

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 119/2010

Date of Order: 25.03.2011

CORAM:

HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER

Prakash Chandra Bothra S/o Shri Chintamani Dass, aged about 58 years, b/c Oswal, R/o 208, Dhani Bazar, District Barmer.

Office Address: HO Churu (Postal Dept.) Dist. Churu, employed on the post of SPM.

Mr. S.P. Singh, counsel for applicant.

...Applicant.

VERSUS

1. Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi.
2. The Chief Post Master General, Rajasthan Circle, Jaipur - 302 007.
3. The Director (Postal Services), Rajasthan Western Region, Jodhpur - 342 001.
4. Superintendent of Post Offices, Barmer Division, Barmer - 344001.

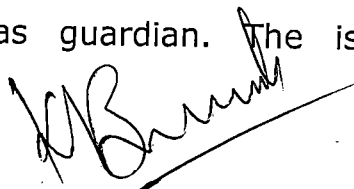
... Respondents.

Mr. M.S. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.

ORDER

(Per Dr. K.B. Suresh, Judicial Member)

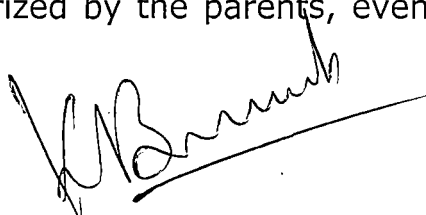
Heard learned counsels for both the parties in great detail. Apparently, the applicant opened a recurring deposit (RD) in the name of a minor girl namely Kumari Seema, when she was accompanying by her maternal uncle namely Gotam and he introduced himself as guardian. The issue raised by the



department is that the maternal uncle is not competent to be an effective guardian under the law and the rules as explained by them, and therefore, the applicant ought not to have opened this account.

2. This account seems to have been under the control of the applicant for two months. Thereafter, he was transferred and the said account remained continued for 36 months and on maturity became payable with interest @ 9% per annum.

3. Apparently, at this time, the mother of said minor girl had requested for the amount to be repaid to her as usual with interest. The concerned employee, at that time, refused to make payment on the ground that this is either illegal account or irregular account, and, therefore, payment was refused along with the interest. The parents of the said girl feeling that it is inadequacy of service of the department, had chosen to move before the District Consumer Disputes Redressal Forum, Barmer by filing complaint no. 230/2004. Apparently, the District Consumer Forum has considered on to who can be the legal guardian. The first limb of consideration is whether the maternal uncle of a minor girl can also effectively by the guardian of a girl, if he is so authorized by the parents, even though, he may not



have been legally appointed as guardian under the law. Second limb of consideration of the Forum seems to be that having accepted the payment and made use of it in their commercial enterprise, the department's agent, at the end of maturity of RD account, refused to make repayment. Is the agent of the department is the applicant herein? Had he entered into a contract at the time of opening of that account? The District Consumer Forum in their finding declared her maternal uncle as guardian and also ordered the amount to be paid amounting to Rs. 36,000/- with interest @ 9% per annum w.e.f. 09.06.2003 till the payment is made, besides cost of Rs. 500/- in favour of the complainant.

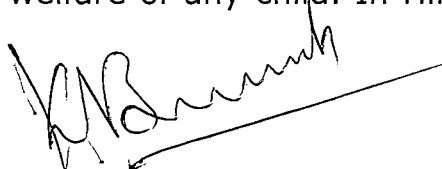
4. On this salutary ground, the District Consumer Forum directed repayment with interest and of course penalty rightly and wisely. The department then paid the same and did not file appeal as it was advised that the forum was right in its entirety. The amounts of Recurring Deposit which is being gathered through the Post Offices in the country are used by the nation for its financial operation, and, therefore, having been made available for the national welfare even if it is irregularly obtained, after having obtained benefit every one is estopped from turning around and not repaying the same after having



1/12

enjoyed it. Therefore, immediately, after the decision of the District Consumer Forum, repayment was made by the department. The department ought to have made payment to the depositor at the first instance itself; therefore, question of extra and excess payment, which had to be made by the department, was solely on the reason of fault on the part of the department as a result of wrong interpretation of their jurisdiction and power by them. Thus, I hold that specifically when the department had collected the amount from the depositor, the department was duty bound to repay the whole amount with interest to the depositor, even if that account was reopened irregularly. It is the internal matter of department, and the depositors should not be caused harassment.

