

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH,  
MUMBAI .**

**O.A.582/2013**

**Dated this Wednesday the 24<sup>th</sup> day of October, 2018.**

**Coram: Dr.Bhagwan Sahai, Member (A)  
Shri R.N. Singh, Member (J) .**

Baliram Ramaji Ghubale,  
Aged 55 years,  
Working as Postal Assistant,  
Department of Post,  
Aurangabad Head Office,  
Aurangabad - 431 001.

R/o House No.H-2/12, Navnath Nagar,  
Behind Power House,  
Aurangabad - 431 001. .. Applicant.

**( By Advocate Ms.Priyanka Mehndiratta ) .**

**Versus**

1. The Union of India, through  
the Secretary,  
Department of Posts,  
Dak Bhavan, Sansad Marg,  
New Delhi - 110 001.
2. The Director of Postal Services,  
O/o Postmaster General,  
Aurangabad Region,  
Aurangabad - 431 002.
3. The Senior Superintendent of  
Post Offices,  
Aurangabad Division,  
Aurangabad -431 001. .. Respondents.

**( By Advocate Shri R.R. Shetty ) .**

**Order reserved on : 06.09.2018  
Order delivered on : 24.10.2018.**

**O R D E R**

**Per : Dr.Bhagwan Sahai, Member (A) .**

1. Through this O.A. the applicant Shri

Baliram R. Ghubale seeks the following reliefs:-

**1(a).** quashing and setting aside of -

**(i).** order dated 07.06.2013 which was a charge-memo under Rule 16 of CCS (CCA) Rules, 1965 for misconduct / misbehaviour;

**(ii).** order dated 06.06.2013 for holding inquiry under Rule 14 of the CCS (CCA) Rules, 1965 for misconduct / misbehaviour;

**(iii).** order dated 31.01.2013 ordering withholding of one increment of the applicant due on 01.07.2013 for a period of one month without cumulative effect;

**(iv).** Charge-memo dated 26.11.2012 for taking action against the applicant under Rule 16 of the CCS (CCA) Rules, 1965 for misconduct/misbehaviour; and

**(v).** letter dated 20.10.2012 which was a reply to his application dated 15.10.2012 regarding notice for voluntary retirement;

**1(b).** declaration that the applicant legally retired from service voluntarily under Rule 48 A of the CCS (Pension) Rules, 1972 from 01.11.2012;

**1(c).** direction to the respondents to notify date of retirement of the applicant and issue his relieving order with effect from 01.11.2012 FN.;

**1(d).** direction to the respondents to pay pension and all retirement benefits to the applicant along

with payment of interest @18% p.a. on the delayed payment of pension and other retiral benefits; and

**1 (e) .** direction to the respondents to treat the period of duty served by the applicant after 01.11.2012.

**2. Facts of the case stated in brief:**

**2 (a) .** The applicant was posted as Sub-Post Master, Parsoda, Dist. Aurangabad in 2012. After completion of 31 years, 10 months and 24 days of qualifying service as on 01.06.2012, he submitted to the Director of Postal Services, O/o PMG, Aurangabad Region notice for his voluntary retirement under Rule 48 A of CCS (Pension) Rules, 1972 from 01.09.2012.

**2 (b) .** On being advised by the respondents, subsequently he submitted another notice dated 01.08.2012 to respondent No.3 for allowing him to retire from 01.11.2012. On 27.08.2012, with reference to his notice of 01.08.2012, he was asked to submit undertaking along with notice of his voluntary retirement. He submitted the undertaking. On 07.09.2012 the applicant was asked to speak with Sr. Superintendent of Post Offices, Aurangabad i.e. respondent No.3 with reference to his grievances.

**2 (c) .** On 11.10.2012 he was asked to postpone his voluntary retirement till next rotational transfers

or ensuing recruitment. On 15.10.2012 the applicant requested the respondent No.3 to reconsider his notice of voluntary retirement from 01.11.2012. Since he had not been relieved, on 12.11.2012, he submitted his request along with copies of his earlier notice of voluntary retirement requesting to relieve him for voluntary retirement immediately. Thereafter the applicant continued in service and kept requesting the respondents for accepting his request.

