

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O. A. NO. 251/2000

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New Delhi this the 29th day of June, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

Shri Jiwa Ram Rathore
Sub Post Master (Retd.)
C/o Sh. Ram Sewak Rathore
Sarul Jalebi Wala, House No. 469
Block-I, Sunder Nagri
Delhi.

... Applicant

(By Shri G. S. Lobana, Advocate)

-Versus-

1. Union of India through
Secretary,
Department of Posts,
Dak Bhawan, Parliament Street,
New Delhi- 110 001.
2. Post Master General,
Agra Region,
Agra-282001.
3. Superintendent of Post Offices,
ETAH Division, ETAH (UP).
4. Director of Postal Accounts,
U.P. Circle, Lucknow- 226001.
5. Chairman,
Union Public Service Commission,
Shahjahan Road,
New Delhi- 110 011

... Respondents

(By Shri R.V. Sinha, Advocate)

O R D E R (ORAL)

V.K. Majotra, Member (A):

The applicant has assailed the Presidential order dated 4.8.1999, Annexure-I vide which 20% of his pension has been withheld for a period of three years. He has also challenged the recovery memo dated 1.10.1999, Annexure- II issued by the Director of Postal Accounts, Lucknow vide which a recovery of Rs.608/- per month has been ordered from his pension. The applicant while he was working as Sub Post Master, Pilua was proceeded against under Rule 14 of the CCS (CC&A) Rules, 1965 on the following articles of charge:-

(9)

"(i) While working as SPM, Pilua on 7.10.91 Shri Jeewa Ram Rathore sanctioned a withdrawal from Songra 5 year TD A/C No. 470113 for its deposit of Rs. 6000/- dated 8.8.87 for Rs. 5,370.10/- as premature closure. But the said Shri Jeewa Ram Rathore failed to ascertain that the premature closure was not applied by the alleged depositor from record as required under Rule 140 of PO SB Manual, Vol. I. He also failed to compare the signatures of the depositor from record as required under Rule 33(4)1 of PO SB Manual Vol. I and he also failed to check from BPM, Songra who showed the bogus liability in his BO daily account dated 5.10.91 against the said 5 year TD Account which was sanctioned on 7.10.91 and infringed the provision of Rule 68(3) of P & T Manual Vol. VI Part III.

(ii) On 14.11.91 the said Shri Jeewa Ram Rathore allowed withdrawal from Songra RD A/c No. 331675 for Rs. 2048.60/-, the withdrawal sanctioned Head Post Office, Etah on 8.11.91 but it was not sent to BO through BO slip and also failed to enter the said withdrawal in the register SB-45, the register of withdrawals sanctioned and sent to BOs. Thus the said Shri Jeewa Ram Rathore failed to observe the instructions contained in Rule 33(4)(ii) of PO SB Man. Vol. I and the said Shri Jeewa Ram Rathore also failed to compare the signature of the depositor as required in Rule 113 of PO SB Man. Vol. I.

(iii) On 15.11.91 the said Shri Jeewa Ram Rathore allowed a withdrawal from Songra RD A/c. No. 331590 for Rs. 827.75, withdrawal was sanctioned by Etah HO on 8.11.91. The said withdrawal was sent to BO duly entered in BO slip and the SPM, Shri Jeewa Ram Rathore failed to make the entry of the said withdrawal in register SB 45, the register of withdrawal sanctioned and sent to BOs for payment as required in Rule 33(4) of PO SB Man. Vol. I."

Since the applicant denied the allegations, a departmental enquiry was held on the above articles of charge. The enquiry officer returned the findings holding the Article I of the charge as proved and Articles 2 & 3 as not proved. The disciplinary authority did not agree with the findings of the enquiry officer and the applicant was directed to make a representation against the memo dated 9.9.1996 vide which the disagreement of the disciplinary authority

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with the findings of the enquiry officer was conveyed to him. The UPSC was also consulted in the matter after which the President agreeing with the findings of the enquiry officer held Article 1 of the charge as proved and Articles 2 & 3 as not proved. The President has decided that 20% of the pension otherwise admissible to the applicant should be withheld for a period of three years and that the amount of gratuity admissible to him be released in full in this case. The applicant has alleged that neither the President nor the UPSC have applied their own mind in the case and have imposed a severe penalty without holding the applicant guilty of any grave misconduct which is a condition precedent for withholding the pension in terms of Rule 9(1) of the Central Civil Services (Pension) Rules, 1972, (for short, the Pension Rules).

