

Reserved  
(On 01.09.2015)

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ALLAHABAD BENCH ALLAHABAD**

Dated: This the 5<sup>th</sup> day of October 2015

**HON'BLE MR. SHASHI PRAKASH, MEMBER -A**  
**HON'BLE DR. MURTAZA ALI, MEMBER -J**

**Original Application No. 1567 of 2005**

Mohd. Mustaqim, son of Late Mohd. Amin, aged about 67 years, Resident of 345-E, Daryabad, Allahabad.

. . . Applicant

By Adv: Shri K.C. Srivastava/Shri A.B.L Srivastava

**V E R S U S**

1. Union of India, through the Secretary to Govt. Of India Ministry of Communication Department of Post – Cum-Director General of Post Dak Bhawan, Sansad Marg, New Delhi – 110001.
2. The Senior Superintendent of Post Office, Allahabad, Allahabad Division, Allahabad.
3. The Director of Postal Accounts and Audit Uttar Pradesh, Sector 'D' Aliganj, Scheme, Lucknow.

. . . Respondents

By Adv: Shri R.K. Srivastava

**O R D E R**

**By Hon'ble Dr. Murtaza Ali, Member – J**

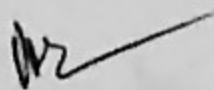
The brief facts of the case are the applicant was retired as Sub Post Master H.S.G. –II level on

*Mr*



29.2.1996, who was paid provisional pension of Rs.1010/- on 1.3.1996 which was raised to Rs.2634/- from 1.3.1998, finally raised to Rs. 3074/- from September 2001. 90% of D.C.R.G gratuity was paid on 24.2.1998 and commuted value of pension amounting to Rs.1,54,272/- was paid in September 2001. The applicant filed O.A. No. 465 of 1998, which was allowed on 12.11.2003 and the applicant was declared entitled to the interest @ 9% per annum on the delayed payment. It is said that the applicant was also made entitled to get Rs.2500/- as cost. As no action was taken by the respondents within the stipulated period, the applicant filed Contempt Petition No. 39 of 2004, which was dismissed on 10.5.2004.

2. The respondents are enforcing the recovery of Rs.2500/- awarded by this Tribunal as cost. The applicant has made several representations which have not yet been disposed of. The applicant had filed a writ petition No. 56350/05 for the award of adequate compensation and 18% interest on the delayed payment but the said writ petition has





been dismissed vide order dated 28.11.2005. It is stated that in the light of High Court order, the applicant has filed this O.A. seeking following relief (s):-

**"(a) a direction of the nature of mandamus to quash the impugned order dated 2.9.2005 and 8.9.2005 (Annexure 1 and 2) issued without the leave of this Hon'ble Tribunal.**

**(b) a direction of the nature of mandamus directing the respondents to refund the amount already recovered along with exemplary cost for violating the settled legal procedure.**

**(c) a direction of the nature of mandamus to award the rate of interest @ 18% P.A. as was awarded by High Court, Tribunal and even by Hon'ble Apex Court during the corresponding period.**

**(d) a direction providing for the payment of retiral dues from the date of retirement itself instead after 3 month from date of retirement in view of settled law**

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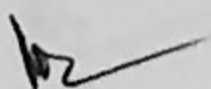
***laid down by Hon'ble Apex Court.***

***(e) Direct the respondent No.3 to compute the arrears of retiral dues viz. Full pension D.C.R.G and computed value of pension and compute interest @ 9% p.a awarded in order dated 12.11.2003 in the light of law laid by Hon'ble Apex Court.***

***(f) Any other and further relief be awarded as may be deemed fit and necessary by the Hon'ble Tribunal.***

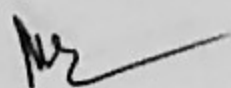
***(g) Award cost for compelling the applicant for repeated litigation arising from non-disposal of representation made to the authorities".***

