

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

BENCH, ALLAHABAD

(This the 19th Day of September 2018)

Hon'ble Mr. Gokul Chandra Pati. Member (A)

Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application No.330/00118 of 2014

(U/S 19, Administrative Tribunal Act, 1985)

Nand Lal Kushwaha, S/o Sri R.B Kushwaha, R/o Village & Post Kanta Chandauli, District Chandauli.

..... Applicant

In person.

Versus

1. Union of India through its Secretary/Director General, Ministry of Communication, Department of Posts India, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Post Master General, U.P Circle, Lucknow.
3. Post Master General, Allahabad Region, Allahabad.
4. Director Postal Services, Allahabad Region, Allahabad.
5. The Director of Accounts (Postal), Aliganj, Lucknow.
6. Superintendent of Post Offices, Mirzapur Division, Mirzapur.

..... Respondents

By Advocate: Shri R.K. Srivastava

O R D E R

Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (Judicial)

1. In the present O.A., the applicant prays for the following reliefs :-

“(i) To issue an order or direction in the nature of certiorari by way of quashing the impugned orders dated 10.7.2007 & 06.9.2013 (Annexure A-1) whereby the pay scale of the applicant has been re-fixed as Rs.425 on 26.02.1977 in place of Rs.425 on 10.7.1975 treating the suspension period as not duty and further directed for recovery against the applicant.

(ii) That the Hon’ble Tribunal may issue an order or direction in the nature of mandamus commanding the respondents to call for entire records pertaining to the applicant.

(iii) That the Hon’ble Tribunal may issue an order or direction in the nature of mandamus commanding the respondents to restore his pay as it was fixed after implementation of the order of the Superintendent of Post Office Mirzapur vide his memo dated 3.2.1993.

(iv) That the Hon’ble Tribunal may issue an order or direction in the nature of mandamus commanding the respondents to pay the interest @ 18% per annum over the arrears as incurred in favour of the applicant.

(v) to pass any other or further order which this Hon’ble Tribunal may pass in the circumstances of the case.

(vi) to award the cost of this application to the applicant”.

2. The detail as given in the O.A. are as under –

1. Appointed as Postal Clerk on 22.2.1967.
2. Qualified exam of Inspector in 21.2.1975.
3. Departmental enquiry in which placed under suspension on 25.2.1975.
4. Suspension withdrawn for the period of 25.2.1975 to 20.12.1975 and treated as duty for pension purpose only without giving any show cause notice vide order No. F 23/74-75/D dated 24.4.1976 by Superintendent Post Offices, Mirzapur.
5. Promoted in Inspector Grade on 26.2.1977.
6. During suspension, his juniors promoted overlooking him and he approached respondents for regularization the suspension period and treating him as on to be posted as Inspector from the date his juniors was promoted.

7. Request of applicant on 30.11.1992 and in compliance to appellate order dated 17.8.1979, Superintendent P.O Mirzapur issued memo No. F-23/74-75/D dated 30.11.1992 for effectively why his suspension period be not treated as on duty for all purpose.
8. Vide memo dated 8.12.1992 and corrigendum dated 24.12.1992, period of suspension treated as duty for all purposes under instructions (3) of FR 54 B.
9. Letter dated 3.2.1993 treating applicant as promoted in Inspector cadre w.e.f. 10.7.1975.
10. Also pay of applicant was revised and refixed at Rs.425 on 10.7.1975 in place of Rs.425 on 26.2.1977.
11. Applicant retired on 31.5.2006.
12. On 26.3.2006, applicant received statement whereby his pay on 1.3.1995 was reduced and refixed at Rs.425 on 26.2.1977 in place of Rs.425 on 10.7.1975 treating the suspension period as duty only for pension purpose without any show cause notice.
13. In CA filed in O.A. No. 652 of 2006, respondents averred that suspension period was decided as duty for pension purpose only and could not be again decided by the same disciplinary authority, as such, the basis for order dated 8.12.1992 and order issued on 3.2.1993 is invalid.
14. In his representation, applicant had represented that the suspension period was decided on 8.12.1992 by Superintendent Post Office in compliance to appellate order dated 17.8.1979. Order dated 17.8.1979 is on file F23/74-75/D in office of Superintendent of Post Office.
15. Order dated 10.4.2007 was passed without calling for the record from the office of Superintendent of Post Offices, Mirzapur, which was challenged before Chief Post Master General, who directed that the order dated 10.4.2007 be challenged before respondent No.2.
16. Applicant preferred representation dated 27.5.2013 before respondent No.2 which was rejected and which order dated

6.9.2013 is illegal since the grounds taken by the applicant have not been discussed by respondent No.2 and the same was passed without calling for the record of Superintendent of Post Offices, Mirzapur as well as other record.

