

01.12.2009

RA 13/2009 (OA No. 432/2009)

Mr. V.S. Gurjar, Counsel for applicants.
None present for respondent.

Heard learned counsel for the applicants.

For the reasons dictated separately, the RA is
disposed of.


(M.L. CHAUHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 01st day of December, 2009

REVIEW APPLICATION NO. 13/2009
IN
ORIGINAL APPLICATION NO. 432/2009

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER

1. Union of India through the Secretary to the Government of India, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Jaipur.
3. Senior Superintendent of Post Offices, Ajmer Division, Ajmer.

.....APPLICANTS

(By Advocate: Mr. V.S. Gurjar)

VERSUS

Hari Ram Nakela son of Shri Ramswaroop Nakela by caste Tamoli, aged about 60 years, resident of Bhagwati Colony, Bayana. Presently retired as APM from Madanganj- Kishangarh Post Office.

.....RESPONDENT

(By Advocate : -----)

ORDER

The present Review Application has been filed by the respondents for reviewing the order dated 06.10.29009 passed in OA No. 432/2009, which order was passed by this Tribunal at admission stage without hearing the respondents wherein it was directed that respondent no. 3, who is Head of Office, should settle the claim of the applicant for retiral benefits in the light of provisions contained under Rule 64 of CCS(Pension) Rules even though Rule 64 of the Pension Rules was not instricto-senso applicable in the case of voluntary retirement. It was also made clear that if the pensionary claim of the applicant is not settled within a period of six weeks, the applicant shall

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be entitled to interest @ 8% per annum. It was further observed that even the person against whom judicial/departmental proceedings are pending, such person is also entitled to provisional pension as per Rule 69 of the Pension Rules. Now the respondents have filed the present Review Application on the ground that in fact the applicant has been sanctioned provisional pension in terms of order dated 04.08.2009 for a period with effect from 15.02.2009 to 31.12.2009 or till finalization of case, whichever is earlier, in terms of Rule 69 (i) of CCS (Pension) Rules, 1972, if otherwise admissible. The copy of this order has been endorsed to the applicant also. The case of the respondents is that the applicant has suppressed this information which has led to passing of the order under Review.

2. I have heard the learned counsel for the applicant under Review/respondents in OA. None has appeared on behalf of the applicant though notice of the Review Application was issued to him. I have also gone through the material placed on record in the Review Application as well as the documents placed on record in OA No. 432/2009. The undisputed facts of the case are that the competent authority i.e. Director Postal Services, Rajasthan Southern Region, Ajmer, has accepted notice of the applicant dated 15.11.2008 for seeking voluntary retirement from service under Rule 48 (A) of CCS (Pension) Rules, 1972 w.e.f. 15.02.2009 F/N vide order dated 02.01.2009 (Annexure RA/2). It has also been mentioned in the said order that before the official is relieved for retirement voluntary, it should be ensured that no Vigilance/ Disciplinary/ Court case is pending or contemplated against him. The applicant was ~~to be~~ relieved

by the Senior Superintendent of Post Offices, Ajmer Division, Ajmer w.e.f. 15.02.2009 as per order dated 02.01.2009.

3. From the reading of these two documents, it is clear that till date the applicant was permitted to be relieved on 15.02.2009 on voluntary retirement under Rule 48 (A) of the CCS (Pension) Rules, 1972, ~~and~~ ^{was} no vigilance/ disciplinary/ court cases ~~is~~ pending against him otherwise he could not have been relieved by the competent authority. Be that as it may, facts remains that applicant stood voluntary retired under Rule 48 (A) of the CCS (Pension Rules, 1972 w.e.f. 15.02.2009. As per provisions contained in Sub Rule 5 of 48 (A), the Pension & Retirement Gratuity of the Government Servant retiring under this rule shall be based on the emoluments as defined under Rules 33 and 34 and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for the purposes of calculating pension and gratuity. Admittedly, the applicant was entitled for regular pension & gratuity in terms of the aforesaid rule. Instead of applying provisions of the said Rule, sub Rule 5 of Rule 48 (A), the respondents have sanctioned provisional pension to the applicant in terms of Rule 69 (1) (A). According to me, provisions of Rule 69 (1) (a) is not attracted in the facts & circumstances of this case. It will be useful to quote Rule 69 (1) (a) of CCS (Pension) Rules, which thus reads as under:-

"69. Provisional pension where departmental or judicial proceedings may be pending

- (1) (a) In respect of a Government servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was

under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension."

4. Sub Rule 4 of Rule 9 is in the following terms:-

"(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub rule (2), a provisional pension as provided in Rule 69 shall be sanctioned."

5. From joint reading of these two rules, it is evident that provisional pension can be sanctioned in respect of those Government servants against whom departmental/ judicial proceedings are initiated or where the departmental proceedings are continued under sub rule (2), which is not attracted in the instant case as it is not the case of the respondents that departmental proceedings initiated against the applicant while in Government service was continued. Rather the facts, as disclosed above, makes it clear that neither departmental/ judicial proceedings were pending nor contemplated when the applicant was relieved on voluntary retirement under Rule 48 (A) of the CCS (Pension) Rules. Further the respondents have not placed on record any material to show that departmental/judicial proceedings have been initiated against the applicant so as to attract the provisions of Rule 9 (4) of the CCS (Pension) Rules. As can be seen from sub Rule 6 of Rule 9 of the CCS (Pension) Rules, a departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date. Admittedly none of the conditions as stipulated under sub rule 6

of Rule 9 is attracted in the instant case. Thus the action of the respondents, to resort to the provisions of Rule 69 is wholly misconceived. The applicant in Para No. 5.4 of OA has specifically stated that till the date of retirement, no disciplinary/ judicial proceedings is pending and further that no ^{departmental &} proceedings are pending against him. Even the respondents in the Review Application have only averred that the departmental proceedings against the applicant for embezzlement have been initiated. It may be stated that initiation of the departmental proceeding subsequent to the retirement of the applicant is of no consequence unless the charge sheet/ statement of charges are issued to the applicant in terms of Rule 9 (6) of the Pension Rules *ibid*.

6. In view of what has been stated above, I am of the view that the respondents have not made out any case for reviewing the order dated 06.10.2009 passed in OA No. 432/2009. It is, however, clarified that in case the respondents have issued statement of charges in terms of Rule 9 (6) of the CCS (Pension) Rules, it is only from that date, the departmental proceedings shall be deemed to have been initiated. The right accrued to the applicant prior to that date cannot be defeated by the respondents and the claim of the applicant has to be settled in terms of provisions contained in sub Rule (5) of Rule 48 A of the CCS (Pension) Rules, 1972.

7. With these observations, the Review Application is dismissed with no order as to costs.


(M.L. CHAUHAN)
MEMBER (J)