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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO. 410 OF 2007

ALLAHABAD THIS THE 1st DAY OF July, 2008

**HON'BLE MRS. MEERA CHHIBBER, MEMBER-J
HON'BLE MR. N.D. DAYAL, MEMBER-A**

Nand Lal Kushwaha, aged about 61 years, S/o Sri R.B. Kushwaha, R/o Village and Post Kanta Chandauli, District Chandauli.

.....Applicant

(By Advocate Shri A. Srivastava)

V E R S U S

1. Union of India through Secretary, Ministry of Posts Communication (Department of Posts), Dak Bhawan, New delhi.
2. CPMG, U.P. Circle, Lucknow.
3. The Director of Accounts (Postal), Aliganj, Lucknow.
4. The Director, Postal Services, Allahabad.
5. Sr. Accounts Officer, office of the Director of Accounts (Postal), Lucknow.
6. The Superintendent of Post Offices, Mirzapur.

.....Respondents

(By Advocate: Sri S. Singh)

WITH

Contempt Petition No. 148 of 2007

Nand Lal Kushwaha, aged about 61 years, S/o Sri R.B. Kushwaha, R/o Village and Post Kanta Chandauli, District Chandauli.

.....Applicant

(By Advocate Shri A. Srivastava)

Versus.

1. Nivedita Srivastava, Director, Postal Accounts, Lucknow, U.P.

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2. M. Abdali, Director, Postal Services,
Allahabad.

.....Respondents

(By Advocate: Sri S. Singh)

O R D E R

BY N.D. DAYAL, MEMBER-A

The applicant has sought the following relief(s):-

- "(i) To issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 8.2.2006, 20.3.2006/19.5.2006 and 10.4.2007 passed by respondent nos. 3 & 5 (Annexure no. 1,2 and 3 to the Original Application).
- (ii) To issue a writ, order or direction in the nature of mandamus directing the respondents not to make any deduction in pursuance to the impugned orders 8.2.2006, 20.3.2006/19.5.2006 and 10.4.2007 and the applicant's pension may also be fixed on the pay scale at Rs. 10,500/- as on 1.7.2005.
- (iii) To issue any other suitable writ, order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.
- (iv) To award cost of the Original Application."

2. When this matter was taken up on 27.9.2007, learned counsel for the applicant requested for interim relief. The Tribunal observed as under:

"We have heard parties counsel. What we find is that prayer for quashing impugned orders dated 8.2.2006, 20.3.2006 and 19.5.2006 is not one, which can be admitted as the same was in the earlier O.A. no. 652/06, which has already been disposed of with certain observations in respect of these communications. No doubt, prayer for quashing the order dated 10.4.2007 is one, which was not there in the earlier O.A. as cause of action for seeking quashing thereof arose on communication dated 10.4.2007. By this order, DPS upheld the order dated 24.4.1976 passed by the SPOs, Mirzapur by which he treated the period of suspension as on duty for the purpose of pension only. Learned counsel for the applicant says that this order dated 24.4.1976 of SPOs, Mirzapur was substituted by an order of SPOs, Mirzapur by which the period of suspension was to be treated for all purposes (Annexure-5 to the O.A.)

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So the O.A. for quashing the order dated 10.4.2007 is admitted for hearing. The O.A. is not admitted for quashing orders dated 8.2.2006, 20.3.2006 and 19.5.2006.

The respondents shall file their reply within 4 weeks. R.A., if any, may be filed within 2 weeks thereafter. List on 29.10.2007 for orders.

In the facts and circumstances above, operation of the impugned order dated 10.4.2007 deserves to be stayed as under the earlier orders, the period of suspension was to be treated as on duty for all purposes. So operation of this order dated 10.4.2007 is stayed till the next date and it will not come in the way of determination of pensionary benefits of the applicant."

Therefore, the O.A. was admitted for hearing only in respect of prayer for quashing of orders dated 10.4.2007. Further, operation of the order dated 10.4.2007 was stayed till the next date and it was ordered that it will not come in the way of determination of pensionary benefits of the applicant.

