

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 554 OF 2009

MONDAY, this the 16th day of November, 2009.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Mr. K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

C.N.Santhamma
Sub Postmaster (Retired)
Kuriyannur Sub Office in account with
Chengannur HO
Tiruvalla Postal Division, Tiruvalla – 689 101
Residing at Ramakrishna Vilasam, Pullad PO
Tiruvalla – 689 548

... Applicant

(By Advocate Mr.K.Ramachandran)

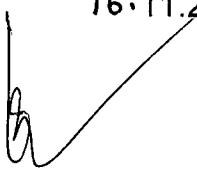
versus

1. Union of India represented by its Secretary
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Pension & Pensioners' Welfare
Lok Nayak Bhawan
New Delhi – 110 003
2. Director (PP)
Department of Pension & Pensioners' Welfare
Lok Nayak Bhawan
New Delhi – 110 003
3. Director of Postal Accounts
Thiruvananthapuram – 695 001
4. Superintendent of Post Offices
Tiruvalla Postal Division,
Tiruvalla – 689 101
5. Postmaster
Chengannur Head Post Office
Chengannur

... Respondents

(By Advocate Mr.S.Abhilash, ACGSC)

16.11.2009 The application having been heard on 09.11.2009, the Tribunal on delivered the following:



ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The claim of the applicant as per para 8 of the O.A. is as under:-

" i. to call for the records leading to Annexures A9 and A10 and to set aside the same;

ii. to issue appropriate direction or order directing the respondents to revise the pension of the applicant in accordance with paragraph 5.2 of Annexure A8 O.M. by determining her pension at 50% of the emolument she was drawing immediately before her retirement by fixing at Rs.6,715 and to disburse the same with arrears immediately with penal interest at 12% per annum from the date the amount became due till the date of actual payment and at any rate, within a time frame that may be fixed by this Hon'ble Tribunal.

iii. to issue appropriate direction or order directing the respondents to disburse the balance of Retirement Gratuity of Rs.39,830 admitted under Annexure A13 with penal interest at the rate of 12% per annum expeditiously and at any rate, within a time frame that may be fixed by this Hon'ble Tribunal;

iv. to issue appropriate direction or order directing the respondents to work out the arrears of pension and the difference of commuted value of pension consequent on revision of pension and in the interim the amount of Rs.84,858 admitted in Annexure A12 be disbursed to the applicant forthwith;

v, to issue appropriate direction or order directing the 4th respondent to disburse the difference of cash equivalent of earned leave at credit sanctioned to the applicant under Annexure A5 memo dated 22.12.2008 and kept as undisbursed with the 5th respondent without authority of law, with penal interest at the rate of 12% from the date the amount became due till the date of actual payment and at any rate, within a time frame that may be fixed by this Hon'ble Tribunal."

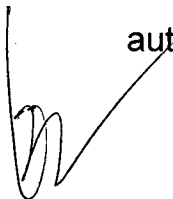
2. Brief facts of the case:

(a) The applicant was serving as Sub Postmaster, Kuriyannur S.O where from she superannuated on 31-03-2007. She had rendered 28 years of



qualifying service at the time of superannuation and her last pay drawn was Rs 5625/- in the pre-revised scale of Rs 4500 – 7000. Accordingly, her pension was fixed at Rs3540 (with reduced pension at Rs 2124 after commutation), commuted value of pension and gratuity worked out respectively at Rs 1,66,692/- and 1,52,390/- and paid, vide Annexure A-1 read with Annexure A-3. Leave encashment was also paid to the applicant on the basis of the above said pay drawn by her, vide Annexure A-2.

