

**CENTRAL ADMINISTRATIVE TRIBUNAL****MADRAS BENCH****OA/310/01670/2018**

Dated *Friday*, the *4th* day of September, 2020

**PRESENT****Hon'ble Mr.T.Jacob , Member(A)**

B. Pitchai,  
S/o. S.Ballakrishnan,  
No. 34-B, Ganapathy Nagar Extension I,  
Nanthivaram, Guduvancherry West – 603 202.

...Applicant

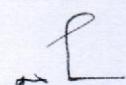
(By Advocate M/s B.Nedunchezhiyan)

Vs

1. Union of India,  
Rep by the Chief Postmaster General,  
Tamil Nadu Circle,  
Anna Salai, Chennai – 600 002.
2. Director of Postal Services,  
Chennai City Region,  
Chennai – 600 002.
3. The Senior Superintendet of Post Offices,  
Tamabaram Division,  
Tamabaram – 600 045.

....Respondents

(By Advocate Mr.M.Kishore Kumar)



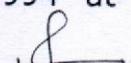
**OR D E R**  
**(Pronounced by Hon'ble Mr. T. Jacob, Member (A))**

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- "i. To call for the records of the 2<sup>nd</sup> respondent pertaining to his order which is made in C/2-38/17-18 dated at Tambaram 24.09.2018 and set aside the same; consequent to;
- ii. Direct the respondent 1 to 3 to pay eligible gratuity with 12% interest to the applicant from 08.08.2000 to till final payment.
- iii. Direct the respondent to work out the commutation amount at the rate of Rs. 16461 instead of Rs. 6405/- and thereby sanctioned the eligible commutation amount to the applicant, further to.
- iv. Direct the respondent 1 to 3 to pay the interest and penal interest for the amount of IIInd instalment 6<sup>th</sup> Pay Commission arrears and
- v. To pass any other order or direction this Hon'ble Tribunal may deem fit and necessary in the facts and circumstances of the present case and in the interest of justice and equity.
- vi. To direct the respondent to pay the leave salary with interest from 08.08.2008 till the payment."

2. The brief facts of the case as submitted by the applicant are as follows:

The applicant, B. Pitchai, had worked as Postal Assistant from 04.07.1994 to 08.08.2008. He joined duty on 04.07.1994 at

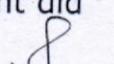


Kelambakkam Post Office as Postal Assistant. While so, he was served with a charge sheet vide memorandum dated 13.03.2007 in relation to misappropriation of Recurring Deposit Accounts (RDA). The applicant denied charges and respondents did not consider the applicant's representation and order was passed by the 3<sup>rd</sup> respondent and removed the applicant from the service vide order dated 07.08.2008 and same was challenged before this Tribunal in OA No. 190 of 2011 and same was dismissed as devoid of merits on 13.03.2014. Aggrieved by the Tribunals' order, the applicant filed W.P. 15682/2015 before the Hon'ble High Court which was allowed on 28.03.2017 by setting aside the orders of the Disciplinary, Appellate and the Revisional Authority and also the order passed by the Tribunal in OA 190 of 2011 and punishment was modified as 'compulsory retirement' instead of 'removal from service' with effect from the date he was removed from service on 07.08.2008. According to the applicant, the 3<sup>rd</sup> respondent replied on 24.09.2018 that leave salary of Rs. 43,837/- was sanctioned on 15.05.2018 and received by the applicant on 03.07.2018 and, subsequently, for the pension for the years from 08.08.2008 to 31.03.2018 for an amount of Rs. 14,56,628/-, also received by the applicant except withholding the retirement gratuity for a sum of

