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OP (KAT) No. 167 of 2016

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MR. JUSTICE P.M.MANOJ

SATURDAY, THE 2ND DAY OF NOVEMBER 2024/ 11TH KARTHIKA,

1946

OP (KAT) NO. 167 OF 2016

PETITIONER:

S.GOPALAKRISHNAN POTTI, AGED 62 YEARS,
S/O.N.SUBRAYAN POTTI RESIDING AT SREEKAILAS,
T.C.13/2091-3 KOYIKKAL LANE, KANNAMMOOLA,
MEDICAL COLLEGE P.O. THIRUVANANTHAPURAM,
KERALA-695011.

BY ADVS.
SRI.K.JAJU BABU (SR.)
SRI.P.P.KURIEN
SMT.M.U.VIJAYALAKSHMI

RESPONDENTS:

- 1 STATE OF KERALA, REPRESENTED BY THE PRINCIPAL
SECRETARY TO GOVERNMENT LOCAL SELF GOVERNMENT
DEPARTMENT GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM-695001.
- 2 THE COMMISSIONER FOR RURAL DEVELOPMENT
COMMISSIONERATE, LMS COMPOUND PALAYAM,
THIRUVANANTHAPURAM KERALA-695001.

BY ADV SRI.A J VARGHESE, SR. GOVT. PLEADER

THIS OP KERALA ADMINISTRATIVE TRIBUNAL HAVING COME
UP FOR ADMISSION ON 02.11.2024, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:



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JUDGMENT

Dated this the 2nd day of November, 2024.

P.M. MANOJ, J.

The order dated 29.07.2016 in OA No.329 of 2014 of the Kerala Administrative Tribunal is assailed in this Original Petition. The limited question raised before the Tribunal was granting of penal interest for the period from 01.01.2009 to 12.09.2012 for the pension and gratuity as well as arrears of salary with interest towards the retrospective promotion and other benefits. The same was declined by the Tribunal on a well founded order.

2. The short facts necessary for the consideration of the original petition are as follows:

The petitioner herein, while working as Joint Development Commissioner, was suspended from service on 27.05.2000 for the reason that a vigilance case was registered against him. Later, he was reinstated on 28.02.2001. However, he was denied promotion due to the



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pendency of vigilance case. Later, he was promoted as Additional Development Commissioner in the light of the interim order dated 27.08.2008 in W.A No.1267 of 2008 of this Court. Thereafter, he retired from service on 30.11.2008 and he was issued with non liability certificate dated 31.12.2008 certifying that he has no liability to the Government. His pension proposal was also made on 29.01.2009, allegedly late. It is further alleged that while others facing disciplinary action or vigilance case, they were sanctioned and disbursed with pensionary benefits. Such benefit was not granted to him, even after execution of bond on 01.04.2009, despite the recommendation by the Accountant General on 06.03.2009. Later, he got an honorable acquittal on his vigilance case on 21.12.2010. Still his pensionary benefits were not drawn and disbursed which was sanctioned on 11.05.2009, it was ultimately disbursed on 05.07.2011.

3. It is the case of the petitioner that non liability



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certificate was issued on 31.12.2008 and bond was executed on 01.04.2009 and even thereafter, the pensionary benefits were not disbursed. Even after his honorable acquittal of the vigilance case on 21.12.2010, his pensionary benefits were disbursed only on 05.07.2011. There is no excuse for the delay in disbursing the pensionary benefits. Under such circumstances, the petitioner submitted representation claiming retrospective promotion and arrears of salary. Thereafter, his period of suspension was regularised on 10.01.2012 and he was given retrospective promotion as Additional Development Commissioner on 25.11.2005, the date on which he was superseded on account of vigilance case. However, the arrears of salary in the promoted post was declined. Later the pensionary benefits were authorized on 12.09.2012. Thereafter, the petitioner submitted a further representation claiming interest for delayed payment of pension and backwages consequent to retrospective promotion. That was rejected by the Government. This is the circumstance in which the petitioner preferred the



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Original Application claiming penal interest for the pensionary benefits for the period from 01.01.2009 to 12.09.2012 for the pension and gratuity as well as arrears of salary with interest towards the retrospective promotion and other benefits.

