

GOVERNMENT OF KERALA
Finance Department

CIRCULAR MEMORANDUM

No.14/Pen.Spl.A2/64/Fin.

Dated, Trivandrum, 18th March 1965

Sub: Pension—Expeditions settlement of pension—Instructions regarding fixation of liability—Issued.

Despite the various instructions issued by Government from time to time, it is observed that there is still avoidable delay in the settlement of pension cases. One of the major contributory causes for this unsatisfactory state of affairs is the delay in finalizing the liabilities of officers about to retire or already retired. Though, the general principles to be followed in fixing monetary liabilities are already laid down in articles 298 and 321 of Kerala Financial Code, Volume I, they are not being applied uniformly or rationally in all the cases. Government feel that there is need for elaborating these principles so as to set at rest all doubts regarding their application.

2. The following supplementary instructions are accordingly issued for guidance in fixing liability so far as the officers are concerned.

- (i) It should be carefully noted that personal monetary liability would arise only when pecuniary loss is sustained by Government. Irregularities in the maintenance of accounts or in the sanction of expenditure would not involve monetary liability, as long as no loss to Government is caused. Distinction should be drawn between objections involving loss to Government and other objections in an audit report. The latter will not constitute monetary liability and will call for other forms of disciplinary action whenever justified.
- (ii) For the purpose of fixing liability, losses may be grouped under the following categories:-
 - (a) Personal dues eg. Excess pay and allowance draw arrears of House rent payable, balance of advances repayable such as Motor Car Advance, House Building Advance, Mosquito Net Advance etc.
 - (b) Physical Loss of cash or store.
 - (c) Loss or Extra expenditure arising out of administrative losses eg. Payment of demurrage charges, payment of surcharge (Final) on electricity bills and Radio License fees, expenditure incurred in excess of one's powers not ratified by the competent authority, purchases effected in violation of store purchase rules resulting in extra expenditure, printing charges to Private Firms in excess of approved rates, Sanctioning posts in Schools in excess of the limits prescribed, irregular grant of fee concessions,

Stipends etc, loss of Revenue due to Wrong assessment or claims becoming time-barred etc.

- (iii) Recovery in cash is called for in respect of categories(a) and (b). in regard to category (c),cash recovery should ordinarily arise only if malafides are proved. The term "malafides" may be defined in this context as a state of mind where the Officer may be deemed to have acted with the intention to be benefited directly or indirectly by such action. In other cases falling under category(c), it should be seen whether the types of irregularities previously pointed out have been repeated. If the irregularities have been repeated or are of serious nature or magnitude, the question of taking other forms of disciplinary action if the office concerned is still in service or of reducing pension under rule 67 of Part III of K.S.R. if already retired, should be considered.
- (iv) While assessing personal liability, the principles laid-down in articles 298 and 321 of Kerala Financial Code (Vol.I) should be borne in mind. Some of the points which require special attention are re-produced below:

"The cardinal principle governing the assessment of responsibility for such losses is that every government servant should exercise the same diligence and care in respect of all expenditure from Public Funds under his control as a person of ordinary prudence would exercise in respect of the expenditure of his own money".

"An Officer's honest errors of judgment involving loss may be deserving of condonation if he can show that he has done his best up to the limits of his ability and experience. Where, however, an officer is dishonest, careless or negligent in the duties entrusted to him, and causes loss to Government, the case is clearly one for punishment and enforcement of personal liability".

"Whenever an administrative authority holds that a Government servant is responsible for a loss sustained by the Government, it should always consider both whether the whole or any part of the Government, it should always consider both whether the whole or any part of the loss should be recovered from him in money and whether any other form of disciplinary action should consider not only the circumstances of the loss but also the Government servant's financial position, since the penalty should not be such as impair his future efficiency"

"whenever a loss is held to be due to fraud on the part of a Government servant or servants, every endeavour should be made to recover the whole amount lost from the guilty persons. If the failure of a Superior Officer to exercise proper supervision and control has facilitated the fraud, he should be called strictly to account and suitably dealt with after carefully assessing his personal responsibility in the matter eg. By recovering from him in money a suitable proportion of the loss or by stopping his increments or reducing the pay"

“If in any particular case, it is not found feasible to take action against a retired Government servant in regard to a loss sustained by the Government on account of any fraud or negligence found to have been committed by him while in service, this should not be made an excuse for the loss and are still in services. Similarly the fact that it is not possible to fix responsibility on the officials who initiated or acquiesced in the initiation of any irregularity resulting in loss to Government will not exonerate those who subsequently acquiesced in the continuation of the irregularity”