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Rs. 1,04,020/- and the commutation value of pension and non payment of (II) instalment of arrears of pay allowances granted by VI Pay Commission. With regard to the dues of TNPCB, the applicant states that he had been paying the instalments regularly. But unfortunately, the society had not maintained any proper accounts in respect of repayments made by the applicant. According to him, regular monthly instalments were recovered and such repayment was made till the date of his compulsory retirement. In any event, the non settlement of loan taken from the society cannot be a ground for withholding the amount payable to retirement gratuity and the commutation value of pension and non payment of (II) instalment of arrears of pay allowances granted by VI Pay Commission. The applicant had filed OA 1209/18 with a prayer to calculate commuted value of pension at Rs. 16461/- instead of Rs. 6405/-, to pay 2<sup>nd</sup> instalment of 6<sup>th</sup> CPC arrears with interest and to sanction DCRG without deduction. In pursuance of the directions of this Tribunal, the applicant's representation was replied on 24.09.2018 by the 3<sup>rd</sup> respondent. Aggrieved by the above, the applicant has filed this OA seeking the above reliefs, inter-alia, on the following grounds:-

(i) From the date of retirement on 08.08.2008 the respondent did



not come forward to settlement in respect of terminal benefits and the non-payment of terminal benefits from the date of retirement is unwarranted. The applicant sent a representation dated on 06.07.2018 to the respondent for consideration of the terminal benefits and same was not considered by the respondent.

(ii) With lapse of time without fault of the applicant, he was informed that gratuity amount will be withheld for the Tamil Nadu Circle Postal Co-operative Bank Ltd (TNCPC) dues of Rs. 3,80,000/- from retirement gratuity as on 24.09.2018.

(iii) The respondent cannot calculate commutation value in pension for Rs. 6405/-. Since, the calculation of commutation value of pension is based on present age of the applicant which is around 59 years, it has to be processed based on the present rate of pension which is around Rs. 16641/-.

(iv) The penal interest arises only due to delayed payment by the respondent otherwise they would have been adjusted earlier at the time of retirement itself. Due to the fault of the respondent for non payment and non adjustment of dues the interest raised is highly excessive in respect of vehicle loan as well as to the TNCPC loan.

(v) Due to delayed payment of settlement from the respondent side the actual outstanding dues of TNCPC is Rs. 2,05,788/- as on 26.02.2010 and same was accumulated with penal interest for a sum of Rs. 3,80,000/- towards outstanding loan as on 26.04.2018. If at all the gratuity amount or leave encashment had been adjusted earlier to the outstanding dues then the present outstanding dues of Rs. 3,80,000/- would not have arisen which is

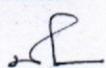


highly excessive without any fault of the applicant.

(vii) In any event, the non settlement of loan taken from the society cannot be a ground for withholding the amount payable to retirement gratuity and the commutation value of pension and non payment of (II) instalment of arrears of pay allowances granted by VI Pay Commission.

3. The learned counsel for the applicant relied on the decision of Central Administrative Tribunal, Ernakulam Bench dated 21-03-2012 in O.A. No. 1017 of 2011 in the case of C. Gopalan Vs. Union of India represented by Secretary to the Government, Department of Post, Ministry of Communication, Government of India, New Delhi & Others. Further, the applicant also relied on the Office Memorandum dated 11<sup>th</sup> July 2013 Ministry of Personnel Public Grievances and Pensions, Department of Pension and Pensioners Welfare.

4. The respondents have filed detailed reply statement. It is submitted that consequent on the modification of penalty of "Removal from Service" as "Compulsory retirement from service", the ASPos., Tambaram sub division was addressed for collection of pension papers from the retired applicant on 19.02.2018. The pension claim papers were submitted by the retired applicant on 22.02.2018 and were forwarded to the General Manager, Postal



Accounts and Finance (C&R). Pension of Rs. 6405/- per month w.e.f 08.08.2008 and retirement Gratuity of Rs. 1,04,020/- were authorized vide GM (PA&F), Ch-8 memo no. Postal/2008/TN/55695/DCRG/12 dated 16.04.2018. It is further submitted that the Retirement gratuity of Rs.1, 04,020/- was sanctioned vide 3<sup>rd</sup> respondent memo no. C/2-38/17-8/DCRG dated 26.04.2018 addressed to the Postmaster, Ambattur HO with a direction to recover a sum of Rs. 3,80,000/- towards Tamil Nadu Circle Postal Co-operative Bank Ltd (TNCPC) bank dues based on the demand notice received from Bank vide its Demand notice dated 14.03.2018. The bank also sent a copy of membership application dated 06.09.1995 which was signed by the applicant, and his then DDO, i.e., Postmaster, Tambaram HO and copy of surety bond jointly signed by the applicant and his surety in which he agreed that the loan amount availed may be recovered from his terminal benefits. The applicant also had given his consent to recover a sum of Rs. 1,68,000/- towards TNCPC bank dues vide his representation dated 01.05.2018. Though the retirement gratuity was sanctioned, the applicant has not taken payment yet. The applicant represented vide his letter dated 06.07.2018 not to recover TNCPC dues from retirement gratuity which is contrary to

