

Reserved
(On 06.09.2016)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 9th day of Sept. 2016

Original Application No. 120 of 2007

Hon'ble Dr. Murtaza Ali, Member – J
Hon'ble Ms. Nita Chowdhury, Member – A

Mahipal Singh, S/o Sri Bindeshwari Prasad, R/o Village and Post Ahmadpur Pawan, Manauri District Kaushambi.

... Applicant

By Adv: Shri S. Dwivedi

V E R S U S

1. The Union of India through the Secretary, Ministry of Communication, Department of Posts, Government of India, New Delhi.
2. The Senior Superintendent of Post Offices, Allahabad Division, Allahabad.

... Respondents

By Adv: Shri S. Srivastava

ORDER

Delivered by Hon'ble Ms. Nita Chowdhury, Member – A

The present OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:

- "A. That the order dated 24.11.2006 passed by Respondent No. 2 (Annexure A-1) be declared illegal and same be quashed.
- B. That the respondents be directed to pay Rs. 18,000/- as an arrear of difference of pay for the period from 01.01.1996 to August, 1997, Rs. 18010/- as an amount of bonus of 4 years and 4 months, Rs. 200930/- as an amount of salary for the period from September 1997 to 31st July, 2001, Rs. 100770/- as an amount of leave encashment and medical allowances at the rate of Rs. 100/- per month with effect from 01.08.2001 and also other pecuniary benefits except the amount of pension and gratuity with interest, at the rate of 18% per annum till the date of actual payment of the said amount and further they be directed to pay compensation to applicant.

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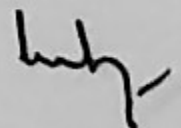
C. *Any other and further relief which this Hon'ble Tribunal may deem fit and proper be also awarded to the applicant.*

D. *Cost of proceeding be awarded to the applicant."*

2. The brief facts of the case as narrated by the applicant are that the applicant was appointed on the post of Postal Clerk/Postal Assistant the respondents with effect from 01.11.1965 and thereafter his services were confirmed by the department. After getting several promotions he was superannuated on 31.07.2001 from the post of Sub Post Master, Post Office Kutchery, Allahabad. In the year 1997 the applicant while posted on the post of Sub Post Master in Bamrauli Airport, Sub Post Office, he was implicated in a false case vide order dated 07.09.1997 of Senior Superintendent of Post Office, Allahabad Division, Allahabad and he was placed under suspension. Thereafter, Respondent No. 2 issued a charge-sheet leveling false charges against the applicant. The applicant denied all the charges, thereafter, departmental enquiry was conducted. During the pendency of departmental enquiry the applicant attained the age of superannuation and retired on 31.07.2001. The competent authority vide order dated 26.02.2004 imposed punishment of withholding of entire pension and gratuity of the applicant. Thereafter, the applicant filed OA No. 231 of 2006 and has challenged the above mentioned punishment order dated 26.02.2004 before this Tribunal, which is still pending before this Tribunal. By the punishment order dated 26.02.2004 only pension and gratuity have been denied to the applicant under the circumstances he is entitled to get all the pecuniary services benefits including retiral benefits except pension and gratuity.

