

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.NO.428/ 2004

Tuesday, this the 1<sup>st</sup> day of February, 2005.

CORAM:

HON'BLE SHRI K.V.SACHIDANANDAN, JUDICIAL MEMBER

O.P.Chandran,  
Retired Assistant Postmaster,  
Thrissur HPO,  
Residing at: Olakkapurakkal House,  
Valappad.P.O.  
PIN: 680 567.

Applicant

By Advocate Mr PC Sebastian

vs

1. The Senior Superintendent of Post Offices,  
Thrissur Division,  
Thrissur-680 001.
2. The Assistant Chief Accounts Officer(Pension),  
O/o the Director Accounts (Postal),  
Thiruvananthapuram-695 001.
3. The Postmaster,  
Thrissur Head Post Office,  
Thrissur-680 001.
4. The Union of India  
Represented by Secretary,  
Ministry of Communications,  
Department of Posts,  
New Delhi.

Respondents


By Advocate Mr TPM Ibrahimkhan, SCGSC

The application having been heard on 1.2.2005, the Tribunal on the same day delivered the following:

ORDER(ORAL)

HON'BLE SHRI K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant retired from service on superannuation from the post of Assistant Post Master, Trichur Head Post Office after rendering service for more than 3 decades. On 18.12.2003, the applicant was sanctioned Death-cum-Retirement Gratuity (DCRG) Rs.1,97,083/- under the provisions of CCS(Pension) Rules as per A-3 dated 18.12.2003 directing the 3<sup>rd</sup> respondent to effect payment of pension. But the 3<sup>rd</sup> respondent has withheld the DCRG. Therefore, the applicant made a representation on 29.3.2004 for releasing the DCRG already sanctioned. The first respondent as per his letter dated 23.4.2004 (A-6) informed that a court case is pending before the Hon'ble



High Court regarding the irregular issue of Kissan Vikas Patras (K.V.Ps) to Anthikkad Co-operative Society and applicant's liability are yet to be decided. Hence it has been decided to withhold payment of DCRG which will be sanctioned only after the disposal of the said proceedings. Aggrieved, the applicant has filed this application for the following relief:

- i) To call for the files leading to the issue of A-6 and quash the same.
- ii) To declare that applicant is entitled to get immediate payment of the DCRG sanctioned as per A-3 and A-4 orders with interest at the rates.
- iii) To direct the 1<sup>st</sup> respondent to effect payment of the DCRG amount due to the applicant as per A-3 and A-4 letters, with interest.

2. The respondents have filed a detailed reply statement contending that the applicant has retired from service on attaining superannuation on 31.12.2003. While working as Assistant Post Master at Trichur from 12.5.2000 till his retirement, i.e. 31.12.2003, he was working as Sub Post Master, Anthikad Post Office from 4.6.98 to 11.5.2000. Notices were received from the Consumer Disputes Redressal Forum in O.P.No.716/2003 and 717/2003 by the Senior Superintendent of Post Offices, Trichur (R1 and R2), filed by the Secretary, Anthikad Milk Supply Co-operative Society for refunding of certain amount towards interest deposited by the Society at Anthikad Post Office in Kissan Vikas Patras during 30.1.97 and 31.1.97. According to the respondents, such investments were made by the Society in contravention of the rules and no interest will be earned on such irregular investments. Such investments are permissible in individual capacity/on behalf of a Trust and not by the Societies. This is borne out by R-3 notification which was not done by the applicant in contravention of the rules. In furtherance of such action, the SSPO, Trichur vide his letter dated 18.12.2003 (R-5) issued notice to the applicant and three other Postal Assistants who had been dealing the concerned Branch at Anthikad Post Office during the said period. It was informed in A-5 that if the applicant is interested, he could himself implead in the said proceedings. A Writ Petition was also pending before the Hon'ble High Court on the subject which was identical as that of the O.P.s filed before the Consumer Disputes Redressal Forum. Since the investment was in contravention of the rules, interest on the investment was denied, the depositors who approached the respective courts and now the proceedings are pending before the appropriate forum. It is further contended that unless the officials responsible for the irregular action are made liable, there will be heavy loss to the department. Therefore the DCRG sanctioned to the applicant to the tune of Rs. 1,98,083/- has been withheld, is justified in accordance with the rules and regulations.

3. Heard Shri P.C.Sebastian, learned counsel for the applicant and Shri TPM Ibrahimkhan, SOGSC for respondents. Learned counsel for the applicant submitted that before the retirement of the applicant, i.e. 31.12.2003, no proceedings whatsoever on disciplinary matter was pending against the applicant and the disbursement of DCRG was sanctioned by the competent authority which should have been paid to him and the



applicant is not directly responsible for making payment to the investment made by the Milk Supply Co-operative Society even though no damage of loss has been caused to the Government. The counsel for the respondents, on the other hand, argued that the acceptance of the deposit from a Co-operative Society is in total contravention of the rules and since the proceedings are pending before the Hon'ble High Court, the action in withholding the gratuity cannot be said to be ultravires or illegal. Due to the fault of the applicant, the department is forced to face judicial proceedings and therefore, the applicant is not entitled for any relief.