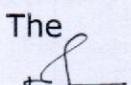
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his earlier consent letter dated 01.05.2018 stated supra and he was replied vide 3<sup>rd</sup> respondent letter dated 23.08.2018 accordingly. Also it was replied to a RTI application of the applicant vide 3<sup>rd</sup> respondent letter no. B1/RTI ACT dlgs/2009 dated 26.02.2010 that a sum of Rs. 2,05,788/- is due to TNCPC bank as on 15.07.2009 and hence second instalment of VI CPC arrears was kept pending. But he has not taken any action to repay the loan amount since then but alleges the raise in TNCPC bank due amount as Rs. 3,80,000/- from Rs. 2,05,788/- due to delay in payment of retirement gratuity. As soon as the punishment of the applicant got modified as compulsory retirement on 16.02.2018 necessary action was taken swiftly and retirement gratuity was sanctioned vide 3<sup>rd</sup> respondent memo dated 26.04.2018. But the applicant is yet to take payment and hence no amount could be credited to TNCPC bank towards his loan and penal interest. Hence interest levied on TNCPC bank loan is due to non settlement of entire TNCPC loan dues by the applicant and not by the respondents.

5. As per CCS (Commutation of Pension) Rules 1981, a Government servant shall be entitled to commute for a lump sum payment of his pension, of an amount not exceeding forty per cent. The lump sum payable to an applicant shall be calculated in



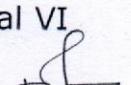
accordance with the Table of the values prescribed from time to time and applicable to the applicant on the date on which the commutation becomes absolute. As the applicant retired compulsorily on 08.08.2008 F/N and pension payable on the date of retirement is Rs. 6405/- p.m commuted value of pension is calculated accordingly. The amount of pension payable to the applicant was revised to Rs. 16,461/- w.e.f 01.01.2016 as per VII CPC rules. His last pay drawn was not revised after his retirement. Hence commuted value of pension payable calculated as per pension payable on the date of retirement (Rs. 6,405/-) and not as per present pension amount (Rs. 16,461/-). Report on the commutation application was received from the GM (PA&F), Ch-8 vide no. 1301/Pen3/com/st.12 dated 06.08.2018. As the applicant retired compulsorily, the commuted value of pension is payable to the applicant after medical examination vide Rule 18(iii) of CCS (Commutation of Pension) Rule, 1981. Hence the Medical authorities were addressed on 14.08.2018 to take necessary action and copy sent to the applicant also. The medical authorities have directed the applicant to appear for medical examination on 14.09.2018. It was intimated by the applicant that no medical examination was conducted on 14.09.2018 vide his letter dated 29.10.2018. The



report from medical authorites is yet to be received and hence commuted value of pension is not sanctioned.

6. It is further submitted that the applicant had availed Scooter Advance of Rs. 30,000/- while he was in service. The outstanding principal amount of Rs. 14520/- plus interest thereon is due to be recovered on the date of his removal from service i.e., on 08.08.2008. But a sum of Rs. 31108/- drawn and was paid to him in bill B152.03.09 towards 1<sup>st</sup> instalment of VI CPC arrears without deduction of any recovery. Neither the applicant represented nor repaid the amount of remaining scooter advance availed by him and got the outstanding Scooter Advance principal amount and interest recovered then from his dues and even after that. Hence the outstanding Scooter Advance (Rs.14,520/-) and interest/penal interest (Rs. 18260/-) recovered from the 2<sup>nd</sup> instalment of VI CPC arrears due to the applicant.

