

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 21/203/2018

**Reserved on: 19.03.2019
Pronounced on: 22.03.2019**

Between:

N. Venkataramaiah, S/o. late N.C. Ramaiah, Gr. C,
Aged 69 years, Occ: Retired Deputy Postmaster,
Secunderabad HO, Secunderabad – 500003.

... Applicant

And

1. The Union of India, Represented by the Secretary to the Government of India, Department of Post, New Delhi – 110 001.
2. The Chief Postmaster General, T.G. Circle, Hyderabad – 500 001.
3. The Postmaster General, Head quarters Region, Hyderabad -500 001.
4. The Director Accounts Postal, A.P. & T.G. Circles, Hyderabad – 500 001.
5. The Senior Superintendent of Post Offices, Secunderabad Division, Hyderabad – 500 080.

... Respondents

Counsel for the Applicant ... Mr. B. Gurudas

Counsel for the Respondents ... Mrs. K. Rajitha, Sr. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar ... Member (Admn.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. Applicant is challenging the action of the respondent in effecting a deduction of 25 % in original pension instead of 25% cut in the monthly pension as per order of penalty imposed by the respondents.

3. Brief facts are that the applicant was issued a charge sheet just 3 days before retirement on 31.12.2008 which was converted into a Rule 9 proceeding after retirement. Based on the Rule 9 proceedings a Presidential order dt 17.8.2012 was issued awarding a penalty of withholding of 25% of the monthly pension for a period of 3 years as per the advice of the UPSC vide their letter dt 9.8.2012. Respondents instead of withholding 25% of the pension from the monthly pension as per the Presidential order have withheld 25 % from the original pension vide letters dt 27.11.2012 and 17/19.6.2014. Commutation was thereafter granted on the reduced pension. Applicant has represented to correctly impose the penalty and allow the difference of commutation that could be permitted thereof. Respondents in response have informed that the matter has been referred to the first respondent vide their lr. dt 5.4.2016 for clarification. Till date the difference of commutation has not been paid and hence aggrieved over the same, OA is filed.

4. The contentions of the applicant are that the incorrect imposition of the penalty contrary to the Presidential order by the respondents is arbitrary and illegal. Presidential order only refers to 25% cut in monthly pension and not from the Original pension. By wrong interpretation of the Presidential order the applicant has been put to financial loss due to receipt of lesser commuted pension. Applicant has been subjected to twin penalties in the process. The original pension of the applicant is Rs.10,945 and after commuting 40% of the pension the remaining monthly pension left is Rs.6,567. As per the Presidential order 25% of this monthly pension has to be deducted for 3 years. The commutation of pension has to be considered from 1.1.2009 by considering the factor prevalent on that day and not based on factor indicated in Aug 2012 and that too, on the reduced pension.

5. Respondents inform that after arriving at the pension of Rs.10,945/- a cut of 25% of pension was imposed as per Presidential Order and a monthly pension of Rs.8,209/- was paid to the applicant. A sum of Rs.3,09,732/- was paid as commuted value of pension to the applicant. Commutation of pension has been done as per Rule 13 .1 (b) of the CCS (Commutation of Pension) Rules. They are awaiting further clarification from the first respondent on the subject.

6. Heard both the counsel and perused the documents as well as material papers placed on record.

7. I) The dispute is about withholding of penalty from the original pension instead of the monthly pension. Penalty of withholding of 25% of monthly pension was imposed on the applicant based on the letters dated 27.11.2012 and 17/19.6.2014 of the respondents. Para 5 of the disciplinary proceedings imposing the penalty reads as under:

“Withholding of 25% of the monthly pension otherwise admissible to the C.O for a period of three years is imposed on him and further the gratuity admissible to him, if not required otherwise may be released.”

