

BEFORE THE GOA HUMAN RIGHTS COMMISSION
PANAJI – GOA

Proceeding No. 186/2019

Jesus Devido Furtado,
JWO, Air Veteran,
House No.2368, Nr. PHE Tank,
Borda, Goa 403 602.

... Complainant

V/s

1. The Principal District & sessions Judge,
South Goa, Margao-Goa.

2. The Director,
Directorate of Accounts,
Panaji-Goa.

... Respondents

INQUIRY REPORT/ORDER

(17th March, 2021)

The Complaint dated 17/07/2019 was inwards in the Commission on the same day in respect of delay in pension of the Complainant after his voluntary retirement as LDC in the Civil and Criminal Court, South Goa, Margao.

2. The Complainant states that he is an Ex-serviceman who was appointed as Goa Government Employee by the District and Sessions Judge, South Goa, Margao, by Order dated 05/12/2003 and he joined his duties on 10/12/2003.

3. He was relieved on voluntary retirement on 21/01/2017 in pursuance of the Order dated 10/01/2017 of the Respondent No.1, stating that he had rendered more than 10 years of service, qualifying for pension to the Government as on date. Thereafter, he submitted his pension papers.

4. The case of the Complainant is that, a Government servant appointed in a pensionable establishment on or before 31/12/2003 and who retires from Government service with a qualifying service of 10 years or more, is eligible for pension in terms of CCS Pension Rule 49(2).

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Accordingly he prayed that the pension may be released which he is deprived of and he feels that he is being victimized.

5. On perusing the complaint, the Commission by Order dated 19/07/2019 called for the report from the Respondents.

6. The Respondent No.2, the Director of Accounts, filed his reply on 16/08/2019. They stated that the Complainant has completed a qualifying service of 10 years based on the entry in his service book. They stated that the Respondent No.1 stood relieved from his duties from 21/01/2017 accepting his notice for voluntary retirement in terms of Rule 5(i) of the State Civil Services (Retirement) Rules 2000.

7. The Respondent No.2 states that the pension case of the Complainant was returned back to the Respondent No.1 by letter dated 05/02/2018 seeking clarifications as regards sanction of pensionary benefits in terms of Rule 5(i) of the State Civil Services (Retirement) Rules 2000 and the pension case was re-submitted by Respondent No.1 by letter dated 05/03/2018 stating that the Respondent No.1 has conveyed that the pensionary benefits have been sanctioned to the Complainant, as per Rule 49(2) of CCS (Pension) Rules 1972.

8. The Respondent No.2 states that the benefits of Rule 49(2) of the CCS (Pension) Rules 1972 apply to the Government servant who retires under the provisions of the CCS (Pension) Rules 1972 and since the Complainant stands retired voluntarily under the Goa State Civil Service (Retirement) Rules 2000, he is not entitled for pension under the CCS (Pension) Rules, 1972.

9. The Respondent No.2 states that the State Civil Services (Retirement) Rules 2000 do not specify as to how the pensionary benefits are to be regulated and they returned the pension papers back to Respondent No.1 by letter dated 13/07/2018 and the same was not re-submitted by Respondent No.1 till date.

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10. The Respondent No.2 states that the delay in finalizing and settlement of pensionary benefits is not caused on the part of the Respondent No.2.

11. The Respondent No.1 filed their reply dated 19/08/2019 giving details in respect of the pension papers of the Complainant. They referred to the letter dated 17/08/2016 from the Dy. Director, Directorate of Accounts, Panaji informing that the department is not the competent authority to examine and clarify the subject matter.

The Respondent No.1 has stated that the application for retirement of the Complainant in terms of Rule 5(i) of the Goa State Civil Services (Retirement) Rules, 2000 was accepted and the Complainant was relieved on 21/01/2017 to proceed on voluntary retirement.

12. The Respondent No.1 states that on return of the pension papers by the Respondent No.2 by letter dated 13/07/2018, the Office of the Senior Civil Judge & CJM, Margao was requested to depute the responsible Head Clerk to the Directorate of Accounts with regard to the observations and compliance of the pension case papers.

13. The Respondent No.1 states that on 08/01/2019, Shri Thomas Silva, Head Clerk was deputed to the Directorate of Accounts and he was informed that the Complainant, who had retired in terms of Rule 5(i) of the Goa State Civil Services (Retirement) Rules 2000 is not entitled for pension as he has not completed the required number of years of service for pension and if required, the Respondent No.1 may approach the Government for further necessary action.

14. The Respondent No.1 states that, accordingly, the Senior Civil Judge & CJM forwarded the Complainant's letter dated 14/03/2019 to the Finance Department (Revenue & Control), Panaji, through the Department of Law & Judiciary, Porvorim-Goa and requested the Secretary (Finance) Secretariat, Porvorim-Goa to look into the matter and do the needful at the earliest.