4. Contentions raised by the petitioner in the Original Application were resisted by preferring reply statements by respondents 1 and 2. It is stated that the petitioner could not be considered for selection to the post of Additional Development Commissioner due to the pendency of vigilance case. The applicant was granted only provisional promotion under Rule 31(a)(i) of Part II Kerala State And Subordinate Service Rules, 1958 (KS&SSR), pursuant to the directions issued by the High Court as per interim order. The pensionary benefits were delayed due to the statutory bar under Rule 3A (a) of Part III KSR and provisional pension as permitted was granted to the applicant. The vigilance case ended only on 21.12.2010. Immediately, steps were taken



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to disburse the pensionary benefits and also the Non Liability Certificate. Accordingly, pensionary benefits were disbursed to the applicant on 22.07.2011. Due to the pendency of the vigilance case alone, pensionary benefits could not be disbursed as the same is possible only after conclusion of vigilance case. Therefore, the applicant is not entitled for penal interest. It is further stated, provisional pension granted to the applicant has been regularized and he has given retrospective promotion notionally with effect from the date on which his junior was promoted by order dated 23.05.2012.

5. These assertions on both sides were considered by the Tribunal. The tribunal also considered the contentions raised on the side of the petitioner in the light of the reported decision in **Ramesh Kumar v. Union of India and others** (AIR 2015 SC 2904) whereby contended that he is entitled for backwages when a promotion was granted to him retrospectively. However, the Tribunal found that the



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facts involved in the aforesaid case has no relevance to the case on hand. In that case, promotion was denied on an error occurred from the part of the Departmental Promotion Committee. That is the circumstance in which the backwages were ordered in that case. However, in the case of the petitioner, it was due to the pendency of vigilance case, the promotion was denied. This situation has clearly distinguished by the Hon'ble Apex Court, i.e., a promotion which is wrongly denied or promotion delayed due to pendency of disciplinary proceedings on criminal case. The Tribunal has rightly examined the case of the petitioner in the light of **Ramesh Kumar's** case (supra), in which it is specifically found that the monetary benefits with regard to the retrospective promotion depends upon case to case. This finding was entered in the light of a decision reported in **State of Kerala and others v. E.K.Bhaskaran Pillai** [2007 (2) KHC 972], wherein the Court held that:

“the principle of “no work no pay” cannot be accepted as a rule of thumb and the matter will have



to be considered in a case to case basis. Such finding is entered by the Hon'ble Apex Court on the premises that sometimes in a case of departmental enquiry or in criminal case, it depends on the authorities to grant full back wages or 50% of back wages looking to the nature of delinquency involved in the matter or in criminal cases wherein the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes, in the matter when the person is superseded and he has challenged the same before Court or Tribunal and he succeeds in that and direction is given for reconsideration of his case from the date person juniors to him were appointed, in that case the Court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors....."

6. These findings were examined by the Tribunal meticulously and found that the petitioner was superseded in the Departmental Promotion Committee convened for selection of eligible Joint Development Commissioners to the post of Additional Development Commissioners due to the



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pendency of vigilance case, which was duly charge sheeted. Therefore, it cannot be held that the promotion due to him had been wrongly denied. Especially, on his acquittal, the petitioner was granted promotion with retrospective effect from the date on which his juniors were promoted. On entering such finding, the claim for back wages was denied by the Tribunal.

7. Similarly, the claim for penal interest on the delayed payment of pensionary benefits was also examined by the Tribunal and finding in negative.