4. I have gone through the pleadings and other material placed on record and

have heard the learned counsel on both sides. The question for consideration is whether the DCRG that has been withheld by the respondents is justified or not. At the outset, the counsel for the applicant argued that DCRG and other retirement benefits are a bounty and not a gratis that is being given to a Government servant. He earns this benefit only after putting very long years of service and cannot be denied in contravention of rules and regulations. He has also taken to my attention to A-3, the DCRG sanctioning letter by the Assistant Chief Accounts Officer(Pension) wherein in the specified Col.No.4, no convincing and cogent reasons are mentioned which resulted in withholding of DCRG. On the other hand, the amount of Rs.1,97,083/- has been unconditionally passed/sanctioned with a direction to the Senior Postmaster for disbursement of the same to the applicant forthwith. In contravention of the said direction, the department has decided to withhold the DCRG by virtue of A-6 impugned order. Learned counsel for the respondents drew my attention to R-3 and R-4 and argued that the deposit that has been accepted by the applicant and other employees at the appropriate time from the Society is in contravention of the notification and rules that has been notified by the Government, which was not taken note of by the applicant. On a specific query to the learned counsel for respondents, he has submitted that though notice R-5 dated 18.12.2003 was issued to the applicant and others, no disciplinary proceeding was initiated against the applicant till date. The reason given by the learned counsel is that they are awaiting the result of the proceedings before the judicial forum.

On going through the material placed on record and the arguments advanced by the counsel on either side, I am convinced that the deposit that received by the Post Office has been re-invested and recycled by the department and earned interest, as if it is a normal deposit. These deposits have been accepted by the Post Office on various dates much prior to the retirement of the applicant and it is too much to believe that these deposits are not subjected to any audit or internal check as to the bonafide/regularity of the same. The fact remains that these deposits have already been utilised by the Government by re-investment and probably they would earned a higher interest from these deposits. In the circumstances, the respondents cannot take a view that they are subjected to damage or monetary loss. The contention that the Government is expected to have monetary loss in case the normal interest that has been deposited is given and even if interest is ordered to be paid for such proceedings, it is a natural consequence, for which the applicant cannot be blamed. The right course

for the respondents was to initiate disciplinary proceeding against the applicant, if he had committed any misconduct, which is not done in this case. The contention of the applicant that A-6 impugned order has been issued without any authority and in this case of a retiree only the President alone can withhold the payment.

5. It is profitable to quote Rule 9 of the CCS(Pension) Rules:

"9. Right of the President to withhold or withdraw pension

(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:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

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..."

Two conditions in Rule 9 are that if any pecuniary loss caused to the Government, and in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, only the President can have the powers of withholding the gratuity. It is also borne out from the records that no disciplinary case was pending against the applicant and though some of the judicial proceedings are brought to my notice, on going through the same, no proceeding was pending against the applicant by <sup>name is</sup> ~~new~~. Rule 9 stipulate that there should be specific finding either of grave or gross negligence. Such finding cannot be deduced and borne on the face fo the record being condition precedent. In D.V.Kapoor vs. Union of India reported in AIR 1990 SC 1923 and Chandra Kishore Jha vs. Mahavir Prasad & others reported in JT 1999 Vol.7 SC 256, the Hon'ble Supreme Court held that "when a statute provides anything to be done in a particular manner, it has to be done in that manner only, and no other manner is to be adopted."

6. Therefore, I am of the view that the respondents have no legal right to withhold the DCRG as per A-6 impugned order, since it is issued without authority and the President till date had not initiated any proceedings. the learned counsel for the applicant was taken to my notice Section 68 of the CCS(Pension) Rules and submitted that interest also to be paid in delayed payment, I am of the view that the delay has been caused not wilfully on the part of the respondents. Hence the applicant is not entitled for interest for the delay in payment.

6. In the conspectus of facts and circumstances, the impugned order A-6 is set aside. The respondents are directed to release the DCRG due to the applicant



forthwith, in any case, within a period of six weeks from the date of receipt of copy of this order. If no payment is made within the stipulated period as above, the applicant will be entitled to get future interest at the rate of 8% from that date till date payment. O.A. is allowed. In the circumstances, there is no order as to costs.

Dated, this the 1<sup>st</sup> February, 2005.



**K.V.SACHIDANANDAN**  
**JUDICIAL MEMBER**

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