(b) The applicant was served with a Memo dated 15th December, 2008 stating that investigation conducted in respect of RD Accounts opened through a scheme called Mahila Pradhan Kshetriya Bachat Yojana (MPKBY) Agent revealed that an amount of Rs 13,71,550/- had been entered in various RD passbook without actually crediting the said amount into the Post office account and the said fraud would not have been possible either without the knowledge or connivance of the applicant or the severe laxity on the part of the applicant as SPM. In addition, a sum of Rs 90,150/- had been permitted to be withdrawn from various RD accounts during May 2004 to March 2007 without credit into post office account. Thus, the applicant was directed to credit a sum of Rs 90,150/- into PO Account or else the same would be recovered from the amount due to her as a part of terminal benefits or recovery proceedings under the provisions of PO Act 1898 would be initiated. Annexure A-4 read with Annexure A-6 refers. To the said Memo, the applicant had submitted her reply, vide Annexure A-7, wherein she had denied her involvement in the alleged transactions and asserted that the proposed action to recover the amount from the terminal benefit as well as by revenue recovery proceedings under the PO Act 1898 is not legally authorized or permissible. Hence, she is not legally liable to remit the amount of




Rs 90,150/- and had requested to recall the Memo dated 15-12-2008.

(c) After the retirement of the applicant in March, 2007, recommendations of the Sixth Pay Commission were accepted by the Government and the pay of Rs 4,500 – 7,000/- was substituted by a broad band pay of Rs 5200 – 20200 with grade pay of Rs 2800/- w.e.f. 01.01.2006, according to which the pay drawn as on 31.03.2007 (the date of superannuation) worked out to Rs 10,630/- plus grade pay of Rs 2800/- vide Annexure A-16. In the wake of the above, the applicant's entitlement to various terminal benefits got enhanced and a sum of Rs 28,450/- was worked out as the difference towards leave encashment, vide Annexure A-5. Similarly, the difference in the Retirement Gratuity was worked out at Rs 39,830/- vide Annexure A-13. However, these amounts have not been paid to the applicant so far, though the applicant had requested for payment of the same, vide Annexure A-14. Similarly, revised pension had been worked out on the basis of the revised pay scale, vide Annexure A-12 and the difference in commutation of pension worked out at Rs 84,858/-. This amount too has not so far been released.

3. The D.O.P.T. has, vide Annexure A-8, issued office memorandum dated 2nd September, 2008 in respect of revision of Pension in the wake of the acceptance of the recommendations of the Sixth Pay Commission, and some of the salient features of the same are as hereunder:-

“(a) Date of effect:

3.1 *Save as otherwise mentioned in these orders, the revised provisions as per these shall I apply, to, Government servants who retire/die in harness on or after 1.1.2006. Separate orders have been issued in respect of employees who retired/died before 1.1.2006.*



3.2 Where pension / family pension / Gratuity / commutation of pension etc has already been sanctioned in cases occurring on or after 1.1.2006. the same shall be revised In terms of these orders. In cases where pension has been finally sanctioned on the pre-revised orders and if it happens to be more beneficial than the pension becoming due under these orders, the pension already sanctioned shall not be revised to the disadvantage of the pensioner in view of Rule 70 of the CCS (Pension) Rules, 1972.

(b) Pension:

5.1 A Government servant retiring In accordance with the provisions of the CCS (Pension) Rules, 1972 before completing qualifying service of ten years shall not be entitled to pension but he shall continue to be entitled to services gratuity in terms of Rule 49(1) of CCS(Pension) Rules, 1972.

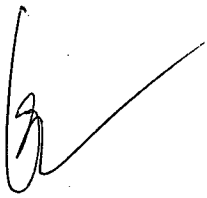
5.2 Linkage of full pension with 33 years of Qualifying services shall be dispensed with once a Government servant has rendered the minimum Qualifying service of twenty years, pension shall be paid at 50% of the emolument or average emoluments received during the last 10 months, whichever is more beneficial to him.

5.3 In cases where Government servant becomes entitled to pension on completion of 10 years of qualifying service in accordance with Rule 49(2) of the CCS I (Pension) Rules, 1972, pension in those cases shall also be paid at 50% of the emoluments or average emoluments, whichever is more beneficial to the Government servant.

5.4 The revised provisions for calculation of pension in para 5.2 and para 5.3 above shall come into force with effect from the date of issue of this O.M. And shall be applicable to Government servants retiring on or after that date. The Governments servants who have retired on or after 1.1.2006 but before the date of issue of this O.M will continue to be governed by the Rules / orders which were in force immediately before coming into effect of these orders.