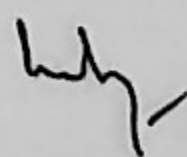
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3. The applicant was not paid arrears of his pay for the period w.e.f. 01.01.1996 to August 1997 which accrued on account of revision of pay as per recommendation of 5th Pay Commission which comes to Rs. 18,000/- apart from this he has not been paid bonus for the period for the year 1996 to 2001 which comes to Rs. 18,010/-, whereas the said amount of difference of arrears of pay and bonus have been paid to all similarly situated Sub Post Master. The applicant made request for payment of salary for the period during which he was kept under suspension. Which comes to Rs. 200930/- and also for payment of Rs. 100770/- of leave encashment and other retiral benefits to Respondent No. 2 and he was assured that the payment of said amount will be considered after the finalization of departmental enquiry. After his retirement the applicant surrendered his CGHS Card in the office of Senior Superintending of Post Office, Allahabad who had intimated the said fact to the Post Master, Allahabad Kutchery, Head Office and started residing at his village Ahmadpur Pawan, Manauri, Kaushambi where the facility of CGHS is not available. Under the rule the retired employees of Central Government to whom the facility of CGHS is not available is entitled to get Rs. 100/- per month as medical allowances from the date of retirement. As such he is entitled to get Rs. 100/- per month as medical allowances w.e.f. the date of his retirement i.e. 01.08.2001. In respect of payment of said amount the applicant made several representations to Respondent No. 2 but no action was taken. Aggrieved, with the said arbitrary action of the respondents the applicant approached this Tribunal by filing OA No. 863 of 2006. This Tribunal disposed of OA No. 863 of 2006 vide order dated 24.08.2006 with the direction to Respondent No. 2 to consider and dispose of the representation of the applicant dated 07.03.2005 in the light



of relevant rules within a period of 03 months from the date of certified copy of the order together with copy of said representation produced before him. Respondent No. 2 passed an order dated 24.11.2006 whereby he refused to aforesaid amount on untenable ground.

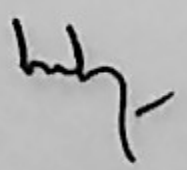
4. Applicant's counsel submitted that from the perusal of the order dated 24.11.2006 it is clear that the Respondent No. 2 has shown his inability to take decision with regard to payment of salary for the period from 10.09.1997 to 31.07.2001. He has further submitted that the applicant was allowed to retire without imposing any major punishment and decision to withhold pension and gratuity only as a punishment was taken after his retirement as such the period during which the applicant was kept under suspension should be regularized as duty period and the full salary be paid to him for the said period. The respondents arbitrarily and illegally refused to consider the request of payment of applicant on unsustainable ground. Applicant's counsel further submitted that the respondents have misinterpreted and misconstrued the provisions contained in SR 39D GID (13) and illegally refused to make payment of amount of leave encashment claimed by the applicant in-fact the said provision referred in the order has got no application in the case of applicant as such the claim of the applicant could not be denied under the law. He has further submitted that by the order dated 24.1.2006 Respondent No. 2 has illegally refused to pay the amount of bonus and other claim of the applicant on the ground that the amount are to be adjusted in the loss caused to Government, the said order could not be passed under the law because after holding department enquiry the respondents have taken decision to withhold entire pension and gratuity



except the pension and gratuity no order for withholding of any other amount payable to applicant by the department have been ordered to be withheld under these respondent No. 2 has got no power to withhold the aforesaid amount.

5. The applicant infact is not responsible for alleged forged payment of Rs. 6290560/- but he has been guilty of charges and punishment of withholding of pension and gratuity has been illegally imposed by the respondents which is under challenge before this Tribunal in OA No. 231 of 2006. In respect of payment of said amount the department has charge sheeted about 20 employees including Officers of the department and huge amount have already been recovered from the said charge sheeted employees and officers and under the said circumstances the applicant could not be solely responsible for the alleged amount mentioned above. The claim of the applicant mentioned in the dated 07.03.2005 could not be refused on the ground of pendency of criminal case against the applicant under the law.

