

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH, K O L K A T A

O.A. NO. 829 OF 2013

Reserved on – 30.01.2018

Date of Order – 22.3.2018

C O R A M

HON'BLE MRS. BIDISHA BANERJEE, MEMBER (JUDL.)

HON'BLE MRS. JAYA DAS GUPTA, MEMBER (ADMN.)

.....

Sri Sunil Kumar Bose, S/o Late Panchkari Bose, aged about 60 years,
Worked as MTS (Group-D), Howrah Head Office, residing at 75/15,
Baisnab Para Lane, Police Station-Sibpur, Howrah, Distt.-Howrah-711
101.

.....**Applicant.**

By Advocate:- Mr. A. Chakraborty;
Ms. P. Mondal.

Vs.

1. The Union of India, through the Secretary, Ministry of,
Communication, Deptt. Of Posts, Dak Bhawan, New Delhi-110
001.
2. The Chief Post Master General, West Bengal Circle, Yogayog
Bhawan, C.R. Avenue, Kolkata -700 012.
3. The Sr. Superintendent of Post Offices, Howrah Division,
Kadamtala, Howrah – 711 101.
4. The Sr. Post Master, Howrah H.O., Howrah-711 101.
5. The Director of Accounts (P), Pension Section, Kolkata-700 001.

.....**Respondents.**

By Advocate :- Mr. S.K. Ghosh

ORDER

Per Bidisha Banerjee, Member [Judl.] :- This application has been filed
seeking the following reliefs:

"8(a) Speaking order dated 24.07.2013 issued by Sr. Post
Master, Howrah can not be tenable in the eye of law and as such
same may be quashed.

(b) Charge sheet issued against the applicant after 13 years can not be tenable in the eye of law and as such may be quashed.

(c) An order do issue directing the respondents to release the full pension and pensionary benefits including the DCRG, leave salary, commuted value of pension and duty pay in favour of the applicant at an early date.

2. The case of the applicant in nutshell, is as under:-

(i) The applicant while working as MTS (Group-D), Howrah H.O. under the authority of Sr. Postmaster, Howrah, retired from service with effect from 31.12.2012, on attaining the age of superannuation.

(ii) On 29.01.2013 an Office Order bearing Memo No. CP-1/Pen-03/12-13/S.K. Bose was issued by the Sr. Post Master, Howrah, whereby the applicant was informed that in pursuance of Rule 71 of CCS (Pension) Rules, 1972 sanction is accorded to the payment of Provisional Pension @ Rs.4869 + Dearness Relief per month w.e.f. 01.01.2013. Subsequently, on 11.02.2013 another Office Order bearing the same Memo No. CP-1/Pen-03/12-13/S.K. Bose was issued by the Sr. Post Master, Howrah clarifying the amount of Provisional Pension as Rs. 5410 + Dearness Relief per month.

(iii) Being aggrieved with the office orders dated 29.01.2013 and 11.02.2013 the applicant moved an Original Application, being OA No. 230 of 2013, seeking the following reliefs:-

(a) Office Order being No. CP-1/Pen-03/12-13/S.K. Bose dated 29.01.2013 & 11.02.2013 issued by the Sr. Post Master, Howrah are bad in law and therefore, the same may be quashed.

(b) An order to issue directing the respondents to release the full pension and pensionary benefits including the DCRG, Leave Salary, Commuted Value of Pension and duty pay in favour of the applicant at an early date.

(iv) The Original Application was disposed of on 16.04.2013 with the following order:-

".....the respondents are directed to decide the representation of the applicant dated 19.02.2013, and pass a reasoned and speaking order in accordance with law within a period of three months from the date of receipt of a copy of this order. The decision so taken be communicated to the applicant as well."

(v) The applicant was called to appear before the Sr. Post Master, Howrah. During personal hearing it was stated by the Sr. Post Master that a major penalty charge-sheet is pending and final pension cannot be released and that charge sheet was sought to serve upon the applicant but he refused to take delivery of the letter dated 19.12.2012. During hearing a copy of the charge-sheet was handed over to the applicant.

(vi) The applicant has claimed that the copy of the charge-sheet was not served upon the applicant before his retirement. Moreover, it was evident from the charge-sheet that charges related to the period from 01.02.1992 to 04.12.2000 and as per Rule, charges within four years before the date of retirement could be raised whereas, evidently there was a delay of 12 years in initiating the disciplinary proceedings and no satisfactory explanation, for inordinate delay in issuing charge memo, was stated.