15. In the course of the proceedings, the Complainant had filed an application to produce additional documents dated 11/09/2020. The Commission passed Order thereon that the relevancy of the documents will be kept open for consideration at the final stage.

16. At the stage of final arguments, written arguments were filed by the Advocate Shri Crizanto Fernandes for the Complainant and he was also heard in the matter. Advocate Ms. Harsha Naik argued on behalf of the Respondents.

17. The Commission has gone through the records and proceedings and the documents relied on by the parties, as well as considered the oral and written submissions.

18. The Goa State Civil Services (Retirement) Rules, 2000 under Rule 3(5)(i) reads as under :

“Any Government servant may, by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of fifty years if he is in Group ‘A’ or Group ‘B’ service or post (and had entered Government service before attaining the age of thirty five years) and in all other cases, after he has attained the age of fifty five years”.

19. As seen from the above rule, any Government servant may by giving notice of not less than 3 months, retire from services after attaining the age of 55 years. As the Complainant had retired from Government services on 21/01/2017, after attaining the age of 55 years, there is no dispute that he retired in terms of Rule 3(5)(i) of Goa State Civil Services (Retirement) Rules, 2000. There is no dispute in this respect. As seen from the reply of the Respondent No.1, the Complainant’s notice dated 20/10/2016 of his intention to retire from Government services was accepted by the Respondent No.1 noting that he had rendered more than 10 years service qualifying for pension. The Notice was in terms of Rue 3(5)(i) of the Goa State Civil Services

(Retirement) Rules, 2000 and he was relieved from duties w.e.f. 21/01/2017 (forenoon).

20. On the Respondent No.2 seeking clarifications from the Respondent No.1, the Respondent No.1 informed the Respondent No.2, by letter dated 19/03/2018, that the pensionary benefits have been sanctioned to the Complainant as per Rule 49(2) of CCS (Pension) Rules 1972).

21. Rule 49(2) of the CCS Rules, 1972, reads as under :

“Rule 49(2) of the CCS (Pension) Rules, 1972 provides that a Government servant is entitled to receive pension on retirement only after the completion of the qualifying service of 10 years.

The relevant extract of Rule 49 of the CCS (Pension) Rules, 1972 is reproduced hereunder for ready reference:

“49. Amount of Pension (1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month’s emoluments for every completed six monthly period of qualifying service.

(2) (a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem.;

(b) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension admissible under Clause (a) and in no case the amount of pension shall be less than Rupees three hundred and seventy-five per mensem;...”.

22. On the Complainant's fresh letter dated 22/03/2019 to the Respondent No.1 to refer his case to the Finance Department, the Respondent No.1 by letter dated 13/05/2019 forwarded the complaint through the Law & Judiciary Department to the Finance Department. In turn the Law Department by letter dated 14/02/2019 forwarded the copy of the representation alongwith enclosures to the Finance Secretary.

23. On going through the additional documents submitted by the Complainant with the application dated 11/09/2020, obtained under RTI, the Commission finds that the representation dated 22/03/2019 of the Complainant was placed before the Finance department relating to delay in pension and was forwarded to the Directorate of Accounts for obtaining details.

24. The Directorate of Accounts had put their recommendation that the benefits of Rule 49(2) can be extended to only those who retire under the CCS (Pension) Rules, 1972 and as the present Complainant is retired in terms of Rule 5(i) of the State Civil Services (Retirement) Rules 2000, Rule 49(2) is not applicable in the present case.

25. The same was examined by the Finance Department calling for comments of the Personnel Department as to how the pensionary benefits are to be regulated of those employees who voluntarily retire in terms of the Retirement Rules, 2000 and the Personnel Department have endorsed their Notes, at page 8/N, 9/N & 10/N of the said file No.21/1/2019.

26. After observing that the Directorate of Accounts holds that the Complainant is not entitled for pension under Rule 49(2) of CCS (Pension) Rules 1972), the Personnel Department has submitted that the Goa State Civil Services (Retirement) Rules, 2000 does not specify the manner of regulating the pensionary benefits to such employees who have retired in terms of these rules.

27. At Serial No. 15, the following has been noted by the Personnel department :

“ The Goa State Civil Services (Retirement) Rules 2000 were framed to substitute the relevant provisions of FR-56 as laid down under these Rules. It therefore means that other provisions of FR & SR would apply to Government Servants in the State but for the corresponding portion of FR 56 as contained therein”.

