

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00448/2014

Jodhpur, this the 9th day of September, 2016

Reserved on 23.08.2016

CORAM

Hon'ble Ms. Praveen Mahajan, Administrative Member

Rewant Ram Pandia S/o Shri Radha Kishan Pandia, aged about 60 years, R/o village & post Nakrasar, District Churu, Rajasthan. Ex Mail Overseer, at Divisional Post Office, Churu.

.....Applicant

Mr.S.K. Malik, counsel for applicant.

Versus

1. UOI through the Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. The Post Master General, Rajasthan Western Region, Jodhpur.
3. The Senior Superintendent of Post Offices, Churu Division, Churu.

.....respondents

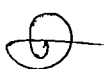
Mr. K.S. Yadav, counsel for respondents.

ORDER

The present OA has been filed by the applicant claiming the following reliefs:-

- "(i) By an appropriate writ order or direction impugned order dated 30.09.2014 at Annexure-A/1 be declared illegal and be quashed and set aside.
- (ii) By an order or direction respondents may be directed to release an amount of Rs.4,45,250/- along with penal interest @ 24% per annum till the date of payment towards retirement gratuity.
- (iii) By an order or direction exemplary cost be imposed on the respondents for causing undue harassment to the applicant.
- (iv) Any other relief which is found just and proper be passed in favour of the applicant in the interest of justice."

2. Briefly stated the facts of the case are that the applicant was initially appointed on 17.06.1981 to the post of Group 'D'. He was promoted to the post of Postman and finally promoted on the post of Mail Overseer in the year 1997. He superannuated on 28.02.2014. The respondents vide letter dated 01.01.2014 issued a list of employees asking all the filed formations to intimate if there were any outstanding dues against the employees shown to be retiring as per this list. The name of the applicant finds place at serial No.2 of the list (Annexure-A/2). The applicant states that three days prior to his retirement, he was informed vide letter dated 25.02.2014 that the amount of gratuity due to him was Rs.4,22,988/- (Annexure-A/3). Subsequently, vide letter dated 28.04.2014, the applicant was informed that his revised gratuity is Rs.4,45,250/- (Annexure-A/4). Neither of the above cited letters mentioned anything about withholding of gratuity, nor was any amount shown as outstanding against the applicant. When no payment of account of DCRG was received by the applicant after a period of seven months, the applicant represented to the respondents on 21.08.2014 (Annexure-A/5). He submitted that he was in dire need of money since just before retirement, he had taken loan for construction of his house and marriage of his children, which had to be repaid. He requested for release of gratuity amount immediately. The applicant was surprised when, vide memo dated 30.09.2014, only an amount of Rs.47,500/- was paid to the applicant against the DCRG amount of Rs.4,45,250/- which was due to him. In the impugned memo Rs.3,97,750/-



has been deducted from the actual DCRG amount of Rs.4,45,750/- (4,45,250-3,97,750 = 47,500). The applicant submits that under Rule 68 of CCS (Pension) Rules 1972 if the payment of DCRG has been authorized later than the date when its payment becomes due, the interest on the same is also to be paid for the period of delay. In support of his contention he has enclosed a copy of Circular dated 22.01.2014 (Annexure-A/7). Aggrieved by the impugned order dated 30.09.2014 (Annexure-A/1) the applicant has filed the current OA.

3. In reply to the OA, the respondents have stated that the applicant failed to pay his regular visit to the Branch Post Offices placed under his Beat and consequently a fraud of Rs.3,97,750/- occurred in the Branch Post Office named Sulakhnia Chhota (Sankhu Fort) which came under applicant's jurisdiction. It is submitted that the applicant paid his visit to the said post office on 16.05.2013 and found the respective Branch Post Master absent but he did not report this to his authority i.e. SPO Churu or Inspector Sub Division, Churu. Nor did he mention this fact in his diary of day/week/fortnight. Had the applicant stayed in village Sulakhnia Chhota and reported the absence of the concerned BPM on 16.05.2013, then the occurrence of embezzlement and the loss of Rs.3,97,750/- sustained by the Department, could have been prevented. It has been alleged that the applicant deliberately concealed the instance of absence of the BPM, and, in this way, the applicant facilitated the occurrence of embezzlement. The said incident of

