

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00662/2019

Wednesday, this the 17th day of February, 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

Mani Jacob, aged 60 years
 W/o.M.George Thoma
 Retired Postal Assistant, Ponkunnam Post Office
 Changanassery Division, Residing at Mannamplackal House
 Ponkunnam P.O (Ph.9446022545)

...Applicant

(By Advocate – M/s. Varkey & Martin)

v e r s u s

1. Union of India represented by the Secretary to Govt. of India, Ministry of Communication and Information Technology
 New Delhi – 110 001
2. The Chief Postmaster General, Kerala Circle
 Trivandrum – 695 001
3. The Superintendent of Post Offices, Changanassery Division
 Changanassery – 686 101
4. Senior Accounts Officer (Pension) , Kerala Circle
 GPO Complex, Trivanerum – 695 001

....Respondents

(By Advocate : Mr.N.Anilkumar,SCGSC)

This application having been heard 9.2.2021, this Tribunal on 17.02.2021 delivered the following :

ORDER

HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER

This is an Original Application filed seeking for the following reliefs:

- “ (i) *Call for the records leading to the issuance of Annexure A5 and quash the same.*
- (ii) *Direct the respondents to sanction and disburse the retirement benefits due to the applicant including retirement gratuity, regular pension and commuted value of pension.*
- (iii) *Declare that the applicant is entitled for 12% interest for delayed payment of gratuity, commutation amount with effect from 30.06.2019 to the date of actual payment and to direct the respondents accordingly.*
- (iv) *Award costs of and incidental to this application.*
- (v) *Grant such other relief, which this Honourable tribunal may deem fit and proper in the circumstances of the case. “*

2. The applicant in this case was working as Postal Assistant at Ponkunnam Post Office till 31.05.2019. On that date, she retired from service and eventhough an application for disbursement of retirement benefits of the applicant including pension was given, the respondents had denied the same. Hence, the applicant has filed this case.

3. The applicant was initially posted as Postal Assistant in the year 1981 and had put in more than 38 years of unblemished and meritorious service. On 27.06.2019, the fourth respondent had sanctioned a provisional pension as per Annexure A-2.

According to the applicant, no disciplinary proceedings or any other proceedings were pending against the applicant at that point of time. The applicant was also not aware of the reason why the provisional pension was granted to her instead of regular pension. She immediately gave another representation on 26.06.2019 to respondent no.3 to grant her retirement benefits (Annexure A-3/Annexure A3(a)) and another representation as Annexure A-4. But instead of granting pensionary benefits, she received a letter dated 16.8.2019 from the third respondent informing that one Smt.Vino Kumari had committed fraudulent withdrawal from SB/RD/MIS Accounts standing at Velloor and Pampadi Sub Post Office by forging the signature of the depositors etc. According to the respondents, the said fraud was committed with the connivance of the staff working in the Post Office. According to the respondents, the applicant is identified as a Subsidiary Offender as she was working as Deputy Postmaster, Kanjirappally Head Office during the period from 30.10.2009 to 30.03.2010. According to the respondents the applicant is liable to compensate the loss suffered by the Department and the share assessed on Inquiry is Rs.7,22,616.00. It was also informed that if the said amount is not paid, disciplinary proceedings will be initiated under Rule 9 of CCS(Pension) Rules, 1972. A true copy of the letter is produced as Annexure A-5. According to the applicant, the fraud was committed at Velloor and Pampady Sub Post Offices by a Mahila Pradan Agent and she has no direct knowledge regarding the same. She had performed her duties in a proper manner and there is no lapse on her side.

4. The demand of amount, without hearing the applicant, is illegal and

unsustainable. According to the applicant, as per Rule 9 (2)b)(ii) of CCS Pension Rules, no disciplinary action should be initiated in respect of any event which took place more than four years before such intituation. In this case, the event had taken place more than 9 years before the retirement of the applicant and hence departmental proceedings cannot be initiated against the applicant. So the applicant claims that she is entitled to get her pensionary benefits.

