

Reserved on 20.2.2018

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH,
ALLAHABAD**

O. A. No.330/01570/2010

Pronounced on 28th March, 2018

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

R.K. Mishra aged about 61 years son of late S.D.Mishra
r/o 127/298, U Block, Nirala Nagar, Kanpur-14.

..... *Applicant*

By Advocate : Sri R.K.Shukla

Versus

1. The Union of India through the Secretary,
Department of Post, Govt. of India, Dak Bhawan,
Sansad Marg, New Delhi-1.
2. The Sr. Superintendent of Post Offices, City Dn.
Kanpur.

..... *Respondents*

By Advocate : Sri M.K. Sharma

ORDER

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

The present OA has been filed 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 to quash the respondent's order dated 24.7.08,
28.8.2009 and 31.8.2010 (Annexure A-1, A-2 and A-3).

ii) To issue a writ, order or direction in the nature of mandamus directing the respondents to pay applicant's gratuity with interest thereon on market rate.

iii) To issue any other suitable writ, order or direction in the light of the facts and circumstances of the case which this Hon'ble Court may deem fit and proper.

iv) To order cost of petition to the applicant.

2. The facts in nutshell is that the applicant joined the Postal Department on 10.11.1971 as whole time contingent. He worked on different posts and also worked as Accountant since 1991-2000.

2.1 In November, 2000, he proceeded to Telecom Department on deputation-cum- absorption basis and continued on deputation till 8.2.2005.

2.2 In 2008, much later of retirement, respondents issued a letter against the applicant for depositing Rs. 140032/- in the Govt. account alleging that the department has been put to a loss of the said amount as the applicant did not collect the undertaking from subordinate postman staff during pay fixation work of Vth Pay Commission in 1997. The recovery order dated 24.7.2008 and 28.8.2009 are annexed as Annexure No. A-2 and A-3.

2.3 The applicant sought information under RTI dated 14.3.2009 (Annexure A-7) about the date of dispatch of circular dated 14.10.97 (which is said to contain the order for collecting the undertaking from postmen staff), about

the name of authority who made endorsement thereon with date as well as the Serial no. of inward and outward register.

2.4 Respondents vide reply dated 16.4.2009 (Annexure A-8) has admitted that no record of receipt and dispatch is available in his office as well as in the office of (b) Postmaster, Kanpur Cantt HO/DDO.

2.5 It is submitted that it is merely a presumption that circular dated 14.10.1997 was served to the applicant and he did not collect the undertaking from the Postmen. It is further said that the said circular was firstly meant for Postmaster Kanpur Cantt/ DDO and not to the applicant directly. Subsequently, the respondent No. 2 could not provide any document which could have substantiated that it was received by his office and sent to DDO and in turn was made over to the applicant.

2.6 Applicant had filed O.A. No. 563/2010 before this Tribunal with the same facts and grounds with a prayer for quashing of the impugned recovery order and payment of wrongly held up gratuity of the applicant which was disposed of by the Tribunal vide order dated 25.5.2010 (Annexure A-10) directing the respondents to decide the pending representation of the applicant dated 4.1.2009 by a speaking and reasoned order.

2.6 In pursuance of the same, respondents vide order dated 31.8.2010 decided the representation of the applicant which is challenged in the present O.A.

3. Notices were issued to the respondents who in turn filed the counter reply through which it is stated that applicant while working as Accountant at Kanpur Cantt. Head Office during the period from 1.10.1997 to 31.5.1998 allowed incorrect fixation of pay and allowances to the employees of Postmen cadre in the revised scales as per recommendations of Vth Central Pay Commission. He failed to obtain undertaking from the Post Man in writing as required vide O.M. dated 14.10.1997 issued by the Govt. of India, Ministry of Finance, Department of Expenditure, Pay Commission, Implementation Cell, New Delhi and due to non-obtaining the undertaking from the Post Man cadre employees, the excess amount paid to them could not be recovered and the department sustained a loss of Rs. 4,20,095/-.