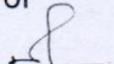
7. Initially the total amount of VI CPC pay commission arrears was claculated as Rs. 77,769/-. Out of which a sum of Rs. 31,108/- drawn and paid in bill B152.3.09 of Ambattur HO towards 1<sup>st</sup> instalment of VI CPC arrears without deducting any recovery. Later, it was noticed that there was a mistake in calculation of VI CPC arrears resulted in excess amounting to Rs.7,840/- Hence actual VI



CPC arrears works out to Rs. 69,929/- and 2<sup>nd</sup> instalment of VI CPC arrears due to be paid to the applicant works out to Rs. 38,821/- only. Also the outstanding scooter advance principal of Rs. 14,520/- and scooter advance interest/penal interest of Rs. 18,260/- were recovered from 2<sup>nd</sup> instalment of VI CPC arrears and balance of Rs. 6,041/- was drawn in bill B8-6-18 of Ambattur HO and intimation sent vide Postmaster/ Ambattur HO letter dated 23.06.2018. The applicant is yet to take payment of 2<sup>nd</sup> instalment of VI CPC arrears of Rs.6041/- It is very clear that the amount due to be paid towards 2<sup>nd</sup> instalment of VI CPC arrears after deducting all Departments dues is Rs.6041/- which is very less and there is no possibility to recover the entire TNCPC loan dues then out of it. Hence interest levied on TNCPC bank loan is due to non settlement of entire TNCPC loan dues by him only and not due to delayed payment of 2<sup>nd</sup> instalment of VI CPC arrears by the respondents as alleged. Hence the respondents pray for dismissal of the OA.

8. Heard the learned counsel for the respective parties and perused the pleadings and documents on records.

9. Admittedly, this is the second round of litigation regarding settlement of retiral benefits before this Tribunal. The applicant had filed OA 1209/18 with a prayer to calculate commuted value of



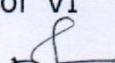
pension at Rs. 16461/- instead of Rs. 6405/-, to pay 2<sup>nd</sup> instalment of VI CPC arrears with interest and to sanction DCRG without deduction and the same was disposed by the Hon'ble Tribunal during admission stage itself and directed the respondents to dispose the representation dated 06.07.18 within 2 months. The applicant's representation dated 06.07.18 was disposed on 23.08.2018 itself by the 3<sup>rd</sup> respondent. And also the representation dated 14.05.18 which was attached along with the copy of the orders of the OA received on 14.09.18 was replied on 24.09.18 against which now the applicant has approached the CAT for setting aside the same.

10. The applicant was removed from service w.e.f. 08.08.2008 for his involvement in multiple frauds committed by him to the tune of Rs. 16500/- during the period from 01.10.2004 to 04.10.2005. His appeal and petition were also rejected by the competent authority. The applicant approached Hon'ble High Court of Madras against the order passed against him. In accordance with the orders dated 28.03.2017 of the Hon'ble High Court, Madras in WP 15682 of 2015, the penalty of "Removal from Service" was modified as "Compulsory retirement from Service". The SLP filed by the Department has been dismissed on 30.10.17.



11. According to the respondents, leave salary of Rs. 43,837/- was sanctioned vide office memo no. C/2-38/17-18 dated 15.05.18 and it was intimated by the Postmaster, Ambattur HO that it was paid to the applicant on 03.07.2018 itself. A sum of Rs. 1,04,020/- towards retirement gratuity was sanctioned vide office memo no. C/2-38/17-18 dated 26.4.18 for which a copy of memo was also sent to the applicant. A demand notice dt. 14.3.18 to recover a sum of Rs. 3,80,000/- towards outstanding loan due amount received from TNCPC and there is no mention in it about loan and interest amount separately. Based on the declaration given by the applicant to the bank while availing loan, recovery of TNCPC dues of Rs. 3,80,000/- from retirement gratuity was ordered. But it was intimated by the Postmaster, Ambattur HO that payment on DCRG amount is yet to be taken by the applicant. Further Sanction for commutation value of pension is under process. It is intimated by the Medical Board authorities that necessary medical examination will be conducted on 14.09.18. On receipt of the medical report, commutation value of pension will be processed.

