

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

Original Application No.20/740/2019

Hyderabad, this the 27th day of December, 2019



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

R. Guruswamy, S/o.R. Rajaiah,
Aged about 66 years,
Occ: Retd. Postmaster (Grade – I),
Renigunta S.O., Tirupati Division,
R/o. H. No. 7-139, NCBN Colony,
Mangalam, Tirupati – 517 507,
Chittoor District.

... Applicant

(By Advocate Mr. M. Venkanna)

Vs.

1. Union of India, Represented by its Secretary to the GOI, Ministry of Communications and IT, Director General of Posts India, Dak Bhavan, Sansad Marg, New Delhi – 110 001.
2. The Chief Postmaster General, A.P. Circle, Vijayawada – 520013.
3. The Director of Accounts (Postal), A.P. Circle, Kurnool – 518002.
4. The Superintendent of Post Offices, Tirupati Division, Tirupati – 517501.
5. The Postmaster, Tirupati HPO, Tirupati – 517501.

... Respondents

(By Advocates: Mr. Shiva Shankar, Addl. CGSC)

ORDER (ORAL)
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

2. The OA is filed challenging the order dated 21.8.2018 issued by the respondents in regard to commutation of pension.



3. Brief facts are that the applicant while working as postal assistant in the respondents organisation was proceeded on disciplinary grounds in two cases in 2013 and on retirement imposed with the penalty of withholding of pension @ 10% of monthly pension for a period of 3 years on 25.10.2016 in one case and in the other, withholding of monthly pension of 10% for a period of 2 years from 22.3.2018 onwards. On implementing the punishment dated 25.10.2016, respondents revised the provisional pension from Rs.10,550/- to Rs.24,403/- with a 10% cut in monthly pension of Rs.27,114/- w.e.f. 25.10.2016 till 24.10.2019, since penalty in another case was not finalised by the said date. Respondents allowed commutation of pension on 21.8.2018 based on the provisional pension of Rs.10,550/- instead of the revised provisional pension of Rs.27,114, is the grievance of the applicant. Aggrieved, OA has been filed.

4. The contentions of the applicant are that the penalty cannot be implemented in respect of provisional pension. When the penalty was imposed on revised pension, commutation of pension has to be granted on the revised pension. Pensionary benefits have been withheld citing pendency of disciplinary action. Implementation of penalties has to be effected concurrently from 1.4.2018 as per relevant rules. The decision of the respondents in granting lesser commutation of pension is a colourable exercise of power.

5. Respondents opposed the contentions of the applicant by stating that the applicant was identified as a subsidiary offender in TD/RD frauds committed in Renugunta Sub Post Office and on the retirement of the applicant on 30.6.2013 he was proceeded under Rule 9 of CCS (Pension) Rules, 1972 resulting in the imposition of penalty of withholding of 10% of monthly pension for 2 years on 22.3.2018. Applicant was also identified as subsidiary offender in Rajendra Nagar Town Sub Office fraud and imposed the penalty of withholding of 10% monthly pension for a period of 3 years on 25.10.2016 after conducting disciplinary proceedings as per rules. As the applicant retired on 30.6.2013 he was granted a monthly pension of Rs 10,550 from 1.7.2013 vide memo dated 4.3.2014 which was paid to the applicant till 31.3.2018. Provisional pension of the applicant was revised from Rs.10,550/- to Rs.24,403/- after implementing the 10% monthly pension cut on eligible pension of Rs.27,114 imposed on 25.6.2013. On finalisation of the two penalty orders regular pension was sanctioned on 27.8.2018 and commutation of pension to the extent of Rs.3,13,199/- was released on 21.8.2018. Pension of the applicant has been revised as per 7th CPC recommendation but there is no provision to revise Commutation of pension to pre-2016 retirees. Besides the two penalties have been given effect to as per DG instructions contained in letter dated 30.7.1981.

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

7. I) The dispute is in regard to non grant of commutation of pension to the applicant based on the revised pension granted as per 7th CPC recommendations and implementation of penalties concurrently. In regard to implementation of penalties the action of the respondents is as per



the directions contained in DGP&T letter dated 30.7.1981 and the same cannot be found fault with. However, when it comes to commutation of pension of the applicant, the decision of the respondents requires closer scrutiny, which has been attempted in the succeeding paras.



II) The applicant was not granted commutation of pension till the two penalties were effected as per Rule 4 of CCS (Commutation of Pension) Rules, 1981, (hereinafter referred to "Commutation Rules, 1981"), which is extracted hereunder. Action of the respondents to this extent is correct.

"4. Restriction on commutation of pension - No Government servant against whom departmental or judicial proceedings, as referred to in Rule 9 of the Pension Rules, have been instituted before the date of his retirement, or the pensioner against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a percentage of his provisional pension authorised under Rule 69 of the Pension Rules or the pension, as the case may be, during the pendency of such proceedings."

