

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00420/2018

Thursday, this the 6th day of June, 2019

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

P.J. Jayanathan Nambudiri, S/o. Late Jayanthan Nambudiri,
 aged 77 years, Ex-Sub Postmaster, Pazhayidath Elamon Mana,
 Peringara PO, Tiruvalla – 689108,
 Pathanamthitta District.

..... **Applicant**

(By Advocate : Mr. C.S.G. Nair)

V e r s u s

1. Union of India, represented by its Secretary,
 Department of Posts, New Delhi – 110 001.
2. The Director General, Department of Posts,
 New Delhi – 110 001.
3. Chief Postmaster General, Kerala Circle,
 Trivandrum – 695033.
4. Director of Postal Service (HQ),
 Office of the Chief Postmaster General,
 Trivandrum – 695 033.
5. Superintendent of Post Offices, Tiruvalla Division,
 Tiruvalla - 689 101.

..... **Respondents**

(By Advocate : Mr. T.C. Krishna, Sr. PCGC)

This application having been heard on 29.05.2019 the Tribunal on
 06.06.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicant claimed relief as under:

“(i) To call for the records leading up to the issue of Annexure A21 and

quash the same.

(ii) To declare that the applicant had effectively retired from service on 11.7.1992 and all action including dismissal from service subsequent to 11.7.1992 is non est in the eye of law.

(ii) To direct the respondents to grant the applicant all retirement benefits including pension, gratuity, leave encashment etc., with interest @ 12% p.a. within a time frame.

(iii) To grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.

(iv) To grant cost of this O.A.”

2. The brief facts of the case are that the applicant was an ex-Postmaster. While working as SPM, Kumbanad under 5th respondent applicant was asked to credit an amount of Rs. 2,32,650/- towards the alleged non-accounting of SB/Time deposits/KVP, etc. He was placed under suspension with effect from 1.8.1991. The applicant has credited the amount as directed to him. Immediately after crediting the amount the applicant has submitted an application for voluntary retirement on 11.4.1992. In the meantime he was served with a charge memo dated 22nd January, 1992. A criminal case was also registered by the Police which culminated in conviction of applicant for one year simple imprisonment and a fine of Rs. 2,000/-. Based upon the conviction he was dismissed from service under Rule 19 of CCS (CCA) Rules, 1965. The applicant has challenged the same by filing OA No. 330 of 1994 which was disposed of directing the applicant to file an appeal before the 3rd respondent. A *de novo* proceeding was started in the meantime. The representations submitted by the applicant to respondents Nos. 3 to 5 were not replied and further no reply has been received for his request for voluntary retirement submitted on 11.4.1992 in view of Rule

48A of CCS (Pension) Rules, 1972. The applicant had effectively retired on 11.7.1992. The appeal submitted by the applicant against the dismissal was rejected by the 3rd respondent. Applicant had submitted an application for compassionate allowance and the same was also rejected by the authorities concerned. As per the information received by the applicant the application for voluntary retirement was not disposed of by the competent authority. As such he sent an application under the Right to Information Act but no satisfactory reply was given. When an appeal to the Chief Information Commissioner was given, the CIC directed the 3rd respondent to give a copy of the order rejecting his request for voluntary retirement, if any. The 3rd respondent finally decided that no order was ever issued. Under the circumstances the applicant has made a request for sanction of pension which was rejected. Feeling aggrieved he has filed this Original Application seeking the above reliefs.

3. Notices were issued to the respondents. They entered appearance through Shri T.C. Krishna, Sr. PCGC appearing for respondents. In the preliminary objection it is submitted that applicant is aggrieved by Annexure A21 order. The applicant ought to have filed the above OA in respect of a grievance stated to have arisen due to a cause of action as early as in the year 1995 i.e. the OA has been filed after more than two decades and it is hopelessly barred by limitation under Section 19 of Central Administrative Tribunal Act, 1985. It is further stated that the applicant has not exhausted the departmental channels for redressal of his grievances. The applicant is stated to be aggrieved over the orders of the penalty which was

issued after following the process of law under Rule 14 of CCS (CCA) Rules, 1965 and as upheld by the appellate authority. The applicant has not filed any revision before approaching this Tribunal. It is further stated that a fraud has come into the light in saving certificates and time deposit amounting Rs. 2,32,650/- which was committed by the applicant during the period from 21st May, 1982 to 4th May, 1991 when he was working as Sub Postmaster, Kumbanad SO. He was placed under suspension with effect from 1.8.1991. The said amount along with interest was credited by the applicant on 14.8.1991 and on 23.9.1991. A criminal case was registered against the applicant by Koipuram Police Station and he was charge sheeted under Section 409 and 477(A) of the IPC. Thereafter he was proceeded under Rule 14 of CCS (CCA) Rules, 1965 on 22nd January, 1992.