12. Initially the total amount of VI CPC pay commission arrears was calculated as Rs. 77,769/-. Out of which a sum of Rs. 31,108/- drawn and paid in B152.3.09 towards 1<sup>st</sup> instalment (40%) of VI



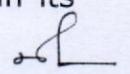
CPC arrears without deducting any recovery. Later it was noticed that there was a mistake in calculation in VI CPC arrears in excess amounting to Rs. 7,840/-. Actual VI CPC arrears works-out to Rs. 69,929/- and, hence 2<sup>nd</sup> instalment of VI CPC works-out to Rs.38,821/- out of which a sum of Rs. 14,520/- recovered towards the Scooter Advance principal and a sum of Rs. 18,260/- towards Scooter interest/penal interest. Remaining amount of 2<sup>nd</sup> instalment of VI CPC worksout to Rs. 6,041/- which is only due to the applicant. It was replied to the RTI querry vide office letter no. B1/RTI Act dlgs/2009 dated 26.2.10 that a sum of Rs. 2,05,788/- was due to TNCPC bank then and, hence, second instalment of VI CPC arrears was kept pending. Hence a sum of Rs. 6041/- towards remaining amount of 2<sup>nd</sup> instalment of VI CPC arrears after deduction of all departmental dues was drawn in bill B8.6.18 and sent to Tiruvottiyur SO for effecting payment with a direction to recover Rs. 6,041/- on account of TNCPC dues and applicant was also intimated by the Postmaster/Ambattur HO. As such, the question of interest claimed by the applicant at GPF interest rate for 2<sup>nd</sup> instalment of VI CPC arrears not at all arise.

13. I have considered the matter. As per Rule 68 of Govt. Of India decisions (3)(i)(c) of CCS Pension Rules 1972, in case where the

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Government servant is not fully exonerated on the conclusion of disciplinary/judicial proceedings and where the competent Authority decides to allow the payment of gratuity, in such cases, the payment of gratuity will be deemed to have fallen due on the date of issue of orders by the competent Authority for payment of gratuity vide O.M. No.7(1) PU/79 dated 11/07/1979 (Para 2 of Decision (1)). As soon as the punishment of applicant got modified, Retirement Gratuity of Rs.1,04,020/- was sanctioned vide 3<sup>rd</sup> Respondent memo no. C/2-38/17-18/DCRG dated 26.4.18 but the applicant did not choose to take payment. The payment of gratuity to the applicant had been sanction on 26.04.2018 within 90 days after issue of order for modification of punishment dated 16.02.2018 without exoneration. There is negligible delay in sanctioning the retiral benefits to the applicant and, therefore, the claim of interest on account of delayed payment is not justified and, hence, not payable.

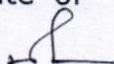
14. The CCS (Pension) Rules do not provide for adjustment from the DCRG of dues other than Government dues. There is thus an immunity provided to the terminal benefits and pension for obvious reasons that such sums are meant to meet the needs at the old age. They are immune to attachment. Not only the gratuity in its



own form, but even if it were converted into FD, the same too is immune to attachment or adjustment.

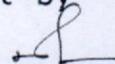
15. Now a word about the obligation on the part of the employer, i.e. the Postal Authorities to execute the provisions of the Pension Rules governing the Government servants with intent and spirit. They are not under any legal obligation to the Tamil Nadu Circle Postal Co-operative Bank Ltd authorities to act contrary to the statutory provisions. While the CCS (Pension) Rules, 1972 do not so provide for adjustment of dues (save government dues) after getting the agreement executed from the Central Government employees such an agreement cannot be entered into and even if the employee agrees, the respondents cannot execute that part of the agreement as the same is contrary to the rules.