3.1 It is further stated that applicant was asked vide letter dated 30.6.2008 followed by reminders dated 24.7.2008 , 21.9.2008 and 28.8.2009 to deposit the said amount under the Head UCR at Kanpur Cantt, Head office but the applicant did not deposit the said amount. He sought information under RTI which was given to him. Applicant filed O.A. No. 563/2010 which was disposed of vide order dated 25.5.2010 directing the respondents to decide the

representation of the applicant dated 4.1.2009 and in compliance of the Tribunal's order, the representation of the applicant was decided by a reasoned and speaking order dated 31.8.2010 which is challenged in the present O.A.

4. Rejoinder reply is filed by the applicant through which he has reiterated the facts as stated in the O.A. and denied the contents of the counter reply.

5. Heard the learned counsel for applicant Sri R.K. Shukla and learned counsel for respondents Sri M.K. Sharma and perused the pleadings available on record.

6. Counsel for applicant has reiterated the facts as stated by him in the Original Application and submitted that applicant has only challenged the order passed by the respondents on his representation in compliance of the Tribunal's order in respect of amount of recovery of Rs. 140032/-. So far as other reliefs are concerned, since the applicant has confined his prayer only for quashing of the order passed by the respondents dated 31.8.2010 only in respect of recovery of amount, as such there is no need to deal the same.

7. Counsel further submitted that applicant worked on various posts and finally continued to work in the department of Telecom till 8.2.2005 and thereafter he was retired from service. It was only in 2008, much later of retirement of the applicant, the respondent No. 2 awoke

from deep slumber and issued a formal letter against the applicant for depositing Rs. 140032/- in the Govt. account alleging that department has put to a loss of the said amount as the applicant did not collect the undertaking from subordinate Postmen staff during pay fixation work of Vth Pay Commission in 1997. Respondents further send reminders on 24.7.2008 and 28.8.2009 for depositing the above amount. The applicant counsel further submitted that applicant in his representation clearly mentioned that Sr. Superintendent Post Offices, Kanpur City is not the competent authority to impose the statutory penalty of recovery as after retirement, only President is empowered to impose the penalty under Rule 9 of the CCS (Pension) Rules, 1972 but respondents have failed to consider the averment made by the applicant in his representation. When the respondents have failed to take any decision, the applicant referred the matter to the higher authority i.e. Secretary, Department of Post, New Delhi (Respondent No. 1) for intervention. Respondent No. 1 did not respond and adopting the red tapism, sent the matter to Sr. Supdt. Post Offices, Kanpur City against whom the petition was made. In reply to RTI, respondent No. 1 was pleased to make half hearted reply. Counsel for applicant further submitted that respondents have acted on the presumption that circular dated 14.10.1997 which contain the order for collecting the undertaking from Postmen staff reached to the Postmaster

Kanpur Cantt and was served to the applicant but in fact the said circular was firstly meant for the Postmaster Kanpur Cantt/DDO and not to the applicant directly and subsequently, the respondent No. 2 could not provide any document which could have substantiated that it was received by his office and sent to DDO and in turn was made over to the applicant. Rather absence of record goes to prove that the circular in question was not received from the higher authorities in the office of Sr. Supdt. Post Offices, Kanpur City. Thus, the respondents have failed to prove that this circular was received in the office of Sr. Supdt. Post Offices, Kanpur City. The averment of Mr. Nankoo Lal, the then Post Master clearly reveals that no circular relating to collection of undertaking was received by him. Thus when the circular was not received by office in-charge, how the applicant comes in the picture. Counsel further submitted that while deciding the representation of the applicant, the issue of codal formalities such as obtaining the permission of the President, inquiring the matter and listing the side of applicant and awaiting the out come of an inquiry to ascertain the official at fault have deliberately and knowingly left untouched and unnecessary the litigation has been thrust upon the applicant. Counsel further submitted that respondents have failed to explain loss of Rs. 420,095/- and in turn recovering Rs. 140032/- from the applicant. Without

ascertaining exact loss, the recovery is against the law. Counsel further submitted that no show cause notice was served to the applicant so as to clarify his position nor any inquiry has been conducted to ascertain the loss to the Govt. and to what extent of loss. The whole action of the respondents is ex-parte and not following the principle of natural justice. Counsel for applicant further submitted that respondents cannot recover the amount as directed by them through impugned order and the OA is liable to be allowed and since the respondents have recovered the amount from the applicant, the same shall be refunded to him.