**2 (d) .** On 26.11.2012 the applicant was issued a charge-memo, to which he submitted his defence on 08.12.2012 requesting for copies of certain documents and to extend the time limit of submission of his representation for further 10 days from the date of receipt of record of the documents.

**2 (e) .** On 21.12.2012, the respondent No.3 replied to the applicant enclosing therewith relevant copies of orders/instructions and clarifying that it was not applicable in his case at that stage to grant extension of 10 days for submitting representation. The applicant's request for conducting inquiry was not accepted and a penalty order was issued on 31.01.2013.

**2 (f) .** On 10.07.2013 the applicant submitted a representation against the proposed disciplinary

action and sought either to grant him voluntary retirement or to free him from the charges stated in the charge-memo dated 26.11.2012.

**2 (g) .** As per order of 31.01.2013, one increment of the applicant due on 01.07.2013 was withheld for a period of one month without cumulative effect.

**2 (h) .** Against that order he filed an appeal on 04.03.2013. On 08.03.2013, with reference to allegations made by the applicant against Shri N.S. Wankhede, Sr. Superintendent of Post Offices, Aurangabad, during the meeting of Sub-Postmasters on 03.03.2013, clarification/explanation was sought from him.

**2 (i) .** On 13.03.2013 the applicant submitted his explanation tendering unconditional apology for the unimaginable act committed by him on 03.03.2013. He sought pardon of the respondent No.3 by taking back his own words, etc. He also promised in writing to be more obedient and careful in future and requested for accepting his apology.

**2 (j) .** Thereafter another charge-memo dated 06.06.2013 was served on him. With reference to charge-memo dated 07.06.2013, the applicant submitted his reply on 25.06.2013 requesting for exoneration from the charges and to give him chance to improve in future and promised for not repeating

facilitation of stealing of cash from the Post Office counter.

**2 (k) .** Subsequently the respondents also appointed Presenting Officer with reference to the charge-memo dated 06.06.2013. In the above background, the applicant has sought various reliefs through this O.A.

**3. Contentions of the parties:**

In his O.A. memo and rejoinder the applicant has contended that -

**3 (a) .** the impugned orders dated 07.06.2013, 06.06.2013, 31.01.2013, 26.11.2012 and 20.10.2012 are illegal, unjust and unfair;

**3 (b) .** the respondents have misused their power to initiate disciplinary proceedings just to harass the applicant. The Respondent No.3 has no authority to initiate the proceedings against the applicant and he stands retired on 01.11.2012. The action of the respondents in not issuing notification for voluntary retirement of the applicant is illegal and void;

**3 (c) .** the applicant is legally retired from service as he had completed more than 32 years of qualifying service at the time of notice for voluntary retirement;

**3 (d) .** the submission of the respondents that

several advisory letters had been issued to the applicant to delay his voluntary retirement to which the applicant did not submit any reply on merits. The applicant continued to be in service because he was not relieved and he could not afford a disciplinary proceedings against him for not properly handing over the charge after retirement;

**3(e).** the claim of the respondents that the last date in the notice of voluntary retirement was 01.11.2012 but prior to that date on 29.10.2012 the applicant had been asked to take voluntary retirement after fresh recruitment in 2012. That letter of 29.10.2012 was not a rejection of his voluntary retirement notice. Instead of relieving the applicant on due date of voluntary retirement, the respondents initiated disciplinary proceedings against him, which was malafide and the apology tendered by the applicant does not wash away his voluntary retirement;

**3(f).** the penalties mentioned by the respondents were awarded after expiry of period of voluntary retirement notice. The respondents compelled the applicant to continue in service claiming shortage of staff but it was done with ill motive.

The respondents contend that -

**3(g).** the applicant had been informed on

29.10.2012 (Annex R-1) asking him to apply for voluntary retirement after the fresh recruitment of 2012. With that communication, the notice of the applicant for voluntary retirement stood rejected;

**3(h).** the applicant was issued two charge-sheets, one for major penalty issued on 06.06.2013 and another for minor penalty on 07.06.2013 which included gross misconduct committed by him and, therefore, the O.A. deserves to be dismissed with cost;

**3(i).** the applicant on his own request was posted as SPM, Parsoda where he joined on 24.05.2012;

**3(j).** due to shortage of staff it was not possible to make arrangement for his relieving from the single handed SPM as the rotational transfer period for SPM for that year was already over. Hence the applicant was advised for postponing his voluntary retirement in view of acute shortage of staff in the Division because of existing vacancies and superannuation retirement during 2012-2013 and, therefore, he was informed on 07.09.2012 to submit his grievance for redress, if any, instead of seeking of voluntary retirement.