3. Contempt Petition no. 148 of 2007 was filed on 14.11.2007 by the applicant for non-compliance of interim order dated 27.9.2007. In the Contempt petition, applicant has stated that the Tribunal while staying the operation of impugned order dated 10.4.2007 further observed that the order dated 10.4.2007 shall not come on the way of settlement of pension and accordingly respondents were directed to finalize the pension of the applicant. We find that this is incorrect representation of interim order; firstly, because the Tribunal has used the word 'determination' and not 'settlement' of pensionary benefits and secondly because there was no specific direction to finalize the pension of the applicant in so many words. The applicant expressed the grievance that he was being paid reduced pension and order of the Tribunal had been disregarded.

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4. The respondents have filed Counter Affidavit and certain Supplementary affidavits are also found in the file. On 1.5.2008 the learned counsel for both sides were heard on O.A. and orders were reserved.

5. The applicant has submitted that he had challenged the order dated 8.2.2006 passed by Director of Postal Accounts, respondent no.3, by which order dated 3.2.1993 had been held as null and void saying that he had been wrongly given promotion in the cadre of Inspectors from the date when his juniors were promoted i.e. 10.7.1975. He had challenged the order dated 20.3.2006 by which his pay was reduced by respondent no.3. Another order dated 19.5.2006 where irregularities in payment of salary had been pointed out was also assailed and lastly order dated 10.4.2007 passed by respondent no.4, Director, Postal Services, Allahabad, by which order dated 24.4.1976 was upheld wherein the applicant's suspension period was treated as duty only for the purposes of pension.

6. It has been explained that the applicant entered into service in 1967 as Postal Clerk and qualified examination for Inspector Grade on 21.2.1975. He was placed under suspension on 24.2.1975, which was revoked on 20.12.1975. The respondent no.6, SPO, Mirzapur passed an order dated 24.4.1976 treating the suspension period as duty only for the purposes of pension. It is stated by the applicant that he filed an appeal before respondent no.4 on 10.6.1976 and by order dated 17.8.1979 he set-aside the order of 24.4.1976. Thereafter, respondent no.6 issued show cause notice dated 30.11.1992 and after considering his representation dated 1.12.1992 and relevant aspects, an order was passed on 8.12.1992 (Annexure-4) holding that the period of suspension from 25.2.1975

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till 20.12.1975 be treated as duty for all purposes under instruction (3) of FR 54-B.

8. The applicant is aggrieved that taking notice of Rule 130 of P&T Vol. III, respondent no.3 has held that respondent no.6 could not have reviewed his own order dated 24.4.1976 by order dated 8.12.1992. It is stated that this rule will not apply because of order of 17.8.1979 wherein the respondent no.4 directed respondent no.6 that order of 24.4.1976 could not have been passed without giving notice and that is why this order was set-aside by him. Thereafter show cause notice was given and only then order was revised. Subsequently, on 24.12.1992 respondent no.6 issued a Corrigendum since certain facts had escaped his notice. This corrigendum mentions setting aside of the above order by respondent no.4 and directions purported to have been given to respondent no.6.

9. The applicant states that he represented that he should be promoted from when his juniors were promoted. Respondent no.6 passed an order on 3.2.1993 promoting the applicant w.e.f. 10.7.1975. The applicant, thereafter, got further promotion in ASPO cadre and HSG-I cadre from the date of his juniors and later-on on 15.3.2000 on the post of Superintendent in Patna Circle. On 1.3.2004, the pay of the applicant was fixed at Rs. 10,250/- instead of Rs. 10,500/-less by one increment.

