

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 07 of 2003

Dated: This the 22nd day of July, 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER-J

1. Smt. Brahma Devi Srivastava, W/O Late Prem Shanker Srivastava
2. Ashok Kumar Srivastava
3. Santosh Kumar Srivastava
4. Brijesh Kumar Srivastava
5. Chandra Kumar Srivastava
6. Sunil Kumar Srivastava.

All Sons of late Prem Shanker Srivastava,
at Present R/o H.No. 15/2 Juhi Safed Colony,
Kanpur Nagar, Parment R/o Vill. Nahari Bari,
P.O. Rastpur, Distt. Kanpur Dehat.

....Applicants

By Advocate: Shri Anil Kumar

V E R S U S

1. Union of India through Secretary,
Department of Post, Ministry of Communication,
New Delhi.
2. Director General, Post Offices, Government
of India, New Delhi.
3. Post Master General, Lucknow, U.P.Circle,
Lucknow.
4. Senior Superintendent of Post Offices,
Kanpur-I.
5. R.C.S.Yadav, Retired Asstt. Director (Post)
Inquiry Officer, Camp Office, Pandav Nagar,
Kanpur Nagar.
6. Additional Director General(Pension),
Postal Directorate, Dak Bhawan, New Delhi.

...Respondents.

By Advocate: Shri Saumitra Singh

ORDER

By Hon'ble Mrs. Meera Chhibber, JM

By this O.A. applicants have sought the following relief(s):-

- i) issue a writ, order or direction in the nature of certiorari quashing the impugned charge sheet dated 15.7.1999- containing in Annexure-1 to the compilation -I.
- ii) issue a writ, order or direction in the nature of mandamus commanding the respondents to pay entire post retirement benefits like Gratuity, Leave encashment amount, D.C.R.G., Commutation of pension etc. with 18% compound interest.
- iii) issue a writ, order or direction in the nature of certiorari quashing the entire departmental proceeding initiated in pursuance of the charge sheet dt. 15.7.99 including inquiry report dated 30.10.00 Annexure II to compilation I and reply dated 18.4.2002. Annexure III to compilation I.
- iv) issue a writ, order or direction in the nature of suitable nature of which this Court may deem fit and proper in the circumstances of the present case.
- v) to award the costs of the petition to the applicant on behalf of respondents. "

2. However, during the pendency of this O.A. applicant died on 21.4.2003 accordingly his legal representatives filed M.A. 2505/2003 for substitution, which was allowed by the Tribunal vide its order dated 05.09.2003.

3. The brief facts ~~have~~ submitted by the applicants are that Shri Prem Shankar Srivastava retired on 29.6.1996 on attaining the age of superannuation from the Postal department but all his ~~retiral~~ benefits like Gratuity, Leave encashment, D.C.R.G., Commutation of pension etc. were not paid and he was ~~not~~ given ^{July 18} provisional pension. Therefore, he gave number of representations 25.6.1998, 01.7.1998, 31.7.1998 and 31.8.1998 for payment of his ~~retiral~~ dues because there was no valid reason for withholding the same as no departmental proceeding was

against ¹² when ¹² pending ~~for~~ him on the date he superannuated. Ultimately he sent the legal notice through his advocate when respondent no.4 informed him vide his letter date 07.12.98 that some proceedings is pending before Director General of Post Office. He once again sent his reply on 13.4.1999 explaining that he is not involved in the misuse of date stamp regarding 4 R.D. pass book as they/related to Navin Nagar Post Office and not to Swaroop Nagar Post Office. It was only after 3 years that applicant was served with the charge sheet dated 15.7.1999(page 15) with the allegation that while working as SPM Swaroop Nagar, P.O., Kanpur during the period from 16.9.1991 to 30.1.1995 Shri Prem Shankar Srivastava failed to check misuse of the date stamp of Swaroop Nagar P.O.(Kanpur), also on the allegation that during the said period Shri Prem Shankar Srivastava accepted the business in the name of Smt. Saroj Mishra even after expiry of her agency on 08.11.1994. Applicant has challenged this charge sheet itself on the ground that this charge sheet is barred by limitation as per Rule 9(2)(b)(ii) of CCS(Pension)Rules, 1972, therefore, his charge sheet may be quashed and a direction be given to respondents to pay all his retiral benefits alongwith interest.

