

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

27.01.2014

OA No. 404/2013

Mr. C.B. Sharma, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

Heard learned counsel for the parties.

The OA is disposed of by a separate order.

Anil Kumar
(Anil Kumar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 404/2013

Jaipur, the 27th day of January, 2014

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Jai Narayan Chaudhary son of Shri Ram Dayal, aged about 62 years, resident of A-193, M.D. Colony, Naka Madar, Ajmer and retired on 31.01.2011 from the post of Sub Post Master, Rajasthan Education Board, Sub Post Office, Ajmer Division, Ajmer.

... Applicant

(By Advocate: Mr. C.B. Sharma)

Versus

1. Union of India through Secretary to the Government of India, Department of Posts, Ministry of Communication & Information Technology, Dak Bhawan, New Delhi.
2. Post Master General, Rajasthan Southern Region, Ajmer.
3. Senior Superintendent of Post Offices, Ajmer Postal Division, Ajmer.
4. Senior Post Master, Ajmer Head Post Office, Ajmer.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

This OA has been filed by the applicant praying for the following reliefs:-

- "(i) That the respondents be directed to refund Rs.24,081/0 alongwith interest at the market rate by quashing letter dated 03.05.2013 and 19.03.2013 (Annexure A/1 & A/2) with the letters dated 17.01.2013, 18.02.2013 and 14.03.2013 (Annexure A/9, A/11 and A/13) with all consequential benefits.
- (ii) That respondents be further directed not to demand rest amount Rs.64,270/- and not to adjust any amount from due payment to the applicant by way of arrears of DA etc. by quashing letter dated 13.10.2011 (Annexure A/4) and to release all due payments time to time without any delay.
- (iii) That respondents be further directed to revise pension and pensionary benefits by allowing one

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increment as per provisions of OM dated 19.03.2012 after considering request of the applicant (Annexure A/6) and release all due payments alongwith interest.

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

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that an MIS Account No. 391885 was opened on 09.05.2003 for Rs.6,00,000/- in the name of Shri Hanuman Prasad Sharma and Sneha Sharma. This MIS Account was joint-B Account. Shri Hanuman Prasad Sharma expired on 06.06.2003 and the applicant on 24.07.2003 substituted the name of Smt. Sita Sharma, wife of Shri Hanuman Prasad Sharma and also allowed interest. The applicant worked upto 2005 in the concerned Post Office. The new incumbent on joining reported the matter that the applicant has acted against the rules by substituting the name of Smt. Sita Sharma. He also stopped payment of interest. The matter was taken up for adjudication before the Consumer Forum and after the decision in Consumer Forum, full payment was made to the account holder. The respondents no-where apprise the applicant regarding the matter till retirement. There was no loss to the department as the amount remained with the Department but authorities calculated Rs.2,20,877/- as loss on account of irregular payment from which the applicant held responsible for Rs.88,351/- from which Rs.24,081/- has been adjusted from the

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arrears and respondents forcing the applicant to credit rest amount of Rs.64,270/-,

3. The applicant represented vide letter dated 21.01.2013 against the said adjustment of Rs.24,081 as it was against the procedure.

4. The learned counsel for the applicant also submitted that no show cause notice was issued to the applicant to represent against the proposed recovery, therefore, the action of the respondents is against the principles of natural justice.

5. The learned counsel for the applicant also submitted that the respondents cannot take any action on the events which take place more than four years prior to retirement as per provisions of Rule 9 of the CCS (Pension) Rules, 1972 as the event took place in the year 2006 after joining of the new incumbent in place of the applicant. Thus the action of the respondents is against the provisions of Rule 9 of the CCS (Pension) Rules, 1972.

6. He further submitted that no consent of the application was taken for the adjustment of Rs.24,081/-. Therefore, the recovery order dated 03.05.2013 (Annexure A/1) and 19.03.2013 (Annexure A/2) be quashed and set aside and the amount already recovered be returned to the applicant alongwith interest.

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7. On the contrary, the learned counsel for the respondents submitted that on the death of one of the depositors of the MIS account, the applicant was required to convert the Joint MIS Account into Single MIS Account and share of deceased partner i.e. Rs.3,00,000/- was required to be withdrawn by the surviving partner and No MIS Account interest was to be paid on the share of the deceased depositor. This deposit only carries interest @ Post Office Saving Bank Account.