10. The applicant reached the age of superannuation on 31.5.2006, but before that on 20.3.2006 his pay was refixed by reducing it to Rs. 9,500/- from Rs. 10250/-. The applicant filed O.A. no. 652 of 2006 for quashing orders dated 8.2.1976, 20.3.2006 and 19.5.2006 and pay fixation which was decided on 11.9.2006. The Tribunal asked the respondents to provide an opportunity to the applicant before

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taking decision. The applicant accordingly availed the opportunity to file representation on 20.12.2006. He was asked to submit copy of order dated 17.8.1979 purported to have been passed by respondent no.4 and reminded on 11.1.2007. The applicant replied that the same was not traceable and may be traced out from the office of respondent no.6. When the request was again repeated, the applicant gave a copy of his application submitted on 21.7.1992 (page 44) to respondent no.6.

11. In response, respondent no.5 Senior Accounts Officer, Office of Director of Accounts (Postal) informed him that his case could not be believed due to non-availability of the order dated 17.8.1979 which he had not furnished and it was held that his suspension period would be treated as duty for the purposes of pension only. The applicant contends that his case has been rejected by respondent no.4 stating that these are old orders and not traceable even in the service records for which the applicant cannot be held responsible particularly since copy of the order dated 8.12.1992 treating suspension period as duty for all purposes passed by respondent no.6 shows that one copy of the same was for Service Book. Therefore, he contends that order dated 3.2.19930 has rightly been issued for his promotion as Inspector from 10.7.1975. In this background, the applicant seeks directions quashing the order dated 10.4.2007 and directions to the respondents not to make any deduction in pursuance of this order and applicant's pension be fixed on the pay-scale of Rs.10500/- as on 1.7.2005.

12. A perusal of the order dated 10.4.2007 shows that the applicant while working as Postal Clerk, Mirzapur Head Post Office was involved in a case of fraudulent withdrawal in SB Account no. 51222 after death of depositor, by issue of duplicate Pass Book

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in the capacity of Ledger Clerk. He was, therefore, placed under suspension by Sr. Supdt. of Pos offices, Allahabad Division on 24.2.1975, which was revoked and the applicant rejoined on 20.12.1975. The disciplinary proceedings under Rule 16 of CCS (CCA) Rules 1965 were finalized by order of SPOs, Mirzapur. By the memorandum dated 24.4.1976 the period of suspension was ordered to be treated as duty for pension purpose only. The applicant contended that order of 24.4.1976 was set-aside on appeal by respondent no.4, order of 17.8.79 asking disciplinary authority to decide suspension after show cause. He submitted that he worked in various Divisions after 1979, but no disciplinary authority decided the suspension period. It was only when he was working as ASPO in Mirzapur Division, that the SPOs, Mirzapur Division issued a show cause notice and decided the suspension period as duty for all purposes by memorandum dated 8.12.1992 followed by corrigendum dated 24.12.1992.

13. The DPS, Allahabad held that the grounds advanced by the applicant were not convincing. The fact of filing appeal against SPOs, Mirzapur order dated 24.4.1976 nor decision purported to have been taken by appellate authority on 17.8.1979 were mentioned in O.A. no. 652 of 2006. We find from a reading of the order passed by the Tribunal that the applicant had put forwarded the case, that no orders were passed for treatment of the suspension period from 25.2.1975 to 18.12.1975, which was an incorrect submission. The DPS, Allahabad further noted that no copy of appellate order dated 17.8.1979 was enclosed by the applicant alongwith his representation. Even when he was subsequently reminded, he failed to supply it. No copy of appellate order dated 17.8.1979 is available with Director Accounts (Postal), nor a copy of Corrigendum dated 24.12.1992

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is available in the service book. The representation was, therefore, found to be incorrect and not based on facts. Besides appeal to the DPS is stated to have been submitted on 10.6.1976 nearly 21 years ago, which is claimed to have been decided three years later on 17.8.1979 and thereafter complied with by SPOs, Mirzapur after another 13 years on 8.12.1992. It was, therefore, concluded that the entire matter appears to be an after thought and order dated 24.4.1976 of SPOs, Mirzapur treating the period of suspension as duty for the purpose of pension only and not for all purposes, was upheld.