8. For considering such claim, the Tribunal has considered the contentions raised on the strength of reported decision of the Hon'ble Apex Court in **Padmanabhan Nair v. State of Kerala** (AIR 1985 SC 356), and the decisions of this Court in **Meenakshi K. v. Cherthala Municipality and others** (2010 (3) KHC 918), **Aravindaksha Panicker v. Accountant General**, (2007 (4) KHC) 764) and **Karunakaran Pillai v. State of Kerala**



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(1994 (1) KLT 78). It is identified by the Tribunal that **Padmanabhan Nair's** as well as **Meenakshi's** case (supra) were on a different footing as the pensionary benefits were unduly delayed. It was not on the basis of disciplinary proceedings or judicial proceedings pending against the retired employee, but for other reasons, not attributable to the employee therein. On waiving the facts involved in this case, the Tribunal found it is distinguishable. In **Aravindaksha Panicker's** case (supra), the law laid down is that even if criminal proceedings or disciplinary proceedings were pending against a retired employee, the Government could not delay the payment beyond a period of three years as prescribed in Note 3 to Rule 3 Part III KSR. However, the position settled was overturned by a bunch decisions of this Court in **State of Kerala and another v. R.Muraleedharan** [2015 (3) KLT 755]. As per the decision rendered by the Division Bench, the disciplinary proceedings or departmental proceedings or judicial proceedings are pending against the pensioner, then by virtue of Rule 3A (a)



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of Part III KSR, the pensionary benefits could be withheld and the Government servant is only entitled to pension. In the case of the petitioner, he retired from service on 30.11.2008 while vigilance case was pending against him. The vigilance case culminated in acquittal on 20.08.2010. Immediately, thereon, the pensionary benefits have been sanctioned and payment authorised on 22.07.2007. Even going by these days, there is no delay than the statutory prescription, which provides three years. Even on considering Rule 3A(a) of Part III KSR, the pensionary benefits were disbursed within a period of 3 years and therefore, the petitioner is not being entitled for penal interest.

9. The Tribunal also answered the contention with respect to the amendment brought to Rule 23 Part I KSR by two sub rules, i.e., sub rules (c) and (d). The contention was that the duties assigned to the post of Joint Development Commissioner and Additional Development Commissioner



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did not involve any change and therefore, the applicant is to be granted back wages on his retrospective promotion. This was negated on the finding that the applicant's promotion was not unduly withheld.

10. In answering the contentions raised by the petitioner, the petitioner was granted notional promotion as Additional Development Commissioner with retrospective effect from the date on which his immediate junior assumed charge with a specific condition that he will not be eligible for back wages, but will be eligible for pensionary benefits. Claim for back arrears arises only when a person is promoted with retrospective effect. Here, the petitioner was notionally promoted. Only after his exoneration by the competent court of law, he became entitled even for a notional promotion.

11. We have heard Sri.Jaju Babu, the learned Senior Counsel, instructed by Sri.Brijesh Mohan, appearing for the petitioner and Sri,A.J.Varghese, Senior Government



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Pleader for the respondents.

12. We have considered the contentions on both sides. We do not find any reason whereby the Tribunal committed manifest error by misconstruing certain documents. We have fortified by the decision rendered by another reported decision rendered by the Division Bench of this Court in **David T.K. v. Kuruppampady Service Co-operative Bank and others** [2015 (2) KHC 301] which followed the decision of the Constitutional Bench in **Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam** [AIR 1958 SC 398], wherein it was specifically held :

“The common law writ, now called the order of certiorari which has also been adopted by our Constitution, is not meant to take the place of an appeal where the Statute does not confer a right of appeal. Its purpose is only to determine, on an examination of the record, whether the inferior Tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential



requirements of the law which it was meant to administer. Mere formal or technical error, even though of law, will not be sufficient to attract this extra ordinary jurisdiction. Where the errors cannot be said to be errors of law apparent on the face of the record, but they are merely errors in appreciation of documentary evidence or affidavits, errors in drawing inferences or omission to draw inference or in other words errors which a Court sitting as a Court of appeal only, could have examined and, if necessary, corrected and the Appellate Authority under a Statute in question has unlimited jurisdiction to examine and appreciate the evidence in the exercise of its appellate or revisional jurisdiction and it has not been shown that in exercising its powers the Appellate Authority disregarded any mandatory provisions of the law but what can be said at the most that it had disregarded certain executive instructions not having the force of law, there is no case for the exercise of the jurisdiction under Article 226."

