

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00190/2014

Reserved on: 06.12.2016

Jodhpur, this the 9th day of December, 2016

CORAM

Hon'ble Ms. Praveen Mahajan, Administrative Member

Arjun Ram s/o Late Shri Thakur Ram, aged about 58 years, R/o C/o Sharvan Lal, Ahuja Colony, Air Force, Ratanada, Jodhpur, presently working on the post of Postal Assistant under suspension at Head Post Office, Jodhpur, Rajasthan.

.....Applicant

By Advocate: Mr.S.K.Malik

Versus

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

.....Respondents

By Advocate : Mr. K.S.Yadav

ORDER

The present OA is filed against non-payment of 60% arrears of the 6th Central Pay Commission (CPC, for short). In relief, the applicant has prayed for a direction to the respondents to make payment of 60% arrears of 6th CPC along with 18% interest from August, 2009 till the date of payment.

2. Short facts of the case are that while working on the post of Sub Post Master at Phalodi Post Office, the applicant was paid 40% of arrears of 6th CPC and remaining arrears were to be paid in August, 2009. The applicant requested the respondents to make payment of 60% arrears, but the respondents under the garb of disciplinary case against the applicant did not pay the same, which has nothing to do with the 60% arrears. In this regard, the applicant made a representation dated 07.01.2013 and another representation dated 28.3.2013 (Ann.A/1 and A/2 respectively), but to no avail. Thereafter the applicant moved representation dated 1.4.2013 enclosing copy of the order of this Tribunal dated 22.3.2013 passed in OA no.490/2012- Ranu Lal v. UOI and Ors. (Ann.A/3 and A/4), but no relief has been granted to the applicant. Hence, aggrieved by the inaction on part of the respondent, the applicant has filed the present OA.

3. In reply to the OA, the respondents have submitted that the 40% of arrears of 6th CPC had already been paid to the applicant, but 60% of the arrears were ordered to be withheld vide PMG (W) Jodhpur DO letters dated 14.9.2009 and 23.9.2009 as the applicant committed a fraud to the tune of Rs. 1,97,95,075/- in collusion with Shri Pancha Ram Bishnoi, the then PA (TR) Phalodi LSG SO. The applicant was working on the post of SPM there and on a sudden visit of Phalodi LSG SO by the SSPOs, Jodhpur on

4.6.2009, this scandal came to the light. A Divisional Level Inquiry was commenced to inquire into the misappropriation committed by the aforementioned two offenders. The 60% of the arrears were ordered to be withheld and amount was kept in undisbursed head due to direct involvement of the applicant. So far as receipt of representation dated 7.1.2013 and 28.2.2013 are concerned, the respondents have denied this averment stating that these representations were made by Shri Ram Singh, who was one of the Co-offender in the said fraud case. The applicant served a notice dated 8.10.2012 demanding arrears, which was replied to vide letter dated 17.10.2012. His offence has been proved in DLI/CLI conducted by the department. Three criminal cases are sub-judice against the applicant and under trial. The disciplinary proceedings are still pending against him. Therefore, 60% of the arrears have been withheld. It is further stated that in the case of Ranu Lal, applicant in OA no.490/2012, the disciplinary proceedings initiated against him have already been finalized and as a result of that, recovery of withheld amount of arrears was not ordered and thus, there was no scope for recovering this withheld amount of arrears because it could not have been recovered otherwise than as a major penalty. In the present case, disciplinary proceedings under Rule 14 of CCS (CCA) Rules have been initiated and are still pending and it is within the domain of the disciplinary authority to recover this withheld amount.

The respondents have also filed additional reply stating that at the time of filing the OA, disciplinary proceedings were pending, which have ultimately culminated into memo dated 22.10.2014 whereby penalty of dismissal from service and recovery of arrears of 6th CPC Rs. 85434/- has been imposed (Ann.R/1). After filing of appeal, the same was confirmed by the Appellate Authority and appeal was dismissed vide memo dated 25.8.2015 (Ann.R/2). At the time of filing of OA, criminal case regarding fraud and misappropriation of public money was pending before the CBI Court, Jodhpur. This has been concluded vide judgment dated 30.6.2016, by which the applicant has been convicted. A punishment of several years under various sections of IPC has been awarded along with fine. Thus, the relief prayed for cannot be granted.

4. Heard both the counsels and perused the available record.
5. The learned counsel for the applicant Shri S.K.Malik commenced his arguments by mentioning that the order of the Appellate Authority dated 25.8.2015 itself is in favour of the applicant. Shri Malik averred that the Appellate Authority has only confirmed the findings of the Disciplinary Authority regarding dismissal from service of the applicant with immediate effect. Applying emphasis on the conclusion of the order dated 25.8.2015, he argued that the Appellate Authority has only

confirmed the penalty of dismissal with immediate effect imposed by the Disciplinary Authority vide order dated 22.10.2014. The appellate order does not confirm or make a mention of recovery of Rs. 85,434/-, which are the unpaid arrears of the 6th CPC, still pending to be paid to the applicant. The learned counsel emphasized that the order has to be seen, as it exists. No inference can be allowed to be made here on the decision of the Appellate Authority regarding order of the Disciplinary Authority. Shri Malik also cited order dated 22nd March, 2013 passed in OA No.490/2012 of one Shri Ranu Lal, where in a similar case, the Division Bench ordered that :-

“6. We have considered the rival contentions of both parties and also perused the relevant record. Annex.A/5 is the order of penalty awarded by the competent authority and it does not refer to any amount to be recovered from the applicant on account of any indiscipline or misconduct committed by him. Therefore, in our considered view, the arrears of 6th CPC cannot be denied to him and order of the respondent not to pay the arrear of 6th CPC is per se illegal and against the settled principle of law and similarly the denial of the payment of TA bills is also not justified.