3. The averments advanced by the applicant on delayed initiation of proceedings were as under:-

(i) The Hon'ble Apex Court in case of **M.V. Bijlani vs. Union of India**, reported in 2006 SCC (L&S) 919 had been pleased to hold that disciplinary proceedings initiated after six years and continued for a period of 7 years evidently prejudiced the delinquent officer.

(ii) The Hon'ble Apex Court in the case of **State of Madhya Pradesh vs. Bani Singh**, reported in 1991 (16) ATC 514, had ruled that when there is a delay of 12 years in initiating disciplinary proceedings it would be unfair to permit that departmental enquiry to proceed at this late stage.

4. Per contra, the respondents stated as under:-

(i) A disciplinary proceeding under Rule 14 of the CCS (CCA) Rules, 1965 was initiated against the applicant Shri Sunil Kumar Bose, and a charge sheet was accordingly issued vide Senior Postmaster, Howrah Head Post Office Memo No. PF/Sunil Kumar Bose dated 15.12.2012 and sent to him on the same day through registered letter with A/D No. E R W359718497 IN dated 15.12.2012. While on duty in Mail Section of Howrah Head Post Office as MTS on 17.12.2012, Sri Bose snatched the said Regd. Letter bearing No. ERW359718497 IN, dated 15.12.2012, from the concerned sorting postman from sorting table and gone through the matter contained in the envelope upon opening it, before taking delivery officially. Said Sri Sunil Kumar Bose thereafter neither took delivery of the letter nor signed on the delivery slip and left the office immediately after the incident on 17.12.2012 at 09.30 a.m. (duty hours 06.00 a.m. to 14.00 p.m.) while on duty without permission of the competent authority. Said Sri Bose, thereafter, submitted one leave application by speed post with medical certificate praying for commuted leave (on medical ground) for the period 18.12.2012 to 31.12.2012 i.e. till the date of his retirement on superannuation and Sri Bose never attended Howrah Head Post Office till 31.12.2012. A copy of the memorandum of charge sheet dated 15.12.2012 was sent to said Sri Bose through Public Relation Inspection (Postal) as special messenger at his residential address at 75/15 Baishnab Para Lane, Howrah-711 101 on 19.12.2012 and also by registered post. On both the occasions said Sri Bose refused to take delivery of the letter. Thus, several attempts by Howrah Head Post Office to physically deliver the memorandum of charge sheet dated 15.12.2012 to Sri Sunil Kumar Bose before his retirement in different ways were made but due to his refusal to take delivery of the charge-sheet dated 15.12.2012 could not be physically served to Sri Bose within the date of his retirement on superannuation.

Said Sri Bose refused to take delivery of Howrah Head Post Offices letters bearing No. PF/Sunil Kumar Bose dated 19.12.2012 and 31.12.2012 relating to the disciplinary action against him sent through registered post at his residential address. He also refused to take delivery of Howrah Head Post Office letter No. PF/Sunil Kumar Bose dated 22.03.2013 issued to him at his residential address through registered post on the same matter.

All the aforesaid instances of refusals indicate that said Sri Sunil Kumar Bose, ex-MTS, Howrah Head Post Office was well acquainted with the disciplinary action initiated against him but feigned ignorance by way of cleverly and wilfully evading the receipt of the charge-sheet issued against him. As per Rule 30 of CCS(CCA) Rules, 1965 read with the instructions contained in DG, P&T letter No. 101/1/65-SPA, August, 1965, if the document sent by Registered Post, Acknowledgement due, is not accepted by the addressee and is returned by the Post Office to the sender, further action may be taken as if the document has been served and due notice has been given to the employee concerned. So, it may reasonably be concluded that the charge-sheet dated 15.12.2012 may be deemed to have been served to him.

(ii) The respondents have further averred that, the disciplinary proceeding against Sri Sunil Bose, ex-MTS, Howrah HO is under process and the same has not yet been completed, and therefore as per Departmental Rules, provisional pension has been issued to said Sri Sunil Kumar Bose, under Rule 69 of CCS (Pension) Rules, 1972 and leave encashment has duly been released in favour of Sri Sunil Kumar Bose.

(iii) As per Rule 9(4) read with Rule 9(6) of CCS (Pension) Rules, 1972, a provisional pension as provided in Rule 69 has been sanctioned.

