

(P3)  
(1)  
(6)

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

ORIGINAL APPLICATION NO. 357 of 1986  
Udai Ram Chaturvedi ... Vs.. U.O.I. (Secretary Minister of Communication, New Delhi and others.

Hon'ble D.S.Misra-AM

Hon'ble G.S.Sharma-JM

( Delivered by Hon'ble D.S.Misra)

In this application under Section 19 of the Administrative Tribunals Act XIII of 1985, the applicant has sought a direction to the respondents to finalise the pension, to make final payment of the GPF Account and to make payment of commutation value of pension , compulsory Group Insurance Fund Rs.25972/- as gratuity and conveyance allowance from May,1980-February,1982.

2. The applicant's case is that he worked as Assistant Post Master at Agra Fort Post Office before his retirement on superannuation on 31.7.85; that the respondents had not made payment of gratuity and final payment of GPF; that they had not finalised his pension and they have not made payment of commutation value of pension and compulsory Group Insurance inspite of several requests made by him; that the applicant wrote to the respondents on 12.1.1986 for this purpose and also sent a reminder on 13.2.1986 without any response from the respondents.

BL

3. In the reply filed on behalf of the respondents, it is stated that the applicant was working as Public Relation Inspector, Civil Lines Post Office, Agra during the period 1980-81; that in the capacity of Public Relation Inspector, he was to inspect the Franking Machine of the area office; that in his area, there is one licensee M/S Basant Prakashan New Agra, having franking machine licence no. 82654; that the licensee has committed a heavy fraud of revenue by misusing his franking machine and the department has sustained a heavy loss; that the applicant in the capacity of Public Relation Inspector during the period 80-81 was to check and inspect the franking machine of the licensees frequently but he failed to do so; that he was also required to re-set the franking machine but he did not do so during the period 31st Jan. 1981 and 9th September, 1981; that the applicant is fully responsible for the loss sustained by the department **liable** for which he is/ to be proceeded against under CCS (CCA) Rules, 1965; that the official stands retired from service and no chargesheet could be served to him before his retirement; **the** case is being submitted to higher authorities for obtaining sanction of the President to proceed against the official under Rule 9 of CCS(Pension) Rule 1972; that the applicant is being paid provisional pension but the final pension and gratuity has been withheld due to the fact of his involvement in the fraud case involving a loss of **lakhs**; that the pension and death cum retirement gratuity will be released after the finalisation of proceedings under Rule 9 of CCS(Pension) Rules; that the provisional pension for 6 months at the rate of Rs. 519/-p.m.

w.e.f. 1.8.1985 and provisional death cum retirement gratuity Rs.16670/- was sanctioned vide order dated 28th August, 1985; that the period of payment of provisional pension was extended from 1st January, 1986 to 31st July, 1986 and has been further extended beyond 31st July, 1986; that the provisional pension is being paid regularly; that the final payment of GPF was also made to the applicant on 16th August, 1986 and the case of commutation of pension, which was received on 18th November, 1986 has been forwarded to the Director of Postal Accounts Lucknow on 4.2.1986 for his sanction which is still awaited; that the settlement ~~their~~ Central Government Employees Group Insurance Scheme was made on 24th July, 1986; that the case of conveyance allowance was rejected by an order dated 18th July, 1986 passed by the Post Master General U.P. Circle Lucknow on the plea that Log Book maintained by the applicant was only for the period 16th May, 1980 to 30th June, 1980 which was for less than 3 months although under S.R.25 Log Book is required to be maintained for 3 months; that the applicant has failed to make out any case for interference by this tribunal and he is not entitled to any relief.

4. In the rejoinder-affidavit filed by the applicant, it is stated that there were two Public Relation Inspectors attached with the Civil Lines Post Office; that one Public Relation Inspector was for North area and the other was for the East Area; that the applicant has worked as PR East Area from May, 1980 to February, 1982; that the licence of M/S Basant Prakashan was not in the jurisdiction of the applicant and it was not the duty of the applicant