5.5 The amount of pension shall be subject to a minimum of Rs. 3500/- and maximum upto 50% of highest pay in the Government (The highest pay in the Govt. is Rs.90,000 since 1.1.2006).

5.6 The provisions of clauses (a) to (c) of sub-rule

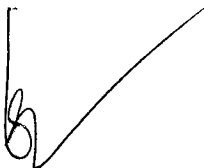


(2) of Rule 49 of the pension Rules shall stand modified to the extent mentioned in para 5.1 to para 5.5 above. The other provisions contained in Rule 49 shall continue to apply."

4. The above was followed by certain clarifications, vide Annexure A-9 and A-10 orders, the relevant portion of which is as under:-

(a) Annexure A-9:

Point raised in regard to the OM No.38/37/08-P&PW (A) dated 2.9.2008	Clarification / modification
<p>Para 5.2 to Para 5.4</p> <p>Whether the recommendation of the Sixth CPC for payment of pension at 50% of the average emoluments received during the last 10 months or the pay last drawn, whichever is more beneficial to the retiring employee, will also take effect from the date of issue of the orders i.e. 2.9.2008.</p>	<p>(i) Yes. The Pay Commission has recommended in para 5.1.33 of its Report that linkage of full pension with 33 years of qualifying service should be dispensed with. Once an employee render the minimum pensionable service of 20 years, pension should be paid at 50% of the average emoluments received during the past 10 months or the pay last drawn, whichever is more beneficial to the retiring employee. In para 6.5.3, the Commission has recommended that the recommendation regarding payment of full pension on completion of 20 years of qualifying service will take effect only prospectively for all Government employees other than PBORs in Defence Forces from the date it is accepted by the Government. The recommendation in para 5.1.33 is to be taken as one package and in view of para 6.5.3 of the report of Sixth CPC, the whole recommendation in para 5.1.33 has, been given prospective effect.</p> <p>(ii) It is, however, clarified that the pension of a post-1.1.2006 pensioner shall also not be lower than fifty percent of the sum of the minimum of the pay in the pay band and the grade pay (or 50% of the minimum of the scale in the case of HAG+ and above) from which the pensioner has retired. For example, if a pensioner has retired in the grade pay of Rs. 10,000/- p.m in the pay band of Rs. 37400-67000, his minimum guaranteed pension would be 50% of Rs. 37,400+Rs. 10,000 (i.e. Rs. 23,700). For those who have retired between 1.1.2006 and 2.9.2008, the pension will be reduced pro-rata, where the pensioner had less than the maximum required service for full pension as per rule 49 of CCS(Pension) Rules 1972 as applicable during that period and in no case it will be less than Rs.3500 p.m. In case the pension calculated in accordance with Rule 49 of CCS Rules 1972, as applicable before 2.9.2008, is higher than the pension calculated in the manner indicated above, the same (higher pension will be treated as Basic Pension,</p>



(b) Annexure A-10:

" Sub:- Implementation of Government's decision on the recommendations of the Sixth Central Pay Commission.

The undersigned is directed to say that in pursuance of Government's decision on the recommendations of Sixth Central Pay Commission, orders were issued vide this Department's O.M.No.38/37/08-P&PW(A) dated 2.9.2008 for introducing modifications in the rules regulating pension etc. Clarifications on certain provisions in this O.M were also issued vide O.M.No.38/37/08-P7PW(A) dated 3.10.2008. In accordance with the instructions contained in this O.M only the Government servants who retire on or after 2.9.2008 are eligible for calculation of pension at 50% of the emoluments (i.e last pay drawn) or average emoluments whichever is more beneficial to the Government servant.