In response to that communication, the applicant along with union representative personally met the SSPO, Aurangabad i.e. Respondent No.3 and



explained about his problem related to transportation and residence at Parsoda, and wanted to be transferred back to Aurangabad Head Office;

**3 (k) .** when relieving arrangement could be made for Parsoda SO, as per his request the applicant was transferred back to Aurangabad HO on 31.03.2013. When the applicant himself promised to be more obedient and careful in future and to work with full zeal, and with his joining back on transfer at Aurangabad, his grievance related to seeking of voluntary retirement stood settled;

**3 (l) .** because of wild allegations made by the applicant against his appointing authority during the meeting of SPMs on 03.03.2013, an explanation was sought from him under Rule 14 on 06.06.2013 as to why disciplinary action should not be initiated against him;

**3 (m) .** the charge-sheet issued on 07.06.2013 was because the applicant had failed to prevent entry of strangers and miscreants inside the S.B. Counter which was in total violation of relevant rules. This led to stealing away of Rs.80,000/- from the S.B. Counter of Aurangabad HO by those miscreants. The applicant is thus responsible for the loss of cash of Rs.80,000/- from the custody of his PA as he was working as APM in Aurangabad HO on 10.06.2011;

**3 (n) .** his representation to Chief Post Master General, Mumbai dated 26.08.2012 was pending before the concerned authority, but without awaiting decision on it, the applicant has filed this O.A.;

**3 (o) .** the applicant has a history of repeated punishments such as (i) withholding of one increment due on 07.07.1983 for a period of 3 years for claiming LTC advance by submitting tickets of other persons, (ii) reduction in his pay for a period of two months vide order dated 28.08.2008 for throwing away the office key on the table of ASP (HQ), throwing his own bag on the table and use of unparliamentary language towards the supervisory authority, (iii) withholding of one increment for one month on 31.01.2013 for failure to generate computerised daily account from 09.08.2012 to 24.11.2012 while working as SPM, Parsoda, and (iv) Censure vide office memo dated 28.06.2013 for his failure to object entry of strangers inside the SB counter on 10.06.2011 because of which the miscreants stole away Rs.80,000/- cash;

**3 (p) .** the applicant has filed this O.A. because of the disciplinary action initiated against him for serious charges of misconduct and failure in performing his duty. The Respondent No.3 is the appointing authority of the applicant, he is

competent to refuse voluntary retirement on administrative grounds on account of disciplinary action pending against the applicant. When his representation is pending before the Chief Post Master General, Maharashtra Circle, Mumbai filing of this O.A. is at a premature stage. Therefore, it should be dismissed.

**4. Analysis and conclusions:**

**4 (a) .** We have considered the contents of the application memo, reply dated 20.02.2014 of the respondents and also submissions made by the respective counsel for the parties.

**4 (b) .** We find that the applicant in this O.A. is seeking contradictory reliefs.

**(i)** - He seeks declaration that he retired from service voluntarily under Rule 48 A of CCS (Pension) Rules, 1972, with effect from 01.11.2012 and seeks direction to the respondents to notify his date of retirement, issuance of relieving order with effect from 01.11.2012, and payment of pension and retirement benefits to him along with penal interest. But at the same time he also seeks direction to the respondents to treat the period after 01.11.2012 for him as on duty.

**(ii)** - He seeks setting aside of the letter dated 20.10.2012 which was in fact a reply to his

application of 15.10.2012 regarding notice for seeking voluntary retirement.

**(iii)** - Also he first requested on 01.06.2012 for voluntary retirement from 01.09.2012 claiming it after completing 31 years 10 months and 24 days of service as on that day, but he submitted his notice under Rule 48A of CCS (Pension) Rules, 1972 which is a provision related to retirement on completion of 20 years of qualifying service and requires acceptance of such notice by the competent authority.

**(iv)** - Then he submitted another notice under Section 48 A on 01.08.2012 seeking voluntary retirement with effect from 01.11.2012. When he was persuaded by his superior officer to postpone his voluntary retirement till next rotational transfers or fresh recruitment vide letter dated 11.10.2012, he requested for reconsideration of his notice for voluntary retirement and to permit him to retire voluntarily from 01.11.2012.