17. His appeal against punishment order dated 20.4.1976 to Director Postal Services Allahabad office of P.M.G. Lucknow and vide order dated 17.8.1979 set aside order of punishment and directed for fresh decision.
18. As per information under R.T.I Act, from D.A.P Lucknow reveals that memo No. F23/74-75/D dated 24.12.1992 is still awaited in service book of applicant in possession of the respondent No.5.
3. So, the situation as coming out from the pleadings and documents placed on record by the parties is that:
 - 1) As per order dated 24.4.1976 of Superintendent of Post Office, Mirzapur, Suspension of applicant was withdrawn for the period of 25.2.1975 to 20.12.1975 and treated as duty for pension purposes only
 - 2) In terms of directions of Appellate authority order dated 17.8.1979, Superintendent of Post Office Mirzapur vide memo dated 8.12.1992 and corrigendum dated 24.12.1992 directed that the period of suspension be treated as on duty for all purposes under Instruction (3) of FR 54 B and accordingly, applicant's pay refixed at Rs.425/- on 10.07.1976 instead of Rs.425/- on 26.2.1977.
 - 3) Respondents have taken the view that the latter order of SPO, Mirzapur treating the period of suspension as spent on duty for all purposes is irregular in light of Rule 130 of P & T Manual Vol III and upheld the order dated 24.4.1976 treating period of suspension as duty for purpose of pension only vide order dated 10.4.2007 passed by Postmaster General, Allahabad and his representation against said order has also been disallowed vide order dated 6.9.2013.

4. Rule 130 of P & T Manual Vol III reads as "*It is not open to the punishment authority to cancel or revise its own orders. In case the orders require any revision or cancellation, the matter should be reported to the appellate to the competent reviewing authority. If however, the order is inoperative, e.g. with-holding of increment of an official who was reached the maximum of his scale of pay, it can be revised by the same punishment authority. It would also be within the competence of the punishing authority to cancel punishment orders passed on an official as a result of his conviction in a court of law when the conviction is set aside on appeal by the appellate authority. It cannot, however, itself set aside its own orders even when it discovers any procedural irregularities*".
5. As per the applicant, Firstly, the latter order of SPO was passed in pursuance of the order passed by the appellate authority in relation to the appeal filed by him and therefore, Rule 130 would be inapplicable; and secondly, the basic impugned orders dated 6.9.2013 and 10.4.2007 rejecting his contentions have been passed without calling for the record from the concerned postal authorities and by holding that applicant has not placed on record the documents pertaining to the appeal filed by him or that his service book contain any such document though he had pleaded to the said authorities/respondents to summon the official record from their subordinate offices.
6. The contention of applicant has force and to be accepted. It seems that the official record was never summoned and perused to see whether the contentions of the applicant are correct or not more so when the impugned orders have far reaching consequences for the applicant and effect him adversely. In these circumstances, setting aside the impugned orders 6.9.2013 and 10.4.2007 passed by respondents, the matter

is remitted back to the competent authority to decide the matter afresh after summoning the record by way of a speaking and reasoned order preferably within a period of 4 months from the receipt of the copy of this order. Meanwhile, applicant shall also inform the respondent/competent authority about the particulars of the record/s required to be perused in support of his case within 3 weeks from today.

7. Another relief sought by the applicant is the recovery of the alleged excess of amount paid to him due to wrong re-fixing of his pay at the time of his retirement. No whatever may be the result of the fresh finding to be given by the competent authority as directed above, if any recovery is ultimately to be made from the applicant, the respondents would follow the guidelines laid down by the Hon'ble Apex Court in State of Punjab & others etc. v. Rafiq Masih (White Washer), 2015 (4) SCC 334, wherein it has been held as under:-

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

8. For the reasons discussed in the foregoing paragraphs, we are of the view that the case of the applicant is squarely covered under the judgment of Hon'ble Apex Court in the case of Rafiq Masih (supra) and hence, the respondents are directed not to effect any recovery, if found due from the applicant after passing of the fresh order as per the direction of para 6 of this order.

9. The O.A. is partly allowed in accordance with the aforementioned directions in para 6 and 8 of this order. No order as to costs.

(Rakesh Sagar Jain)

Member (J)

(Gokul Chandra Pati)

Member (A)

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