1/16

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Applications 194/2009 and 195/2009

Dated this the 16th day of March, 2011

CORAM

HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE MR. SUDHIR KUMAR, ADMINISTRTIVE MEMBER

OA 194/2009

1. Bhagwana Ram S/o Dault Ram,at present employed on the post of PA in the office of SSPO's (DO), Jodhpur.

2. Smt.Maya W/o Manohar Lal, at present employed on the Post of Accts at Jodhpur HPO, Jodhpur.

3. Summr Singh Son of Shri KalyanSingh
At present employed on the post of APM Accts
At Jodhpur HPO.

4. G.S.Limba Son of Shri Hameera Ram
At present employed on the post of APM
Counter in Jodhpur HPO, Jodhpur.

5. D.S.Bhati Son of Shri Vijay Singhji,
At present employed on the post of
SPM Residency Road, Jodhpur.

6. Rakesh Dadhich son of Shri Madhusudan Dadhich,
At preset employed on the post of PA in
The office of SSPO's (DO) Jodhpur.

7. U.U.Khan son of Amananulah Khan,
At present employed on the post of
APM Treasury at Jodhpur HPO, Jodhpur.

8. Prem Singh son of Udai Ram,
At present employed on the post of APM at
Jodhpur HPO, Jodhpur.

-2-

9. Mayur Son of Shri Parasmal,
At present employed on the post of PA
Shastrinagar HO, Jodhpur. ...Applicants

(By Advocate Mr. J.K.Mishra)

Vs.

1. Union of India through Secretary to the Government
Of India, Ministry of Communications &
Info Technology, Department of Posts,
Dak Bhawan, Sansad Marg, New Delhi.

2. Chief Postmaster General,
Rajasthan Circle, Jaipur.

3. Post master General,
Western Region, Jodhpur.

4, Senior Superintendent of Post Offices,
Jodhpur Division, Jodhpur. (Raj).

5. Senior Postmaster,
Jodhpur HPO, Jodhpur-342001. ...Respondents

(By Advocate Mr.M.Godara, proxy counsel for Adv.Vinit Mathur)

OA 195/2009

1. Bhinyaram Chaudhary Son of Shri Birmaram Chaudhary,
At present employed on the post of PA
(TBOP) in Jodhpur HPO, Jodhpur.
2. Smt. Kanta W/o Shri Subhash Joshi,
At present employed on the post of PA
in Jodhpur HPO, Jodhpur.

3. Smt. Vijay Laxmi Wife of Shri Sunil Kumar Chauhan,
At present employed on the post of PA in
Jodhpur HPO, Jodhpur.

4. Rakesh Meena Son of Shri JP Meena,
At present employed on the post of PA in
Jodhpur HPO, Jodhpur.

5. Sumermal son of Shri Ghewarmal,
At present employed on the post of PA
In Jodhpur HPO, Jodhpur.

1/18

-3-

6. Gopal Rao son of Shri Haridanji,
At present employed on the post of PA
In Jodhpur HPO, Jodhpur.

7. Gauri Shankar son of Shri Srilalji Vyas,
At present employed on the post of PA
In Jodhpur HPO, Jodhpur.

8. Prakash Son of Shri Gaya Ram
At present employed on the post of PA in
Jodhpur HPO, Jodhpur.

9. K.L.Sharma son of Shri Nand Ram Sharma,
Office Asstt. Divisional Office, HPO Building,
Jodhpur. ....Applicants

(By Advocate Mr. J.K.Mishra)

Vs.

1. Union of India through Secretary to the Government
Of India, Ministry of Communications &
Info Technology, Department of Posts,
Dak Bhawan, Sansad Marg, New Delhi.

2. Chief Postmaster General,
Rajasthan Circle, Jaipur.

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4. Senior Superintendent of Post Offices,
Jodhpur Division, Jodhpur. (Raj).

5. Senior Postmaster,
Jodhpur HPO, Jodhpur-342001. ...Respondents

(By Advocate Mr.M.Godara, proxy counsel for Adv.Vinit Mathur)

-4-

ORDER

HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER

Both the Original Applications are being taken up together for disposal as in both the cases common question of facts and law arise for adjudication and so both the O.As are being disposed of by this common order passed in OA 194/2009.

