

Reserved
(On 02.05.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 18th day of May 2018

Original Application No 330/00712 of 2012

Hon'ble Mr. Gokul Chandra Pati, Member – A

Shukh Ram Sharma, S/o late Shri Anant Pratap Sharma, R/o 281/1, Vibiba Nagar, Gandhi Gram, Post, Harjendra Nagar, Kanpur – 07.

..
.Applicant

By Adv: Sri S.M.A. Naqvi & Shri S.P. Pathak

V E R S U S

1. Union of India through Secretary, Ministry of Communication, Department of Posts, Dak Bhawan, New Delhi.
2. The D.G. Posts, Dak Bhawan, Sansad Marg, New Delhi – 110001.
3. The Director Postal Services, Kanpur Region, Kanpur – 208001.
4. The Sr. Superintendent of Post Offices, Kanpur (City), Division, Kanpur.

... Respondents

By Adv: Sri Saurabh Srivastava.

O R D E R

The present OA is preferred by the applicant under Section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:-

- "i) To issue a writ, order or direction in the nature of certiorari quashing the respondents' order dated 07.06.2011 (Annexure A-1).*
- "ii) To issue a writ, order or direction in the nature of Mandamus directing to the respondents to pay the interest @ 18% per annum (Market rate) on the principal amount Rs. 2,00,000/- which was coffer in the Department of Posts for the period 13.02.2008 to 05.09.2009 which was illegally been holdover by the respondents No. 4 without any sufficient reason or cause.*
- "iii) Issue any order / direction which the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*
- "iv) Award the cost of petition to the applicant."*

2. The applicant states in the OA that he was functioning as cash overseer under Kanpur Cantt. Head Post Office and while working he had collected the amount of Rs. 22,50,000/- from the cash / treasury of the Kanpur Cantt. Head Post Office to deliver the fund to different Post Offices and each bundles were properly marked by him and kept under the safe custody of the amount under the Police guard. Then he proceeded to

Munshipurwal, Kanpur Post Office to handover the amount of Rs. 6,55,000/- . There he found that the bundle bearing the slip of that Post Office was missing from the bag. The applicant immediately reported the matter to his higher postal authorities. On 09.02.2008 he was forced to deposit 2,00,000/- by withdrawing from his GPF account and he was also suspended. Subsequently, it was discovered that another employee of the Post Office had stolen the amount, which was recovered from him and Rs. 6.55,000/- was deposited in the treasury by concerned staff by 12.02.2008. However, the amount of Rs. 2,00,000/- which was deposited by the applicant, was not refunded to him immediately, but his suspension was revoked by the authorities. He made a representation dated 20.02.2008 for refund of that amount (Annexure A-2). However, he was asked for an explanation vide order dated 15.07.2008 (Annexure A-3). This was challenged by the applicant in OA No. 397 of 2009 and the respondents were issued a direction to the respondents by this Tribunal vide order dated 24.04.2009 (Annexure A-4) to decide the representation of the applicant within 06 weeks. Thereafter, respondents No. 3 and 4 issued orders dated 21.08.2009 (Annexure A-5) and 31.08.2009 (Annexure A-6) respectively to refund the amount of Rs. 2,00,000/- after a delay of more than one and half years. Then the applicant submitted a representation dated 09.09.2009 (Annexure A-7) for payment of interest on the principal amount and reminded vide representation dated 15.02.2011 which was rejected vide order dated 07.06.2011 (Annexure A-1), which is challenged in this OA.

3. The respondents in their Counter Affidavit have stated the following:-

- During the preliminary investigation, the applicant deposited Rs. 2,00,000/- voluntarily in the govt. account on account of loss of the government. However, subsequently the amount was recovered from another Group 'D' employee of Kanpur Head Office who deposited the said amount in three different dates last being 12.02.2008.
- The amount of Rs. 2,00,000/- was refunded to the applicant on 05.09.2009.
- Due to slackness on the part of the applicant, the amount of Rs. 6,55,000/- was missing from the cash bag and the applicant has violated the provision of Rule 343 and 351 of the Postal Manual Vol.