16. As per CCS (Commutation of Pension) Rules, 1981, a Government servant shall be entitled to commute for a lump sum payment of his pension of an amount not exceeding forty per cent. The lumpsum payable to an applicant shall be calculated in accordance with the Table of the values prescribed from time to time and applicable to the applicant on the date on which the commutation becomes absolute. As the applicant retired compulsorily on 8.8.08 F/N and pension payable on the date of



retirement is Rs. 6,405/- pm, commuted value of pension calculated accordingly and he is drawing his pension since then. The amount of pension payable to the applicant was revised to Rs. 16,461/- w.e.f. 01.01.16 as per VII CPC rules. His last pay drawn was not revised after his retirement. Hence commuted value of pension payable calculated as per pension payable on the date of retirement (Rs.6,405/-) and not as per present pension amount (Rs.16,461/-). As per Rule 17 and 18 (iii) of Central Civil Services (Commutation of Pension) rules, 1981, the applicant who reitred compulsorily is eligible to commute fraction of his pension after medical examination only. The applicant is telling one or the other reason and not subjected himself for medical examination whenever called by the Medical Authorities for which the applicant is alone responsible and not the respondents. The Medical authorities were reminded by the 3<sup>rd</sup> respondent but report from medical authorities is yet to be received and hence commuted value of pension is not sanctioned. Hence prayer of the applicant to work out commutation at the rate of Rs. 16461/- instead of Rs. 6405/- could not be accepted.

17. As the Applicant was initially 'Removed from service' on 08.08.08 which was later modified as 'Compulsory Retirement' by



the Court of Law in WP 15682 of 2015 only on 28.3.2017, he is not eligible for leave salary then in 2008. Leave salary was processed since then and Rs.43,837/- was paid on 3.7.18. As per Govt of India decisions (5)(2)(f) under Rule 68 of CCS Pension Rules 1972, in the matter of delayed payment of Leave encashment, the Department of Personnel and Training in their note dated 2/8/99, has clarified that there is no provision under CCS (Leave) Rules for payment of interest or fixing responsibility. Moreover, encashment of leave is a benefit granted under the leave rules and not a pensionary benefit. Thus the request of the applicant to pay interest for leave salary from 08.08.2008, the date of his compulsory retirement till the date of payment, is not maintainable.

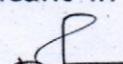
18. As per letter dated 15.07.2009 received from the Tamil Nadu Circle Cooperative Bank Ltd, the applicant owed bank dues of Rs. 2,05,788/- and it was also intimated to him as a reply to his RTI application vide 3<sup>rd</sup> respondent letter dated 26.02.2010 that 2<sup>nd</sup> instalment of 6<sup>th</sup> CPC arrears were kept pending. He was also paid arrears of pension of Rs. 14,56,628/- for the period from 08.08.08 to 31.03.2018 on 24.04.2018. Despite knowing very well that he is having TNCPC loan dues and outstanding Scooter Advance on the date of his termination from service and penal interest, if not paid

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also leviable the applicant did not make any arrangement to settle the dues on his own. However, the 2<sup>nd</sup> instalment of VI CPC arrears of Rs. 6041/- after deducting all departmental dues drawn and sent to Tiruvottiyur sub office for effecting payment to him on 23.06.2018 and he was also intimated vide the Postmaster/Ambattur HO letter dated 23.06.18 on this. But the applicant did not choose to take payment of 2<sup>nd</sup> instalment of VI CPC arrears till date. As such the prayer of the applicant to pay interest and penal interest for the amount of 2<sup>nd</sup> instalment of pay commission is not at all maintainable.

19. In the present case as already noticed the employee has already been compulsorily retired. He has not been exonerated by the Hon'ble High Court. What has been done is only to modify his punishment from 'removal from service' to 'compulsory retirement' with effect from the date he was removed from service on 07.08.2008. At this juncture as the punishment has now been modified against the applicant, the respondents should pay all his retirement benefits such as DCRG, Commutation etc promptly. The applicant has no entitlement for interest on retiral benefits from the date of compulsory retirement.

20. Considering the period spent in litigation by the applicant in



facing the penalty which is now modified, I direct the respondents to disburse the retirement benefits of the applicant as expeditiously as possible at any rate not later than 12 weeks from today.

21. The OA is disposed of accordingly. No costs.