6. In the Rejoinder Affidavit filed by the applicant he has stated that the KVPs were submitted before him while he was working as Sub Post Master and, thereafter, the applicant after following the procedure prescribed under law and after getting the amount of KVPs from the office of Senior Superintendent Post offices, Allahabad paid the amount to Sri Sultan Ahmad. It is incorrect to say that the amount was paid without proper identification and without following the procedure prescribed under the law. He has further submitted that the respondents have wrongly rejected the claim of the applicant by the impugned order. The payment

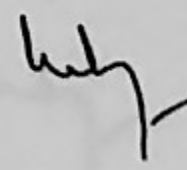


was made after making scrutiny of the claim by about 25 employees including Superintendent of Post Offices, Allahabad and before making payment all the procedure prescribed under the law were followed. The applicant did not committed any negligence in payment of amount and there is no question of adjustment of any loss after the withholding of entire pension and gratuity from the other pecuniary benefits. The provisions contained in SR 39 D GID No. 13 has got no application in the facts and circumstances of the present case and the period of suspension is not concerned with the pending of criminal case and the same must have been decided after the conclusion of disciplinary proceedings initiated against him. The respondents has misinterpreted the facts and law in respect of claim of applicant infact the contention of respondents under reply are absolutely incorrect and denied and applicant is entitled to get the amount as claimed. Rule 39(3) CCS (Leave) Rules, 1972 and SR 39 D GID are not applicable in the facts and circumstances of the present case, under the circumstances the refusal of claim of the applicant is absolutely illegal and unsustainable in law. The arrears of pay of applicant cannot be withheld under the provision contained in Rule 39(3) of CCS (Leave) Rules 1972. The applicant had followed all the procedure prescribed under the law for payment of amount of KVPs and he had not committed any negligence in the matter. The charge-sheet, proceeding of enquiry and punishment order of the employees and officers who have been referred as subsidiary offenders are relevant to be considered for the proper adjudication and just decision of the case.

7. In the counter affidavit filed by the respondents they have submitted that a large number of KVPs were stolen during the course of transmission

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from Indian Stamp Depot, Nasik Road, Nasik to Patna junction in the year 1995. Out of such stolen KVPs, some fraudulent issued KVPs were encashed at Manauri Air Force Post Office, Allahabad during the period w.e.f. 24.12.1996 to 09.07.1997. These KVPs amounting to Rs. 62,90,560/- were encashed before their maturity period. The KVPs presented at Manauri Air Force Post Office for encashment were part of these KVPs stolen and were shown issued from Sahatwar Post Office, Ballia in the name of Sultan Ahmad with fake stamp and fake date stamp. The signature of Sub Post Master appearing on these KVPs was also found fake. The applicant who was working as Sub Post Master, Manauri Air Force Post Office during the aforesaid period paid Rs. 1,42,000/- against 20 KVPs on 24.12.1996 to the so called Sultan Ahmad without proper identification and without establishing the identity of investor Sultan Ahmad at local address as required under Rule 23 (1) of Post Office SB Manual Vol. II. In this way, the applicant did not care for his first and foremost duty of payment procedure of payment procedure to be followed in the case of payment of KVPs presented at the other Post Office than the issuing Post Office. The applicant paid Rs. 61,48,560/- against rest of 839 KVPs without getting the verification of genuiness of the KVPs from the issuing office i.e. Sahatwar Post Office, Ballia. Thus a total of Rs. 62,90,560/- was paid to the so called investor against the said stolen 859 KVPs. The matter was reported to the Police and an FIR was lodged under Case Crime No. 276/97 under Section 419/420/409/467/468/471 IPC on 10.09.1997 in Police Station Puraufuti, Kaushambi. The police has submitted charge-sheet No. A-145 in the learned Court of ACJM – 1, Allahabad on 22.11.1997. Lateron, the said case has been transferred in the Court of ACJM – III, Allahabad that is in progress there. The applicant



was suspended on 10.09.1997 and charge sheet under Rule 14 of CCS (CC&A) Rules 1965 was issued to the applicant on 18.05.1998. As the applicant was due to retire on 31.07.2001, as such the case was decided under Rule 9 of CCS (Pension) Rules, 1972 vide Directorate order No. C-14016/20/2002-VP dated 26.02.2004 withholding his entire pension and entire gratuity permanently. The applicant submitted his representation against the said punishment which was returned to the applicant on the ground that no representation/review/mercy petition is acceptable against the order issued by the Hon'ble President dated 04.08.2005.