5. The respondents have filed their reply statement stating the following facts:

The respondents have admitted the service particulars of the applicant and her retirement from service on 31.05.2019. While the applicant was working as Deputy Postmaster, Kanjirappally Head Post Office during the period from 30.10.2009 to 30.03.2010, a fraud was committed by Smt.V.N.Vinokumari a Mahila Pradhan Kshetriya Bachat Yojana (MPKBY for short) and Standardized Agency System (SAS for short) Agent attached to Velloor Sub Post Office under Kanjirapally Head Post Office in Changanassery Division during the period from 30.05.2009 to 20.10.2010. The said MPKBY Agent had committed suicide on 20.10.2010. After some time, some of the depositors of the agent enquired about the status of their accounts and it was only at that time, the fraud was revealed. A detailed Inquiry was intiated and the Department found that Rs.38,83,790/- was lost to the Department. Thus a total loss of Rs.79,48,772/- has to be recovered from the MPKBY agent and subsidiary offenders along with the interest in this case. The Circle Level Investigation report is marked as Annexure R-1. According to the respondents the applicant is a subsidiary offender

and she is liable to pay an amount of **Rs.7,22,616/-** as her liability.

6. After the filing of this Original Application, the Superintendent of Post Offices, Changanassery Division had sanctioned the payment of retirement gratuity vide Memo dated 3.1.2010, after recovering an amount of Rs.7,22,616/-. As per Financial Hand Book Volume 1, '**every feasible effort be made to recover the loss sustained by the Department from all possible sources**'. It is on the basis of the above Rule, they had initiated steps for recovering the amount. The respondents had also filed an additional reply statement and the applicant had filed rejoinder also.

7. We have heard the counsel for the applicant and counsel for the respondents and also perused all pleadings and documents produced by both sides.

8. Admittedly, the applicant in this case had retired from service on 31.05.2019. There was no departmental inquiry pending against the applicant and no Charge Memo has been issued to the applicant on that date. So the rule applicable to the applicant for initiation of disciplinary proceedings is **Rule 9 of the Central Civil Services (Pension) Rules, 1972**. It reads as follows:-

“9. Right of President to withhold or withdraw pension

¹[(1) *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.]

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| 2 | (a) | <i>The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :</i> |
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Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

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| (b) | <i>The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -</i> |
| | <i>(i) shall not be instituted save with the sanction of the President,</i> |
| | <i>(ii) shall not be in respect of any event which took place more than four years before such institution, and</i> |
| | <i>(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.</i> |

(3) ¹omitted

Footnote : 1. Deleted by G.I., Dept. of P. & P.W., Notification No. 38/189/88-P. & P.W. (F), dated the 4th February, 1992, published as G.S.R. 55 in the Gazette of India, dated the 15th February, 1992.

(4) *In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued*

under sub-rule (2), a provisional pension as provided in² [Rule 69] shall be sanctioned.

Footnote : 2. Substituted by G.I., Dept. of Per. & A.R., Notification No. 6(1), Pen. (A)/79, dated the 19th May, 1980.

(5) *Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.*

(5-A) *The President may at any time, either on his own motion or otherwise call for the records of any inquiry and revise any order made under these rules, after consultation with the Union Public Service Commission, and may confirm, modify or set aside the order; or remit the case to any authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or pass such other orders as he may deem fit.*

Provided that no order enhancing the amount of the pension or gratuity to be withheld or withdrawn, shall be made by the President unless the Government servant concerned has been given a reasonable opportunity of making a representation against the order proposed and except after consultation with the Union Public Service Commission,

(5-B) *The President may at any time, either on his own motion or otherwise review any order passed under these rules, where extenuating or special circumstances exist to warrant such review or when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case has come, or has been brought, to his notice.*

Provided that no order enhancing the amount of the pension or gratuity to be withheld or withdrawn, shall be made by the President unless the Government servant concerned has been given a reasonable opportunity of making a representation against the order proposed and

except after consultation with the Union Public Service Commission.

(6) For the purpose of this rule, -

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| (a) | departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date ; and |
| (b) | judicial proceedings shall be deemed to be instituted - |
| (i) | in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and |
| (ii) | in the case of civil proceedings, on the date the plaint is presented in the court. |

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9. If we carefully go through the Rule 9(1), it can be seen that for withholding pension or gratuity, or both, either in full or in part, or withholding 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, the pensioner should be found guilty of grave misconduct or negligence prior to the recovery. Rule 9(2)(b)(i) states that if an employee is retired, disciplinary proceedings can be initiated only with the sanction of the President. Rule 9(2)(b)(ii) states that no disciplinary action can be initiated in respect of any event which took place more than four years before the date of retirement from such Institution.

