

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(6)

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O.A. NO.2956/91

DATE OF DECISION : 17.07.92

Shri Om Prakash Misra
vs.

...Applicant

Union of India & Ors.

...Respondents

CORAM

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant ...Shri Beni Prasad

For the Respondents ...Shri M.L. Verma

1. Whether Reporters of local papers may be allowed to see the Judgement? *Ys*
2. To be referred to the Reporter or not? *Ys*

JUDGEMENT

The applicant was last employed as Assistant Post Master Accounts at Head Post Office, Mathura and he has assailed the order dt. 28.6.1990 (Annexure A6) whereby Senior Superintendent of Post Offices, Mathura was directed to settle the case at an early date regarding arrears of pension, pay, deduction from pension and C.F.A. recovery etc. The applicant has claimed the relief that the recovery from pension DAR be declared void and further to order payment of arrears of pay, revision of pension with an interest @ 12% p.a. He has claimed a balance

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of G.P.F. Rs.380 and also claimed Rs.1627.75 of Honorarium and other amount of Honoraria and C.E.A. Rs.270.

2. The facts of the case are that the applicant retired w.e.f. 7.6.1989 and he had G.P.F. Account No.64231. The Director, Postal Accounts is responsible for keeping up these accounts. The respondents also issued No Due Certificate against the applicant and hence the retirement benefits were paid to the applicant. The applicant was not also allowed to cross the EB on 1.10.1986, but the orders of EB were issued on 31.1.1990. However, the arrears of pay etc. since 1.10.1986 to 7.6.1989 along with arrears of pension etc. from 8.6.1989 were withheld illegally. The last balance in G.P.F. Account of the applicant is Rs.380 + interest. The respondent No.4 stopped the payment of pension hundred per cent including the Dearness Allowance by the letter dt. 30.3.1990 (Annexure A2) wherein the was informed that since he applicant did not reply about the refund of the excess amount of G.P.F. drawn by him, so the said amount shall be recovered from his benefits. Thus pensionary L the applicant filed the present application for the relief mentioned above.

3. The respondents contested the application taking the preliminary objection that the application is barred by time. Further it is stated that in the year 1981-82, there was a closing

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balance of Rs.627.20 in the G.P.F. Account of the applicant which by mistake was shown as Rs.6272.20 as opening balance during 1982-83. The applicant took advantage of the excess balance knowing that the mistake would not come to the notice.

He neither pointed out the mistake nor supplied an information vide DA slips for 1982-83. This mistake was detected at the time of ^{his} retirement, when he was asked to deposit the excess amount drawn from GPF Account. During 1989-90, there was minus balance of Rs.1334. He went on taking advance of Rs.1500 in April, 1989, Rs.400 in May, 1989 when there was no balance in the G.P.F. Account. During the final calculation, it was noticed by the office that there was a copying mistake while closing balance of the year 1981-82 bringing forward an opening balance for the year 1982-83 instead of Rs.627.20, the decimal was changed and it was made Rs.6722.20. The

applicant ^{himself} was Assistant Post Master, Accounts in the ^{same} Office of the Post Master, Mathura at the time of retirement. He got his pension claims settled in advance and submitted G.P.F. claim papers after retirement on 7.9.1989. The G.P.F. Account does not form a part of "No Due" Certificate. Moreover, the applicant was dealing with his own case and concealed the minus balance from 1984-85 onwards. The correct figure

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is shown as follows :-

Year	Opening balance	Deposit &Refunds	Intt.	Total	Withdrawal	Closing balance
1981-82	523-20	1710-00	44-00	2277-00	1650-00	627-20
82-83	627-20	1970-00	80-00	2677-00	2300-00	377-00
83-84	377	1820	42	2239	2100	139
84-85	139	3520	(-)309	3350	6600	(-)3250
85-86	(-)3250	5560	(-)684	1626	8600	(-)6924
86-87	(-)6924	5464	(-)1083	(-)2593	6641	(-)9234
87-88	(-)9234	8400	(-)1338	(-)2172	8600	(-)10872
88-89	(-)10772	3940	(-)1718	(-)8550	5440	(-)13990
89-90	(-)13990	900	9-	(-)1455	(-)14545	1900
						(-)16445

The respondents further stated that the minus balance was required to be recovered from the DAR and not from the pension of the official. He himself applied to take pension to avoid the recovery of over paid GPF amount. Thus according to the respondents, the application has no merit.

4. I have heard the learned counsel for the parties at length and have gone through the record of the case. The learned counsel for the applicant has referred to the authority of Beni Prasad vs. Union of India, 1937(3) ATC 545. It has been laid down by the Principal Bench that recovery from the pension cannot be made unless disciplinary proceedings under Rule 9(i) are satisfied, but in such a case the pensioner himself should not be guilty of fraud. The definition of

pension under Rule 3(o) of the CCS (Pension) Rules, 1972 reads,

"Pension includes gratuity except when the term of pension is used in contradistinction to gratuity." The Tribunal held as follows :-

