gratuity from 'pension' as spoken of in that rule. Rule 66 of KSR-Part III, speaks about eligibility for additional gratuity not exceeding that specified in Rule 68 and also a gratuity or pension under Section III. DCRG is that amount specified in Rule 68, every employee who has completed minimum five years of qualifying service is entitled to be paid on death or retirement. Rule 57 is about determination of pension based on the length of service and Rule 58 provides for fixing of pension in whole rupees. The Note to Rule 58 specify that the term pension includes, gratuity, death cum retirement gratuity compassionate allowance and family pension. Hence, though pension and DCRG, come under the common nomenclature of retirement benefits; they have been treated distinctly and the rule making authority has in certain instances specifically included or excluded DCRG from the terminology 'pension'. Under Rule 3 DCRG stands excluded specifically and pension as spoken of in the Rule does not take in DCRG.

22. As we found, Rule 3A is for effective implementation of Rule 3. This facilitates (i) withdrawing

or withholding of pension, in full or in part, permanently or for a specified period, if a grave misconduct or negligence is proved and (ii) recovery of pecuniary loss, if quantification is carried out in a departmental or judicial proceeding continued under the proviso to Rule 3. The punishment of withdrawing or reduction and recovery of quantified loss caused, could only be from the pension and not at all from DCRG. We fully agree with the principle in *Kesavan,* though Rule 3A was not noticed by the Division Bench. The reference order agreed with *Muraleedharan Nair* which interfered with the reading down of Rule 3A as carried out in *Aravindaksha Panicker*. We find *Muraleedharan Nair* on this aspect to be wrongly decided. Even if there is a quantification of loss caused, in the disciplinary proceeding in *Muraleedharan Nair* the recovery under Rule 3 can only be against pension and not DCRG. *Aravindaksha Panicker* dealt with the issue in the correct perspective except for the reading down of the provision; which according to us, fell short of what was required. We intend to strike down that provision in Rule 3A permitting DCRG to be withheld; without any

eventual consequence on the same. It goes without saying that *Rajan A* was not correctly decided. We answer the reference striking down the second limb of Rule 3A which permits withholding of DCRG for reason of pending departmental or judicial proceeding under Rule 3 of KSR, Part-III-Pension.

23. We do not think the cases require to be sent back to the Division Bench, especially since the reference answered, puts the issue beyond any pale of doubt and there are no disputed facts. In O.P(KAT) 78/2015 the employee was proceeded against, on the allegation of demanding and receiving bribe. He was suspended between 13.10.2006 and 01.03.2008. A Vigilance Case was registered in the year 2008 which was converted to CC 13/2008. While the said matter was pending he retired on 31.03.2011. He was convicted and sentenced on 29.07.2011. In O.P(KAT) 428/2019 a Vigilance Case was registered as VC 24/03/TSR later charge filed as CC 7/2006 under Section 120B of the IPC r/w Sections 7 and 13 of the Prevention of Corruption Act. He retired as Taluk Supply Officer on 30.04.2004, after which he was convicted and sentenced. Both the

retired employees filed appeals, which are pending.

24. Even if the criminal appeals are rejected and the Government intends to proceed under Rule 3, the consequence of a punishment proposed can only be on the pension payable to the said individual and not on DCRG. Identical would be the consequence in the case of a disciplinary proceeding ending in the quantification of a loss caused or a civil proceeding in which a pecuniary loss is found recoverable. Coercive action could only be on the pension; which recovery, in the case of a judgment of a Civil Court could even be proceeded with against the assets of the pensioner. There could be no consequence as against the DCRG for the simple reason that the Rule does not provide for it. The withholding of DCRG pending departmental or judicial proceeding permitted in Rule 3A, is an arbitrary provision, sanctioning authoritarian defiance to the right of an employee to receive DCRG on retirement, depriving him of a rightful claim without any consequential power to partly or fully forfeit such eligible benefits, on finalization of the pending proceedings. We hence direct the Government to disburse

DCRG, to both the Applicants before the Tribunal, with 8% interest, from the date of retirement, which interest liability is for reason of the retired employees having been deprived of their rightful DCRG in all these years, which deprivation itself translates as an onerous penalty imposed, merely for reason of the pending proceedings. We answer the reference, striking down the second limb of Rule 3A, approving *Kesavan* & the principles enunciated in *Aravindaksha Panicker;* but finding *Muraleedharan Nair* and *Rajan.A* to have not laid down the law correctly.

We reject O.P(KAT) 428/19 and allow O.P(KAT) 78/2018. The parties shall suffer their respective costs.

Sd/-
K.Vinod Chandran,Judge

Sd/-
V.G.Arun,Judge

Sd/-
T.R Ravi,Judge

Sp/jma

APPENDIX OF OP(KAT) 78/2015

PETITIONER'S/S EXHIBITS:

ANNEXURE A1	**TRUE COPY OF THE G.O.(P) NO. 185/2002-FIN DATED 27.3.2002 FILED ALONG WITH O.A.**
ANNEXURE A2	**TRUE COPY OF THE REQUEST DATED 21.08.2014 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT**
ANNEXURE 3	**TRUE COPY OF THE POSTAL RECEIPT**
EXHIBIT P1	**P1- TRUE COPY OF THE ORDER IN O.A.NO.104/2014 DATED 9.1.22014 DATED 9.12.2014 PASSED BY THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM**
EXHIBIT P2	**P2- TRUE COPY OF O.A.NO.104/2014 FILED BY THE PETITIONER BEFORE THE KERALA ADMINISTRATIVE TRIBUNAL, THIRUVANANTHAPURAM.**
EXHIBIT P3	**P3- TRUE COPY OF I.A.NO.1326/2014 IN O.A.NO.104/2014 FILED BY THE PETITIONER**

APPENDIX OF OP(KAT) 428/2019

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	**A TRUE COPY OF THE O.A.(EKM)NO.300/2015 ALONG WITH EXHIBIT PA(A1) TO P1(A6).**
EXHIBIT P1 (A1)	**TRUE COPY OF THE PROCEEDINGS NO.(C.S)B3-5922/04 DATED 29.03.2004.**
EXHIBIT P1 (A2)	**TRUE COPY OF THE ORDER DATED 27.01.2007.**
EXHIBIT P1 (A3)	**TRUE COPY OF THE ORDER DATED 18.07.2014 IN CRL.A NO.672/2014.**
EXHIBIT P1 (A4)	**TRUE COPY OF THE REPRESENTATION DATED 17.12.2013 PREFERRED BY THE APPLICANT BEFORE THE 2ND RESPONDENT.**
EXHIBIT P1 (A5)	**TRUE COPY OF THE ORDER (C.S.)J7/15345/10 DATED 15.01.2014.**
EXHIBIT P1 (A6)	**TRUE COPY OF THE ORDER DATED 07.10.2014 IN TA NO. 6375/2012.**
EXHIBIT P2	**A TRUE COPY OF THE REPLY STATEMENT FILED BY THE FOURTH PETITIONER ON22.06.2015.**
EXHIBIT P3	**TRUE COPY OF THE REPLY STATEMENT FILED BY THE THIRD PETITIONER ON 16.02.2016.**
EXHIBIT P4	**TRUE COPY OF ORDER OF THE KERALA ADMINISTRATIVE TRIBUNAL DATED 10.06.2019 IN THE AFORESAID ORIGINAL APPLICATION.**