14. In their Counter Affidavit, the respondents have, besides seeking vacation of ex-parte stay order dated 27.9.2007, also claimed that the O.A. is without merit and deserves to be dismissed. They have recounted the developments in this case on the lines of the stand taken by the Director, Postal Services, Allahabad in order of 10.4.2007 and pointed out that the applicant was posted in Mirzapur Division in different posts during the period from 1988 to 1993 as below:

Period	Posted as
28.12.88 to 3.6.91	Asstt. Superintendent of Post Offices (West), Mirzapur.
4.6.91 to 10.2.93	Asstt. Superintendent of Post Offices (Headquarters), Mirzapur
11.2.93 to 28.6.93	Post Master, Mirzapur.

15. It is observed that the applicant was in Mirzapur Division {Headquarters} during the period when orders of SPOs, Mirzapur treating the suspension period as duty for all purposes and promoting the applicant as Inspector with retrospective effect from nearly 18 years ago, were passed. The applicant initially does not seem to have apprised the SPOs, Mirzapur also of the order

already passed by his predecessor on 24.4.1976 directing suspension period to be treated as duty only for the purpose of pension because of which order dated 8.12.1992 carries no mention of it, nor of letter dated 21.7.1992 (page 44) and was passed regulating the suspension period as duty for all purposes. Even the corrigendum dated 24.12.1992 does not make any reference to letter of 21.7.1992, nor any other source of information. Yet, letter of 21.7.1992 was produced when repeatedly asked by respondents to give a copy of decision dated 17.8.1979 purportedly taken by respondents on his appeal. Merely to endorse a copy to Service Book on such letter or any order cannot be sufficient to remove the doubts about existence of any order dated 17.8.1989. The suspension may not be punishment and appeal lies, but applicant has not brought to our notice any rule or instruction which requires decision on treatment of suspension period to be deferred after punishment order has been issued until statutory remedies provided against penalty imposed, have been exhausted.

16. Besides, as emphasized by respondents GOI instructions (3) of FR 54-B, copy at Annexure CA-3, shows that these instructions to treat the suspension as wholly unjustified in case of award of minor penalty are effective from the date of issue, which is 3.12.1985 and past cases already decided such as that of the applicant decided on 24.4.1976, were not to be reopened. This makes order dated 8.12.1992, which relies on the same, unsustainable.

17. The applicant in his Rejoinder Affidavit has reargued his case by ^{and} ~~en~~large on the same grounds as already taken.

18. Having considered the matter, we are not satisfied that the applicant has made out his case.

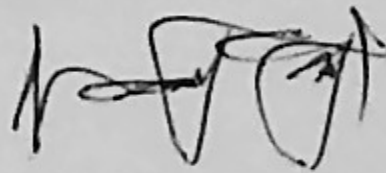
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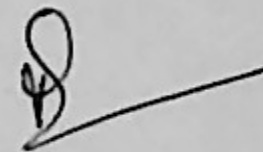
The crucial document upon which the applicant has relied upon, namely his appeal dated 10.6.1976 and decision of respondent no.4 dated 17.8.1979 thereon, have not been produced by him, nor reliable details provided for them to be traced from the official records. As observed by the Hon'ble Supreme Court in the case of Anil Rishi Vs. Gurbaksh Singh reported in 2006(5) SCC 558 the burden of proof ordinarily rests on the person who makes the assertion and so initial onus would be on the applicant to discharge the same by placing the documents relied upon.

19. The documents on record do not show that the applicant has come to the Court with clean hands and likelihood of bias in passing of orders in his favour cannot be ruled out. As such we are not inclined to interfere with the impugned order dated 10.4.2007.

20. The O.A., therefore, fails and is dismissed. CCP No. 148/2007 is disposed of accordingly. Notices issued to the respondents in the CCP are discharged. No costs.



MEMBER-A



MEMBER-J

GIRISH/-