3. In the counter affidavit filed on behalf of respondents, It has been stated that the applicant was working on the post of Sub Post Master in Sohbatiyabagh Post Office. He retired on 29.2.1996. He allowed Sri Rajendra Kumar Sharma ex-representative (relative of Smt. Raj Kumari Sharma) as authorized National Saving Agent to work inside of Post Office in respect of deposit in





R.D. Account standing at Sohbatiyabagh Post Office. Shri Rajendra Kumar Sharma misappropriated the Government money by using seals, stamps of Sobhatiyabad Post Office. Due to negligence, carelessness and connivance of applicant the department sustained a loss of Rs.99344.20. An FIR was lodged against Rajendra Kumar Sharma, Smt. Raj Kumari Sharma and the applicant at Gorge Town Police Station under section 409, 467, 468, 420 IPC in which the police submitted final report. As the applicant retired during the course of departmental investigation, so the charge-sheet against the applicant could not be issued and the permission was not granted by the President to proceed under Rule 9 of CCS (Pension) Rules 1972. The applicant filed O.A. NO. 465 of 1998 claiming interest on his delayed payment of retiral dues. Rs.4284/- was paid to the applicant to this effect and a sum of Rs.2500/- was also paid to him under wrong interpretation of the order of the Tribunal dated 12.11.2003. As the applicant did not deposit Rs.2500/-, an amount of Rs.2000/- was recovered from D.A.R of the pension. In compliance

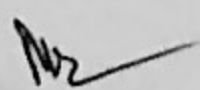




of order dated 23.12.2005 passed in O.A. NO. 1567 of 2005 an amount of Rs.500/- has been refunded to the applicant. It has been stated that D.C.R.G could not be released earlier due to pendency of criminal case against the applicant and after submitting F.R by the police and its acceptance by the Court, the pending D.C.R.G has been released. Thus, the applicant is himself responsible for the late release of D.C.R.G. It has further been submitted that as the amount of Rs.2500/- was wrongly paid to the applicant and the respondents are entitled to recover the said amount from the applicant. The respondents have already paid the interest as per order of this Tribunal.

4. Heard Shri K.C. Srivastava counsel for the applicant and Shri R.K. Srivastava counsel for the respondents.

5. On the perusal of record, it appears that due to delayed payment of retiral benefits, the applicant had filed O.A. NO. 465 of 1998 and claimed interest thereupon. The said O.A. was

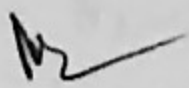




decided on 12.11.2003 with the following directions:-

**"6. Since we are holding that there was no justification for the respondents for making delayed payments, applicant would also be entitled to the cost of Rs.2500/-. However, I have no power to grant any compensation, therefore, that relief is rejected. Respondents shall compute the arrears to be paid to the applicant after calculating the interest w.e.f. May 1996 i.e. after 3 months from the date of his retirement till date when he was actually paid the amount andn pay the same to applicant. This exercise shall be completed within 2 months from the date of receipt of a copy of this order".**

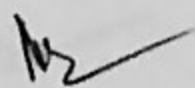
6. It also appears that the applicant had filed CCP No. 39 of 2004. In the counter affidavit filed on behalf of respondents for compliance of order dated 12.11.2003 passed in O.A. No. 465 of 1998, it was stated that the order passed by this Tribunal in O.A. NO. 465 of 1998 has been complied with and a cheque of Rs.4284/- towards interest and





other cheque of Rs.2500/- towards cost have been paid to the applicant. Accordingly, it was observed that the order dated 12.11.2003 passed in O.A. No. 465 of 1998 has been complied with and the contempt petition was dismissed. The applicant filed writ petition No. 56350 of 2005 against the order dated 10.5.2004 passed in contempt petition No. 39 of 2004. The said writ petition was also dismissed on 28.11.2005 and it was observed in the said order that it is always open to the petitioner to challenge the action of the respondents either before the authority concerned or before the Tribunal by way of filing fresh O.A. Accordingly, the applicant has filed instant O.A. for quashing the order dated 2.9.2005 (Annexure A-1) and 8.9.2005 (Annexure A-2). It has also been prayed that he should be awarded interest @ 18% per annum from the date of retirement till the date of payment of retiral dues.