2. A number of reference are being received in this Department in this respect. The matter has been reviewed in consultation with the Ministry of Finance (Department of Expenditure). It has now been decided that the provision or payment of pension at 50% of the emoluments (pay last drawn) or 50% of average emoluments received during the last 10 months, whichever is more beneficial to the retiring employee, shall be applicable to all Government servants retiring on or after 1.1.2006. **However, only those Government servants, who retired during 1.1.2006 to 1.9.2008 after completion of 33 years of qualifying service, will be eligible for full pension and the pension of those Government servants, who retired during 1.1.2006 to 1.9.2008 with qualifying service of less than 33 years, will continue to be proportionate tot he full pension based on their actual qualifying service."**

5. The applicant has, through this O.A., challenged the above provisions of Annexure A-9 and A-10, as provisions of pro rata pension for those who retired during the period from 01-01-2006 to 02-09-2008 are violative of the equality clause and there cannot be a class within a class. Again, the applicant has claimed the payment of all the dues as aforesaid, with interest.

6. Respondents have contested the O.A. According to them, with regard to the alleged fraud in respect of R.D. Accounts, a police complaint has been

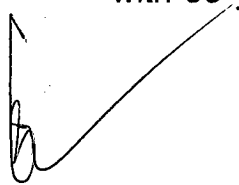


lodged, vide Annexure R-1, in which the name of the applicant has also been included as the fraud was not possible without the active connivance of the applicant who was serving as sub postmaster at that time. Provision exists even under Pension Rules (Rule 73) for recovery of dues from the retired government servants, and deferring payment of terminal benefits is one of the methods provided to force payment of government dues. As regards challenge to Annexure A-9 and A-10, the respondents have stated that the clarification as given therein is very clear and in unequivocal terms that it is only pro rata pension that is admissible to those who had not rendered full tenure of 33 years before their retirement (during the period from 01-01-2006 to 02-09-2008). The applicant having put in only 27 years and 11 months, her entitlement to the pension cannot be the full amount but would be limited to as per pro-rata basis.

7. The applicant has filed the rejoinder, in which she has contended that provisions for recovery of government dues, as contained in Rule 71 etc., of the Pension Rules, is applicable to only those who were to retire from the Service and not to those who had already retired from service.

8. Counsel for the applicant argued that the case is in two parts – (a) as to the extent of pension admissible to the applicant and (b) payment of arrears of terminal benefits already sanctioned.

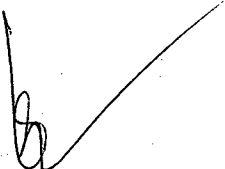
9. As regards (a) above, the counsel argued that as per the provisions of para 5.2 and 5.3 of the O.M. Dated 2nd September, 2008, linkage of full pension with 33 years of qualifying service stood dispensed with and once a government



servant has rendered the minimum qualifying service of twenty years, pension shall be paid at 50% of the emolument or average emoluments received during the last 10 months whichever is more beneficial to him. Pro rata pension is applicable only in respect of those who become entitled to pension on completion of 10 years of qualifying services in accordance with Rule 49(2) of the CCS (Pension) Rules, in whose case also the pension is paid at 50% of the emoluments or average emoluments, whichever is more beneficial to the retired government servant. In the case of the applicant, she having put in more than the minimum qualifying service of 20 years, there is no question of applicability of pro-rata pension. Thus, the provisions contained in Annexure A-9 and A-10 are illegal. To hammer home his point, counsel for the applicant relied upon the following decisions:-

1. AIR 1985 SC 356
2. 2008 (3) KLT 58 (SC)
3. 2001(3) KLT SN 15
4. (1994) 6 SCC 589
5. (1994) 1 KLT SN 8
6. 2005 (2) KLT 534
7. AIR 1990 SC 1920
8. 2007 (2) KLT 801
9. (2007) 9 SCC 625
10. (1991) 4 SCC 109
11. (1980) 3 SCC 459
12. (2008) 5 SCC 257
13. (2007) 6 SCC 704
14. (2006) 9 SCC 630
15. (1997) 6 SCC 623
16. AIR 1987 SC 415
17. (2001) 8 SCC 71

10. Counsel for the applicant took us through the decision in the case of ***U.P. Raghavendra Acharya v. State of Karnataka, (2006) 9 SCC 630***, wherein it has been held, "Pension, as is well known, is not a bounty. It is treated to be a deferred salary. It is akin to right of property. It is correlated and has a nexus with



the salary payable to the employees as on the date of retirement." He has laid emphasis upon para 18, 21, 23 to 28 and 34 thereof. Certain other citations have also been referred to read over.

