

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 21st day of July, 2010

Original Application No. 333/2010

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. K.S.SUGATHAN, MEMBER (ADMV.)

Kishan Lal Verma
s/o Nathu Ram Chhipi,
r/o Shastri Colony,
Narainpur Road,
Bansur, District Alwar and
retired on 26/2/2010 on the post of
BCR PA, Behror, Head Post Office,
District Alwar

.. Applicant

(BY Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through its Secretary to the Government
of India, Department of Posts,
Ministry of Communication and
Information Technology,
Dak Bhawan, New Delhi.
2. Chief Post Master General,
Rajasthan Circle,
Jaipur
3. Director, Postal Services,
Jaipur Region, Jaipur
4. Senior Superintendent of Post Offices,
Alwar Postal Division,
Alwar.

... Respondents

(By Advocate:)

ORDER (ORAL)

The present application is made against the chargememo dated 25.2.2010 (Ann.A/1) by which disciplinary proceedings against the applicant under Rule 14 of CCS (CCA) Rules, 1965 were initiated at the verge of his retirement. The above chargememo is said to have been served on the applicant on 4.3.2010 i.e. after his retirement on superannuation on 28.2.2010. Besides, the applicant is also aggrieved by the action of the respondents whereby the competent authority has sanctioned provisional pension and withheld the commutation and gratuity amount pursuant to initiation of the enquiry proceedings. Thus, the applicant has filed this OA thereby praying for the following reliefs:-

- (i) That the respondents may be directed to release payment of retirement benefits i.e. commutation and gratuity sanctioned vide Annexure-A/3 alongwith interest at market rate w.e.f. 01/03/2010 by quashing charge memo dated 25/02/2010 (Annexure-A/1) with all consequential benefits.
- (ii) That further proceedings in pursuance to charge memo at Annexure A/1 may be quashed and set aside with all consequential benefits.
- (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 costs of this application may be awarded."

2. We have heard the learned counsel for the applicant at admission stage. The main grievance of the applicant in this case is that it was not permissible for the respondents to proceed with the chargememo dated 25.2.2010 which was served upon the applicant after his retirement on 4.3.2010, as such, the same is

required to be quashed. The learned counsel for the applicant further argued that in fact the competent authority has sanctioned amount of gratuity as well as commutation in favour of the applicant, but the same has been wrongly withheld by respondent No.4 which course was not permissible as the enquiry after retirement can only be instituted by the President under Rule 9 of the CCS (Pension) Rules, 1972. Since there was no disciplinary proceedings pending against the applicant, as such, the respondents were not justified in withholding the retirement benefits.

3. We have given due consideration to the submissions made by the learned counsel for the applicant. We are of the view that the applicant is not entitled to any relief in view of the law laid down by the Hon'ble Apex Court in the case of U.P.State Sugar Corporation Ltd. and Ors. vs. Kamal Swaroop Tondon, (2008) 1 SCC (L&S) 352. That was a case where show-cause notice/chargesheet for departmental enquiry was issued to the respondent before the Apex Court on the last day of his service i.e. on 31.1.2000 and the same was received by the respondent after office hours at 6.40 p.m. on 31.1.2000. Simultaneously, copy of the chargesheet was also sent by post which was received by the respondent on 14.2.2000. The contention raised by the respondent before the High Court was that proceedings having been initiated against the respondent employee after his retirement from service could not have been continued after his retirement as by that time the tie was broken and there was no relationship of employer and employee between the Corporation and the writ petitioner. The findings given by the High

Court were set-aside by the Hon'ble Apex Court and in the facts and circumstances of the case, it was held that it could not be said that the proceedings had been initiated against the respondent employee after he retired from service. Such proceedings could have been continued since they were initiated for the recovery of losses sustained by the Corporation due to negligence on the part of the respondent employee. Such loss caused to the Corporation could be recovered from the retiral benefit of the respondent. It was further noticed that it is settled law that resignation brings about complete cessation of master and servant relationship, but retirement does not do so. In case of retirement, master and servant relationship continues for grant of retiral benefits. Hence, proceedings could have been continued after the retirement of the respondent employee as far as financial loss caused to the Corporation because of negligence on the part of employee concerned.

4. The ratio as laid down by the Hon'ble Apex Court in the case of Kamal Swaroop Tondon (supra) is squarely applicable in the facts and circumstances of this case. It may be relevant to state here that in terms of Pension Rule 9(2)(a) the departmental proceedings if instituted while the Government servant is in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rules and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service. As

can be seen from the language stipulated in the aforesaid rule, what is relevant for the purpose of continuance of departmental proceedings is institution of proceedings before retirement and this rule does not stipulate that service of chargememo is condition precedent for institution of department proceedings. Thus, in terms of the aforesaid rule, the departmental proceedings which have been instituted against the applicant by issuing a chargesheet on 25.2.2010 shall be deemed to be the proceedings continuing under Rule 9(2)(a) of the CCS (Pension) Rules. Thus, in terms of the provisions contained in Rule 69 of the CCA (Pension) Rules, the applicant is entitled only to the provisional pension and not to gratuity amount which has been withheld by the respondents in accordance with the rules. Therefore, according to us, the applicant has not made out a case for grant of relief.

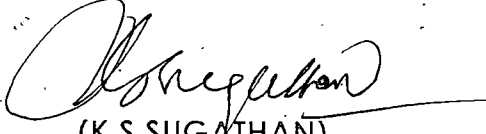
5. The further contention raised by the applicant is that in any case, the respondents may be directed to finalize the enquiry expeditiously, especially when the charges against the applicant are regarding not noticing the irregularities committed by the subordinate officials who were guilty of fraud as the applicant cannot be held responsible for the shortcomings in the matter of financial irregularities committed by other officials.


6. We have given due consideration to the submissions made by the learned counsel for the applicant. Since the applicant has already retired on superannuation on 28.2.2010 and his retiral benefits have been withheld by the respondents, it will be in the interest of justice, if the respondents are directed to expedite the

disciplinary proceedings pending against the applicant and if possible, conclude the same within a period of six months from today.

7. With these observations, the OA is disposed of with no order as to costs.

8. Needless to add that the applicant shall also render all possible assistance and cooperate in the disciplinary proceedings.


(K.S.SUGATHAN)
Admv. Member


(M.L.CHAUHAN)
Judl. Member

R/