7. From the perusal of impugned orders dated 2.9.2005 and 8.9.2005, it appears that the applicant was directed to deposit Rs.2500/- as the

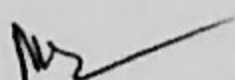




said payment was wrongly made to him. By interim order dated 23.12.2005, the respondents were directed not to recover any more amount from the pension payable to the applicant towards the recovery of Rs.2500/-. It was also provided that in case, any amount has been recovered before the delivery of copy of this order (over and above already recovered amount of Rs.1500/-), the same shall be refunded to the applicant. The respondents were also directed to make available a detailed statement containing the extent of payment due to the applicant, interest worked out thereon and the total amount paid.

8. The main question in this O.A. is whether respondents can recover the payment of Rs.2500/- made to the applicant as cost and whether applicant is entitled to get interest @ 18% per annum on the delayed payment of his retiral dues.


9. From the perusal of order dated 12.11.2003 passed in O.A No. 465/98, it is evident that the order for payment of Rs.2500/- as cost was made





but the department has wrongly interpreted that no order has been passed by the Tribunal for payment of Rs.2500/- as cost to the applicant. By the impugned order, the respondents are claiming Rs.2500/- on the pretext that it has wrongly been made to the applicant. The applicant has already retired on 29.2.1996 from Class III post and in view of law laid down by Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer) etc. in Civil Appeal No. 11527/14 (arising out of SLP(C) No. 11684/12) along with other connected Civil Appeal decided on 18.12.2014*** recovery of excess payment cannot be made from retired employee. Hon'ble Supreme Court in para 12 of its judgment has held as under:-

***"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we***





**may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:**

**(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).**

**(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.**

**(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.**

**(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been**

102

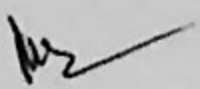


***required to work against an inferior post.***

***(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover".***

Thus in view of above judgment of Hon'ble Supreme Court, the respondents cannot recover the amount of Rs. 2500/- even if it has wrongly been paid to the applicant who has retired in the year 1996. Accordingly, the impugned orders dated 2.9.2005 and 8.9.2005 (Annexure 1 and 2) are liable to be quashed and the applicant is entitled to get the amount back which has already been recovered by the respondents.

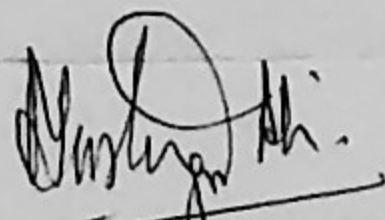
10. The second issue is whether applicant is entitled to get enhanced interest on the delayed

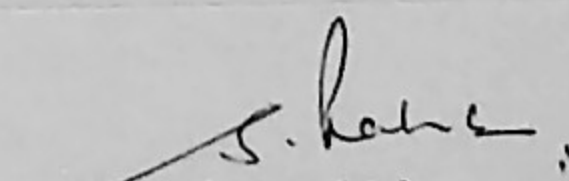




payment of his retiral benefits. It is evident from the order dated 10.5.2004 passed in CCP NO. 39 of 2004 that the applicant has received a cheque of Rs. 4284/- as the interest @ 9% which was provided in the order dated 12.11.2003 passed in O.A. No. 465 of 1998. As the matter of interest has already been settled in O.A. No. 465 of 1998, the same issue cannot be reopened again in the instant O.A. which is barred by principles of Res-judicata. Accordingly, the prayer of applicant for enhancing the rate of interest on the delayed payment of his retiral benefits cannot be acceded to.

11. Accordingly, the O.A. is partly allowed and the orders 2.9.2005 and 8.9.2005 (Annexure 1 and 2) are quashed. Respondents are directed to refund the amount which has already been recovered from the applicant against the said orders within the period of 3 months. No order as to costs.

  
Member (J)

  
Member (A)

Manish/-