

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

DATE OF ORDER: 22-9-04

ORIGINAL APPLICATION NO. 411/2003  
with  
Misc. Application No. 276/2004

Ghanshyam Sharma son of Late Shri Moti Lal Sharma aged about 60 years, resident of In front of Maruti School, Chuli Gate, Gangapur City, Voluntary retired on 16.4.2003 from the post of Sub Postmaster (HSG-II), Railway Colony Post Office, Gangapur City.

....Applicant.

VERSUS

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communication, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. Superintendent of Post Offices, Sawaimadhopur Postal Division, Sawaimadhopur.
4. Postmaster, Gangapur Head Post Office, Gangapur City.

....Respondents.

Mr.C.B. Sharma, Counsel for the applicant.  
Mr. B.N. Sandu, Counsel for the respondents.

CORAM:

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

ORDER

PER HON'BLE MR. A.K. BHANDARI

The OA has been filed u/s 19 of the Administrative Tribunal's Act, 1985, to seek the following reliefs:-


"(i) That the respondents may be directed to release Pension payment Order for pension and amount of gratuity, leave encashment and commutation alongwith interest @ 12% p.a. with effect from 16.5.2003 till payment.

(ii) That the respondents may be further directed to refund Rs.32,000/- credited by the applicant alongwith interest at market rate till payment by quashing letter dated 25.7.2003 (Annexure A/1).

(iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.

(iv) That the cost of this application may be awarded."

2. The facts of the case are that the applicant submitted an application for voluntary retirement in the month of January, 2003. With reference to this, he received a query from respondent No. 3, whether he is willing to deposit the amount of share of the loss to be sustained by the Department in the cases filed by S/Shri Murari Lal Soni and Satya Narain before the District Consumer Protection Forum. In reply, applicant submitted that he is not involved in these cases, therefore, he is not responsible. It is further stated that the case concerning of Murari Lal Soni relating to money order had been disposed of by the above forum and nobody was held responsible. However, the case regarding Satya Narain relating to deposit of Rs.32000/- towards loan taken from Recurring Deposit Account at Wazirpur Post Office on 31.5.2000 when Shri Hari Singh was holding the post of Sub Post Master and the applicant had joined as Sub Post Master on 7.6.2000 was still pending. But the mistake in the case, if any, had been committed by Shri Hari Singh and the Department was in process of fixing the responsibility on four officers namely: S/Shri Hari Singh, J.P. Bairwa, Hari Om Mittal and the applicant. That the applicant was informed on 16.1.2003 whether he was willing to deposit his share of Rs.8000/- because the case filed by Shri Satya Narain is still pending in the forum, Sawaimadhopur. That respondent No. 2 who is competent to accept the notice of voluntary retirement accepted applicant's application vide Memo dated 27.2.2003 and ordered voluntary retirement w.e.f. 16.4.2003. Accordingly, respondent No. 2 also issued Memo dated 7.3.2003 retirement is w.e.f. 16.4.2003. While doing so, nothing adverse was reported pending against the applicant by respondent No. 3 who is both Appointing and Disciplinary Authority. Copies of above Memos are cited as Annexure A/3 and Annexure A/4m respectively. Accordingly, the applicant stood voluntarily retired on 16.4.2003 having handing over the charge to Shri C.L. Meena vide Charge Report dated 16.4.2003 (Annexure A/5). It is then stated that inspite of retirement, nothing by way of pension or other retiral benefits had been paid to the applicant although they were due from May, 2003. On the contrary, vide



letter dated 25.7.2003 (Annexure A/1), respondent No. 3 directed the applicant to deposit the full amount (Rs.32000/-) concerning the case of Satya Narain, without which pension and retiral benefits could not be given. This is the impugned order of this QA. In these circumstances applicant replied vide Annexure A/6, <sup>dated 25.7.03</sup> that four persons are alleged in the pending case and not the applicant alone due to which, there was no justification for demanding payment of Rs.32000/-. In spite of this assertion, the applicant deposited Rs.32000/- on 1.8.2003 at Railway Colony Post Office, Gangapur, under protest, copy of which is annexed as Annexure A/7. The applicant is, therefore, aggrieved by this harassment in not releasing pension payment, amount of gratuity, leave encashment and commutation for more than four months and not returning above Rs. 32000/- taken from him by the respondents under duress. He has demanded 12% interest on both the amounts.

In the grounds, allegation of arbitrariness and unreasonable have been alleged and it is stated that by this action, the respondents have violated Articles 14, 16 and 21 of the Constitution of India as they were duty bound to extend the retiral benefits and other dues in the month of May, 2003. The delay is fully unjustified because the applicant is not at all at fault even in the case of Shri Satya Narain because voluntary retirement application has been accepted after scrutiny of record. That he was found clear from all angles including vigilance, without which voluntary retirement application would not have accepted. That Pension and above benefits are his rights. Therefore, this OA.

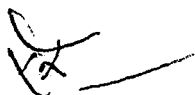
4. The respondents have submitted a detailed reply largely denying the version of the applicant that he credited Rs.32000/- on the basis of direction issued by Superintendent of Post office, Sawaimadhopur vide his letter dated 25.7.2003 because this letter dated 25.7.2003 was despatched on 12.8.2003 on the request of the applicant so that he could get the refund of the amount on later date and he credited the amount of Rs.32000/- on 1.8.2003 on his own without/before receiving this letter.