13. While passing orders the learned Division Bench of this Court in **David T.K.** Supra also considered **Shama Prashant Raje v. Ganpatrao and others** [2000 (7) SCC 522] wherein it was held:



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“Undoubtedly, in a proceedings under Article 226 and Article 227 of the Constitution, the High Court cannot sit in appeal over the findings recorded by a competent Tribunal. The jurisdiction of the High Court, therefore, is supervisory and not appellate. Consequently Article 226 is not intended to enable the High Court to convert itself into a court of appeal and examined for itself the correctness of the decision impugned and decide what is the proper view to be taken or order to be made. But notwithstanding the same, on a mere perusal of the order of an inferior Tribunal if the High Court comes to a conclusion that such Tribunal has committed manifest error by misconstruing certain documents, or the High Court comes to a conclusion that on the materials it is not possible for a reasonable man to come to a conclusion arrived at by the inferior Tribunal or the inferior Tribunal has ignored to take into consideration certain relevant materials or has taken into consideration certain materials which are not admissible, then the High Court will be fully justified in interfering with the findings of the inferior Tribunal.”

14. In the case on hand, we could not come to a conclusion that the Tribunal has ignored to take into consideration certain relevant materials or has taken into consideration certain materials which are not admissible. Here, the contentions raised by the petitioner have been



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meticulously examined and answered by the Tribunal. This Court not being an appellate court, cannot re-examine those factual circumstances involved in this case under Article 227 of the Constitution of India.

Therefore, we do not find any reason to interfere with the findings of the Tribunal. Accordingly, Original Petition is dismissed.

sd/-

**A.MUHAMED MUSTAQUE,
JUDGE**

sd/-

**P.M. MANOJ,
JUDGE**

das



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APPENDIX OF OP(KAT) 167/2016

PETITIONER ANNEXURES

- ANNEXURE A1** TRUE COPY OF THE GOVERNMENT ORDER
NO.3723/08/LSGD DATED 22/10/2008.
- ANNEXURE A2** TRUE COPY OF THE NON LIABILITY
CERTIFICATE NO.42038/AC&AD 3/08/CRD
DATED 31/12/2008.
- ANNEXURE A3** TRUE COPY OF THE GO(RT)
NO.2296/07/LSGD DATED 31/12/2008.
- ANNEXURE A4** TRUE COPY OF THE COMPLAINT
NO.2181/2007 DATED 06/08/2008.
- ANNEXURE A5** TRUE COPY OF THE ORDER
NO.ESTT.A3/14234/06/CRD DATED
19/01/2009
- ANNEXURE A6** TRUE COPY OF THE UNDERTAKING DATED
01/04/2009.
- ANNEXURE A7** TRUE COPY OF THE ORDER
NO.11966/ETT.D1/09/CRD DATED
05/07/2011.
- ANNEXURE A8** TRUE COPY OF THE ORDER
NO.PR/2100935458/P10/1/1211121525
DATED 22/07/2011.
- ANNEXURE A9** TRUE COPY OF THE REPRESENTATION DATED
23/12/2011.
- ANNEXURE A10** TRUE COPY OF THE GO(RT) NO.4/12/VIG.
DATED 10/01/2012.
- ANNEXURE A11** TRUE COPY OF THE GO(RT)
NO.1423/12/LSGD DATED 23/05/2012.