4. In the meantime the applicant gave a notice under Rule 48A of CCS (Pension) Rules, 1975 for voluntary retirement with effect from 13th July, 1992. The permission for voluntary retirement was refused by the competent authority vide letter No. ST/MP-23/92, dated 19th June, 1992 within the prescribed time limit. The applicant was tried and was found guilty of the offense by Chief Judicial Magistrate concerned and he was awarded one year simple imprisonment and to pay fine of Rs.2,000/-.

5. On receipt of the copy of the judgment in the above police case, the applicant was intimated of the proposal to take action against him under Rule 19(1) of CCS (CCA) Rules, 1965 by the 4th respondent on 3.11.1993. The applicant was granted an opportunity to submit representation, if any,

against the proposal and the applicant was also granted an opportunity to appear before respondent No. 4 on 22.11.1993. However, applicant did not turn up for personal hearing but submitted a representation expressing his inability to attend the personal hearing. The competent authority found this being dilatory tactics as applicant has not even requested for second hearing. It was found that the finding of the learned CJM Court was based on the evidence adduced before it and the charge had been proved beyond doubt. The applicant was found to have betrayed the trust reposed on him by the Department as well as by the members of the public and therefore, the 4th respondent imposed the penalty of dismissal from service vide Annexure A4 order dated 26.11.1993. The appeal preferred by the applicant was considered by the 3rd respondent. It was observed that the 4th respondent has not issued a show cause notice to the applicant who considered the reply, if any, as per Rule 19 of CCS (CCA) Rules, 1965. Accordingly, it was ordered by the 3rd respondent to remit the case to the disciplinary authority for conducting a de novo proceedings from the stage of issuance of a show cause notice to the applicant after giving the applicant a fresh chance to present his case and after considering Annexure A7 representation the applicant was awarded the penalty of dismissal from service.

6. The appeal preferred by the applicant against the order of dismissal was rejected by the 3rd respondent. It is further submitted that after a lapse of 21 years the applicant submitted the request dated 15.12.2015 for compassionate allowance. The representation was considered by the

competent authority in accordance with Rule 41 of CCS (Pension) Rules, 1972 and was rejected with a speaking order. The respondents further submitted that as per Rule 48-A of CCS (Pension) Rules, 1972 there is a provision that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period. The above rule should be read along with Rule 48 of CCS (Pension) Rules, 1972 wherein it is provided that where the Government service giving notice for voluntary retirement is under suspension, it shall be open to the appointing authority to withhold permission to such Government servant to retire under this rule.

7. The Government of India decision below Rule 48-A provides that acceptance of notice for voluntary retirement may be generally given in all cases except (a) in which disciplinary proceedings are pending or contemplated against the Government servant concerned for the imposition of a major penalty and the disciplinary authority, having regard to the circumstances of the case, is of the view that the imposition of the penalty of removal or dismissal from service would be warranted in the case, or (b) in which prosecution is contemplated or may have been launched in a court of law against the Government servant concerned. Further FR 56(m) provides that it shall be open to the appropriate authority to withhold permission to a Government servant, who seeks to retire proceedings, if:

- i. The Government servant is under suspension; or
- ii. A charge sheet has been issued and the disciplinary

proceedings are pending; or

iii. If judicial proceedings on charges which may amount to grave misconduct, are pending.

Undisputedly, the applicant was under suspension with effect from 1.8.1991 and disciplinary proceedings and criminal proceedings were also pending against the applicant. Therefore, it can only be construed that the applicant's request for voluntary retirement would have been turned down by the competent authority, which has also been mentioned in Annexure A. Respondents prayed for dismissal of the OA.

8. Heard Shri C.S.G. Nair, learned counsel appearing for the applicant and Shri T.C. Krishna, Sr. PCGC, learned counsel appearing for the respondents. Perused the record and appreciated the legal submission.

9. The issue falls within a narrow compass as to whether the applicant is entitled for voluntary retirement from service during the currency of criminal case as well as departmental proceedings ?

10. During the course of arguments, learned counsel for the applicant has relied upon Rule 48 of CCS (Pension) Rules, 1972 i.e. Retirement on completion of 30 years' qualifying service. It provides as under:

“(1) At any time after a Government servant has completed thirty years' qualifying service -

(a) he may retire from service, or

(b) he may be required by the appointing authority to retire in the public interest, and in the case of such retirement the Government servant shall be entitled to a retiring pension :

Provided that -

- (a) a Government servant shall give a notice in writing to the appointing authority at least three months before the date on which he wishes to retire; and
- (b) the appointing authority may also give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest or three months' pay and allowances in lieu of such notice

Provided further that where the Government servant giving notice under clause (a) of the preceding proviso is under suspension, it shall be open to the appointing authority to withhold permission to such Government servant to retire under this rule.

.....”

11. A plain reading of the above rule transpires that though the government servant has given notice under clause (a), if he is under suspension, it shall be open to the appointing authority to withhold permission of such government servant to retire under this rule. Thus, it is well within the purview of the competent authority to withhold the permission for grant of voluntary retirement.