*Sh*

to inspect his ~~xxmxx~~ Franking Machine; that the Firm M/S Basant Prakashan was under the jurisdiction of PRI (North) and the applicant should not be punished for the negligence committed by PRI North, or the fraud committed by M/S Basant Prakashan ; that the applicant re-set the aforesaid Franking Machine of M/S Basant Prakashan in compliance with the orders given by the Senior Post Master as PRI(P) North was not available at that time; that according to the rules inspection of the Franking Machine should be carried out by a postal official other than the one who set the machine and if there is any irregularity, he must report it to the Post Master ; that after resetting the machine the senior Post Master sealed the franking machine and the applicant is not liable to be punished for the fraud committed by M/S Basant Prakashan; that the respondents have not filed any documentary evidence in support of their contention that they had sought the sanction of the President under Rule 9 of the Central Civil Servant Pension Rule, 1972; that the time for getting sanction has elapsed and the defence of the respondents is liable to be struck down on this ground alone; that PRI(North) Sri O.P.Seth who set the Franking Machine No.A-2654 on 13.12.1980 has retired from the service on 31.3.1986 and his pension has been finally settled by the department; that the non-settlement of the pension of the applicant by the department is an attack on the rights granted under Article 14 of the Constitution of India; that due to nonfinalisation of the pension, the department has to obtain permission from the Director of Postal Accounts every six

months ~~that~~ the applicant does not receive his pension in time and it causes hardship as he has no other source of income. The applicant has filed copy of the Log Book maintained by him(annexure-1) regarding journeys performed by him in respect of his claim for conveyance allowance.

5. We have heard the arguments of the learned counsel for the parties and have also perused the record. None of the allegations made by the applicant in his rejoinder-affidavit ~~have been disputed~~ by the respondents. Learned counsel for the applicant invited our attention to the provisions of Rule 9 of the CCS(Pension) Rule 1972 which is reproduced below:

Rule-9: Right of President to with-hold or withdraw pension.

(1) The President reserves to himself the right of with-holding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension 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 his service, including service rendered upon re-employment after retirement:

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

Provided further that where a part of pension is with-held or withdrawn, the amount of such pension shall not be reduced below the amount of rupees sixty per mensem.

(2)(a) 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:

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.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment,-

(i) shall not be instituted save with the sanction of the President,  
(ii) shall not be in respect of any event which took place more than four years before such institution, and

(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.

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action which arose, or in respect of an event which took place, more than four years before such institution.

(4) In the case of a 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 in rule 69 shall be sanctioned.

(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.

(6) For the purpose of this rule,-

(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

be

(A) (2)

ii) in case of civil proceeding, on the date plaint is presented in the court."

6. Learned counsel for the respondents did not dispute that this rule was applicable to the case of the applicant. It is admitted by the respondents that no disciplinary proceedings had been started against the applicant, ~~neither~~ have they disclosed the date of discovery of the loss of revenue due to the fraud committed by the licensee M/S Basant Prakashan. Respondents have also not furnished any evidence in support of their claim that M/S Basant Prakashan was located within his jurisdiction and he was responsible for the fraud committed by the licensee. Sub-clause(b) of sub-rule(2) of Rule 9 clearly states that the departmental proceedings, if not instituted, while the government servant was in service, whether before his retirement or during his re-employment, shall not be instituted in respect of any event which took place more than 4 years before such institution. Besides this the proceedings can be started only with the sanction of the President of India. Respondents have admitted that the sanction of the President of India has not been obtained so far.

7. From the facts and circumstances of this case we find that the department has failed to take action within the period of limitation prescribed under Rule 9 of the Central Civil Service (Pension) Rules, 1972. Their action in withholding the finalization of the pension of the applicant is illegal and must be set aside. As regards the claim of the applicant for grant of conveyance allowance, on his own admission, he has submitted the Log Book for a

be

period of 1/2 months only and he has also failed to produce any rule in support of his claim being sanctioned without submitting the Log Book for a period of 3 months. We are of the opinion that this claim is not sustainable and is rejected.

8. From the reply furnished by the respondents, it is noticed that after the filing of the claim of the applicant before this tribunal, they have taken action for paying his GPF dues and his dues under Central Government Employees Group Insurance Scheme. The applicant has not denied these payments and we are of the opinion that the relief sought by him on these two counts has been granted. However, we find that the relief claimed in respect of final pension and payment of gratuity has not been granted. Accordingly, we direct the respondents to finalise the pension and make payment of the amount of gratuity admissible to the applicant. The respondents are also directed to make payment of the commuted value of pension to the applicant within a period of 3 months from the date of receipt of this order.

The application is disposed of accordingly. We make no order as to costs.

*Dharmendra*  
A.M 17.8.87

*J.M.*  
J.M.