- (v) It may be that in a case of loss/infractions expenditure, more than one person is involved eg. In the case of loss of stores, apart from the direct responsibility of the supervising officer/officers having control over stores will also arise. In such cases the degree/extent of personal responsibility of each individual should first be fixed strictly with reference to his duties and responsibilities and the extent to which he neglected them. The fact that a Government servant has been misled or deceived by a subordinate will, in no way mitigate his personal responsibility since every Government servant exercises a specially strict and close control over his subordinates in regard to the use of public funds and the maintenance of proper accounts. Having fixed the personal responsibility of each individual in the above manner, cash recovery/other forms of disciplinary action/should be ordered with reference to such responsibility. In ordering cash recovery, the Government servant's financial position should also be taken into consideration. Cases may arise where it is not possible to recover the share so fixed from one or more individuals due to their death or for other reasons. In such circumstances, it will not be correct to recover such share from others and such shares may have to be written off by the competent authority. However, such cases should be rare, if timely and adequate action was taken for fixation of personal responsibility and recovery of the loss to Government.
3. One of the major items of objections raised in departmental audit relates to loss of sub-vouchers and chalans. Under the financial rules, the Head of the Office is required to keep under safe custody sub vouchers such as payees' receipts for amounts not exceeding Rs.50 and forwarded those above Rs.50 to the Accountant General. Similarly, the head of the office is required to keep the original chalans in respect of remittances into treasuries. In a number of cases, internal audit is done after a considerable time lag and by that time some of the chalan or vouchers might be missing or are not readily available. In such cases such items as the liability of the Officer, without further examination. If register can be accepted as evidence of payment and certificates of payment issued on the basis of such entries should be accepted to audit. However, extreme care should be bestowed by the Heads of Offices in regard to preservation of sub vouchers and chalans so that cases of such missing documents should be rare.

4. Another type of potential liability relates to purchased but not entered in the stock register. In such cases if the articles are physically available (though they were omitted to be noted in the stock register) the question of liability should not normally arise. The items can be taken to stock when the omission is noticed. Verification of stores is often taken up after the retirement of an officer. Since several officers might have held the post during the period, it becomes difficult to pin – point responsibility. Departmental Officers should, therefore, ensure that the rules regarding physical verification of stores are scrupulously adhered to.
5. It has already been ordered by Government in G.O.MS.161/59 dated 2-4-1959 that in normal cases, no investigation of liabilities of an officer for more than three years preceding the date of his retirement will be made and only in cases where any irregularities are already under investigation or are suspected, the enquiry will have to extend to the entire period of service. This decision should be borne in mind and needless enquiry to cover the entire period of service avoided.
6. It is seen that in number of cases, the finalization of liability need not necessarily be linked with the clearance of all the objections raised in an internal audit. The objections involving loss to Government which would entail personal monetary liability should be dealt with speedily and a decision reached as to the extent of loss and the extent of personal responsibility of the officers involved.
7. When cash recovery is involved, such recovery can be made from the D.C.R.G. without the consent of the retired officer but to satisfy the principles of natural justice, the nature of the liabilities should be communicated and reasonable time (not less than 15 days) granted to the officer to put up his defence, if any, due to the officer, if a written consent is obtained from him, as pension (as distinct from D.C.R.G) enjoys the protection of the Pension Act. So also, if the retired officer is governed by rules other than the K.S.Rs., no D.C.R.G. would be admissible to him and recovery from the pension can be made only with the written consent of the retired officer. A written consent will be valid only to the extent it covers the amount of pension earned by him till the date of such written consent. In both the cases, if the pensioner refuses to give his consent, it should be examined whether rule 3 part III of K.S.R. can be invoked. If this is also not possible, it should be seen whether a reduction in pension may not be proposed to Government, if the service of the officer was not thoroughly satisfactory. But the mere fact of an officer having refused to give a written consent for recovery of liabilities should not be taken as sufficient reason to consider his service as unsatisfactory. When putting up proposals for reduction of pension particular regard should be had to the provision in note 3 to Rule 67 of part III of K.S.R. that the rule does not operate to authorize a reduction of ordinary pension to nothing or to nominal amount. The measure of the reduction in the amount of pension made under the rule should be the extent by proposals for reduction of pension particular regard should be had to the provision in note 3 to Rule 67 of part III of K.S.R. that

the rule does not operate to authorize a reduction of ordinary pension to nothing or to nominal amount. The measure of the reduction in the amount of pension made under the rule should be the extent by which the officers service as a whole has failed to reach a thoroughly satisfactory standard and any attempt to equate the amount of reduction with the amount of loss caused to Government would be incorrect. The proof of a specific instance of fraud or negligence by the Government servant would, how ever, justify a decision that the Government servant's service has not been thoroughly satisfactory.

With the issue of these instructions, it is hoped that there would be no further delay in the finalization of liabilities. The Heads of Departments should immediately arrange to make a through review of pension cases pending on this account and proceed to fix the liabilities within a period of two months at the latest. The results of the review should be communicated to the finance Secretary by the first week of May, 1965. The Heads of Departments are requested to acknowledge receipt of these orders forthwith.

By order of the Governor,
C.THOMAS,
Finance Secretary.

To

The Accountant General.
All Heads of Departments and Offices.
All Departments and Sections of the Secretariat.
The Secretary, Public Service Commission Kerala (with C.L)
The Registrar of High Court(with C.L)
The Registrar, University of Kerala,Trivandrum(with C.L)
The Personal Clerk of Chief Secretary.
The Secretary to the Governor.
The Director of Public Relations.
The Private Secretaries to Advisers.
The Secretaries, Under Secretaries, Additioanl Secretaries, Joint
Secretareis, Deputy Secretaries and Assistant Secretaries to Government.
The Superintendent of Government Presses, Trivandrum.
The Commissioners of Government Presses, Trivandrum.
The Commissioners of Corporation, Trivandrum and Kozhikode.
The Commissioners of all Municipalities.