III and Rule 23 of Postal Manual Vol. VI part III and he was responsible for the said loss to the department as per rules. Since this happened due to negligence of the applicant, no interest is to be paid to the applicant.

- The applicant had voluntarily deposited Rs. 2,00,000/-, there was no pressure by the authorities. Further, although he was placed under suspension initially but the same was revoked subsequently.

4. In the Rejoinder affidavit the applicant reiterated the points mentioned in the OA. As pointed out by him that the representation was disposed of by the respondents refunding the amount of Rs. 2,00,000/. He contended that the claim of interest which was not considered by the respondents, although the claim for interest was included in the representation.

5. In the supplementary counter affidavit, the respondents denied the contentions in the rejoinder affidavit and reiterated that the applicant had deposited Rs. 2,00,000/- voluntarily. It is further stated that there is no rule in the department entitling him for payment of interest and that the theft occurred while the govt. cash was in his custody. After recovery of the entire case stolen, the amount deposited by him has been refunded to him.

6. Heard Shri S.M.A. Naqvi, learned counsel for the applicant on 2.5.2018, who reiterated the contentions in the applicant's pleadings. The impugned order dated 07.06.2011 stated that the applicant had deposited on 09.02.2008 Rs. 2,00,000/- voluntarily in view of his responsibility for the incident. However, subsequently the theft of government money was found to be on account of another Group 'D' staff, from whom the amount of Rs. 6,55,000/- was recovered by 12.02.2008 by the respondents. The entire loss of government money was recovered. While considering the representation in pursuance of the direction of this Tribunal, respondents decided to refund the amount of Rs. 2,00,000/- to the applicant with no interest as per the claim of the applicant is payable on this amount.

7. Shri L.S. Kushwaha proxy counsel to Shri S. Srivastava, learned counsel for the respondents requested for adjournment to argue the case. But as the case being quite old, no adjournment was allowed and taking into account the order dated 22.11.2017, learned counsel for the respondents was directed to file written submissions within a week. The written

submissions was filed by learned counsel for the respondents as per order dated 02.05.2018, reiterating the contentions stated in the counter reply.

8. From the pleadings, the contention of the applicant that he had withdrawn the amount from his GPF Account No. PLW009209 for depositing Rs. 2,00,000/- in the govt. cash, has not been denied or contradicted by the respondents. It was the responsibility of the respondents to have returned this amount within a reasonable time after recovery of full amount by 12.02.2008 from the concerned employee, who was found to responsible for loss. But the respondent did not refund the amount to the applicant, for which the applicant had to approach this Tribunal and after the order dated 24.04.2009 of this Tribunal directing the respondents to decide the representation of the applicant, steps appears to have been taken by the respondents to refund the amount to the applicant. It was the responsibility of the respondents to consider genuine representation of the applicant as per law. The applicant submitted his representation dated 20.02.2008 (Annexure A-2) and no action was taken by the respondents till he approached this Tribunal for disposal of his representation.

9. The contention of the respondents that the applicant was liable under the rules for his negligence due to which the theft occurred and, hence, no interest is payable, cannot be accepted, since without taking any disciplinary action under the CCS (CCA) Rule, 1965, the applicant cannot be held to be responsible for any loss.

10. In view of the above, I am of the considered view that the applicant is eligible for payment of interest, at least at the rate the applicant would have earned in the GPF account for delay on the part of the respondents to release the amount of Rs. 2,00,000/- to the applicant within a reasonable time of about 15 days of submission from the date of his representation dated 20.02.2008 (i.e. 06.03.2008) after full recovery of the amount from the concerned staff by 12.02.2008. Accordingly, the OA is allowed and the impugned order dated 07.06.2011 (Annexure A-1) is quashed and set aside and the respondents are directed to pay the interest at the rate of 9% per annum from the date 07.03.2008 till the date of actual payment to the applicant i.e. 05.09.2009 as stated in para 16 of the counter affidavit. This order shall be complied by the respondents within a period of two months from the date of receipt of copy of this order. There is no order as to costs.

(**Gokul Chandra Pati**)
Member (A)

/pc/