This is totally true as under Rule 4(i), in respect of “Cessation and Saving”, on and from coming into force of the Goa Rules, the provisions of FR 56 shall cease to apply to all the employees in Group ‘A’, ‘B’, ‘C’ & ‘D’ posts under the Government of Goa. Thus, the Goa Rules only substituted the relevant provision of FR 56, which itself was in respect of compulsory/voluntary retirement of Government servants.

28. The Joint Secretary (Personnel) of the Personnel Department had noted at Sr.No.17, that the Directorate of Accounts have settled all other cases for pensionary benefits though the CCS (Pension) Rules, 1972 does not amplicitly cover cases of employees returning in terms of Goa State Civil Service (Retirement) Rules, 2000.

29. In the concluding Note No.18, in page 10/N, it has been stated as under :

*“It will be therefore appropriate to advert the implied interpretation in the above cases to the case of Shri Jesue Devido Furtado and **grant him pension in accordance with Rule 49 of the CCS (Pension) Rules 1972”.** (Emphasis added)*

30. The interpretation of the Personnel Department has been approved by the Chief Secretary on 10/12/2019 and by the Hon’ble Chief Minister on 11/12/2019, i.e. by the Goa Government, i.e. by the Competent Authority. The issue involved herein required interpretation of the

pension rules. The matter being service related as per the rules of business is within the competence of the Personnel Department to interpret and adjudicate in the matter. Thus, the interpretation of the Personnel department on the issue in dispute having been approved by the Hon'ble Chief Minister, as the Minister for Personnel, attained finality and settled the disputed issue.

31. On the file, coming back to the Finance Department, it was noted that the Joint Secretary (Personnel) has examined the matter vide notings at pages 8/N to 10/N and has concluded that the pension may be granted to Shri J. D. Furtado in accordance with the Rule 49(2) of the CCS Pension Rules, 1972. The file was then referred to Accounts for examination of the matter.

32. Thereupon the Directorate of Accounts again made a detailed note dated 19/06/2020, that the matter may be re-examined, as there will be two concurrent voluntary Retirement Rules/Schemes and the regulation of pensionary benefits would be contradictory. As already pointed out above, the matter was examined by the Joint Secretary (Personnel) and approved by the Government of Goa, the decision of the Personnel Department being approved by the Chief Secretary and the Hon'ble Chief Minister, and thus decided the matter in favour of the Complainant. Yet the Complainant has been harassed by the non-payment of his pension.

33. On going through the records, the Commission finds that the Complainant has been made to run from pillar to post and yet his pension has not been paid to him for last over 4 years after his retirement on 21/01/2017. The Complainant had joined the Goa Government Services on 10/12/2003 after earlier having been an Ex-Serviceman and Veteran from the Indian Air Force and having served in the Air Force for 20 years and who was discharged on 31/12/1999. Thereafter, he served in the Civil Court at Margao for 13 years, 1 month and 12 days, as on 21/01/2017, when he retired. By non-payment of his pension dues for over 4 years and till date, his human rights have been and continue to be violated, resulting in his undue harassment.

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34. At this stage, the Commission would consider it appropriate to refer to the Judgments of the Hon'ble Supreme Court of India in respect of payments of pension.

35. The Supreme Court of India in ***D.S. Nakara & Others vs. Union of India, AIR 1983 SC 130***, has made the following observations on right to pension.

“The antiquated notion of pension 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 right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar & Ors. , (1971) 2 SCC 330, wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by rules and a Government servant coming within those rules is entitled to claim pension”.

36. In ***State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr, (2013) 12 SCC 210*** , the Hon'ble Supreme Court of India, referred to the above case and held as under :

" 7. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. Conceptually it is so lucidly described in D.S. Nakara and Ors. Vs. Union of India, (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:

“The approach of the respondents raises a vital and none too easy to answer, question, as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay

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pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court, has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar and Ors.[1971] Su. S.C.R. 634, wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension.

It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Anr. V. Iqbal Singh (1976) IILLJ 377SC".

It is thus hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300 A of the Constitution of India."

37. Guided by the above case laws and the fact that the issue as regards to eligibility of the Complainant for pension, had been finally adjudicated by the Competent Authority, i.e. by the Personnel Department, the Respondent No.2 could not have raised any objection to the said decision, which objection has caused further delay in release of the pension of the Complainant. Hence, the Commission finds that it is appropriate to recommend to the Respondent No.2 to forthwith disperse the pension alongwith arrears of the pension of the Complainant in accordance with Rule 49 of the CCS (Pension) Rules, 1972.

38. In view of the delay in payment of the pension dues, the Ld. Advocate for the Complainant sought that appropriate interest be awarded to the Complainant.

