

**Central Administrative Tribunal**

**Lucknow Bench, Lucknow.**

**Original Application No: 28/2003**

**Lucknow, this the <sup>16<sup>th</sup></sup> day of July, 2009**

**HON'BLE Ms.Sadhna Srivastava, MEMBER (J)**

**HON'BLE DR. A.K. MISHRA, MEMBER (A)**

Mohd. Ibrahim, aged about 64 years, son of Late Amzad Ali, resident of Village Sarkhelpur, Ploice Station Kandhai, District Pratapgarh.

Applicant

By Advocate Sri A. Jabbar.

**Versus**

1. Union of India, through its Secretary, Ministry of Communications (Department of Posts) Dak Bhawan, Sansad, Marg, New Delhi-110001.
2. The Member (P) Postal Services Board, Government of India, Ministry of Communications (Department of Posts) Dak Bhawan, Sansad Marg, New Delhi-110001.
3. The Director Postal Services Allahabad, P.M.G. Office, Allahabad.
4. The Senior Superintendent of Post Offices, Pratapgarh Division, Pratapgarh.
5. The District Magistrate, Pratapgarh.

Respondents

By Advocate: Shri A. N. Singh.

**ORDER**

**HON'BLE DR. A.K. MISHRA, MEMBER (A)**

This application has been filed challenging the order dated 5.1.2009 passed by Respondent No. 4 rejecting the representation of the applicant made on 18.8.2008 against the recovery certificate issued as well as claims for release of pension and other retiral benefits, and also impugning the orders of the Respondent No. 4 dated

11.12.2007 and 4.8.2008 respectively relating to recovery certificate and the clarification thereon.

2. The applicant has made a number of prayers:
  - i) to direct the Respondent No. 4 to fix the pension of the applicant on the basis of the pay scale obtaining on the date of compulsory retirement and also to pay the arrears of pension, gratuity, provident fund, leave encashment, arrears of pay, group insurance money to the applicant within a specified period;
  - ii) to quash the recovery certificate/order dated 11.12.2007 and 4.8.2008 (Annexures-2 and 3) respectively through which a sum of Rs. 1,39,018/- is sought to be recovered as arrears of land revenue;
  - iii) to quash the impugned order dated 5.1.2009 of Respondent No. 4 rejecting the representation of the applicant made on 18.8.2008.

By way of interim relief, a prayer has been made to stay operation of the impugned order dated 5.1.2009 and also for a direction to release provisional pension of the applicant.

2. The learned counsel for the applicant took up the prayer for stay of the recovery proceedings on urgent basis as, according to him, the properties of the applicant were scheduled to be auctioned today by the revenue authority and there was an immediate need for intervention from this Tribunal.

3. The applicant was working as Sub- Post Master at Oraiyyadeeh Post Office and Sheetlaganj Post Office, District Pratapgarh during 1977 to 1980. Charges of embezzlement/misappropriation of public money from the passbooks of account holders were levelled against the applicant. FIR was also lodged under Section 409 I.P.C. and three criminal cases were prosecuted against him in the years 1980, 1982 and 1984 in the Court of Judicial Magistrate, Pratapgarh. He was convicted and sentenced to three years simple imprisonment with fine of Rs. 5,000/- in each case by the Trying Magistrate in his order dated 16.1.2007. The applicant filed criminal appeal against the convictions and was acquitted by the Additional District and Session Judge in his order dated 29.4.2008.

4

4. In the intervening period the applicant was placed under suspension by the disciplinary authority on 1.4.80 and the disciplinary proceedings which were started against him ended in his dismissal from service vide order dated 4.5.1984 of Respondent No. 4. The appeal against this order was rejected by the appellate authority on 23.3.85. He filed an application before Allahabad Bench of This Tribunal against this order but, the application was dismissed. He filed a review petition against of the punishment order in the year 1992, and the Respondent No. 2, the Member (P) Postal Services Board, modified the punishment of dismissal to that of compulsory retirement with effect from the date of dismissal.

5. It is stated that the provisional pension that had been granted to him w.e.f. 4.5.1985 was stopped from the month of March 2007 and further that a requisition had been sent to the revenue authorities for recovery of Rs. 1,39,018/- as arrears of land revenue. The applicant filed O.A. 700/1991 challenging the impugned letter issued by the respondent authorities. The Tribunal, in its order dated 6.8.1992, quashed the recovery proceedings but left it open for the respondents to start the proceedings against him in accordance with law. The recovery proceedings had been stayed until the conviction order was passed in the criminal proceedings against him. A fresh recovery certificate was issued on 11.12.2007 for recovery of the same amount. The applicant filed O.A. 372/2008 against issue of this certificate; the respondents were directed by the Tribunal to consider the representation of the applicant dated 18.8.2008 and pass reasoned orders as per rules. The impugned order dated 15.1.2009 has been passed following this direction of the Tribunal.

6. The respondents submit that steps have been taken to file criminal appeal against the acquittal order of the Additional District and Session Judge and the matter is under consideration at the State Government level; further that the impugned certificate has been issued soon after the conviction order was passed by the Trying Magistrate and there was no irregularity in filing of this certificate. As regards, his claims for pension and other retiral benefits, the impugned order states that his group insurance claim has already been sanctioned and there are no arrears of pay of the applicant due for payment ; further, that the applicant has not specifically given details of the exact amount of provident fund due to him.