2. In their counter, the respondents have stated that the applicant in his capacity as Sub Post Master, Pilua has facilitated Shri Rajveer Singh, EDBPM, Songra to commit fraudulent withdrawals from the RD and TD accounts standing at Songra EDBO. If the applicant had discharged his supervisory duties carefully, various frauds by Shri Rajveer Singh and those alleged in the Articles of charge against the applicant would not have been committed.

3. We have heard the learned counsel of the parties and examined the material placed before us carefully. The learned counsel of the applicant has stated that out of three Articles of charge only one was said to have been proved by the enquiry officer.

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That too was not of grave nature. Even the UPSC in its opinion did not hold the applicant guilty of any grave misconduct. Thus in the absence of any clear finding that grave misconduct has been committed by the applicant, the learned counsel of the applicant maintained that the pension of the applicant could not be withheld under Rule 9(1) of the Pension Rules. The learned counsel for the applicant relied upon an order dated 28.6.1999 passed by the Principal Bench of the Tribunal in OA No.1171/1998- Moti Lal Shakya vs. Union of India & ors. which in turn relied on the ratio of the judgement of the Supreme Court in the case of D.V.Kapoor v. Union of India and others, AIR 1990 SC 1923 wherein it was held that before withholding of pension as a measure of punishment, the President has to record a finding that the delinquent officer is guilty of grave misconduct or negligence. In the absence of a finding to the same effect, the President was not competent to impose the penalty of withholding any pension or part of it.

4. The learned counsel for the respondents stated that the proceedings against the applicant had been initiated under Rule 14 of the CCS (CC& A)Rules which relate to serious charges and were converted into action under Rule 9(1) of the Pension Rules as the applicant has retired. According to him, the failure of the applicant to discharge his duties as a supervisor has led to fraudulent withdrawals from the post offices by Shri Rajveer Singh, EDBPM, Songra.

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5. Rule 9(1) of the Pension Rules reads as under:-

"The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy five per mensem."

In the case of D.V.Kapoor (supra), the Hon'ble Supreme Court has held that the exercise of the power by the President under Rule 9(1) of the Pension Rules "is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge. In the absence of such a finding, the President is without authroty of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period, or to order recovery of the pecuniary loss in whole or in part from the pension of the employees..." UPSC in its opinion has stated that "neither the article of charge

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nor inquiry proceedings have established that the C.O. was directly involved in the fraudulent withdrawal of the said 5 yr TD A/c No. 470113 and RD A/c Nos. 331675 & 331590." It was also stated by the UPSC that "nothing on record has established that he deliberately assistant ^{red} BPM/Songra in fraudulent withdrawal from TD A/c No. 470113." The UPSC further stated that it would not be in order to recover the amount of Rs. 5,370.10 from DCRG of the C.O. as he could not be solely held responsible for the alleged fraudulent withdrawal. In the impugned order also we do not find anywhere a finding that the delinquent is guilty of grave misconduct or negligence in the discharge of public duty in the office. In our view although the President has reserved to himself the right of withholding a pension or gratuity or both either in full or in part from pension of any pecuniary loss caused by the Government employee but from the facts of the case before us, the condition precedent that there should be a finding that the delinquent is guilty of misconduct or negligence in the discharge of public duty in office has not been recorded while passing the impugned order. The ratio of the cases of Moti Lal Shakya and D.V.Kapoor (supra) are squarely applicable to the facts of the present case. In the facts and circumstances of this case, therefore, the impugned order of imposing penalty of withholding 20% of pension of the applicant for a period of one year is hereby quashed. Having regard to the facts and circumstances of the case, the prayer of the learned counsel of the respondents for granting

opportunity to them to pass fresh orders in accordance with the rules is rejected.

6. The OA is allowed in the aforesaid terms but without any order as to costs.

V.K. Majotra
29.6.2001
(V.K. Majotra)
Member (A)

Ashok Agarwal
(Ashok Agarwal)
Chairman

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