absence of BPM was mentioned by the applicant in his diary only on 27.09.2013. This act of the applicant, comes under the category of grave misconduct/ indiscipline. It helped the BPM to abscond with the embezzled Government money. The applicant's negligence facilitated this act of non recovery of Rs,3,97,750/- from the BPM. Hence, the department has restrained an equivalent amount from his gratuity. The remaining amount, Rs.47,500/- ($4,45,250 - 3,97,750 = 47,500$) has been sanctioned to him. The disciplinary action under Rule 9 of the Pension Rules is being processed against the applicant.

4. In rejoinder to the reply, the applicant has averred that allegation of the respondents regarding applicant's negligence is totally fallacious. It is wrong to say that the applicant failed to pay his regular visit to the Branch Post Office (BPO) placed under his beat. When the applicant visited Sulakhania Chhota (Sankhu Fort) on 16.05.2013 he also visited the Branch Post Officer where he found that GDS DA Shri Krishanpal Singh was not present, and the post office was closed. He reported this to Inspector Post Office Churu on the same day i.e. on 16.05.2013 (Annexure-A/8). The same facts are mentioned in his diary, which is produced as Annexure-R/4. The applicant tried to contact Shri Krishanpal Singh despite which he did not come. Going beyond the call of duty, the applicant contacted Shri Krishanpal Singh and suo moto recorded his statement on 27.09.2013 confronting him with his misdemeanour. The delinquent official mentioned that he will rectify the record and make the

payment of the remaining amount upto Monday. This report, along with statement of Shri Krishan Pal Singh, was submitted by him to Inspector Post Office Churu on 27.09.2013 itself (Annexure-A/9). The entire episode was reported to the Superintendent of Post Offices Churu by the Inspector concerned vide letter dated 01.10.2013 (Annexure-A/10). So the allegation that the applicant had been trying to suppress the information about absence of Shri Krishanpal Singh is totally incorrect. Subsequently, Shri Krishanpal Singh was arrested, and is currently under police custody. In the rejoinder, the applicant further submits, that he has not caused any pecuniary loss to the department as contended by the respondents. He brought the entire facts to the notice of the Inspector Post Office Churu about the absence of Shri Krishanpal Singh and his activities. If the respondents failed to take any action against him, the onus cannot be shifted on the applicant for their delay or/and, for the embezzlement.

5. During the course of arguments, the learned counsel for the applicant Shri S.K. Malik, stated that the respondents are holding the applicant guilty to cover up their own slackness. Reiterating the sequence of events, already submitted in the OA and rejoinder, he forcefully argued, that the moment the applicant got to know that Shri Krishanpal Singh is not present at the Sulakhnia Chhota (Sankhu Fort) office, he reported this to the Inspector Post Office Churu on the same day, i.e. on 16.05.2013. He continuously made efforts to contact Shri Krishanpal Singh, and finally recorded his statement on

27.09.2013 and, brought this to the notice of the higher authorities. Hence, he made every effort to ensure that he not only performs the duties assigned to him diligently but he also took initiative to record the statement of Shri K.P. Singh and confront him with the irregularities found. The learned counsel, relied upon the judgment of the Hon'ble Apex Court, in the case of State of Jharkhand & Ors. v. Jitendra Kumar Srivastava & Anr. reported in (2014) 2 SCC (L&S) 570 wherein the Hon'ble Apex Court held that "**pension and gratuity are not in the nature of bounty but property, and such earned benefit cannot be taken away without complying with due process of law.**" The learned counsel for the applicant submitted that the ratio of the said judgment would apply in the instant case since Rule 9 of CCS (Pension) Rules 1972 and Rule 43 (b) of Bihar Pension Rules both read alike, as is evident from the table reproduced below:-