**(v)** - He continued to be in service and on 12.11.2012 he applied to Director of Postal Services, Aurangabad Region along with copies of his earlier notice, details of medical treatment and correspondence with SSPO, Aurangabad requesting for relieving him immediately.

In short, all this record reveals that the applicant applied for voluntary retirement on 01.06.2012 under Rule 48 A, on persuasion by his superior officers he agreed not to press for that notice and delayed his request for voluntary retirement but submitted it again to retire from 01.11.2012. Then he continued in service in the department and duly participated in the disciplinary proceedings conducted against him. So the applicant seems either to be a totally confused person or has tried at every stage to be too clever by half.

**4 (c) .** While we do not find any infirmity in the disciplinary proceedings conducted by the respondents against him, but find that a conditional reply was submitted by the applicant on 10.07.2013 against the proposed disciplinary action seeking either to grant him voluntary retirement or to free him from the charges mentioned in the charge-memo dated 26.11.2012. We also take note of very strange contents in his reply dated 13.03.2013 to the letter from SSPO Aurangabad dated 08.03.2012. In his reply he apologized for allegation no.2 mentioned in the letter of the SSPO and with reference to allegation no.3 in that letter, he begged pardon of the SSPO, Aurangabad and sought to take back his words. He sought consideration of his submission with full

mercy and undertook to be more obedient and careful in future and to work with full zeal.

**4 (d) .** Then in his reply on 25.06.2013 (page 59-60 Annex A-3 of the OA) he also confessed that he did not object to entry of strangers inside the counter when theft of Rs.80,000/- from the SB Counter took place in his office. He sought exoneration from the charges and to give him chance to improve in future and promised not to repeat such lapses or negligence in future.

These facts reveal a very bizarre scenario of gross indiscipline on the part of the applicant - he first indulged in abuses and wild allegations against the Appointing Authority and then submitted apology. We also note that at one stage he took a plea of victimhood on ground of belonging to SC community. This misconduct deserved major penalty. Even then the Respondent No.3 has been too considerate for the applicant.

**4 (e) .** He had submitted his voluntary retirement notices under Rule 48 A and seeks relief in this O.A. under that rule item (f) on page 9. As per the provisions of 48 A(2) a notice of voluntary retirement given under Rule 48 A(1) requires acceptance by the Appointing Authority. In this case the Appointing Authority in public interest

persuaded him to postpone his voluntary retirement to which the applicant agreed and thus continued in service. The Respondent No.3 also redressed his grievances. Then the applicant himself continued in service and even at the time of filing of this O.A. on 31.07.2013, he was in service. This persuasion by the concerned authority was in public interest and amounted to deemed refusal to accept applicant's notice of voluntary retirement from 01.11.2012 as per the provisions of the rule 48(A)(2). We do not find any infirmity in this. Therefore this O.A. is totally devoid of merit.

**4 (f).** The applicant claims to benefit from a decision of Ahmedabad Bench of the Tribunal in O.A.403/2004 decided on 13.01.2005 - Ramesh Sahelwala Vs. Union of India and others. However, the case in that O.A. was not exactly similar to the present case. It was a case of submission of notice for voluntary retirement under Rule 48, whereas in the present case the applicant had submitted his notice of voluntary retirement on 01.06.2012 and 01.08.2012 under Rule 48 A under which notice of voluntary retirement requires acceptance by the Appointing Authority and in the present case acceptance was not given and in fact on being persuaded to postpone his retirement, the applicant

has himself continued in service. He is in service now also. When these are the facts, the claims of the applicant for declaring him retired from 01.11.2012 and payment of retiral benefits therefrom are not only without any merits, these claims are paradoxical.

**5.        Decision**

In view of the above analysis of facts of the case, the OA submitted by the applicant is totally devoid of merit, it is an exercise in wasteful litigation. Hence the O.A. is dismissed with cost of Rs.5,000/- to be paid by the applicant to the respondents as cost of litigation within one month of receipt of certified copy of this order.

**(R.N. Singh)**  
**Member (J) .**

**(Dr.Bhagwan Sahai)**  
**Member (A) .**

H.