

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

Original Application No.21/1071/2019



Hyderabad, this the 14th day of February, 2020

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

A.Somaiah, S/o. late Narayana,
Aged about 57 years, Occ: Retd. Postal Assistant (TBOP),
Khairatabad Head Post Office, Hyderabad,
R/o. Flat No. 503, A-Block, SNR,
Sri Sri Kalakuteer's Apartment, Chintal Kunta,
LB Nagar, Hyderabad – 500 074.

... Applicant
(By Advocate: Dr. A. Raghu Kumar)

Vs.

1. The Union of India, Rep. by its Director General,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi – 1.
2. The Chief Postmaster General,
Telangana Circle, Hyderabad -1.
3. The Director of Postal Services,
O/o. Postmaster General,
Hyderabad Head Quarters Region,
Dak Sadan, Abids, Hyderabad – I,
Hyderabad City Region, Hyderabad – 1.
4. The Senior Superintendent of Post Offices,
Hyderabad City Division, Hyderabad – 1.
5. The Senior Postmaster,
Khairatabad Head Post Office, Khairatabad,
Hyderabad – 500 004.

... Respondents

(By Advocate: Mr. G. Rajesham, Addl. CGSC)

ORDER (ORAL)
{As per B.V. Sudhakar, Member (Admn.)}

2. The OA is filed in respect of reinstatement of the applicant into service in pursuance of the order of the Tribunal in OA No.1138 of 2012 dated 06.09.2018.



3. Brief facts are that the applicant while working as Postal Assistant in the respondents organisation was proceeded on disciplinary grounds for unauthorised service and compulsorily retired from service on 25.05.2005, which when challenged in OA 1138/2012, respondents were directed to reinstate the applicant vide order dated 6.09.2018. For reinstatement, respondents have laid the condition to repay the pensionary benefits received on being compulsorily retired. Aggrieved, OA has been filed.

4. The contentions of the applicant are that there is no provision in the rules to subject reinstatement consequent to refund of retiral benefits received on being compulsorily retired. The pension and pensionary benefits can be adjusted as per F.R 54 from the pay and allowances. Action of the respondents is against the orders of this Tribunal in OA 1138/2012.

5. Respondents confirm that the applicant was compulsorily retired on grounds of unauthorised absence and that consequent to the order of this Tribunal in OA 1138/2012, the applicant was directed to refund the retiral benefits for reinstating him to service as the applicant cannot claim the twin

benefits of retirement as well as employment. Applicant filed CP No. 21/41/2019 in OA 1138/2012, which is yet to be disposed.

6. Heard both the counsel and perused the pleadings on record.



7. I) It is not a disputed fact that the applicant was compulsorily retired for unauthorised absence and on approaching the Tribunal in OA 1138/2012, respondents were directed to reinstate the applicant on 6.9.2019. Respondent stipulated the condition of recovery of the retiral benefits with interest received on being retired compulsorily retired for reinstating the applicant to service order dated 13.6.2019. Applicant claims that there is no provision in the rules to lay such a condition of recovery for reinstating the applicant. This contention was not rebutted by the respondents in there reply statement. Nevertheless, to resolve the dispute the order of the Tribunal in OA 1138/2012 dated 6.9.2018 is hereunder extracted.

“12. Having regard to the aforementioned circumstances of the case, we are of the considered view that the punishment was unduly harsh and shockingly disproportionate. Therefore, we are inclined to set aside the impugned order.

*13. Consequently, the impugned order dated 25.05.2005 passed by the disciplinary authority imposing the punishment of ‘compulsory retirement’ on the applicant is set aside. The respondents are directed to reinstate the applicant forthwith. The respondents are directed to pass the order consequential to reinstatement by following the above cited judgment i.e. the judgment in **Chairman cum Managing Director Coal India Limited & Another v. Mukul Kumar Choudhuri & Others**, reported in CDJ 2009 SC 1698.”*

As can be seen from the above, the direction of the Tribunal was to reinstate the applicant forthwith. Hence the respondents have to first

reinstate the applicant to comply with the directions of the Tribunal. Directing the applicant to repay the retiral benefits for reinstatement goes contrary to the orders of the Tribunal. It requires no reiteration, that a court order, good or bad, has to be implemented as per the observation of the Hon'ble Supreme Court in ***Director of Education v. Ved Prakash Joshi, (2005) 6 SCC 98***, which is extracted as under. Otherwise, it will be construed as contempt of the Court and exercising this right the applicant did file CP 21/41/2019, which is pending disposal.



“The court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order..... Right or wrong the order has to be obeyed. Flouting an order of the court would render the party liable for contempt.”

(Emphasis supplied)

II) There is no stay of the order of the Tribunal from the higher judicial forums. Besides, it is to be made clear to the respondents that they cannot sit on appeal on the orders of the Tribunal. True, respondents need to recover the amount paid to the applicant on being retired compulsorily. It requires no reiteration that the applicant is ineligible for pensionary benefits on being reinstated. For recovering the amount paid to the applicant towards retiral dues, respondents can invoke FR 54 and other relevant rules for recovering from pay and allowances of the applicant after reinstatement. Applicant could have used the retiral benefits to make a living on compulsory retirement. Expecting him to pay the same before reinstatement is not fair, since he may not have other sources of income to make payment

of a considerable amount in one go. Besides, the impugned memo dt. 13.6.2019 is violative of the order of the Tribunal cited supra.

III) In view of the aforesaid circumstances, respondents are directed to reinstate the applicant immediately in accordance with the orders of this Tribunal in OA 1138/2012 dt. 6.9.2018, for effecting recovery of the retiral benefits paid to the applicant as per rules and in accordance with provisions of law from pay and allowances or from other benefits due to the applicant. Other benefits like back wages, seniority etc sought by the applicant be dealt as per rules and law by the respondents.

IV) With the above direction, the OA is disposed with no order as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

/evr/