11. Counsel for the respondents submitted that since an FIR is pending, difference in the terminal benefits cannot be released. Again, as regards the entitlement to full pension, the same is not permissible in view of the specific provisions contained in the office memorandum dated 2nd September 2008 read with the clarifications given vide Annexure A-9 and A-10. A translated version of the FIR has also been made available.

12. Arguments were heard and documents perused.

13. First as to the entitlement of full pension as claimed for by the applicant. Rule 49(2) of the CCS(Pension) Rules, 1972 reads as under:-

49. Amount of Pension

(2) (a) *In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem.*

(b) *In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (a) and in no case the amount of pension shall be less than [Rupees three hundred and seventy-five] per mensem .*

(c) *notwithstanding anything contained in Clause*

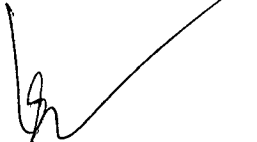
(a) and Clause (b), the amount of invalid pension shall not be less than the amount of family pension admissible under sub-rule (2) of Rule 54."

14. The latest orders on the subject, vide para 5.4 and 5.6 of OM dated 02nd September, 2008 read as under:-

5.4: The revised provisions for calculation of pension in para 5.2 and para 5.3 above shall come into force with effect from the date of issue of this O.M. And shall be applicable to Government servants retiring on or after that date. The government servants who have retired on or after 1.1.2006 but before the date of issue of this O.M. Will continue to be governed by the Rules/orders which were in force immediately before coming into effect of these orders.

5.6: The provisions of clauses (a) to (c) of sub-rule (2) of Rule 49 of the Pension Rules shall stand modified to the extent mentioned in para 5.1 to para 5.5 above. The other provisions contained in Rule 49 shall continue to apply.

15. The above provisions would go to show that in so far as para 49(2)(b) of the Pension Rules, which states that in the case of a government servant retiring before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under clause (a) and in no case the amount of pension shall be less than Rs 1,913 per mensem. It is this clause that is applicable to the case of the applicant. Since amendment to rule 49 takes place in accordance with para 5.1 to 5.5 of the OM dated 2nd September 2008 and since para 5.4 clearly states that the government servants who have retired on or after 1-1-2006 but before the issue of the O.M. (i.e. 2nd September 2008) will continue to be governed by the Rules/orders which were in force immediately before coming into effect of the revised orders, the entitlement of the applicant is pension as applicable on the basis of emoluments under the revised pay rules, but restricted to pro-rata which works out to 359/396 of the full



pension. It is this that has been worked out by the respondents.

16. The applicant has not challenged order dated 2nd September, 2008 but took support of it and tried to challenge only the order of clarification. This would not assist the applicant. If the applicant is dissatisfied with the difference in calculation of prorata pension, then he should challenge the main order and not the order of clarification. It is understood that the All India employees Federation at Delhi has taken up this issue as one of the major issues to the Anomaly Committee. If so, the decision arrived at would bind the applicant also. In any event, liberty is given to challenge the said order of 2nd September 2008, if so desired.

17. In so far as non payment of difference in the terminal benefits is concerned, the records show that there has been absolutely no show cause notice before directing the applicant to remit Rs 90,150/-. This itself is against the principles of natural justice, as no recovery could be effected without affording an opportunity to the applicant. Annexure A-4 is a communication, directing the applicant to remit a sum of Rs 90,150/- without any details. In such a case, recovery cannot be effected (see the decision of the Apex Court in the case of **Lakshmi Narayan Mukhopadhyay v. Union of India, (2002) 10 SCC 379**) wherein the Apex Court has held as under:

1.