For this reason, ~~that~~ letter dated 25.7.2003 is nowhere referred to in, the intimation/application dated 1.8.2003 addressed to respondent No. 3. It is further stated that applicant was responsible to make good the loss sustained by the Department due to his negligence. Due to this reason, the question of issuing direction to return Rs.32000/- till the case is decided did not arise. It is also informed that following payments have been made on dates mentioned below

Pension	18.09,2003
DCRG	18.09.2003
Commutation	18.09.2003
Leave Encashment	20.09.2003
CGEIS	29.09.2003

In Parawise reply, it is conceded that respondents had received an application for voluntary retirement on 10.1.2003 and on that date, two DCPF cases were pending against the Department in which the applicant was involved. Therefore, vide letter dated 16.1.2003, the applicant was informed whether he was willing to credit the loss sustained by the Department in case the decision was pronounced against the department and only after receipt of his willingness, the notice for voluntary retirement was accepted. The applicant's contention that he was not responsible in these cases is denied because he himself has accepted the liability to credit the loss to be sustained by the Department vide his application dated 21.1.2003. However, the case regarding Shri Murarilal Saini was decided favourably on 16.7.2003 but the second case filed by Shri Satya Narain for non depositing of Rs.32000/- in Recurring Deposit Account No. 97268 on 31.5.2002 was still pending. In this matter, the applicant has been identified as subsidiary offender inasmuch as he allowed Shri Vishmbhar Dayal, unauthorised person, to perform agency function on behalf of Smt. Gayatri Devi on 30.6.2000. The case pending in DCPF is going to fix the final responsibility in this case. The contention that the applicant was directed to deposit Rs.8000/- is



denied. It is asserted that the applicant had himself credited the entire amount as it was his responsibility to make good the likely loss, depending upon the decision of DCPF. It is also denied that the amount of Rs.32000/- was deposited under protest and that on applicant's request, the letter dated 25.7.2003 was despatched on 12.8.2003 and he made payment voluntarily on 1.8.2003 with the intention that he will be able to claim the refund if the DCPF did not find him guilty. That there is no harassment by the respondents, and on the contrary, the matter was dealt with sympathetically. The delay in passing retiral claim is explained by stating that in the matter of voluntary retirement, the pension case is processed after actual retirement in this case 16.4.2003 of the Government Servant and all payments have been between 7.8.2003 and 29.9.2003 soon after he paid Rs.32000/- on 1.8.2003 as stated earlier. It is also denied that his record of service was clean in view of the fact that in preliminary investigation, he was found involved as subsidiary offender in DCPF case. On the basis of the above, the grounds of arbitrariness and illegality and delay are denied.

5. During the course of hearing on 29.1.2004, the learned counsel for the respondents was directed to produce the letter dated 21.1.2003 written by the applicant whereby he had accepted the liability to credit the loss to be sustained by the Department as per averment made in Para No. 5 of the reply Affidavit. In compliance of this, the MA No. 276/2004 is filed. In this MA, the respondents have submitted a copy of the applicant's undertaking which reads as under:-

"I will deposit the share, if any, sustained by the department in DCPF cases filed by Shri Murari Lal Soni and Shri Satya Narain resident of Wazirpur if the decision is pronounced against the department."

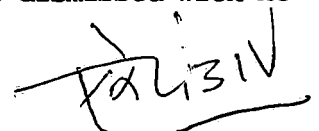
This document is marked as Annexure R/3. In addition, respondents have submitted a copy of judgement of the DCPF dated 16.4.2004 in which the applicant was found guilty. While conceding that the said undertaking was



indeed given by the applicant that he will deposit his share of loss, if any, sustained by the Department in DCPF case, the learned counsel for the applicant stated that the Department has gone in appeal against the decision of the DCPF which means that in view of the respondents, the finding of the DCPF cannot be considered conclusive on the basis of which he should be given interest @ 12% p.a. from 16.5.2003 till the date of payment of retiral dues. Per contra, the learned counsel for the respondents argued that in light of the above undertaking as also voluntarily depositing of Rs.32000/- on account of DCPF case in which he has been found guilty, there is no ground for accepting the prayer of the applicant regarding return of Rs.32000/-. Also there is no question of paying interest on retiral dues because of above DCPF case, and because there has been no delay in paying the retiral dues.

7. After careful consideration of all facts and pleadings, it is seen that the applicant has no case. His prayer regarding delayed payment of retiral dues cannot be sustained because he had deposited Rs.32000/- for obtaining 'No Dues Certificate' on 1.8.2003 whereas all retiral dues were paid to him on 29.9.2003. The respondents could not have paid any retiral dues before the payment of above Rs.32000/- because it was the case of voluntary retirement and the case of Satya Narain against the respondents was pending in DCPF. The Department could not have taken the responsibility for the loss when the applicant was already found to be subsidiary offender. As such, there has been no delay. There is no case for payment of interest on pension and retiral dues. In the face of finding of guilt against the applicant in the case of Shri Satya Narain vide order dated 16.4.2004 (Annexure R/2), the question of refunding of Rs.32000/- to the applicant does not arise.

8. In view of what has been stated above, the OA is dismissed with no order as to costs.



(A.K. BHANDARI)

MEMBER (A)