"This definition does not throw much light on whether RIP, as such, could be treated as pension. Dearness allowance relief granted to pensioners is primarily intended to offset high rise in prices and cost of living. What was considered to be reasonable pension payable to a pensioner on the date of his retirement is rendered illusory by the steep rise in prices of commodities. That is sought to be offset by sanctioning dearness allowance to serving employees and relief on pension to the pensioners. It is, in fact, the depreciated value of the rupee that is sought to be compensated by granting relief to a pensioner by way of RIP. It is, thus, in fact, part of the pension. It is an amount paid for services already rendered. If a person is entitled to receive pension, he will also be entitled to receive the RIP. Without pension, there could not be any payment by way of RIP. Relief in pension in all respects, in our view, is part of pension. The prohibition contained in Rule 9 is, therefore, equally applicable to RIP. No doubt, as contended by the learned counsel for the respondents, the Ministry of Finance in their U.O. No. 718-EV(A), dated 7.2.1978 (incorporated as Government's decision No.7 under Rule 73 of the Pension Rules in Swamy's Pension Compilation, 10th Edition at page 120) has clarified that "Pensioner's Relief is not covered by the Pensions Act and there may be no objection to the recovery of Government dues from the Pensioner's Relief without the consent of the pensioner. But if RIP, as held by us, constitutes pension in the eyes of law, then the prohibition contained in Rule 9 of the Pension Rules would be automatically attracted and any amount due to the Government can be recovered only on the conditions mentioned therein being satisfied. Admittedly, in this case they are not fulfilled. It may not be out of place to mention that periodically when the pension is revised, the relief in pension is sought to be absorbed in the pension itself and the pension fixed accordingly. Relief in pension also cannot be withheld for adjustment towards any Government dues in contravention of Rule 9 of the Pension Rules."

However, in para-7, the Tribunal held as follows :-

"We must, however, hasten to clarify that what we have stated above would be applicable where the pensioner has not himself been guilty of fraud in getting his pension released. No person, including a pensioner, can be

allowed to take advantage of his fraud and permitted to resist recovery of any amount due from him to the Government. Fraud vitiates all transactions and a pensioner too cannot be allowed to retain the advantage which he has secured by playing fraud. In this case, the applicant is not accused of playing any fraud or misrepresentation. If at all a mistake was committed, it was in the office maintaining the G.P.F. Account for which the applicant cannot be held responsible. The withholding of pension and RIP is, therefore, illegal; the same shall be paid to him."

In the present case, the respondents have clearly stated that the applicant was working as Assistant Post Master, Accounts at Mathura. He got his pension claims settled in advance and submitted his G.P.F. claim papers after retirement on 7.9.1989. The applicant was dealing with his own case and concealed the minus balance from 1984-85 onwards. In reply to para-4.6 rejoinder it is stated by the applicant of the counter, in the L that the para contained in the application are reiterated. He further stated that Shri P.N. Sharma was the Assistant Post Master, Accounts who verified the accounts. The applicant has not denied specifically that he was not dealing with his own case as APM, Accounts. In view of this fact, the authority cited by the applicant does not apply to his case. The authority, however, goes against the applicant where it has been held that the deductions can be affected if the applicant has committed ^{misrepresentation} fraud. On a perusal of the accounts given by the respondents as annexure to the counter and in para-4.10 of the counter, it is evident that in the year 1984-85, there was a minus closing balance of Rs.3250 of the applicant. The mistake has crept in the

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opening balance of 1981-82 where the correct opening balance was Rs.627.20 while in 1982-83, it has been shown as Rs.6272.20 The account submitted by the applicant in para-10 of his application does not show the closing balance of the year 1981-82 and it appears to have been omitted purposely.

If the applicant wanted to establish that the opening balance in the year 1982-83 was Rs.6272.20, then he should have established this as a fact. A person cannot be allowed to reap the fruits of fraud. The applicant has been Incharge of the Accounts Section in the Head Post Office, Mathura and that fact is not denied by him. The respondents have clearly stated that they are not withholding the pension of the applicant, but they are adjusting the over drawal of the applicant from the interim relief and DA. Though interim relief and DA form part of the pension, but in a situation like the present one where the applicant knowingly enriched himself having the knowledge that balance to his credit in the GPF Account is less and made consistent withdrawals, then he cannot be allowed to retain that amount.

5. It is a fact that no disciplinary proceedings were drawn against the applicant as envisaged under Rule 9 of the UGS(Pension) Rules, 1972. But the respondents have asked the applicant to deposit the excess withdrawal made by the applicant from time to time from his G.P.F. Account and since he did not reimburse

the amount, the respondents ordered the reimbursement from the interim relief as well as from the DA of the applicant.

6. The case of the learned counsel is that the amount cannot be recovered from the pension or DA or retirement benefits without ^{the} procedure laid down in Rule 9 of CCS(Pension) Rules, 72. This preposition of law cannot be disputed, but in a case of the present nature where the applicant himself was managing the accounts including that of his own, then it cannot be said that the respondents cannot reimburse the amount. The rules, of course, are of mandatory nature and have statutory force, but at the same time, the fraud cannot be allowed to be encouraged and a person cannot be allowed to reap the fruits of fraud and it has been clearly held in the above noted authority. No other reliefs have been pressed by the learned counsel for the applicant.

7. In view of the above facts, the application is disposed of with the direction that the pension amount be paid to the applicant as and when due and no deduction should be made from the pension, but at the same time, the respondents can make good the loss caused to them by over drawal from the G.P.F. Account from interim relief and DA on the pension as well as

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other arrears of the applicant lying with them.

In the circumstances, the parties shall bear their own costs.

Sharma
(J.P. SHARMA)
MEMBER (J)

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