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GOVERNMENT OF KERALA

Abstract

LSGD - Engineering Wing - Order of the Hon. Kerala Administrative Tribunal in OA (EKM) No.637/16 filed by Sri. Subhash.K.S, Executive Engineer (Rtd.) - Complied with - Orders issued.

LOCAL SELF GOVERNMENT (EW) DEPARTMENT

GO (Rt) No.783/2017/LSGD.

Dated, Thiruvananthapuram, 21-3-2017.

ORDER

- Read:-
- 1 G.O.(Rt)No.949/2014/LSGD. dated 31.03.2014.
 - 2 Order of the Hon. High Court dated 04.12.2014 in CrI.M.C.No.3260/14.
 - 3 Order of the Hon. High Court dated 20.02.2015 in CrI.M.A.No.5643/2014.
 - 4 G.O.(Rt)No.1262/2015/LSGD. Dated 28.04.2015.
 - 5 Representation for regularization of suspension period dated 20.11.2015 (Annexure A-6)
 - 6 Representation for pensionary and other benefits dated 16.03.2016 (Annexure A-7)
 - 7 Order of the Hon. Kerala Administrative Tribunal dated 15.07.2016 in OA (EKM) No.637/16.
 - 8 Order No. E18/10848/2015/CE/LSGD(1). dated 10.11.2016 of the Chief Engineer, LSGD, Thiruvananthapuram.
 - 9 U.O Note No.8637/D1/2016/Vig, dated, 23-01-2017 from Vigilance(D) Department .

ORDER

As per G.O. read as 1st paper above Sri.Subhash.K.S, formerly Town Planning Officer was suspended from service and later on the basis of the order of the Hon. High Court dated 04.12.2014 in CrI.M.C.No.3260/14 he was reinstated into service as per G.O. read as 4th paper above. In that order the Hon. High Court made it clear that pendency of the proceeding may not by itself stand in the way of service benefits. In the order dated 20/02/2015 in CrI.M.A.No.5643/2014 also read as 3rd above, the Hon. High Court stated that if disciplinary action is not over, the petitioner will have to be reinstated in service with the benefits he deserves.

Sri. Subhash.K.S, Executive Engineer (Rtd.) submitted representations read as 5th and 6th paper above before the Government for regularising his suspension period and to provide pensionary and other service benefits. In the meantime he filed OA (EKM)No.637/16 before the Hon. Kerala Administrative Tribunal and the Hon. KAT in its verdict read as 7th paper above ordered to consider and pass appropriate orders on Annexure A7 in the light of the pleas raised by the applicant and after affording an opportunity of being heard to the applicant. By Annexure A7 representation Sri.Subhash.K.S requested Government to sanction service benefits due to him including loss of pay during his suspension period as ordered by the Hon. High Court as

per 2nd and 3rd paper read above. Through Annexure A6 representation he has requested to regularise the period of suspension from 31.3.14 to 18.5.15 as no disciplinary action has been initiated against him.

Sri.Subhash.K.S, Executive Engineer retired from service on superannuation on 30.11.15 and he was sanctioned provisional pension only due to the disciplinary action pending against him. Also as per order read as 8th paper above sanction was accorded for the payment of full pension provisionally and commutation to Sri.K.S.Subhash, Executive Engineer (Rtd).

The applicant was heard on 20/12/16. His main grievance is to regularise the suspension period and to sanction all pensionary benefits. He also stated that one year has been elapsed after his retirement (retirement dated 30/11/2015) and hence eligible for pensionary benefits as per the guidelines issued in G.O.(P).185/2002/Fin. Dated 27/03/2002.

As per paper read as 9 above, Vigilance Department in Government has informed that the Vigilance case in VC 07/13/EKM against Sri.Subhash.K.S is still pending before the Enquiry Commissioner & Special Judge, Muvattupuzha and it has further informed that regularisation of the period of suspension can be considered only after the final orders of the Hon'ble Court. Hence the request to regularise his period of suspension cannot be considered now as Vigilance case against him is not disposed of, and the pending pensionary benefits cannot be sanctioned to him at this stage. Also as per Rule 3A (a) of Part III KSRs , in cases where any departmental or judicial proceedings is instituted under rule 3 or where a departmental proceeding is continued under clause (a) of the proviso there to, 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 proceedings, final orders are passed, a provisional pension not exceeding the maximum pension which would have been admissible on the basis of his qualifying service up to the date of retirement but no gratuity or DCRG shall be paid to him until the conclusion of such proceedings and issue of final orders thereon. Further in G.O(P) No.803/02/Fin dated 30/12/02 it has been ordered that pensionary benefits of employees against whom cases are pending before judiciary can be finally settled only after the disposal of the cases, because one cannot certify that the service of the employee was satisfactory before the final judgement is pronounced. Only provisional pension can be sanctioned in such cases. Hence in view of the statutory provision and Government order stated above DCRG and commutation cannot be released till the finalisation of vigilance case.

Government have examined the matter in detail. In pursuance to the orders of Hon'ble, Administrative Tribunal read as 7 above, the Chief Engineer , LSGD has already sanctioned payment of full pension provisionally and commutation to Sri.K.S.Subhash, Executive Engineer (Rtd). as per order read as 8th paper above. As Vigilance Case in VC 07/13/EKM against Sri.K.S.Subhash is still pending before the Enquiry Commissioner & Special Judge, Moovattupuzha, regularisation of suspension period can be possible only after the final verdict of the Hon. Court. In view of the statutory provisions of Rule 3A (a) of Part III KSRs and G.O(P) No.803/ 02/Fin dated 30/12/02 , the remaining pensionary and service benefits

including regularisation of suspension period can be sanctioned only on finalising the vigilance case.

Under the above circumstances, the request of Sri.Subhash.K.S contained in Annexure A7 representation cannot be considered now and hence declined. The order of Hon'ble Kerala Administrative Tribunal dated 15/07/2016 in OA (EKM) No.637/16 is thus complied with.

(By Order of the Governor)

SREEJITH. V.P

Under Secretary to Government

To

- 1 Shri. Subhash.K.S, Executive Engineer (Rtd.)(Through Chief Engineer, LSGD)
- 2 The Chief Engineer, LSGD, Thiruvananthapuram.
- 3 The Advocate General, Kerala, Thiruvananthapuram (With C/L)
- 4 The Principal Accountant General (A&E/Audit) of Kerala, Thrissur.
- 5 The Director, V&ACB, Thiruvananthapuram.
- 6 The Vigilance (D) Dept. (UO No.8637/D1/2016/Vig. dated 23.01.2017.)
- 7 The Finance Department (UO No.DEV-1/5/2017/FIN. dated.3/02/2017.)
- 8 The Web & New Media, I & PRD.
- 9 The LSG (EW3) Department.
- 10 Stock File/Office Copy.

Forwarded/By Order



Section Officer.