4. Respondents on the other hand have stated in their Counter Affidavit that after the enquiry was conducted ^{Directorate 12} ~~Directorate~~ New Delhi vide its order dated 21.3.2003, has decided to drop the disciplinary proceedings against the petitioner, therefore, the same has been dropped vide memo dated 28.3.2003 by Senior Superintendent of Post Offices, Kanpur(Annexure C.A.-I). Accordingly by memo dated 28.3.2003 the Accountant D.O. Kanpur City Division has been directed to release the pensionary benefits of the applicant and its information have also been given to the applicant. They have further submitted

that the order for payment of D.C.R.G. have also been issued on 31.3.2003 for Rs.73,000/-. They have, thus, submitted that all the relief(s) have already been granted to the petitioner, therefore, there is nothing more that requires to be adjudicated by the Court. They have explained that in pursuance of the sanction accorded by the President of India under Rule 9 of CCS (Pension) Rules, 1972 for initiating the departmental proceedings against the petitioner received vide Directorate letter dated 27.5.1999 and received on 10.6.1999 accordingly charge sheet dated 15.7.1999 was issued and served upon the petitioner on 17.7.1999. They have, thus, submitted that the pensionary benefits and D.C.R.G. were held up due to non-finalisation of departmental proceedings against the petitioner by the Directorate. However, thereafter the entire retiral benefits have been given to the petitioner. They have, thus, prayed that the D.A. may be dismissed.

5. Applicants have filed their R.A and stated therein that the actual payment of pension was made to the widow on 30.09.2003 (page 12 of the R.A.), D.C.R.G. was actually paid to the widow on 10.10.2003 and life time arrears were paid to her on 09.12.2003. Counsel for the applicant, thus, submitted that even after the Disciplinary proceedings was dropped, payments have been made to the widow after a long delay, therefore, they are entitled for grant of interest for delayed payments.

6. I have heard both the counsel and perused the pleadings as well. To decide this case it would be relevant to quote Rule 9 of CCS (Pension) Rules, which ^{for 18} have ready reference reads as under. Since sub rule (2)(ii) is relevant for our purpose, only, that part of rule is being quoted herein below:-

" 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."

Sub rule 6 of same rule 9 is further relevant for the present purposes, therefore, ~~is~~ ^{is} also being quoted herein below, which for ready reference reads as under:-

" 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 "

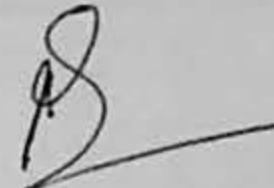
7. ^{negative} _{is} Perusal of rule 9(2)(b) shows that this rule is in ^{communicative} _{form} and ^{is} _{specifically} stated therein that departmental proceedings, if not instituted while the Government servant was in service, shall not be in respect of any event, which took place more than 4 years before such institution. The word 'Institution' has further been explained in sub rule 6 of rule 9, which states that 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. It is, thus, clear that 'institution'

means the date on which the statement of charges is issued to the Government servant or pensioner. In the instant case respondents have themselves stated in para 13 of the C.A. that a charge sheet dated 15.7.1999 was issued and served upon the petitioner on 17.7.1999, therefore, the date 15.7.1999 becomes relevant in this context, now if we go four years back from the date 15.7.1999 it will come to 14.7.1995 meaning thereby that any event which took place before 14.7.1995 for that period charge sheet could not have been instituted under rule 9(2)(b) (ii). Since in this case the charge sheet was issued on 15.7.99, the contention made by applicant's counsel has to be accepted may be, this was one of the reasons why respondents have themselves dropped the proceedings. Ultimately on 26.3.02. No reason has been given in the order dated 26.3.2002 for dropping the departmental enquiry, therefore, the charge sheet which was issued for an incident which took place between the period from 16.9.1991 to 30.1.1995 is not sustainable in the eyes of law. The said charge sheet and findings given thereon are, therefore, quashed and set aside.

8. Since the charge sheet itself has been quashed and set aside and even otherwise since there was departmental proceeding pending against the employee and charge sheet was instituted at a much later stage there was no justification for respondents under the law to withhold the retiral benefits of the applicant, therefore, applicants become entitled for grant of interest on the delayed payment. Respondents are accordingly directed to pay interest on all the retiral dues @ 9% per annum only till 28.3.2003 because that is the date, on which respondents had already released the retiral benefits in the name of Shri Prem Shankar Srivastava, subsequent delay in actual payment to the widow might have taken place because the cheques would have to be changed after the death of Shri Prem Shankar Srivastava on 21-04-2003,

therefore, it is made clear that applicants would be entitled to get interest on the delayed payments of D.C.R.G. from 29.7.1996 till 28.3.2003 @ 9% per annum. This shall be calculated and amount paid to the applicants alongwith due and drawn statement within a period of 3 months from the date of receipt of a copy of this order.

9. In view of the directions given above this D:A. is allowed with no order as to costs.



Member- (J)

Brijesh/-