

Central Administrative Tribunal Lucknow Bench Lucknow

O.A. NO. 44/2007

This, the 18th day of March, 2011

HON'BLE JUSTICE ALOK KUMAR SINGH MEMBER (J)

1. Smt. Kewla Devi w/o Late Prithivi Raj Singh aged about 60 years.
2. Mayankar Singh s/o Late Prithivi Raj Singh aged about 21 years.
3. Jayankar Singh s/o Late Prithivi Raj Singh aged about 19 years.

All resident of Vill. Katka, Marautha, Post- Katka Bhagatpurwar, Distt-Bahraich.

Applicants

By Advocate Shri A. K. Singh.

Versus

1. Union of India through Chief Post Master General UP Circle, Lucknow.
2. Major Commandant Army Postal Service Centre, Kamptee APO, Nagpur, Maharastra.
3. The Director Postal Services (Accounts), Uttar Pradesh Parimandal, Aliganj, Lucknow.
4. Superintendent of Post Office, Bahraich, Division Bahraich.

Respondents.

By Advocate Shri S. P. Singh.

Order (Oral)

By Hon'ble Justice Shri Alok Kumar Singh, Member (J)

This O.A. has been filed for directing the respondents to make the payment of gratuity for the services rendered by the applicant in the Army Postal Services w.e.f. 20.6.45 to 17.10.57 and count this period for the purposes of qualifying service and fix the pension accordingly.

2. The case of the applicant is that late Shri Prithvi Raj Singh (who has now died and in his place, three legal heirs have been substituted) was initially appointed on the post of Packer in Army Postal Service w.e.f. 20.6.1945. Thereafter, he was served with the discharge cum movement order on 9.8.1957 asking him to report for duty to Superintendent of Post Offices Faizabad Division Bahraich. He was paid only Rs. 1221.18 as outstanding dues from his previous department and no service gratuity was ever paid to him from the service rendered in the APS. In compliance of the aforesaid order dated 9.8.57, he joined as Postman

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on 18.10.57 from where he retired on 31.10.1985 after attaining the age of superannuation. On 20.6.86, the original applicant was served with a letter issued from the office of Director Postal Accounts, Lucknow asking him as to whether he had deposited the amount paid to him as service gratuity and if the reply is not received within the stipulated period then it will be presumed that the original applicant had not deposited the amount paid to him as service gratuity for period of 12 years 3 months and 26 days which would be subtracted from the qualifying service and pension and gratuity would be fixed accordingly (Annexure-5). The original applicant replied this letter vide his representation dated 8.8.1986 saying that except an amount of Rs. 1221.18, as outstanding dues, nothing has been paid to him as gratuity (Annexure-6). Then after waiting for about 17 years, the applicant again preferred a representation on 8.4.2003 reiterating the similar facts (Annexure -7). In reply thereof, he received a letter dated 29.10.2003 saying that service gratuity paid to him by previous department as is also evident from letter dated 24.4.1986 (Annexure A-8) and since he did not deposit the amount in accordance with the rules, he has been correctly paid the retiral benefits by the present department. But from the side of the applicant, it is said that the applicant never received such letter dated 24.4.1986 addressed to him saying that amount of gratuity has been paid.

3. From the other side, it is said that the applicant has already been paid the gratuity for the period of service he rendered in the Army Postal Service vide order dated 19.4.1960 (CA-1). Secondly, it is said that the pension and DCRG case of the original applicant was finalized on 16.10.86. While this O.A. has been filed in the year 2007 i.e. after about more than 20 years hence it is highly time barred for which the applicant has not averred any explanation whatsoever in the entire O.A.

4. The arguments of the learned counsel for both the sides were heard at length.

5. From the pleadings aforesaid, only two points emerge out for determination;

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- (i) whether the O.A. is time barred.
- (ii) As to whether or not the amount of gratuity was paid to the original applicant for the service rendered by him in APS from 20.4.45 to 17.10.57 and if the same was not paid then whether he is entitled to get that period included for working out pension from the present department of Postal department (respondents.).