Accordingly, while allowing the OA, we direct the respondents to make the payment of pending TA Bills and the arrear of the 6th CPC amounting to Rs 41678/- within three months from the date of receipt of the order.”

In view of this, he submitted that 60% of the arrears of the 6th CPC which are lying undisbursed in Jodhpur Head Office should be paid to him along with 18% interest from August, 2009 till the date of payment. Shri Malik stated that the arrears of 6th CPC have

nothing to do with the disciplinary case and not paying the arrears is arbitrary and violative of Article 14 and 16 of the Constitution.

6. Per contra, the learned counsel for the respondents Shri K.S.Yadav stated that Para-6 of the order in OA No.490/2012 cited by Shri Malik has been quoted out of context and has to be read

► alongwith Para-4 of the said order. He stated that in that case, there was no order of penalty of the Disciplinary Authority regarding recovery of any amount from the applicant. Hence, grant of arrears of 6th CPC was dealt with by the Tribunal, keeping in view the facts of the case which were entirely different from the current one. Shri Yadav stated that the order cited is distinguishable on these counts. He argued that recovery ordered from the applicant cannot be deemed to have been set-aside by the Appellate Authority, merely because he has not made a mention of the same in his final order. The orders have to be seen in totality. Where, it has been categorically stated by the Appellate Authority that "**I find no reason to interfere with the decision of the Disciplinary Authority**". He emphasised that the Appellate Authority has nowhere stated in his order that out of the two penalties imposed on the applicant i.e. dismissal from service as well as penalty of recovery, one has been set-aside. In view of the same, he stated that the respondents have correctly withheld the payment of 60% arrears of the 6th CPC to the

applicant. The applicant cannot be allowed to take benefit of some unintentional clerical error or omission, which might have crept in while issuing the appellate order dated 25.8.2015 (Ann.R/2).

7. On going through the facts of the case, I am inclined to agree with the contention raised by the learned counsel of the respondents. The arguments put forth on behalf of the applicant are not convincing. The order of the Appellate Authority leaves no room for ambiguity. The concluding portion of the order states:-

“....I find no reason to interfere with the decision of the Disciplinary authority, in as much as, the punishment awarded by the disciplinary authority neither appears to be incommensurate to the gravity of the charges nor any procedural defect or unjustifiably in the findings of the disciplinary authority is seen. The undersigned therefore in exercise of the powers conferred by Rule 27 of CCS (CCA) Rules, 1965, hereby reject the appeal and confirm the penalty of “dismissal from service with immediate effect” imposed by the Sr. Superintendent of Post Offices Jodhpur Dn. Jodhpur vide his memo No. F 9-1/09-10 dated 22.10.2014.”

Clearly, the Appellate Authority agreed with the order of the Disciplinary Authority. In the preceding paragraphs, the Appellate Authority while discussing the appeal filed by the applicant, has given his comments on each point. On the point of recovery, the Appellate Authority in para- (xiv) has observed that”:-

"The loss sustained by the Department was to be recovered and the orders have been passed keeping in view of this aspect. G.O.I. orders are very clear in the matter of recovery of loss from the officials at fault. Further the Rule 11(iii) of the CCS (CCA) Rules, 1965 clearly stipulates that penalty of recovery from pay of the whole or part of the loss caused by the government servant to the government by negligence or breach of orders on his part can be awarded to him. The recovery of loss can be done from the pay of the Government official and in the appellant case, the amount which is ordered to have been recovered is fully solely related to pay and allowances of the official and therefore, it could very have been recovered as a major punishment. Hence, the action of disciplinary authority is as per rules and the amount ordered to be recovered from the appellant is inconsiderable one in view of the huge amount of the fraud detected in the case."

It is, therefore, clear that the Appellate Authority was in agreement with the punishment of recovery, awarded by the Disciplinary Authority, by way of withholding 60% of arrears of 6th CPC – pending disbursement to the applicant. There is nothing to suggest that the Appellate Authority in his order dated 25.08.2015 accepted the appeal, in part only, or disagreed with the recovery order dated 22.10.2014, passed by the Disciplinary Authority.

I find no infirmity in the penalty imposed by the Disciplinary Authority utilising the amount of 60% arrears of 6th CPC, towards recovery, and the appellate order passed in this regard. The applicant is, thus not entitled to any relief.

8. In the above facts and circumstances, the OA is dismissed.
No costs.


(PRAVEEN MAHAJAN)
Administrative Member

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