-4-

7. At the time of hearing, the learned counsel for the applicant urged forcefully that the conviction order having been reversed by the appellate criminal court, it was illegal on the part of the respondent authorities to proceed with the recovery proceedings. From the pleadings of the parties, we find that disciplinary proceedings had been initiated against the applicant for his irregularities which reflected on his integrity and the charges framed under Rule 14 of CCS (CCA) Rules 1965 were held as proved and the punishment of dismissal was imposed on him on 4.5.1984, which was subsequently moderated to that of compulsory retirement. Besides, fresh certificate for recovery has been issued after he was convicted in the criminal proceedings involving embezzlement under Section 409 IPC, before it was over-turned by the appellate authority.

8. The learned counsel for the applicant has cited the judgment of the Supreme Court in Civil Appeal No. 8046 of 2004 Jasbir Singh Versus Punjab & Sind Bank & Ors. delivered on 31<sup>st</sup> October, 2006. The ratio of this judgment is that if, in any civil proceeding, the charge of embezzlement against an employee was not been proved, the authority was not entitled to recover the amount concerned.

9. As stated earlier a departmental proceeding had been drawn up against applicant which ended in imposition of major penalty of compulsory retirement against the applicant. In other words, the charges in the departmental proceedings had been proved and the punishment imposed on the applicant has already acquired a finality as the O.A. filed against this order was dismissed by the Tribunal. The applicant has not clearly brought out the facts relating to disciplinary proceedings and whether the charges were identical to the criminal charges framed under Section 409 IPC against him. From the concluding paragraph of the order of the Reviewing Authority at Annexure 4, it is seen that the charges related to non-accounting for the deposits and withdrawals according to Rules and issue of fake passbooks.

10. The learned counsel for the respondents have taken the preliminary objection about jurisdiction of this Tribunal to stay proceedings initiated by the revenue authorities under the Revenue Recovery Act/Public Accountant Defaulters Act. He cited the judgment and order dated 1<sup>st</sup> July 2009 of this Bench in O.A. No.

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206/2009. The issue of jurisdiction of this Tribunal to hear any matter relating to recovery of arrears of land revenue, which is governed by separate statutes was earlier dealt with by this Bench in its order dated 23<sup>rd</sup> July 2001 in O.A. 73/93. It was held in this judgment that since the subject of recovery of arrears of land revenue is governed by separate statutes, this Tribunal had no jurisdiction to entertain any application under Section 14 of Administrative Tribunal Act 1985 in respect of such a matter. This judgment followed the ratio of the judgment of this Tribunal passed earlier in O.A. No. 471/96 in the case of Raja Ram Saroj vs. Collector District Sultanpur. The judgment of this Tribunal in Raja Ram Saroj case was challenged through an SLP in the Hon'ble Supreme Court. While dismissing the SLP, the Apex Court observed that matters falling within the scope of PAD Act and Revenue Recovery Act could not be said to be a service matter and therefore this Tribunal could not take cognizance of such a matter. In view of the settled legal position about the jurisdiction of this Tribunal to entertain any application relating to the action taken under Revenue Recovery Act/PAD Act, we hold that the present application for intervening in the matter of recovery proceedings initiated by the District Magistrate Pratapgarh, cannot be entertained by this Tribunal. The applicant has opportunities under the said Acts to file his objection against the certificates before the appropriate forum under those Acts.

11. The respondents have raised another objection that earlier, the applicant had filed O.A. No. 494/95 claiming pensionary benefits, which was dismissed by this Tribunal in its order dated 16.2.1996. The applicant has denied this averment and stated that the record concerned, which is available in our registry should be examined for the purpose. We called for the record of O.A. No. 494/95 and noticed that an application had been filed by the applicant on 15.9.1995 for release his pensionary benefits. This application was dismissed on 16.2.1996 on the ground of non-prosecution. As no application has been filed for recall of this order, it has acquired a finality. This fact has been concealed in the present application.

12. The respondents have also objected to the maintainability of the application on the grounds of claiming plural reliefs.

13. As regards pensionary and other benefits claimed by the applicant, we find that the applicant is seeking multiple reliefs in one application which is not



- 6 -

permissible under Rule 10 of the CAT (Procedure) Rules 1987. Initiation of recovery proceedings under the Revenue Recovery Act is a separate cause of action and non-release of retiral benefits cannot be deemed to be flowing from this cause of action. Admittedly the applicant was getting provisional pension till February, 2007. A separate cause of action has arisen after stoppage of provisional pension in March, 2007, which has nothing to do with issue of recovery certificate on 11.12.2007. As regards non-payment of other retiral benefits, the cause of action arose on 4.5.1984 and on for pensionary dues it arose on 21.1.1994 when the order of dismissal was moderated to that of compulsory retirement. It constitutes a separate cause of action altogether. Therefore, the prayer of the applicant for direction to release retiral benefits cannot be considered in the same application in which he is seeking relief against revenue recovery proceedings. The objection of the respondent on this ground is sustained.

14. In view of the foregoing discussion, the application is dismissed as not maintainable. No costs.

 16/07/09  
(Dr. A. K. Mishra)

**Member (A)**

  
(Ms. Sadhna Srivastava)

**Member (J)**

v.