(iv) Further, it has been stated that, the applicant moved Hon'ble CAT, Calcutta Bench and filed OA No. 230 of 2013 against non-

receipt of his regular pensionary benefits which was disposed of on 16.04.2013 with certain direction to the respondents. In pursuance thereof, a speaking order, dated 24.07.2013, was issued by the Senior Postmaster, Howrah Head Office, being the competent authority, with reference to his representation dated 19.02.2013, which was delivered to said Sri Bose on 24.07.2013.

(v) That, at present the applicant is drawing provisional pension since the Disciplinary proceedings under Rule 14 of the CCS (CCA) Rules 1965 has been converted into the proceedings under Rule 9 of the CCS (Pension) Rules, 1965 consequent upon his retirement on superannuation dated 31.12.2012 (A/N).

5. Learned counsel for the applicant would vociferously submit that in view of the decision in **Union of India vs. Dinanath Santaram Karekar & Ors. (1998 (7) SCC 569)** the charge-sheet had to be served, else it could not be deemed to have taken effect. Even if served, the stale charges were unsustainable and if not served prior to retirement the stale charges had to be dropped in terms of Rule 9(4) of CCS (Pension) Rules.

6. The issues, therefore, to be determined were two folds:-

(i) Whether charge-sheet was served prior to the retirement of the applicant. If so, whether the stale charges were sustainable.

(ii) In the event the respondents failed to serve charge memo prior to retirement, whether the charges relating to a period more than four years prior to retirement, could be sustained.

7. **Our findings:-**

(i) **On service of charge-sheet -**

Several attempts were made by the respondents, prior to the retirement of the applicant, to serve the charge memo, but all their efforts went in vain as the applicant cleverly evaded service and at times even refused to put his signature on the delivery slip. However, his "refusal" ought to be viewed as good service, and the applicant being well aware of the initiation of proceedings, vide charge memo, would be estopped from claiming that it could not take effect prior to his retirement due to its non-service.

In **Dinanath Santaram Karekar** (supra) the Hon'ble Apex Court having found the service of the charge-sheet and the show cause notice as insufficient, set aside the order of punishment which is not the case here, due to enumerations supra. Service of charge memo here cannot be treated as insufficient.

It is axiomatic and settled law in view of decisions infra that the "communication" of impugned order is essential and not its "actual service" because till the order is issued and actually sent out to the person concerned, the authority making such an order would be in a position to change his mind and modify it, if thought fit. But once an order is sent out, it goes out of control of such authority and therefore, there would be no chance whatsoever of changing his mind or modifying it:

- (i) **State of Punjab vs. Khemi Ram** [(1969) 3 SCC 28];
- (ii) **Bacchittar Singh vs. State of Punjab** (AIR 1963 SC 395);
- (iii) **State of Punjab vs. Amar Singh Harika** (AIR 1966 SC 1313); and

In **S. Partap Singh vs. State of Punjab** (AIR 1964 SC 72) Hon'ble Apex Court ruled "in our view once an order is issued and it is sent out to the Government servant concerned, it must be held to have been communicated to him, no matter when he actually received it."

(ii) On applicability of Rule 9(2) (b) (ii) supra –

Due to initiation of proceedings prior to retirement of the applicant with the communication of charges as stated supra, we hold that bar under Rule 9(2)(b)(ii) of the CCS (Pension) Rules would not come into play.

(iii) On sustainability of stale charges –

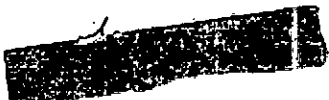
Since the charges were initiated and communicated to the applicant before his retirement there was no bar under Rule 9 sub-rule 2(b)(ii) of CCS (Pension) Rules to proceed against such charges which related to incidents of 1992-2000 i.e. more than 4 years from the date of retirement, in view of the law laid down in (i) Secretary, Ministry of defence vs. Prabhash Chandra Mirdha [(2012) 11 SCC 565]; (ii) Inspector General of Police & Anr. Vs. Thavasiappan (AIR 1996 SC 1318) ; and (iii) Steel Authority of India & Anr. Vs. Dr. R.K. Diwakar (AIR 1998 SC 2210).


8. Learned counsels submitted that the proceedings have ended in 2014 but yet not concluded with a final order, as advice of UPSC has been sought for since the applicant is now a retired employee.

9. In view of such, since more than 5 years have elapsed after the retirement of the employee, the respondents are directed to expedite the matter with UPSC so that a final order is arrived at within three months, failing which to release the dues with an undertaking

from the applicant to refund the same subject to the outcome of the proceedings.

10. With the aforesaid direction, the OA is disposed of. No costs.


(Jaya Das Gupta)
Member (Admn.)


(Bidisha Banerjee)
Member (Judl.)

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