2. O.A No.194/2009 has been filed on behalf of Applicant Bhagwana Ram and eight others (total 9 applicants) whereas O.A.No.195/2009 has been field on behalf Binyaram Choudhary and eight others(total nine applicants). In both the O.As orders NO.F/Mic/Falodi/09-10 dated 4.9.2009 issued by the Senior Post Master, Jodhpur HPO for withholding of payment of 2nd instalment of arrears under 6th C.P.C (Central Pay Commission). are under challenge and the applicants have prayed to quash and set aside the abovementioned orders in respect of all applicants with direction to respondents to release and make payment of remaining 60% of arrears of 2nd instalment under 6th CPC alongwith withheld D.A, bonus and interest.

3 The brief facts of the case are as follows.

All the applicants (in both OAs) were initially appointed in Postal Department on different dates. After implementation of the 6th C.P.C. recommendations, the pay of the applicants were fixed accordingly and 40% of arrears on account of implementation of the recommendation of CPC were paid to the applicants. On 25.8.2009 the Ministry of Finance issued Office Memorandum (Annexure.A.10) for payment of remaining 60% of

-5-

arrears by way of 2nd instalment on account of implementation of the 6th C.P.C. The order of payment of 60% of arrears by way of second instalment in respect of the applicants was without any condition and thus all the applicants were entitled for payment of arrears of second instalment on implementation of the recommendation of the 6th C.P.C. But all the applicants were individually informed by Office Order dated 4.9.2009 that the payment of remaining 60% of arrears as a result of revised pay and allowances under the 6th CP.C. has been withheld in pursuance of Order No.F.1/09-10 dated 26.8.2009 passed by the 4th respondent. The above order communicated to the individual applicants have been annexed in both the O.A.s which are Annexures.A1 to A.9 in both the O.As. and the same are under challenge. The applicants have stated that for withholding the payment of 60% arrears neither any show cause notice were issued to the applicants nor the applicants were given any opportunity to be heard before passing the orders. The applicants have further stated that none of the applicants is involved in any disciplinary proceedings nor any penalty has been imposed against any individual applicant for recovery of any amount. It is stated that the applicants tried to know the reason of issuing order of withholding of 60% of arrears and came to know that since a big money scam was committed in Falodi Post Office and the matter was being investigated by CBI the impugned orders were issued by way of abundant caution because of the fact that transaction at Falodi were also done at HPO/Divisional Office and the applicants had also dealt with transactions relating to Falodi Post Office at Jodhpur. It has further been stated that against the applicants

no departmental proceedings for recovery of any amount is pending and since the recovery is one of the penalty and cannot be imposed except after following procedure established by law, as such the withholding of the 60% arrears of pay and allowances under the 6th CPC is unjust, improper and illegal and so the orders should be quashed.

4. On filing of the O.A. notices were issued to the respondents and in compliance of the notice respondents appeared through lawyer and filed reply of the OA. According to the reply of the respondents their case is that on 4.6.2009 the Senior Superintendent of Post Offices, Jodhpur made a surprise visit at Falodi Post Office where he detected a huge amount of misappropriation of government money. The matter was handed over to CBI for investigation. Simultaneously departmental investigation was also done and it was found that Rs.1,70,91,463/- has been misappropriated at Falodi Post Office. It is stated that the Falodi Post Office is under the administrative control of Divisional Office Jodhpur. It is stated that during the departmental investigation it was noticed that due to severe negligence on the part of the applicants the fraud was got facilitated and the culprits succeeded to commit misappropriation of government money and so by order dated 23.7.2009 issued from the Office of Post Master General, Rajsthan Western Region, Jodhpur the competent authority issued order to withhold the 60% of 6th Central Pay Commission arrears as well as the arrears of DA of all the principal and co-accused and subsidiary offenders and accordingly the orders to withhold the payment of 60% arrears and DA of 6th Pay Commission were ordered in respect of the applicants till the

completion of enquiry. It is further stated that during the investigation it was found that some of the officials including some of the applicants whose involvement in the scam were not found, in respect of them the authority passed orders for releasing the 2nd instalment of 60% arrears of 6th CPC. The said order has been annexed as Anenxure.R.2 of the OA. On the above ground and on the ground that the applicants have not exhausted all the departmental channels as such the respondents prayed that both the O.As be dismissed.