Rule 9 CCS (Pension) Rules, 1972	Rule 43 (b) Bihar Pension Rules
<p>9. Right of President to withhold or withdraw pension</p> <p>[(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :</p> <p style="text-align: center;">Provided that the Union Public Service Commission shall be consulted before any final</p>	<p>"43.(b) The State Government further reserve to themselves the right of withholding or withdrawing a pension or any part of it, whether permanently or for specified period and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Government if the pensioner is found in departmental or</p>

<p>orders are passed :</p> <p>Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.]</p> <p>(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :</p> <p>Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.</p> <p>(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -</p> <p>(i) shall not be instituted save with the sanction of the President,</p> <p>(ii) shall not be in respect of any event which took place more than four years before such institution, and</p> <p>(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."</p>	<p>judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to the Government by misconduct or negligence, during his service including service rendered on re-employment after retirement."</p>
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6. He further contended that, from the aforesaid Rule 43 (b) Bihar Pension Rules, it emerges that:

- (i) The state Government has the power to withhold or withdraw pension or any part of it when the pensioner is found to be guilty of

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grave misconduct either in a departmental proceedings or judicial proceeding.

(ii) This provision does not empower the State to invoke the said power while the departmental proceeding or judicial proceeding are pending.

(iii) The power of withholding leave encashment is not provided under this Rule to the State, irrespective of the result of the above proceedings.

(iv) This power can be invoked only when the proceedings are concluded finding guilty and, not before.

7. He also stated that ratio of judgment of Hon'ble Supreme Court, in the case of Rashmi Metaliks Limited and Anr. v. Kolkata Metropolitan Development Authority and Ors. reported in (2013) 10 SCC 95 would also apply in this case.

8. Concluding the arguments, the learned counsel for the applicant submitted that the applicant is merely a Group 'D' staff who was trying to do his duty to the best of his ability. Imposition of penalty like withholding of gratuity by the respondents, for a fraud, committed by someone else, when no complicity of the applicant is either made out or alleged, is totally arbitrary & illegal and needs to be set aside.

9. The learned counsel for the respondents Shri K.S. Yadav, countering the submissions made by the applicant, vehemently argued, that the applicant gravely erred in not reporting the fact of absence of Shri Krishanpal Singh

when he visited the Post Office Sulakhnia Chhota (Sankhu Fort) on

16.05.2013. It was after a lapse of nearly four months, that he informed his senior officers about the absence of Shri Krishanpal Singh on 27.09.2013 and recorded it in his dairy. This fact is apparent from Annexure-A/9. Learned counsel stated that though the letter dated 27.09.2013 made a reference to letter dated 16.05.2013 written by the applicant, but the said letter has never been received by the respondents. In view of the provisions contained in Postal Manual, Volume-3 Rule 137 the recovery can very well be made from the pension and gratuity of the applicant. The said rule stipulates that :

"137. Disciplinary proceedings can be initiated against a retired officer in the manner provided in Article 351-A of C.S.R. for the purpose of withholding or withdrawing a pension or any part of it either permanently or for a specified period and also for ordering recovery from pension and or DCR gratuity of the whole or a part of any pecuniary loss sustained by the Government on account of the negligence of the retired officer. Such orders can also be passed under that rule and in the manner provided therein, if the pensioner is found guilty of grave mis-conduct or negligence during the period of his service, including service rendered upon re-employment after retirement. The standard forms prescribed are reproduced as Appendix XI-A & XI-B."

Since the applicant has retired from service, hence disciplinary proceedings are contemplated against him under Rule 9 of CCS (Pension) Rules, 1972.

