

Bhanwar Lal son of Shri Giriraj Prasad by caste Rawat, aged about 61 years, resident of A-35, Sanjay Nagar, Bharatpur. Presently Retd. as Sub Record Officer, Bharatpur RAS, Bharatpur.

.... Applicant

VERSUS

1. Union of India through the Secretary to the Govt. of India, Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Postmaster General Rajasthan Circle, Jaipur.
3. Sr. Superintendent, Railway Mail Service, Opposite Radio Station, M.I. Road, Jaipur.
4. Head Record office, Railway Mail Service, Opp. Radio Station, M.I. Road, Jaipur.

.... Respondents.

Mr. P.N. Jatti, Counsel for the applicant.

Mr. N.C. Goyal, Counsel for the respondents.

CORAM:

Hon'ble Mr. M.L. Chauhan, Member (Judicial)

Hon'ble Mr. A.K. Bhandari, Member (Administrative)

ORDER (ORAL)

The applicant who has retired as Sub Record Officer Bharatpur RAS, Bharatpur, has filed the present application ^{against} the order dated 6.9.1999 (Annexure A/1) whereby the applicant was requested to file representation ^{against} the proposed reduction of fixation of pay on account of disallowing the benefit of stepping of pay vide order dated 25.7.1994.

2. In this application, the applicant has prayed that the impugned order dated 6.9.1999 (Annexure A/1) be quashed and set aside and directions be issued to the respondents to release the withheld gratuity amount with 18% interest with effect from 31.7.2000 to till the date of the payment and the pension also be sanctioned correctly and fresh PPO be issued with all the arrears of the pension w.e.f. 31.7.2000.

3. Vide Annexure A/2, the applicant has also made representation to the Sr. Superintendent, Railway Mail Service, Jaipur Division, Jaipur for the payment of withheld amount of Rs.19,553/- from his gratuity amount, *made vide Annexure A/7*

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48

4. Notice of this application was given to the respondents. The respondents have filed detailed reply. In the reply, it has been stated that stepping up of pay of the applicant was wrongly fixed and he was not entitled for the benefit of stepping up of pay pursuant to the judgement of the Apex Court rendered on 12.9.97 in Civil Appeal No. 8638/96. It is further averred that show cause notice was given to the applicant. The application submitted his representation to the said show cause notice in the Office of Chief Post Master General, Rajasthan Circle, Jaipur. No final order has been passed on it and as such sufficient amount has been ordered to be withheld from the gratuity vide letter No. AC/16-276/88-89/II dated 02.06.2000 (Annexure B/2).

5. We have heard the learned counsel for the parties and have gone through the material placed on record. It is not disputed that CCS (Pension) Rules, 1972 are applicable in the instant case. According to the provisions of CCS (Pension) Rules, the gratuity can be withheld, if disciplinary/judicial proceedings are pending against the Govt. Servant on the date of retirement and in that event, the gratuity amount can be withheld till the decision of the proceedings. Further according to Rule 71 read with Rule 73, the gratuity amount can be withheld, if Govt. Dues are outstanding against the Govt. servant. According to sub-Rule 3 of Rule 71 of CCS (Pension) Rules, over-payment of pay & allowances has been defined as 'Govt. Dues.' Before the gratuity amount can be withheld, it is the duty of the Head of the Department to assess and ascertain the 'Govt. Dues.' Admittedly, no such dues has been ascertained and assessed by the competent authority and as such the amount of Rs.19,553/- could not have been adjusted from the gratuity amount of the applicant. On the other hand, according to Rule 68 of CCS (Pension) Rules, the gratuity amount shall be paid to the Govt. Servant immediately after retirement and in case, the same is not paid within the prescribed period, and delay in payment was not because of failure on the part of the Govt. Servant, the Govt. Servant shall be entitled to interest on delayed amount of gratuity. Since the respondents were not legally authorised to withhold the amount of the gratuity as per the provisions of the Rules, as mentioned above, the action of the respondents in withholding the said amount from the retiral gratuity cannot be up-held.

6. Consequently the impugned order dated 01.03.2001 (Annexure A/7) is hereby quashed. Since the show-cause notice was issued to the applicant and the applicant has also submitted the reply and further that the respondents have not determined the dues as per



observations made here-in-above, the respondents will be at liberty to proceed with the matter and pass appropriate order within a period of two months from today. In case, an appropriate order is not passed within the aforesaid period, the respondents shall refund the amount which has been recovered from the gratuity of the applicant after expiry of two months from today alongwith interest @ 10% P.A. In the event of passing of the fresh order within prescribed period, the payment, if any, of withheld amount from gratuity shall govern the said order.

7. The OA is allowed with these observations. No order as to costs.

2/3/14
(A.K. BHANDARI)
MEMBER (A)

[Signature]
(M.L. CHAUHAN)
MEMBER (J)