39. To consider the same, the following decisions would be relevant to be quoted.

The Honourable Supreme Court in the case of ***(Dr. Uma Agarwal vs. State of U.P. and another) 1999 (3) Supreme Court Cases 438***, held that when there is delay in disbursement of the pensionary benefits, the department is liable to pay interest thereof. In Para No.5 to 7 of the said case, it was held as follows:-

"5. If rules/instructions which prescribe time schedule for settling of retirement dues, are followed strictly, much of litigation can be avoided and retired government servants would not feel harassed. Pension is not a bounty but right of a government servant. Government is obliged to follow rules. Delay in settling retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too, there is a prescribed procedure. This indeed is unfortunate. In cases where a retired government servant claims interest for delayed payment, the Court can certainly keep

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in mind time schedule prescribed in the rules/instructions, apart from other relevant factors applicable to a case.

6. The present case is a clear example of inexcusable department delay. Respondents contend that letters were sent to the petitioner after her retirement seeking some information for settling her retirement dues but this is denied by the petitioner. Even if it is assumed that such letters were sent, this cannot be an excuse for lethargy of the department because rules/instructions provide for initiation of process much before retirement. The exercise which was to be completed much before retirement was in fact started long after petitioner's retirement.

7. This is a fit case for awarding interest to the petitioner. It is however not necessary that the matter should go back to the Government for computation of interest. Instead, on the facts of this case, interest is quantified at Rs.1 lakh. The same shall be paid to the petitioner within two months.".....

40. Similarly, in the case of ***(D.D. Tewari (dead) through legal representatives vs. Uttar Haryana Bulivitrans Nigam Limited and others) (2014) 8 Supreme Court Cases 894*** the Honourable Supreme Court held that denial of interest from the date of entitlement till the date of actual disbursement would take away the valuable rights of the retired government servant. It was reiterated in that decision that pension and gratuity are not bounty to be distributed by Government to its employees on their retirement, but are valuable rights and property in its hands and any culpable delay in settlement and disbursement thereof is to be visited with penalty of payment of interest.

41. In the case of ***(State of Kerala and others vs. V. Padmanabhan***

Nair (1985) 1 Supreme Court Cases 429, it was held that prompt payment of retirement benefits is the duty of the Government and any failure in that direction will entail the Government liable to pay penal interest to the government servant. It was further held that gratuity should be paid on the date of retirement or on the following day and pension should be paid at the expiry of the following month. In that case, the Supreme Court, finding that there was delay in disbursement of the terminal benefits, directed the respondents therein to disburse the pensionary benefits with interest at the rate of 6% per annum.

42. It is very important to refer to the landmark judgment of the Supreme Court, in the case of ***Union of India v. Tarmen Singh, (2008) 8 SCC 648***, wherein it was observed that if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties.

It held as under :-

“That the right of a retired employee to get his retiral dues on the date of attaining superannuation is a valuable right which accrues in his favour on the date of his attaining superannuation. Further, pension is no more considered to be a bounty to be handed out by the State at its whim. An employee has a right to receive pension upon retirement. If payment of such pension is delayed, the retired employee is surely entitled to get some interest for such delayed payment.

Pension and gratuity are aimed at maintaining the life of a retired employee and his/her dependents, these are welfare provisions and even if there is delay on the part of a retired employee to approach the Court claiming interest on delayed payment of pensionary benefits, the delay per se should not be the ground for rejection of the writ

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petition. No third party interest will be affected by a direction on the State to compensate the retired employee for delayed payment of pensionary benefits by paying interest at a reasonable rate.”

43. In ***Civil Appeal No 399 of 2021, The State of Andhra Pradesh and Another, Versus Smt Dinavahi Lakshmi Kameswari***, decided on 8th February 2021, the Supreme Court directed that interest shall be paid to all pensioners of the State at the rate of 6% per annum on the deferred portion, for the period of delay .

44. Based on the above case laws and in the facts of the present case and in terms of Section 18(a)(i) of the Protection of Human Rights Act, 1993, the Commission recommends that the Respondent No. 2 shall make payments of the arrears of pension to the Complainant, Shri Jesus Devido Furtado, due from 21/01/2017, in accordance with Rule 49 of the CCS (Pension) Rules, 1972, within 60 days from today and his future pensions be paid in accordance with law. The Commission recommends that all the arrears of the pension due from 21/01/2017 be paid to the Complainant with simple interest thereon of 6% per annum from the due dates till final payment, within 60 days from today.

Accordingly, the Proceedings stand disposed of.

Date : 17/03/2021

Place : Panaji-Goa.

Sd/- (Justice U.V. Bakre) Chairperson Goa Human Rights Commission	Sd/- (Desmond D'Costa) Member Goa Human Rights Commission	Sd/- (Pramod V. Kamat) Member Goa Human Rights Commission
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