

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

O.A. No.050/00934/2015

Reserved on: 24.08.2018
Date of Order: 11.10.2018

C O R A M
HON'BLE MR. JAYESH V. BHAIKARIA, JUDICIAL MEMBER

Hafiz Mian, son of late Roshan Mian, aged about 77 years, resident of village: Village Kauriya, P.S. Bhagwanpur, District- Siwan.

..... Applicant.
By Advocate : Shri Arbind Kumar

-Versus-

1. Union of India through Chief P.M.G., Patna.
2. The D.A. (P), Patna
3. The Superintendent of post officer Siwan, District- Siwan.
4. The Accounts Officer, Siwan, District- Siwan.
5. The Post Master Sub-Post office Basantpur, District- Siwan.
6. The Account officer O/o Post Master General, Northern Region, Muzaffarpur.

..... Respondents.

By Advocate(s) :- Shri H.P.Singh

O R D E R

Per Mr. Jayesh V. Bhairavia, M (J) :- This OA has been filed by the applicant seeking quashing the order dated 01.10.2015 issued under the signature of Superintendent of Post offices, Siwan Division, Siwan, District- Siwan vide memo no. C/27/08/2002/H.Mian/SWN and for a direction to the respondents to refund Rs.199,302.75/- credited by the applicant, for payment of rest amount of his suspension period from 08.09.1994 to 22.09.1997, and also for grant of promotional benefit in HSG-I grade on the ground of his acquittal in the criminal case vide order dated 21.03.2013.

2. The brief facts of the case as submitted by the applicant is as below:-

2.1 The applicant was an employee of Department of post and superannuated from the post of P.A on 31.10.2002. Since he was arrayed as an accused in a P.S. Case No. 106/95 along with two others, he was suspended on 08.09.1994 and thereafter the said suspension of the applicant was revoked on 18.09.1997/22.09.1997. However, the applicant was posted as a P.A, Gopalganj Head Quarter on non-sensitive post without T.A and transit. After his retirement on 31.10.2002 he was not paid his retirement benefits.

2.2 The applicant approached this Tribunal vide OA 601 of 2007 and sought relief for direction to the respondents for payment of retiral dues. Considering the fact that judicial proceeding was pending against the applicant the said OA was disposed of by this Tribunal vide order dated 01.09.2008 with a direction to respondents to pay the due amount to applicant except the final pension, commutation of pension and gratuity amount (Annexure A/1 refers).

2.3 The applicant moved before the Hon'ble High Court vide CWJC No. 3621 of 2009 against the order passed by this Tribunal in OA 601/2007. The said Writ Petition was disposed of vide order dated 01.04.2009 with a observation that no reason to interfere with the impugned order passed by the Tribunal in a writ proceedings. However the petition may take steps in accordance with law for expediting disposal of the judicial proceedings pending against him (Annexure A/2 refers).

Thereafter, the criminal case pending before J.M. 1st Class, Siwan was decided in favour of applicant vide judgment dated 21.03.2013 and applicant was exonerated from the charges (Annexure A/3 refers).

2.4. The respondent no. 6 thereafter issued a letter dated 06.08.2013 to respondent no. 3 with regard to finalization of the retirement benefit of applicant (Annexure A/4 refers).

2.5. When no action was taken, the applicant sent legal notices dated 02.08.2014 and 20.09.2014 to respondent no. 3 for redressal of his grievances but till date no order has been passed regarding payment of due amount (Annexure A/5 series).

2.6. It is contended that the applicant also approached this Tribunal again in OA/050/00131/2015 which was dismissed as withdrawn vide order dated 23.02.2015 with liberty to the applicant to file appropriate representation before the authority. In pursuance of the said order, the applicant filed his representation dated 17.03.2015.

2.7. When no action was taken on the said representation dated 17.03.2015, the applicant again approached the Tribunal in OA/050/555/2015 which was disposed of vide order dated 29.07.2015 with direction to respondent no. 3 to consider and take decision on the representation dated 17.03.2015 in the light of the judgments passed by Hon'ble Court as well as Criminal Court and to pass a reasoned and speaking order. In the said order the applicant

was given liberty to file exhaustive representation before the respondents and respondents were directed to pass the speaking order from the date of such representation (Annexure A/5 refers).

2.8. In the light of the above direction, the applicant made a representation on 05.08.2015 before the respondent no. 3. In response to it, the respondents have passed the reasoned and speaking order dated 01.10.2015 which is impugned in the instant OA.

2.9. The learned counsel for the applicant submitted that the withheld retiral dues of the applicant is required to be released since the applicant has already been acquitted in the criminal case and as per the settled principle of law since there is no judicial proceeding pending against the employee, i.e. applicant herein the respondents ought to have released his withheld amount. The reason and grounds stated in the impugned order are contrary to the facts and also in violation of the settled principle of law.

3. The respondents in their written statement have denied the statements made by the applicant in his O.A and submitted as below:-

3.1 it is submitted by the learned counsel for the respondents that the applicant while working as SPM, Mora S.O. during the period from March 1992 to January 1994 defrauded in several SB Accounts by getting accounts transferred fraudulently from Basantpur S.O. to Mora S.O causing loss of public fund to the tune of Rs.2,19,302.45/-.

3.2 The respondents had taken action against the applicant under Rule-14 of CCS (CC&A) Rules, 1965 vide memo dated 10.10.2000 issued by the Superintendent of Post Offices, Siwan Division for the said lapses and a case u/s 409, 420, 467, 471 and 120(B) bearing no. 106/95 was also lodged vide trial no. 2038/95. The said trial case was disposed of by the 1st Class Judicial Magistrate, Siwan vide judgment dated 21.03.2013.