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- ANNEXURE A12** TRUE COPY OF THE ORDER
NO.PR/2100935458/P10/1/1512171989
DATED 12/09/2012.
- ANNEXURE A13** TRUE COPY OF THE NOTE FILE
NO.38852/DEVI/12/FIN OBTAINED UNDER
RTI ACT.
- ANNEXURE A14** TRUE COPY OF THE REPRESENTATION DATED
20/01/2012.
- ANNEXURE A15** TRUE COPY OF THE REPRESENTATION DATED
19/05/2012.
- ANNEXURE A16** TRUE COPY OF THE GOVERNMENT LETTER
NO.30964/ERA3/12/LSGD DATED
21/07/2012.
- ANNEXURE A17** TRUE COPY OF THE GOVERNMENT LETTER
NO.51342/ERA3/12/LSGD DATED
15/11/2012.
- ANNEXURE A18** TRUE COPY OF THE REPRESENTATION DATED
21/11/2012.
- ANNEXURE A19** TRUE COPY OF THE GOVERNMENT LETTER
NO.42450/ERA3/12/LSGD DATED
26/10/2013.
- ANNEXURE R2 (A)** TRUE COPY OF THE GO (RT) NO.
3723/07/LSGD DATED 22/10/2008.
- ANNEXURE R2 (B)** TRUE COPY OF THE PENSION PAYMENT
ORDER DATED 11/05/2009.
- ANNEXURE R2 (C)** TRUE COPY OF THE LETTER NO.PEN-
SR/128/2009 DATED 26/10/2009.
- ANNEXURE R2 (D)** TRUE COPY OF THE D.O. LETTER



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NO.11966/ESTT.D1/09/CRD DATED
27/07/2011.

ANNEXURE R2 (E) TRUE COPY OF THE GOVERNMENT LETTER
NO.30058/ERB1/2011/LSGD DATED
20/12/2011.

ANNEXURE R2 (F) TRUE COPY OF THE LETTER
NO.11966/ESTT.D1/09/CRD DATED
30/06/2012.

ANNEXURE R2 (G) TRUE COPY OF THE RELEVANT EXTRACT OF
AVAILABLE ORDERS ON DELEGATION OF
POWERS OF ADDITIONAL DEVELOPMENT
COMMISSIONER AND JOINT DEVELOPMENT
COMMISSIONER.

ANNEXURE R1 (A) TRUE COPY OF THE GOVERNMENT ORDER
GO (RT)NO.3723/08/LSGD DATED
22/10/2008.

EXHIBIT P1 TRUE COPY OF THE OA 329/2014 ALONG
WITH ANNEXURE A1 TO A19 FILED BEFORE
THE HONBLE KERALA ADMINISTRATIVE
TRIBUNAL, THIRUVNANATHAPURAM.

EXHIBIT P2 TRUE COPOY OF THE REPLY STATEMENT
FILED ON BEHALF OF THE 2ND RESPONDENT
IN OA 329/2014 ALONG WITH ANNEXURE
R2 (A) TO R2 (G) BEFORE THE HON'BLE
KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM.

EXHIBIT P3 TRUE COPY OF THE REPLY STATEMENT
FILED ON BEHALF OF THE 1ST RESPONDENT
IN OA 329/2014 ALONG WITH ANNEXURE
R1 (A) BEFORE THE HON'BLE KERALA
ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM.

EXHIBIT P4 TRUE COPY OF THE ORDER DATED



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**29/07/2016 IN OA 329/2014 PASSED BY
THE KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM.**

EXHIBIT P5

**TRUE COPY OF THE JUDGMENT DATED
21/12/2010 IN CC NO.37/2002 OF THE
ENQUIRY COMMISSIONER AND SPECIAL
JUDGE, KOZHIKODE.**

EXHIBIT P6

**TRUE COPY OF THE JUDGMENT DATED
30/11/2016 IN TA NO.2683/2012 OF THE
KERALA ADMINISTRATIVE TRIBUNAL,
THIRUVANANTHAPURAM.**