10. Admittedly, this incident had taken place in between 30.10.2009 and 30.03.2010. So the incident had taken place more than 9 years before the date of retirement of the applicant. If we go through the pleadings and documents, it can be

seen that the incident came out only when the MPKBY agent committed suicide on 20.10.2010. The respondents had admitted that when the Agent committed suicide, the depositors of the agent enquired about the status of their accounts and the fraud was revealed. So the fraud was revealed to the respondents in the year 2010 itself. Respondents submits that they had conducted an Inquiry into the malpractice and they have assessed the total amount of loss incurred to the respondents. But, if we go through the documents produced before this Tribunal, it can be seen that **no disciplinary action has been initiated against the applicant prior to her retirement**. On the other hand, she was permitted to retire on 31.05.2019 and only thereafter the respondents had issued Annexure A-5 letter dated 16.08.2019 demanding to remit the loss to the Department. So when the demand was made, admittedly, **there was no charge memo issued and there was no case for the respondents that the applicant was found guilty for any fraud directly or as a subsidiary**.

11. In the above circumstances, we find that the applicant cannot be proceeded with at this stage. As per Rule 9(1), Rule 9(2)(b)(ii), no disciplinary action can be initiated against a pensioner in respect of any event which took place more than four years before the date of retirement. This is a clear bar against any action which can be taken against the applicant. It is also clear from the Rule 9(1) that 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 should be found guilty of grave misconduct or negligence during the period of service. Here, the applicant had already retired on 31.05.2019. So there is no legal backing for withholding the loss sustained by the Department from the gratuity liable to be paid to the applicant. **In the light of the above, we find that the respondents are not entitled to recover any amount from the applicant as loss sustained by the Department after a period of more than 9 years after the incident. The applicant is entitled to get back the withheld portion of gratuity i.e, 7,22,616.00.** Accordingly, we find that there is merit in the contentions raised by the applicant and accordingly the Original Application is allowed.

12. **The respondents are directed to grant pension, pensionary benefits and balance amount of gratuity within a period of 3 months from the date of receipt of a copy of this Order. There has occurred a lot of delay in granting the pension and remaining portion of the gratuity in this case. The respondents are directed to pay 6% simple interest from the date of this order till payment to the applicant for the aforesaid amount. No costs.**

(K.V.EAPEN)
ADMINISTRATIVE MEMBER

(P.MADHAVAN)
JUDICIAL MEMBER

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List of Annexures

Annexure A1 - True copy of the letter No.B/3-40/09 dated 28.5.2019

Annexure A2 - True copy of the letter dated 27.6.2019

Annexure A3 - True copy of the request submitted by the applicant dated 26.6.2019

Annexure A3(a) - True English translation of Annexure A3

Annexure A4 - True copy of the representation dated 5.8.2019 submitted by the applicant

Annexure A4(a) - True English translation of Annexure A4

Annexure A5 - True copy of the letter bearing No.F/4-2/2010-11/Vol.V Part-II dated 16.8.2019

Annexure A6 - True copy of the representation dated 29.8.2019 submitted by the applicant

Annexure A7 - True copy of the bearing No.4-1/2014-PEN dated 25.3.2014 issued by the Department Posts, Ministry of Communication and IT

Annexure R1 - A true copy of the Circle Level Investigation report dated 22.5.2019

Annexure R2-A - A true copy of the Postal Directorate letter No.F.No.4-92/Ker-05/2016-Inv dated 23.7.2019

Annexure R-3 - A true copy of the sanction Memo No.C/15/2019 dated 3.1.2010

Annexure R-4 - A true copy of Rule 58 of Financial Handbook Volume 1

Annexure R-5 - A true copy of Clause 5 of Appendix 4 of Financial Hand Book Volume I

Annexure R-6 - A true copy of Rule 85 of Post Office Savings Bank Manual

Annexure R7 - A true copy of list of fraudulent transactions which were left un-noticed due to the negligence of the applicant

Annexure R8 - True copy of the statement of the applicant dated 30.5.2019

submitted before Assistant Supdt. Of Post Offices, Kanjirappally Sub Division

Annexure R9 - True copy of Rule 71 of CCS(Pension) Rules

Annexure R10 - Orders of the 3rd respondent posting the applicant as HSG I Postmaster, Kanjirappally HO from the period from 31.3.2010 to 31.5.2010

Annexure R11 - Orders of the 3rd respondent posting the applicant as HSG I Postmaster, Kanjirappally HO from the period from 01.06.2010 to 04.08.2010 and 09.09.2010 to 30.09.2010

Annexure R12 - Orders of the 3rd respondent posting the applicant as HSG I Postmaster, Kanjirapally HO from the period from 01.10.2010 to 28.10.10 and 01.11.10 to 31.01.2011

Annexure R13 - True copy of Para 4 of Appendix 4 of Financial Hand Book Vol I.

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