8. The applicant in violation of the Rules, added the name of Sita Sharma, wife of Late Shri Hanuman Prasad Sharma in place of Shri Hanuman Prasad Sharma at his own will without any provisions under the rules and continued the joint account by making interest payment @ Rs.4000/- from June, 2003 to July 2006. This interest was got deposited in SB Account No. 450858 standing in the name of the depositors.

9. This discrepancy was noticed by the successor of the applicant and thereby he stopped the payment of monthly interest. The Consumer Court, however, ordered for payment of Rs.9,16,000/- to the depositor including Court Legal expenses and that is only due to complete failure/carelessness in working of applicant as SPM Nagra. The department sustained the loss to the tune of Rs.2,20,877/-

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10. The learned counsel for the respondents further submitted that three other employees were found responsible for this lapse and their share of loss has been recovered from them.

11. He further submitted that Rule 9 of the CCS (Pension) Rules, 1972 is not applicable in the present case because no disciplinary proceedings have been initiated against the applicant. The applicant was issued notice several times for depositing the remaining amount of loss but the applicant has not deposited the balance amount so far. Therefore, the action of the respondents is according to the instructions of the Department and the OA has no merit and it should be dismissed.

12. Heard the learned counsel for the parties and perused the documents on record. From the perusal of Rule 168 (9) of POSB Manual 1, which has been quoted by the respondents, it is clear that if one of the depositors of a MIS Account dies, the account will be treated as a single account in the name of the surviving depositor from the date of death of the said depositor. When a report to this effect is received in the Post office, the Post Master/Sub Post Master would ask the surviving depositor to withdraw the excess amount in excess of the limit prescribed for the single depositor as this amount will carry interest at the rate of Post Office Saving Account from the date of death of the joint depositor. The MIS interest already paid on this excess amount will be recovered or adjusted. The account will be converted into a single account.

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13. In this particular case, instead of converting the Joint MIS Account on the death of Shri Hanuman Prasad Sharma, the applicant allowed the wife of Late Shri Hanuman Prasad Sharma to be substituted in his place and interest was also paid on this MIS account as was applicable for Joint Account. The rules do not permit substitution in the case of death of one of the joint holder of account. Thus substitution of the wife of Late Shri Hanuman Prasad Sharma was contrary to the provisions.

14. The learned counsel for the applicant argued that before effecting recovery, the respondents should have given a notice but they have not done so, therefore, violated the principles of natural justice. The learned counsel for the respondents submitted that a notice was given to the applicant vide letter dated 19.03.2013 (Annexure A/2). He was also informed to deposit Rs.88,351/- as his share of loss within ten days vide letter dated 13.10.2011 (Annexure A/4). Thus enough opportunity was given to the applicant to represent his case. Therefore, the contention of the learned counsel for the applicant that no opportunity was given to the applicant before making the recovery is not correct. He further submitted that the applicant has also made a representation dated 08.11.2011 (Annexure A/5) in which he has stated no action can be taken against him because the incident is related to the year 2003, which is four year prior to his retirement. The learned counsel for the respondents further submitted that the provisions of Rule 9 of

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the CCS (Pension) Rules, 1972 are not applicable in the present case as no disciplinary proceedings have been initiated against the applicant.

15. I am inclined to agree with the averments made by the learned counsel for the respondents that a notice was issued to the applicant on 19.03.2013 (Annexure A/2). From the perusal of this notice, it is evident that the applicant was asked to deposit the amount of Rs.88,351/- but the applicant did not respond to this communication. Even earlier to this notice, the applicant was also issued notice dated 13.10.2011 (Annexure A/4) to the effect that he should deposit Rs.88,351/-. Therefore, it cannot be said that principles of natural justice was violated in this case.

16. I have perused the Rule 9 of the CCS (Pension) Rules, 1972. These provisions apply to the case of disciplinary proceedings. In this particular case, no departmental proceedings have been instituted against the applicant. Therefore, the provisions of Rule 9 of the CCS (Pension) Rules, 1972 are not applicable in this case.

17. As submitted by the learned counsel for the respondents, the three co-offenders have already deposited their share of loss with the Department. I do not find any reason to take a different view in the case of the applicant. Thus looking from any angle, the applicant is not entitled for any relief in this OA.

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