3.3 The learned counsel vehemently submitted that in fact the applicant had admitted all the charges leveled against him vide his representation dated 25.10.2000 and made good a sum of Rs.1,69,302,75 under head U/R on different dates in course of departmental disciplinary proceedings. The Disciplinary Authority awarded punishment of recovery of a sum of Rs.27,276.30/- along with reduction of pay from Rs.6650/- to Rs.6500/- with cumulative effect and treatment of suspension period from 08.09.1994 to 23.09.1997 as 'Dies Non" vide memo dated 06.02.2001 (Annexure R/1).

3.4 Against the said punishment order, the applicant submitted an appeal before the PMG (N) Muzaffarpur which was rejected with modification to regularize the period of suspension as spent on extra ordinary leave vide memo dated 08/11.02.2002 (Annexure R/2). The applicant thereafter preferred a revision petition before the Chief Postmaster General, Bihar Circle, Patna which was also rejected vide memo dated 04.06.2007 (Annexure R/3).

3.5. It is submitted that the applicant thereafter never challenged the order of Revisionary Authority. Therefore, no question arises with regard to grant of promotional benefit to HSG-I Grade. Since the applicant was the principal offender and has been found guilty in course of departmental disciplinary proceeding for his lapse, major penalty was imposed upon him. The applicant has himself admitted his all charges leveled against him. It has been further contended that all the retiral benefits have already been sanctioned.

4. Heard the parties, perused the records and considered the rival submissions.

5. It emerges from the record that the applicant, while working as SPM, Mora SO during the period from March 1992 to January 1994 he defrauded in several SB Accounts by getting transferred accounts fraudulently from Basantpur SO to Mora SO causing loss of public fund to the tune of Rs. 2,19,302.45/- He was proceeded under Rule 14 of CCS(CCA) Rules vide Memo No. F4-1/8/94-95 dated 10.10.2000. It is further noticed that in the disciplinary proceeding the applicant-delinquent had admitted all the charges vide his representation dated 25.10.2000 and made good a sum of Rs. 1,69,302.75 paisa under heading "U/R" on different heads. The Disciplinary Authority awarded the punishment of recovery of Rs. 27,276.30 paisa along with the reduction of pay from Rs. 6650/- to Rs. 6500/- with cumulative effect and treatment of suspension period from 08.09.1994 to 23.09.1997 as "Dies non" vide Memo dated 06.02.2001.

The appeal preferred by the applicant was rejected by the Appellate Authority vide order dated 11.02.2002 with modification to regularize the period of suspension as "spent on extraordinary leave" against which revision petition was preferred and the same was rejected vide order dated 04.06.2007. The said punishment order passed by the Appellate Authority and the Revisionary Authority were not challenged before any court of law. Thus, the punishment awarded against the applicant by the Disciplinary Authority had attained finality on 04.06.2007. Since the applicant had admitted all the charges during the departmental disciplinary proceedings, he had deposited/credited the defrauded amount and balance amount, i.e. Rs. 27,276.30 paisa was ordered to be recovered in view of punishment imposed on him. Therefore, the respondents have rightly rejected the claim of the applicant for refund of deposited/credited amount during the disciplinary proceeding as not admissible.

6. It is further noticed that a criminal case was also lodged against him in the year 1995 which ended with judgment dated 21.03.2013 acquitting the applicant in the trial case. His withheld retiral dues were paid to him by the respondents on the following dates:-

1. Final DCRG – 16.01.2014
2. Commutation – 16.01.2014
3. PPO (Final Pension)- 30.12.2013

It is also not in dispute that other retiral benefits were already paid at the time of his superannuation and the details are as under:-

4. Final GPF – 11.08.2003
5. CGEGIS – 28.11.2002
6. Leave Encashment – 20.11.2002

The aforesaid fact about the payment of retiral dues are not rebutted by the applicant.

7. The punishment was awarded against the applicant by the Disciplinary Authority vide its order dated 06.02.2001 and the applicant retired from the service on attaining the age of superannuation on 31.10.2002. The main grievance of the applicant that since the applicant was acquitted in the criminal case vide order dated 21.03.2013, therefore, he is entitled to be promoted to the promotional post HSG-I Grade and promotional benefits accordingly. The said claim of the applicant was not considered by the respondents Department. In this regard, the said claim of the applicant was also rejected by the respondents on the ground that major penalty was imposed on the applicant by the Disciplinary Authority. Therefore, the said claim was not found admissible. The applicant failed to rebut the said contention of the respondents. Therefore, the relief sought in this OA for a direction to grant promotional benefit is without any substance.

8. As regards payment of rest amount of his suspension period, it is noticed that the Appellate Authority vide his order dated 8/11.02.2002 (Annexure R/2 refers) modified the order passed by the Disciplinary Authority by treating the suspension period as spent on extraordinary leave. The respondents have also rejected the said claim of the applicant. The learned counsel for the respondents in this regard

submitted that the subsistence allowance from 08.09.1994 to 31.08.1997 has been paid to the applicant and thereafter he was transferred to Gopalganj Hq., 25% increase in the subsistence allowance has been drawn vide memo dated 05.01.1995. The differential pensionary arrears were also paid to the applicant and as such the applicant is not entitled for any amount as claimed. The said submission of the respondents was also not rebutted by the applicant and even otherwise also there is no material on record to substantiate the said claim raised by the applicant. Therefore, it cannot be said that the respondents have erroneously denied the said claim.

9. In view of above factual matrix and the discussions made hereinabove, I do not find any infirmity in the impugned order dated 01.10.2015. Hence, the OA is dismissed being devoid of any merit. No order as to costs.

[Jayesh V. Bhairavia]
Member (J)

mks/srk