10. He also made a reference to circular No.4-66/TN-16/2009 -Inv. dated 19.03.2015 of Government of India, Ministry of Communication & IT Department of Posts, whereby Directorate has issued several instructions regarding recovery of public money lost in fraud cases. It has been directed therein that such loss, should be recovered along with normal interest and penal interest. Para 3.2 of the letter mentions that *"the DG (Vig) letter No.8-*

3/2003-Inv dated 25.02.2003 enjoins upon disciplinary authorities to ensure punishments which are commensurate with lapses on their part and loss sustained by the Government. Further, it should be ensured that loss involved in the fraud etc is fully recovered distributing the total loss over all the offenders in a suitable proper depending upon the proper of gravity of offence of each of the offenders involved in the case. DOP&T instructions issued vide OM No.11012/1/2000-Estt. (A) dated 06.09.2000 as mentioned in Director (Vigilance) DO letter No.17-3/2006- Inv dated 08.09.2006 require that the punishments should be commensurate with the gravity of charges keeping in mind the principles of natural justice and equity".

11. The learned counsel for the respondents again reiterated that it was only in the month of September, 2013 that the applicant recorded the incident of absence of Shri Krishanpal Singh in his diary. Had this fact been reported on time, the respondents could have taken timely action against Shri K.P. Singh and prevented the fraud from taking place.

12. Responding to the arguments of the learned counsel for the respondents, the learned counsel for the applicant stated that the very fact that the respondents lodged an FIR against the main offender, only on 05.05.2015, (Annexure-A/11) shows that their investigation was tardy, and it took them almost two years, after the embezzlement, to take necessary action against the

main culprit. Now they are merely looking for a scapegoat (the applicant, in this case) to justify their inaction.

13. I have heard the rival contentions, and perused the record carefully.

14. The issue to be adjudicated in this OA is whether the respondents have rightly deducted the amount of Rs.3,97,750/- from the gratuity of the applicant, which is the exact amount embezzled, by the BPM, Shri Krishanpal Singh.

15. The case of the respondents revolves around the allegation that the applicant showed grave negligence because he did not report the fact of absence of Shri Krishanpal Singh, BPM, from the Branch Post Office Sulakhnia Chhota (Sankhu Fort) Post Office, on 16.05.2013, when the applicant visited the Branch Post Office. According to the respondents, this act of non-reporting of absence of BPM, facilitated the accused Shri Krishanpal Singh to abscond with Government money to the tune of Rs.3,97,750/-. At one place it is even mentioned, that this fact of absence, was 'concealed' by the applicant by not mentioning this fact in his diary or reporting it to the appropriate authority. Further, the respondents aver that action of the department is covered by Rule 9 (i) CCS (Pension) Rules, 1972 which stipulates that **"if the pensioner is found guilty of grave misconduct or negligence during the period of service, then recovery from a pension, or gratuity of the whole, or part of any pecuniary loss caused to the**

Government can be withheld by the President", in consultation with the UPSC.

16. The action of respondents restraining the gratuity of the applicant, is covered by the instructions which find place in Rule 137 of Postal Manual Vol.3 and is also fortified by various departmental circulars referred to in the letter No.4-66/TN-16/2009-Inv dated 19.03.2015. Finally, the respondents rebut the defence of the applicant that he reported the entire episode to Inspector Churu on 16.05.2013 itself. As per the respondents this report never reached them and this fact was brought to the notice of Inspector Churu only on 27.09.2013.

17. On the contrary, the applicant maintains that he faithfully reported this matter of absence of Shri Krishanpal Singh, BPM on the day of his visit to Sulakhnia Chhota (Sankhu Fort) i.e. 16.05.2013. Subsequently, he has again mentioned this fact in his letter dated 27.09.2013 to Inspector Churu. Seeing the seriousness of the matter, he kept trying to contact Shri Krishanpal Singh and finally on 27.09.2013 he confronted Shri Krishanpal Singh with the facts and recorded his statement. Shri Krishanpal Singh in his statement has admitted that he was not in office on 16.05.2013. Afterwards, he was contacted on telephone a few time (02.07.2013) to reconcile the irregularities for which he sought some time. He has stated that he was asked to join in the inspection on 03.09.2013, which he avoided. Ultimately, on the day of his

statement he concurred with the irregularities pointed out by the applicant and promised to rectify the record and make the necessary payment.