8. The applicant filed an OA No. 231/06 before this Tribunal for consideration against the order of punishment. During the pendency of said OA the applicant again filed another OA No. 863/06 claiming the disbursement of pay and allowance for the suspension period leave encashment, arrear of pay, bonus and medical allowances which was disposed of by this Tribunal on 24.08.2006, with the direction to the respondent No. 2 to decide the representation of the applicant dated 07.03.2005. Since a criminal case was pending against the applicant and entire pension and gratuity has been forfeited by the department under Presidential order under Rule 9 of the Pension Rules and the applicant is not entitled for the claims made by him in his representation, hence, the said representation was decided accordingly by the Respondent No. 2. Now challenging the said order dated 24.11.2006, the applicant has failed to present OA before this Tribunal.

9. Respondents have further submitted that the department sustained a huge pecuniary loss due to gross negligence of the applicant and a

major part of that loss is yet to be adjusted. Accordingly, arrears of pay, bonus and medical allowance is not payable. As per SR 39-D GID NO. 13 leave encashment is not payable to the officials whose pension is reduced under Rule 9 of Pension Rules and since a criminal case on the above fraud case is pending against the applicant, hence the period of suspension is not to be decided and the applicant is not entitled for disbursement of any amount claimed by him in the OA. The order dated 24.11.2006 is self explanatory in which facts have been discussed on the basis of Rules in force. As per Rule 39(3) CCS (Leave) Rules, 1972, leave encashment is not payable to the official / pensioner against whom a disciplinary or criminal case is pending. Since criminal case is pending against the applicant, hence leave encashment is not admissible to him. As per Rule 39 (3) of CCS (Leave) Rules, 1972 arrears of pay is not admissible till finalization of court proceedings against the applicant.

10. We have heard the learned counsel for the parties and gone through entire pleadings.

11. In OA No.231/06 filed by the applicant for quashing his punishment order the following direction was given:-

"Hence, the case is remanded to the respondents for reconsideration of the case with reference to quantum of penalty. The case may have to be referred by them to the UPSC as well as their advice sought. In case by that time the applicant's criminal case is also concluded and if the same results in exoneration of the applicant, the same may also be considered. In case in the criminal court the applicant is convicted then there is no question of revision of penalty, since provision exists that on conviction by the criminal court, dismissal from service is permissible, the consequence of which is forfeiture of past service. In case, the criminal case is yet to be concluded, the authorities may review the case

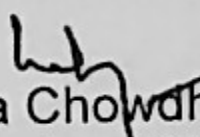
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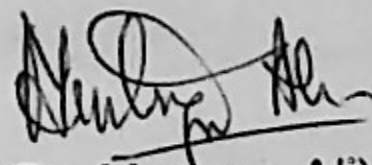
of the applicant for continuance of his pension on its conclusion".

12. AS regards the prayer for payment of Rs. 18000/- as difference of pay from 01.01.1996 to August 1997, the same cannot be paid to the applicant in view of Rule 69 of CCS (Pension) Rules, regarding leave encashment, the same can also not be paid to the applicant in view of Rule 23 of CCS (CCA) Rules, 1968 as also in view of SR 39D GID 13, other dues as claimed by the applicant can also not be paid to him on account of the recoverable amount pending.

13. Regarding claim for Rs. 100/- per month as medical allowances, the respondents are directed to make payment of the same to the applicant as deduction from his salary for the same is made regularly. He is thus entitled to the medical benefits as granted as post retirement for himself and for his family.

14. In view of the above the respondents are directed to make payment of medical allowance at the rate of Rs. 100/- per month to the applicant w.e.f. 01.08.2001 and in future also. No other reliefs are sustainable. The OA is accordingly disposed of. No order as to costs.


(Ms. Nita Chowdhury)
Member (A)


(Dr. Murtaza Ali)
Member (J)

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