

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.530/94

THURSDAY THIS THE TWENTY SIXTH DAY OF MAY, 1994

MR. JUSTICE P.K. SHYAMSUNDAR VICE CHAIRMAN

MR. V. RAMAKRISHNAN MEMBER (A)

Shankaragouda,
Aged about 58 years,
Retired Postal Assistant,
Residing at P&T Quarters,
Nijalingappa Nagar,
Raichur

Applicant

(By Advocate Shri M.R. Achar)

v.

1. The Post Master General,
N.K. Region,
Dharwar
2. The Superintendent of Post
Offices, Raichur Division,
Raichur

Respondents

(By learned Senior Standing Counsel)
Shri M.S. Padmarajaiah)

ORDER

MR. V. RAMAKRISHNAN, MEMBER (A)

Admit.

2. The applicant who retired as a Postal Assistant on 30.11.93 on superannuation is facing disciplinary proceedings which were instituted when he was in service. These are being continued by the Department under the relevant rules even after retirement with a view to imposing a major penalty. After he

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retired, the applicant has been sanctioned a provisional pension but his gratuity, commutation of pension as also payment of the cash equivalent of earned leave have been withheld.

3. We have heard Shri M.R. Achar for the applicant and Shri M.S. Padmarajaiah, the learned Senior Standing Counsel for the Department.

4. The applicant is being proceeded against allegedly for causing loss to the government to the tune of over Rs.1 lakh on account of his negligence while passing some bills. Shri Achar contends that even assuming that the charges against the applicant are proved and a penalty is imposed, the penalty cannot be anything other than the recovery of pecuniary loss caused to the government by negligence or breach of orders besides any action under rules⁹ of the Pension Rules. He also refers to Rule 110 of the P&T Manual Vol.III which states that recovery of a part or the whole of a loss caused to the government ordered from the pension of a government servant should not ordinarily be made at a rate exceeding one third of the gross pension ordinarily sanctioned including any amount which may have been commuted. The applicant's request for commutation of pension has not yet been sanctioned. Shri Achar also refers to the P&T letter dated 17th August, 1971, COI direction No.23(c) under ~~rule~~^{rule} 11 of CCS(CCA) Rules (Swamy's Compilation Twentieth Edition) which clarifies that recovery from pay as a punishment for any pecuniary loss caused by a government servant by negligence or breach of orders should not exceed one third of basic

pay (i.e. excluding dearness pay or any other allowance) and should not be spread over a period of more than 3 years. In other words, the recovery should not exceed one year's basic pay in any case. Shri Achar states that the applicant's one year salary is Rs.19560/- whereas the gratuity which has been withheld is Rs.16,000/- which facts have not been disputed by the respondents. Shri Achar argues that there is no reason as to why the leave encashment should be withheld in full. Shri Achar does not press for release of gratuity or commutation of pension.

5. Shri Padmarajaiah contends that the applicant is not entitled for getting the cash equivalent of earned leave at this stage. He further submits that as the proceedings are in full swing, the Department is expected to complete the same within the next four months or so and depending upon the outcome of the enquiry, the applicant's legitimate dues will be settled. He also draws our attention to Rule 39(3) of the Leave Rules which reads as follows:

"The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."

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In view of the above, Shri Padmarajaiah argues that it is premature for the applicant to press for release of leave encashment.

6. As has been brought out earlier even if the applicant is found guilty of negligence which has resulted in pecuniary loss to the government, there is a monetary limit for recovery from him by way of pension or from his salary, the limit in any case being not in excess of Rs.19560/-. As the applicant's gratuity amounting to Rs.16,000/- has already been withheld, the same would be available to the government in case the applicant is found guilty of negligence and a decision is taken to recover the pecuniary loss from him. We, however, do not see any justification for withholding in full the leave encashment as Rule 39(3) of the Leave Rules referred to by the learned Standing Counsel is only an enabling provision which permits the competent authority to withhold "the whole or part of cash equivalent of earned leave", if in his view, there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against the applicant. This Rule does not impose a total ban against release of leave encashment. We are informed that the applicant is entitled to cash equivalent of earned leave for 240 days and that his pay is Rs.1630 per month plus dearness allowance on his retirement.

7. In view of the above, we direct the Department to release the cash equivalent of earned leave due to the applicant on his retirement withholding only a sum of Rs.5000/- out of the same. The same should be released by the