2. The appellant was employed in the Ministry of Railways as Inspector of Works, In-charge. He voluntarily retired from service on 30-11-1991. Since the post-retirement benefits were not paid to him in full, he approached the Tribunal. The Tribunal on perusal of the record produced by the respondents held that the appellant Inspector of Works supplied to contractors excess of material and a sum of Rs 49,536 was recoverable from the appellant's gratuity amount. The impugned order dated 24-11-1992 was upheld.

3. Learned counsel for the appellant has submitted that the Tribunal has erred in law inasmuch as this amount was arrived at by the respondent without giving opportunity to the appellant. On the other hand learned counsel for the

Union of India has contended that by letter dated 12-6-1991 the appellant was asked to explain and thereafter, the Divisional Railway Manager (Engg.) by letter dated 24-11-1992 i.e. after the voluntary retirement of the appellant, directed that the amount should be recovered from the amount of gratuity of the appellant. We extract below the relevant part of the letter which was produced before the High Court:

"It has been observed that Shri L.N. Mukhopadhyay while functioning as IOW/SNY issued the following excess materials to contractors M/s Hiramoti Construction (P) Ltd., Jamshedpur without observing the guidelines issued by the headquarters office and this office.

Sl. No.	Details of excess material issued	Qty.	Value
1.	M.S. Rod 20 mm size @11,500/MT	149.386 kg	Rs 1717.94
2.	xxx	xxx	xxx
		Say	Rs 49,536

Competent authority issued orders for recovery of Rs.49,536 from DCRS and other dues of Shri L.N. Mukhopadhyay, ex-IOW/SNY.

You are therefore, requested to make necessary recovery of Rs 49,536 from the settlement dues of Shri L.N. Mukhopadhyay, ex-IOW/SNY with an intimation to him and the recovery particulars may be intimated to this office to close the same.

sd/-

Divisional Railway Manager (Engg.),
Chakradharpur."

4. There is nothing in the letter to show that this amount was arrived at after giving opportunity to the appellant or that the amount due was quantified by the date of retirement. The alleged letter dated 12-6-1991 giving show-cause notice has not been brought on record or referred to in the impugned order. Moreover, what guidelines were not followed by the appellant, was also not indicated in the letter. We, therefore, hold that in view of the aforesaid circumstances, the impugned order of the Tribunal dated 24-2-1995 in OA No. 1170 of 1993 is not sustainable and is accordingly set aside. We direct the respondents to pay the amount within two months. Learned counsel for the appellant prays for interest at the rate of 12%.

5. In the facts and circumstances of this case we direct the respondents to pay a sum of Rs 10,000 in lump sum to the appellant in addition to the above said amount. The amount shall be released within a period of two months.

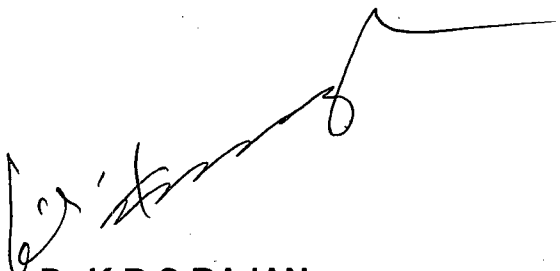
18. In view of the above, there is no need to refer to other citations referred to by the counsel for the applicant. Suffice it to state that in so far as pro rata pension is concerned, the department cannot be faulted with as the entitlement is as per the existing provisions of Rule 49(2) of the Pension Rules only and in so far as withholding of difference in terminal benefits, the same are to be paid to the applicant without any adjustment towards any dues. The applicant is also entitled to interest as in the above said decision, but the rate of interest shall be restricted to 8% from 1st January, 2009 till the date of payment since the same is the prevailing rate of interest afforded by State Bank of India from January 2009, on fixed deposit for a period of one year for senior citizens. This order shall be complied with, within a period of two months from the date of communication of this order.

19. The O.A is thus, **partly allowed** to the above extent. No cost.

Dated, the ~~16~~th November, 2009.



K GEORGE JOSEPH
ADMINISTRATIVE MEMBER



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

vs