III) Regular pension to the applicant was granted on 27.8.2018 after imposing the penalties as per Rules and a sum of Rs.3,13,199/- was sanctioned towards commutation of pension on 21.8.2018. The commutation was allowed on pension of Rs.8440 as per impugned memo dated 21.8.2018 instead of the revised pension as per 7th CPC which came into effect from 1.1.2016. Thereafter, respondents have issued a corrigendum dated 1.5.2019 (Annexure R-3) addressing the Post Master, Tirupati Head Post Office, stating that the regular pension granted as Rs.27,114/- and that the pension eligible to be paid is Rs.24,403/- after imposition of the relevant penalty.

IV) A perusal of rules clearly specify that Commutation of pension is to be allowed on provisional or regular pension. In the case of the applicant since the disciplinary cases were pending, applicant had to wait till the cases were finalised as per commutation rules, 1981. Pension as defined under clause 3 (j) of Commutation Rules, 1981 is defined as under:



"3 (j) "Pension" means any class of pension including compassionate allowance referred to in Chapter V of the Pension Rules but does not include extra pension and the amount, by whatever name called, granted by the Government to a pensioner as a compensation for higher cost of living."

The regular pension granted to the applicant was Rs.27,114 after imposing the relevant penalty it was Rs 24,403, which would be completed by 30.9.2021. The penalty order indicates that the cut is 10 percent of monthly pension. Therefore, the procedure to be followed by the respondents was to work out the regular pension eligible to the applicant, thereafter allow the 40% commutation on the regular pension and then impose the 10 % cut on the monthly pension as held in a similar case on 22.3.2019 while disposing OA 203/2018 by this Tribunal in N. Venkatramaiah v Dept of Posts. Therefore, commutation of pension has to be allowed on the revised pension of Rs.27,114/- as per Rule 3 (j) of Commutation Pension Rules, 1981. When the penalty was imposed on the revised pension of Rs.27,114/- per month it is not in the realm of reason to grant commutation of pension on pre-revised pension as per memo dated 21.8.2018. Besides the contention of the respondents that there is no provision to revise commutation of pension to pre 2016 is incorrect. The said rules provide for commutation of pension in stages. In the present case grant of regular pension and commutation was effected in 2018 after the

implementation of the 7th CPC and imposition of the relevant penalty. As per Rule 10 of Commutation Rules, extracted hereunder, even retrospective revision of final pension consequent to enhancement of final pension due to a Govt. decision is permitted.



“10. Retrospective revision of final pension - An applicant who has commuted a percentage of his final pension and after commutation his pension has been revised and enhanced retrospectively as a result of Government's decision, the applicant shall be paid the difference between the commuted value determined with reference to enhanced pension and the commuted value already authorized. For the payment of difference the applicant shall not be required to apply afresh.”

When there exists a provision cited supra, it is not understood as to how the respondents could claim that there is no rule to revise commutation of pension of pre-2016 retirees. Respondents deducting a higher amount towards penalty based on revised pension but granting less commutation on pre-revised pension does not speak well of them as a model employer. Morevoer, the penalty has to be imposed as per orders of the disciplinary authority and not in contravention of the same. The essence of the penalty is to allow commutation and then impose the monthly cut in pension.

V) To be candid, it was an attempt to frustrate the genuine claim of the applicant, which, the respondents should not, as a model employer, as observed by the Hon'ble Supreme Court in ***Bhupendra Nath Hazarika & Anr v. State Of Assam & Ors on 30 November, 2012 in CA Nos 8514-8515 of 2012*** as under:

*“51. In Secretary, State Of Karnataka And vs. Umadevi And Others [(2006)4SCC1], the Constitution Bench, while discussing the role of state in recruitment procedure, stated that if rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules, for the State is meant to be a **model employer**.*

*53. We have stated the role of the State as a **model employer** with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of*

*such magnitude is not adopted to frustrate the claims of the employees. It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a **model employer** should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized. We say no more.”*



VI) As seen from the above, action of the respondents is against rules and the legal principle laid down by the Hon'ble Supreme Court. Consequently, the impugned order dated 21.8.2018 is quashed. Resultantly the respondents are directed as under:

- i) To sanction commutation of pension on the revised pension of Rs.27,114/- from the date eligible as per CCS (Commutation of Pension) Rules, 1981 after deducting the amount of Rs.3,13,199 already paid to the applicant.
- ii) After allowing the commutation as at (i) above, the penalties are to be imposed as per the DG letter dated 30.7.1981 and regular monthly pension be fixed and released from the date eligible as per extent rules and regulation on the subject with consequential benefits thereof, like release of pension arrears if any etc, due to re-fixation of pension as directed.
- iii) Time allowed to implement the order is 3 months from the date of receipt of the order.
- iv) With the above directions the OA is allowed. No order as to costs.

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

/evr/