12. The learned counsel for the respondents Shri T.C. Krishna has drawn my attention to the Government of India decisions under Rule 48 issued by the Department of Personnel & Training vide OMs Nos. 25013/7/77-Estt.(A), dated 26.8.1977, 25013/3/79-Ests.(A), dated 28.7.1979, 25013/10/85-Estt.(A), dated 5.7.1985 and 25013/3/2003-Estt.(A) dated 17.6.2003 which prohibits the acceptance of voluntary retirement as per FR 56(k) in cases where disciplinary proceedings are pending or contemplated and the disciplinary authority having regard to the circumstances of the case, is of the view that the imposition of the penalty of removal or dismissal from service would be warranted in the case or (b) where prosecution is

contemplated or may have been launched in a Court of Law against the Government servant concerned.

13. In the present case the applicant was under suspension and criminal proceedings were pending which led to conviction of the applicant and accordingly, the competent authority has withheld the permission to voluntary retire vide letter No. ST/MP-23/92, dated 19th June, 1992 within the prescribed time limit. Therefore, this Tribunal is of the view that applicant himself is not sure whether he is entitled for voluntary retirement or whether he is otherwise entitled for compassionate allowance under Rule 41 of CCS (Pension) Rules, 1972. This clearly shows that the act of the applicant is such that he has accepted each and every stage of disciplinary proceedings as well as criminal proceedings because against both of the proceedings he has not filed any revision/appeal i.e. as per records available neither he has challenged the CGM order in appeal nor he has filed any revision petition against the order of dismissal confirmed in appeal. Moreover, the present OA is filed after more than two decades also which shows the conduct of the applicant as he is simply beating around the bushes. The legal position is also very clear in this regard.

14. Hence, this Tribunal is of the view that the present OA has no merit whatsoever and the same is liable to be dismissed. Ordered accordingly. The OA is dismissed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

“SA”

Original Application No. 180/00420/2018**APPLICANTS' ANNEXURES**

- Annexure A1** - True copy of the memo No. F1/1/91-92 dt.9.7.1991 issued by the 5th respondent.
- Annexure A2** - True copy of the memo No. F1/1/91-92 dt.1.8.1991 issued by the 5th respondent.
- Annexure A3** - True copy of the application dt. 11.4.1992.
- Annexure A4** - True copy of the order No. INV/5-7/91, dt. 26.11.1993.
- Annexure A5** - True copy of the appeal to the 3rd respondent on 4.4.1994.
- Annexure A6** - True copy of the order No. ST/B-9/94 dt. 18.7.1994 issued by the 3rd respondent.
- Annexure A7** - True copy of the representation dt. 12.9.1994 to the 4th respondent.
- Annexure A8** - True copy of the order No. St/B-20/90 dt. 8.2.1995 issued by the 3rd respondent.
- Annexure A9** - True copy of the application on 27.2.2016 under RTI Act 2005 to the 5th respondent.
- Annexure A10** - True copy of the letter No. RTI/DO/3/2016 issued by the 5th respondent addressed to the 3rd respondent dt. 22.3.2016.
- Annexure A11** - True copy of the letter No. INV/RTI/7/2016 dt. 31.3.2016 issued by the 3rd respondent.
- Annexure A12** - True copy of the letter No. RTI/DO/5/2015 dt. 29.4.2016.
- Annexure A13** - True copy of the letter No. ST/-2/4/2014 dt. 13.6.2016 issued by the 3rd respondent.
- Annexure A14** - True copy of the appeal dt. 24.6.2016.
- Annexure A15** - True copy of the final order No. CIC/BS/A/2016/001827 dt. 19.7.2017 issued by the Central Information Commission.

- Annexure A16** - True copy of the letter No. ST/9-2/4/2014, dt. 7.8.2017.
- Annexure A17** - True copy of the application dt. 15.12.2015 addressed to the 4th respondent.
- Annexure A18** - True copy of the order No. VIG/1-9/DLGS/2015 dt. 1.4.2016 issued by the 3rd respondent.
- Annexure A19** - True copy of the representation to the 3rd respondent on 1.9.2017.
- Annexure A20** - True copy of the letter No. B/Misc/PJ) dt. 2.1.2018.
- Annexure A21** - True copy of the letter No. VIG/1-9DLGS/2015 dt. 9.1.2018 issued by the 3rd respondent.
- Annexure A22** - True copy of the memo No. AP/4-1/MIDC/2017 dt. 9.1.2018.
- Annexure A23** - True copy of the representation to the 3rd respondent on 12.1.2018.
- Annexure A24** - True copy of the letter dt. AP/4-1MISC/2018 dt. 22.3.2018 issued the 3rd respondent.
- Annexure A25** - True copy of the letter No. VIG/1-9/DLGS/2015 dt. 23.4.2018 issued by the 3rd respondent.
- Annexure A26** - True copy of the letter on 9.5.2000 to the 3rd respondent.
- Annexure A27** - True copy of the reminder dt. 26.5.2000.
- Annexure A28** - True copy of the reminder dt. 27.6.2000.
- Annexure A29** - True copy of the reminder dt. 24.7.2000.

RESPONDENTS' ANNEXURES

Nil

-X-X-X-X-X-X-X-