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CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXXXXXXXXXXXXXXXXXX~~

NEW BOMBAY BENCH

~~XXXXXXXX~~

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T.A. No. 85 of 1986

DATE OF DECISION 29.7.1988

Shri Vinayak R. Lohakare Petitioner

Shri D.K.Ghaisas Advocate for the Petitioner(s)

Versus

Union of India & Others. Respondent

Shri S.R.Atre(for Mr.P.M.Pradhan) Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Ajay Johri, Member(A)

The Hon'ble Mr. M.B.Mujumdar, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
NEW BOMBAY BENCH, NEW BOMBAY

Transferred Application No.85 of 1986

Shri Vinayak Ramchandra Lohakare,
At: 637, Dattawadi,
Pune-411 030

.. Applicant.

V/s.

1. Senior Superintendent of
Post Offices, Pune City,
West Division,
Pune-411 030.
 2. A.K. Sen,
Additional Postmaster General,
Bombay-30.
 3. Government of India
through Secretary to the
Govt. of India,
Ministry of Communication Department
New Delhi.
- .. Respondents.

Coram: Hon'ble Member(A), Shri Ajay Johri
Hon'ble Member(J), Shri M.B.Mujumdar

Appearance:

1. Mr.D.K.Ghaisas,
Advocate for the
applicant.
2. Mr.S.R.Atre
(for Mr.P.M.Pradhan)
Advocate
for the respondents.

ORAL JUDGMENT:-

Date: 29.7.1988

¶PBR: Shri M.B.Mujumdar, Member(J)¶

The applicant had filed Writ Petition No.3600/83
on 11.10.1983 and it is transferred to this Tribunal
under Section 29 of the Administrative Tribunals Act,
1985.

Contd....2/-

2. The relevant facts for the purpose of this judgment are these:.. In 1954, the applicant joined Postal Department as Packer which was a Class-IV ~~service~~ ^{post}. By an order dated 16.8.1978 the applicant was dismissed from service after holding ~~the~~ a departmental inquiry against him. At that time he was working as Postal Assistant in the Post Office at Khadki. Against that order the applicant had preferred an appeal to the Post & Telegraph Board. The Board by its order passed on 16.7.1980 reduced the penalty to one of compulsory retirement w.e.f. 16.8.1978. On 4.2.1981 the provisional pension of Rs. 95/- was sanctioned to the applicant for a period of six months. That period is being extended from time to time.

^{dated 21-5-1983}
3. A notice ^{dated 21-5-1983} was issued to the applicant directing him to show cause as to why his pension should not be reduced by Rs. 25/-. According to Rule 6 of the C.C.S. (Pension) Rules, 1972. This show cause notice was given by the Senior Superintendent of Post Office, Pune City, West Division. He found that the service rendered by the applicant had not been satisfactory in view of the instances given in the notice. The applicant replied to that notice on 17.6.1983. By ~~an~~ order dtd. 1.7.1983, the Senior Superintendent of Post Office, Pune City, West Division held that the service rendered by the applicant had not been satisfactory and hence directed that his ~~p~~ension shall be reduced by Rs. 10/- per month. The applicant challenged that order by filing the present Writ Petition on 11.10.1983.

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4. The respondents had filed their replies when the matter was pending in the High Court. They have also filed their written statement when the matter was transferred to this Tribunal.

5. The authorities have reduced the pension of the applicant by Rs. 10/- per month Under Rule 6 of the C.C.S.(Pension) Rules, 1972. This rule was deleted by notification dated 3.3.1980. The rule as it stood, read as follows:-

"Reduction in the amount of pension for unsatisfactory services.

(i) If the service rendered by a Government Servant prior to the date of his retirement has not been satisfactory, the appointing authority may order make reduction in the amount of pension, or gratuity, or both, as that authority may think proper:

Provided that the appointing authority shall before passing an order under this sub rule serve or cause to be served a notice upon the person concerned specifying the reduction proposed to be made in such amount on account of such person to submit, within fifteen days of the receipt of the notice or such further time as may be allowed by that authority, such representation as the person concerned may wish to make against the proposed order and take into consideration the representation, if any, submitted by such person before passing such order:

Provided further that the amount of pension shall not be reduced below the limit specified in sub rule (5) of Rules 49.