6. Concededly, the original applicant finally retired from the last service on 31.10.85 and his pension and DCRG was finalized on 16.10.86. It appears that thereafter, he slept over the matter for about 17 years. Then on 8.4.2003, he made another representation (annexure A-7). Then again, he slept over the matter for about 4 years and then he filed this O.A. on 25.1.2007. Surprisingly, for the reasons best known to the original applicant and his heirs, no condonation application was ever given and in the OA also no explanation has been given for such an inordinate delay. A claim may be good or bad, but the law has provided a timeframe for putting once claim before appropriate forum. Section 21 of the Central Administrative Tribunal Act is relevant for the purpose which is reproduced below:-

"21. Limitation(1) A Tribunal shall not admit and application,-

(a) in a case where a final order such as is mentioned in Clause (a) of sub-section(2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in Clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months."

7. In view of the above, the only conclusion to which we can reach is that this O.A. is highly time barred. On this ground itself this O.A. is therefore liable to be dismissed.

8. Now let us come to the second point. Before entering into the merit on this point, it would be relevant to go through the relevant rules i.e. Rule 19 of the CCS (Pension) Rules which is as under:-

"A government servant who is re-employed in a civil service or post before attaining the age of superannuation and who, before such reemployment, had rendered Military service after attaining the age of eighteen years may, on his confirmation in a civil service

or post, opt either-(a) to continue to draw the military pension or retain gratuity received on discharge from military service, in which case his former military services shall not count as qualifying service; or

(b) to cease to draw his pension and refund-

(i) the pension already drawn, and

(ii) the value received for the commutation of a part of military pension and

(iii) the amount of (retirement gratuity) including service gratuity, if any,

And count previous military service as qualifying service, in which case the service so allowed to count shall be restricted to a service within or outside the employee's unit or department in India or elsewhere which is paid from the Consolidated fund of India or for which pensionary contribution has been received by the Government:

9. Undoubtedly, the applicant has taken a plea in this O.A that no amount of gratuity was ever paid to him by APS where he rendered his service from 20.6.45 to 17.10.57 i.e. 12 years 3 months and 26 days. From the other side, it has been specifically pleaded in para 9 and 15 that in fact the amount of gratuity was paid to the original applicant for the aforesaid service rendered by him in APS. In support of the pleadings, documentary evidence has also been brought on record which is in the shape of letter dated 19.4.60 issued by the APS Record Office Kampatee, (CA-1). In para 4 of the RA, in reply to para 9 of the CA, it has been said that the letter dated 19.4.60 is in the possession of the Postal authorities and it does not depict any amount of gratuity paid to the applicant. At this stage, this letter was again perused. The contents of the letter are as under:-

"The above mentioned official was discharged from APS with effect from 18th October, 1957. The service gratuity paid to him under the Military Rules was noted. In the Last Pay Certificate of the Official by the Senior Deputy Accountant General Posts and Telegraphs (APS Accounts Section) Nagpur.

A suitable remark regarding payment of service gratuity to the official may please be record in the verification memo of services/ service book/roll of the official under advice to this office."

10. This letter is from Lieut. for Officer Incharge and it is addressed to Postmaster Bahraich (U.P). Learned counsel for the applicant says that the amount of gratuity is not mentioned in it rather it was mentioned in the Last Pay Certificate. In fact, the amount of gratuity is not relevant for the purpose of this case. The only relevant fact is that whether or not any amount of gratuity was paid for the aforesaid period of service rendered

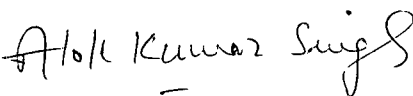
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by him in the previous department. As far as this factum is concerned, it is mentioned in so many words that the amount of gratuity was paid to him by the previous department under the relevant Military Rules. In respect of Para 15 of the CA, reply has been given in Para 9 of the RA. In this paragraphs, there is a general denial of paragraphs 15 to 18 and nothing has been said to controvert the specific pleading in respect of payment of gratuity. Again in para 21 of the CA, it has been reiterated that the applicant was paid the service gratuity and in view of Rule 19 of the CCS Pension Rules 1972, since, he has not deposited the gratuity received by him within a period of 3 months of confirmation to his service, it was presumed that he has accepted the gratuity and therefore, the service of APS could not be counted as qualifying service. In reply to this specific pleading contained in Para 21 of the CA, no reply whatsoever has been given in the rejoinder affidavit.

11. In view of the above there is no other option but to accept the pleadings of the respondents which are also substantiated by the aforesaid documentary evidence. Finally, therefore, this point is also decided in favour of the respondents.

12. In view of the above, this O.A. is liable to be dismissed and accordingly it is so ordered. No order as to cost.


(Justice Alok Kumar Singh)
Member (A)

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