18. There is certainly some force in the arguments advanced by the respondents, that had the applicant made his visits to the post office on quarterly basis, as he was required to, instead of only once, in 2013, perhaps, the irregularities could have come to light earlier. It has not been elaborated by the respondents as to how the applicant can be held responsible for facilitating the embezzlement, or for helping the BPM to abscond with the Government money. There is no convincing correlation between the visit of the applicant to the BPO on 16.05.2013, his alleged, non reporting about the absence of the BPM Shri Krishanpal Singh and the embezzlement committed by the former. A fraud of this kind, has to be a consequence of systematic planning- normally, spread over a period of time. To suggest that its occurrence could have been prevented and the loss made good, merely, if the applicant had reported it, seems a little far fetched. This ground alone, is certainly not sufficient to put the entire burden of embezzlement on the applicant and withhold his gratuity. The respondents have denied the receipt of letter dated 16.05.2013 (Annexure-A/8), reportedly, sent by the applicant to the Inspector Churu. The veracity of this claim could have been enquired into, by verifying the mode of communication, by which the letter was sent by the applicant. However, even if, the letter did not reach the respondents, the fact remains, that after 27.09.2013, the main culprit was available to the

respondents for taking further action in the matter, including, steps for recovering the embezzled amount. If not the entire amount, at least some part of the loss sustained by the Government, could have been recovered from Shri Krishanpal Singh. Undoubtedly, the respondents would have taken necessary steps in this direction, the details of which, however, have not been mentioned in the reply.

19. The impugned memo dated 30.09.2014 withholding the gratuity of the applicant has been issued exactly after one year, again assuming, that the facts of the absence of Shri K.P. Singh, came to the knowledge of department only on 27.09.2013. **It is difficult to believe that during this period of one year, respondents could not recover anything from the embezzled amount, necessitating, restraining an equivalent amount from the gratuity of the applicant.** Even if the applicant were to be charged with some amount of negligence, it is certainly not fair to put the entire onus of the full embezzled amount of his weak shoulders to cover up the inaction or inertia of the respondents.

20. While totally agreeing with the statutory provisions contained in Rule (i) CCS (Pension) Rules, 1972, including Rule 137 of Postal Manual Vol.3 and the circular dated 19.03.2015, the issue which remains to be examined is whether this restraining order issued by the respondents is as per law or, has this power been exercised in an arbitrary manner - to somehow recover the

loss of public money? The answer, unfortunately, appears to be in the affirmative. It is indeed an exaggeration to suggest, or believe, that had the respondents known about the absence of Shri Krishanpal Singh, BPM from the Branch Post Office, on 16.05.2013 the entire episode of embezzlement could have been stalled, or, prevented. It is not disputed that the department has the right to order recovery of dues from pension or gratuity of an employee but for this, 'grave misconduct or negligence has to be established', which, to my mind has not been done in this case. In the case of State of Jharkhand & Ors. v. Jitendra Kumar Srivastava & Anr., cited above, the Hon'ble Apex Court observed, ofcourse with reference to Rule 43 (b) of Bihar Pension Rules that **even after the conclusion of the departmental inquiry, it is permissible for the Government to withhold pension, etc. only when a finding is recorded either in departmental inquiry or judicial proceedings that the employee had committed grave misconduct in the discharge of his duty while in his office. There is no provision in the Rules for withholding of the pension/ gratuity when such departmental proceedings or judicial proceedings are still pending.**


21. As already discussed in para 6 above, Rule 9 of the CCS (Pension) Rules, 1972, and Rule 43 (b) Bihar Pension Rules are both identically worded. Hence in my view the ratio of the principle cited above is applicable on all fours, to the current case.

22. In view of the discussions above, the impugned order dated 30.09.2014 (Annexure-A/1) is quashed and the respondents are directed to release the due gratuity amount of the applicant within three months from the date of receipt of a copy of this order. However, looking to the facts and circumstance of the case, I am not inclined to grant interest on the aforesaid due amount.

23. The OA is thus allowed as stated above with no order as to costs.


[Praveen Mahajan]
Administrative Member

Rss

Rec

S.K. Mallik
Adv
8/8/11

SP

8/9/16