5. Shri J.K.Mishraa learned advocate appeared on behalf of the applicants in both the cases whereas on behalf of the respondents Shri M.Godara, learned proxy counsel for Advocate Vinit Mathur appeared and argued the case.

6. According to the submission of the learned advocate of the respondents, the 2nd instalment of withholding of payment of arrears under the 6th CPC in respect of the applicants were ordered because of abundant caution as defalcation of huge government money at Falodi Post Office amounting to Rs. 1,70,91,463/- was detected for which a CBI case was instituted along with initiation of departmental enquiry. He submitted that although the applicants were not principal or co-accused in the case, they were suspected to be subsidiary offenders and as such withholding of the amount of arrears in respect of the applicants were passed but when during the enquiry no material was found against some of the applicants in respect of those applicants orders were issued for releasing the 2nd instalment of 60% arrears on account of 6th CPC recommendations. He submitted that he

-8-

has annexed the said order which is dated 10.9.2009 and which has been made as Annexure.R.2 in both the O.A.s. Learned advocate submitted that Annexure.R.2 establishes that the payment of 2nd instalment of 60% arrears under the 6th CPC were not permanently withheld rather the same were withheld till the conclusion of departmental enquiry and as soon as the authorities found that some of the applicants are not at all involved in the scam they issued orders to release the withheld amount. He submitted that the authority is also ready to release the withheld amount of arrear in respect of other applicants as soon as the authority arrives at the conclusion that they are not involved in the scam. He submitted that in view of the stand taken by the authority these O.As should be dismissed or may be disposed of with direction to the authority to conclude the enquiry within a fixed period.

7. Learned advocate of the applicants conceded that in respect of some of the applicants the authorities have already released payment of 2nd instalment of 60% arrears of pay and DA under the 6th CPC.

8. Considering the submission of both the learned advocates and after going through Annexure.R.2 of both the O.As we find that the authorities by order dated 10.9.2009 have already released the payment of 2nd instalment of 60% arrears of the 6th C.PC in respect of some of the applicants which supports the contention of the respondents that by way of abundant caution the payment of 2nd instalment of 60% arrears of 6th CPC. were withheld in view of big scam committed at Falodi Post Office. Annexure.R.2 further establishes that as soon as the authorities arrived at the conclusion that a particular employee is not involved in the scam they passed order for

1/24

-9-

releasing the withheld arrear and so we are convinced that the authorities are in process of issuing order for releasing the withheld amount in case a particular employee is not found involved in the scam. In such view of the matter, we are of the view that both the O.As can be disposed of with direction to the authorities to conclude the departmental enquiry within a fixed period and if no involvement of the remaining applicants is found and the authorities do not issue charge sheet against them for initiation of departmental proceedings, they shall release the withheld amount after the expiry of the said period.

9. In the result, we dispose of both these O.As with direction to the respondents to conclude the enquiry initiated by them for tracing out the real culprits who are involved in misappropriation of huge amount of government money at Faluda Post Office within a period of four months from the date of receipt/production of this order. We further direct the respondents that if in enquiry the involvement of remaining applicants with the scam committed at Falodi Post Office, is not found, then the respondents shall immediately release the 2nd instalment of 60% arrears under the 6th CPC to all those applicants. Accordingly both the O.As stand disposed of with above direction. No costs.

Dated this the 16th day of March,2011

SUDHIR KUMAR
ADMINISTRATIVE MEMBER

JUSTICE S.M.M. ALAM
JUDICIAL MEMBER

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दिनांक 21-6-16 के आदेशानुसार
मेरी उपस्थिति में दिनांक 29-6-16
को भाग-II व III नष्ट किए गए।

अनुभाग अधिकारी
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर न्यायपीठ, जोधपुर