(2) (a) The appointing authority may delegate power to a subordinate authority for deciding if the service rendered by a Government servant has been satisfactory and, therefore, no reduction in the amount of pension, or gratuity, or both is called for.

(b) The power under clause (a) shall be delegated in respect of a category or categories of Govt. Servants who may be subordinate to such subordinate authority.

(c) The delegation of power under clause (a) shall not carry with it the authority to order reduction in the amount of pension or gratuity, or both, which shall continue to vest in the appointing authority.

(3) For the purpose of sub rule (1) and sub rule (2) the expression 'appointing authority' shall mean the authority which is competent to make appointments to the service or post from which Government Servant retires.

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- (4) (a) The reduction referred to in sub rule (1) shall be of a permanent character.
- (b) The measure of reduction in the amount of pension shall be to the extent by which the Government Servant's service as a whole has failed to reach a satisfactory standard and no attempt shall be made to equate the amount of reduction with the amount of loss caused to the Government.
- (5) The pension authorized under these rules shall not be reduced although proof of the service having been not satisfactory may come to the notice of the appointing authority subsequent to the authorization of pension.
- (6) Whenever in the case of a Government servant the President passes an order (whether original or appellate awarding a pension including gratuity less than the maximum admissible under these rules, the Union Public Service Commission shall be consulted before the order is passed.
- (7) Nothing in this rule shall apply-
- (a) Where a part of pension has been withheld or ordered to be recovered under Rule 9; or
- (b) Where a part of pension has been reduced under rule 40; or
- (c) where death-cum-retirement gratuity is admissible under clause (b) of sub rule (1) of Rule 50 and family pension is admissible under Rule 54 or Rule 55; or
- (d) to effect any recovery which the result of punishment.

The only question that ^{is} ~~was~~ required to be decided in ^{is} ~~the~~ case whether the authorities were competent to reduce the pension of the applicant by taking recourse to rule 6 which was not in existence when the show cause notice dtd. 21.5.1983 was given to the applicant.

4. In Swamy's Pension Compilation 1987 edition the author has given Government of India's decision under rule 6. The decision reads as under:-

"...No reduction in pension for unsatisfactory service- Attention is invited to Notification,

Contd...5/-

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dated the 3rd March, 1980, deleting Rule 6 and Form 6 of the C.C.S.(Pension) Rules, 1972. As a result, it is no longer necessary to go through the exercise of determining whether any part of the qualifying service of the retiring Government servant was unsatisfactory. Thus, the question of making any reduction in pension would not arise except in cases where provisions of Rule 8 relating to departmental or judicial proceedings are invoked... (G.I., M.H.A.(D.O.P.&A.R.), O.M.No.31 (2)-Pen. (A)/80, dated the 29th August, 1980)..."

According to the above decision the question of making ~~making~~ any reduction in the pension sanctioned to the applicant could not have arisen unless the authorities thought it fit to take action under rule 9 of the Pension Rules. Rule 9 gives an absolute right to the ~~President~~ ^{certain} ~~person~~ to withhold or to withdraw the pension, ^{therefore} under circumstances. Admittedly the authorities have not taken any action under that rule. We hold that the action of the authorities of reducing the pension of the applicant by taking recourse to rule 6 which was ^{deleted more than 3 years back} already was not justified. We, therefore, held that the impugned order dtd. 1.7.1983 is liable to be quashed and set aside.

5. By our order dtd. 16.2.1987 we had allowed the applicant to amend the application. The applicant was directed to carry out the amendment on the same day, but he has failed to do so. We direct that he should be carried out the amendment today. By that amendment the applicant ^{has} is requested for directing the respondents to re-calculate his pension and death-cum-retirement gratuity. We feel that this prayer also deserves to be

Contd...6/-


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granted. In result, we pass the following order.

ORDER

The impugned orders dated 1.7.1983 and 25.7.1983 (copies of which are attached at Exhibit 'C' and 'D' to the application) are hereby quashed and set aside. The respondents are directed to re-calculate the pension and death-cum retirement gratuity payable to the applicant according to the rules and pay the difference to him within four months from the date of receipt of a copy of this order. Parties to bear their own costs.


(M.B. Mujumdar)
Member(J)


(Ajay Johri)
Member(A)

Review Petition No.
51/88 for
reviewing the order/judgment
dt. 29.7.88.

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2.11.88