8. Counsel for respondents submitted that applicant while working as Accountant at Kanpur Cantt Head Office during the period from 1.10.1997 to 31.5.1998 allowed incorrect fixation of pay and allowances to the employees of Postmen cadre in the revised scale as per recommendation of Vth Central Pay Commission and he failed to obtain undertaking from the Postmen in writing as required vide O.M. dated 14.10.1997 and due to non-obtaining the undertaking from the Postmen cadre employees, the excess amount was paid to them and could not be recovered and the department sustained a loss of Rs. 4,20,095/-. Thereafter the applicant was asked to deposit the said amount. The applicant moved a representation and the said representation was rejected by

the respondents in compliance of the order passed by this Tribunal. Counsel further submitted that applicant was under obligation to collect the undertaking and in absence of undertaking, the respondents could not recover the said amount from the Postmen employees. Counsel further submitted when the respondents tried to recover the said amount from the Postmen, Union of Postal Employees filed an O.A. No. 600/2006 before the Principal Bench of this Tribunal who decided the same vide judgment dated 6.9.2006 and clearly observed that since the respondents have failed to take undertaking from the Postmen, the amount cannot be recovered from them and when the matter came into the knowledge of the respondents, they made enquiry and have come to the notice that applicant has done the work of fixation of pay and not collected undertaking from the Postmen employees which clearly caused loss to the Govt. and respondents after fixing the responsibility on the three persons, asked the applicant to deposit Rs. 140032/- of his share. Counsel further submitted that O.A. has no merit and is liable to be dismissed.

9. Court is unable to accept the contentions raised by the learned counsel for respondents.

10. First of all, before issuing the order of recovery of Rs. 140032/-, no show cause notice was given to the applicant asking his explanation and no opportunity was granted to

the applicant to demonstrate his version or his defence before the competent authority which clearly violates the Principle of Natural Justice. No person shall be condemned unheard . In the present case, the applicant was not given any opportunity to explain and respondents have passed the order in arbitrary manner.

11. So far as dismissal of representation of the applicant is concerned, respondents have failed to take into consideration the points raised by the applicant in his representation regarding the power of competency provided under CCS (CCA) rules to deduct any amount from the gratuity of the applicant who has already retired. Further, the applicant has taken a plea that the circular which provides to take undertaking from the Postmen, this circular was never served upon the applicant. Respondents have failed to consider this aspect also while deciding the representation of the applicant. Since the applicant only restricted his relief in respect of quashing of order passed by respondents on his representation to the extent of recovery of Rs. 140032/- and for that purpose, no notice was given to the applicant nor any opportunity was provided to the applicant to defend his case, the court found it proper to set aside that part of the order passed on the representation of the applicant that dealt with recovery of Rs. 140032/- and other part of the order will remain intact. Since respondents have not given any show cause

notice to the applicant to defend himself, Court has left no option but to remit the matter to the respondents to issue a show cause notice to the applicant along with proper documents and evidence for recovering Rs. 140032/- from the applicant and thereafter, the applicant will furnish his explanation within time framed and then respondents will pass a reasoned and speaking order taking into consideration the rules and facts stated by the applicant in his reply and if required, the applicant may also given opportunity of personal hearing.

12. In view of the above, O.A. is partly allowed and set aside that part of the order passed on the representation of the applicant that dealt with recovery of Rs. 140032/- and other part of the order will remain intact. The matter is remitted to the respondents to issue a show cause notice to the applicant along with proper documents and evidence for recovering Rs. 140032/- from the applicant and thereafter, the applicant will furnish his explanation within one month and then respondents will pass a reasoned and speaking order taking into consideration the rules and facts stated by the applicant in his reply within one month thereafter and if required, the applicant may also be given opportunity of personal hearing. No order as to costs.

(Justice Dinesh Gupta)
Member (J)

HLS/-