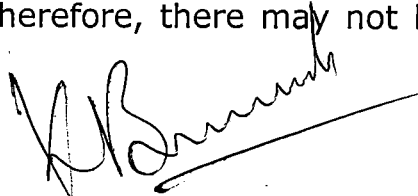
5. On this context, let us examine, what is the illegality in opening a recurring deposit account by the maternal uncle. The Hindu law, which had been followed in this country and to which apparently it is applicable to the concerned parties, do not prohibit the categories of persons being guardian of a minor. In fact, the rules of pious obligation, which is the basis of Hindu Philosophy, would treat the maternal uncle and the paternal uncle as the pious person other than the grand parents responsible for the welfare of any child. In Hindu Philosophy the



13

role of those grand parents and uncles include a pious role and obligation. The Hindu Succession Act also would point out that even though in exclusive class or category, the maternal uncle to be a legal heir. The minor child is also legal heir of the maternal uncle, and in certain circumstances, between them that have been established that there may not be any illegality in a maternal uncle's acting as a guardian of a minor girl. This is especially so supported since there is no allegation of any conflict of interest in the maternal uncle to repay the girl as the repayment was demanded by the mother of the said girl, who is his own sister. The stand taken by the department does not seem to be correct in the entire scenario of law as is available in the country. At this juncture, we see to the fact that the applicant had filed so many litigations against the department and, therefore, even as the light issues impact seems to be more pronounced.

6. The learned counsel for the respondents invited my attention to Annexure A/7 letter dated 15.12.2009, in which letters dated 23.02.2007, 06.10.2008 and 06.07.2007 are mentioned. He would say that the said letters are not appropriately elucidated in the pleadings with the Original Application, and, therefore, there may not be any link between

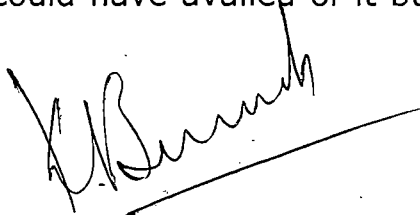


14

them. He said so in answer to the question of limitation raised by him on the ground that the recovery was ordered some years back in 2005 and the O.A. was filed in 2010, therefore, he would say that the matter would have become stale.

7. The answer of the applicant's counsel in this regard was that annexure A/7 by which the respondents still claims that the claim of the applicant is still in their consideration, and, therefore, not having received any answer within the stipulated time, he approached the Tribunal; therefore, there is no question of limitation vitiating his claim. He also points out that if respondents had any doubt about veracity of the letters, since they have admitted this in their letter that the matter is still under consideration, they must be in possession of it and having been in possession of the same, they had a duty to explain it, if they want to challenge it. Therefore, he would say that the respondents' objection regarding limitation is not correct. The applicant had filed a detailed rejoinder also, which is also on the same grounds as stated above.

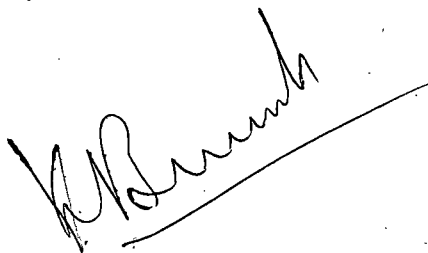
8. At this stage, the respondents' counsel brings to my notice that the applicant had a statutory remedy available in the form of revision and that he could have availed of it but since having



2/15

not availed of it; the Tribunal may not consider the matter so far as related to the applicant. It is apparent that the applicant seems to have represented the matter to the respondents, which were dealt with by them, and according to the annexure A/7 the same are still pending consideration of the respondents, and, therefore, the question of filing of revision may not have any relevance.

9. At this juncture, the learned counsel for the respondents invited my attention to the judgment of the Hon'ble Apex Court in the case of **R.C. Sharma vs. State of Himachal Pradesh** reported in 1999 AIR SC Weekly, page 3911, which directs a view that before condonation of delay and limitation thus got over, no orders on merits can be passed by a judicial authority. Obviously, this is a correct foot. But in view of the fact of annexure A/7 letter dated 15.12.2009 regarding pendency of consideration of the matter before the competent authority, the applicant had approached the Tribunal within the time. It is not the immediate primacy of the cause of that matter, but the time taken during its resolution also is apparent in this respect, therefore, there is no question of limitation involved in this case.



1/16

10. Therefore, I quash and set aside the impugned orders dated 24.10.2005 (Annex. A/1) and dated 30.11.2006 (Annex. A/2).

The respondents are directed to refund the amount of Rs. 7,001/- to the applicant with interest @ 9% per annum. The Original Application is, thus, allowed to the extent as stated above. There shall be no order as to costs.


(DR. K.B. SURESH)
JUDICIAL MEMBER

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दिनांक 21-4-16 के आदेशानुसार

परीक्षा क्र. 09-6-16

को 09-6-16 पर

आचार्य
केन्द्रीय प्रश्न पत्र, अधिकारण
खोजपुर न्यायपीठ, जोधपुर