

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE.

DATED THIS THE 9th DAY OF SEPTEMBER, NINETEEN EIGHTY SIX.

Present: Hon'ble Shri Ch. Ramakrishna Rao, Member (J)
and
Hon'ble Shri L.H.A. Rego, Member (A)

Tr. Application No. 722/86.

Shri S.D. Pranesh,
S/o Shri S. Dhoomachar,
aged 59 years,
Retired Assistant Post Master,
No. 685, 5th Cross,
Mahalakshmi Layout,
Bangalore-560 086.

....Applicant.

(Sri S. Vasantha Kumar, Advocate)

Vs,

1. The Post Master General,
Karnataka Circle,
Palace Road,
Bangalore-560 001.
2. The Sr. Superintendent of Post Offices,
Bangalore West Division,
Bangalore-560 010.
3. Shri B. Sadhashiva Rao,
Sr. Superintendent of Post Offices,
Bangalore West Division,
Bangalore-560 010.

....Respondents.

(Central Government Standing Counsel, Advocate).

The application has come up for hearing before
this Court on 28.7.1986, Upon perusing the petition, the

statement of objections and the material papers, filed herein and the records produced and upon hearing the arguments of the counsel for the respective parties, the Tribunal made the following:

O R D E R

(Order as per Hon'ble Shri Ch. Ramakrishna Rao, Member (J))

The salient facts in this application, which was initially filed as a writ petition in the High Court of Karnataka at Bangalore, are: the applicant was working as Assistant Post Master at Rajajinagar Head Post Office at the time of his superannuation on 30.4.1985. He was placed under suspension by an order dated 21.2.1985 of the 2nd respondent, the Senior Superintendent of Post Offices (SSPO), Bangalore West Division, pending departmental proceedings which were initiated against him on 12.3.1985. The charges levelled against him were:

- (i) that he accepted from one Smt. Deepti Sagar, Partner, Ronisha Company, Bangalore, a sum of Rs. 210/- in cash towards licence fee and also a sum of Rs. 1,800/- in the form of a cheque as consideration for getting the licences issued; and
- (ii) that he visited the shops of some of the radio/T.V. Dealers in Rajajinagar area during October 1984 to December 1984 and accepted gifts from four such dealers by misusing his official position;

and thus, acted in a manner unbecoming of a Government servant violating Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

2. The applicant was due to retire on 30.4.1985 (AN) on superannuation. The SSPO passed an order on 12.3.1985 permitting him to retire. After the applicant retired from service, he received a letter dated 10.5.1985 from the ASP (INV-I) calling upon the former to attend on 18.5.1985 the preliminary^{or} hearing in the inquiry to be held against him. The applicant replied that after his retirement from service, the respondents had no jurisdiction to continue the departmental proceedings. The objection of the applicant was brushed aside by the SSPO in his letter dated 27.5.1985, in which he clarified that the disciplinary proceedings were initiated even while the applicant was in service and there was no impediment to the continuance of the same under rule 9(2) of CCS (Pension) Rules, 1972 (briefly, the Rules). Aggrieved, the applicant has filed this application.

3. Shri S. Vasant Kumar, learned counsel for the applicant, submits that the respondents have no jurisdiction to continue the disciplinary proceedings after the applicant has retired from service; that the proceedings can be continued under rule 9(2) of the Rules only if pecuniary loss having been caused to the Government on account of grave misconduct or negligence

on the part of the applicant, and no such pecuniary loss having been caused to the Government in the present case, the proceedings automatically lapsed with the retirement of the applicant from service.

4. Shri M. Basavaraju, learned counsel for the respondents, submits that the charges levelled against the applicant in the disciplinary proceedings are such that they involve financial loss and the provision in the Pension Rules cited above is applicable.

5. On a scrutiny of the charges extracted supra, it is apparent that the allegation is not that the amounts aggregating to Rs. 2,010/- due to the Government were misappropriated by the applicant, but were collected by him from the said Smt. Deepti Sagar as illegal gratification for getting the commercial T.V. licences etc. issued, and for having accepted gifts from four dealers by misusing his official position. The gravamen of the charges is that the applicant acted in a manner unbecoming of a Government servant. We are of the view, that if the applicant has ceased to be a Government servant, it would not be open to the respondents to continue the proceedings, since, after retirement, the applicant sheds his character as a Government servant. The decision of the Supreme Court in B. SHELAT v. STATE OF GUJARAT (1978(2) SCC 202) is in point. We may also refer to the decision in STATE

OF ASSAM v. PADAM RAM BORH (AIR 1965 SC 473), wherein the Supreme Court had occasion to consider rule 56 of the Fundamental Rules of Assam and held that suspension of an employee before completion of 55 years of age till finalisation of departmental proceedings is valid under rule 56.

6. We, therefore, hold that it was incumbent on the part of the respondents to have extended the date of retirement of the applicant until the completion of the departmental proceedings against him, which were pending. We now proceed to consider the applicability of Rule 9(2) of the Pension Rules.

7. For the purpose of understanding and appreciating whether any pecuniary loss has resulted to the Government, we called upon Shri Basavaraju to produce the file relating to the charges levelled against the applicant. The file contains the statement of Shri Munivenkatappa, WLI-I, Rajajinagar HO given before the IIW, Bangalore City HO, which reads as under:-

"Regarding application for issue of New Dealers' Licence to M/s. Ronisha & Co., I want to say that the application was handed over to me by Sri Pranesh, Asst. Post Master, R. Nagar HO on 11.1.85. After conducting the necessary enquiry, I have forwarded the application with my recommendation on 14.1.85".

statement,

Based on the above/ the SSPO granted permission to Smt. Deepti Sagar for obtaining the commercial broadcast and T.V. licences on payment of a surcharge of Rs. 310/- and licence fee of Rs. 210/-. Thus, there has been no loss to the Government, since ultimately the licence fee of Rs. 210/- was collected from Smt. Deepti Sagar. Whether the sum of Rs. 210/- and the further sum of Rs. 1,800/- were at all paid by Smt. Deepti Sagar to the applicant is a matter which could have been ascertained after the completion of the departmental proceedings, but the proceedings elude finalisation in view of the legal position stated above.


8. After careful consideration, we are satisfied that the facts and circumstances of this case do not attract the applicability of rule 9(2) of the Pension Rules, nor is it possible to continue the proceedings since there is no order extending the date of retirement of the applicant, as already pointed out above.

9. In the view that we have taken, we do not consider it necessary to refer to the decision in K. MALLAPPA v. STATE OF KARNATAKA (ILR 1985) KAR 2030) relied upon by Shri Vasant Kumar, for elucidating the meaning of the phrase 'pecuniary loss arising out of grave misconduct or negligence'.

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10. In the result, the application is allowed.


(L.H.A. REGO)
Member (A)
9-9-1986.


(CH. RAMAKRISHNA RAO)
Member (J)
9-9-1986.

dms.