II) Rule 9 of the Central Civil Services (Pension) Rules, 1972, allows the Government the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement. Under the said rule there is no provision to withhold monthly pension. There is provision to withhold only pension in full or in part. Hence the pension order is not in consonance with the

relevant rule. Even otherwise based on applying the Principles of Natural interpretation, the penalty order has to be read as cut in the monthly pension and not in the original pension. Being on the subject of Principles of Natural interpretation, it needs to be adduced that these are basic rules of Interpretation of law. They follow the principle of statute, shall be read as a whole and should confer benefits to the people. Interpretation means the art of finding out the true sense of an enactment by giving the words of the enactment their natural and ordinary meaning. There are three main rules to interpret a statute; the literal, golden, mischief and also the integrated approach, known as the purposive approach. Literal rule is a rule used to interpreting statutes. When interpreting a statute, the courts generally apply the literal rule first before applying any other rules of interpretation. In literal rule, the words in a statute are given its plain, ordinary, and literal meaning. By applying this principle of literal interpretation, the purport of the Presidential order is to impose a penalty of withholding 25% of the monthly pension. Accordingly, the monthly pension of the applicant after commutation works out to Rs.6567/- . Twenty five percent of this pension has to be withheld as per the Presidential order. By not doing so the applicant is subjected to a twin disadvantages of lower commutation value and a higher amount being deducted from the monthly pension disbursed. Such an order is akin to double jeopardy, which, it is assumed, is not the intent of the Presidential order. Even UPSC while tendering its advice has documented the following fact at Para 4.5 as under:

“ There is nothing on record to prove that the CO was involved in any fraudulent or dishonest activity but it has been established beyond doubt that the CO failed to exercise proper supervision and permitted payments/ withdrawals to take place that should have been disallowed. The COs negligence certainly amount to misconduct.”

III) The applicant was not found to be dishonest or was he involved in a fraudulent activity. It was more of a procedural lapse due to negligence. Hence the intent of the advice to impose a monthly pension cut so that the financial impact is not so severe as it would be in case of a cut in the original pension. The Golden rule of interpretation emphasizes to look at the intent of the document. A full reading of the UPSC advice conveys the intent to let go the applicant with a monthly pension cut and not as has been effected by the respondents. Coming to the Mischief rule, it is a principle used for the interpretation of a statute. This principle is used by the courts to determine the intention of the legislators. This principle aims at finding out the mischief and defect in a statute and to implement a remedy for the same. Applying this principle we find a defect in implementing the Presidential order by imposing a cut in the original pension instead of doing so from the monthly pension. Regarding commutation the rule quoted by the respondents is relevant but before commutation is effected the penalty order has to be implemented. Presidential order is silent about how the commutation of pension has to be done in the eventuality of a cut of 25% in monthly pension. In other words, the Presidential order was issued with an intention as to not to impact the commutation of pension. Penalty order has to be properly worded within the ambit of the phraseology used in the relevant rule in order to implement it. There cannot be any ambiguity in issuing a penalty order. Respondents are assuming that the original pension and the monthly pension are the same. Penalties cannot be effected based on assumptions and presumptions. Indeed monthly pension develops a character and colour depending on the percentage of pension commuted by the pensioner. It would not be similar to the original pension which is 100 percent of the pension entitled. That being the clear distinction, it is not known as to how the respondents have arrived at the

conclusion that the cut in monthly pension will be in the original pension sanctioned. Often when there is a doubt in interpreting a rule or an order the benefit of doubt is given to the employee as per law, until the issue is further clarified. Without seeking such a clarification the penalty has been given effect to in haste. However, respondents have informed that the matter has been referred to the first respondent for clarification. The OA is filed on 6.3.2018 and more than a year has elapsed. The clarification is yet to be received. Being a model employer the respondents organisation need to be sensitive to staff/pension matters which have a telling impact on the morale and the quality of living of the employees/pensioners. Hon'ble Supreme Court observation in regard to the state being a model employer is extracted hereunder to appreciate as to what has to be done by a model employer.

“In Secretary, State Of Karnataka And vs. Umadevi And Others [(2006)4SCC1], the Constitution Bench, while discussing the role of state in recruitment procedure, stated that if rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules, for the State is meant to be a **model employer**.

We have stated the role of the State as a **model employer** with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of such magnitude is not adopted to frustrate the claims of the employees. It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a **model employer** should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized. We say no more.”

IV) Further, learned counsel for the respondents has not submitted any clarification received as on the date of final hearing. Prolonged silence on the

issue is as good as acceptance of an undeniable fact. The undeniable fact in the present case is that the cut in pension is on a monthly basis and not in the original pension. The mistake has been done by the respondents by issuing an ambiguous penalty order. Besides, by wrong interpretation of the penalty order applicant has been subjected to multiple penalties of lower commuted pension and a higher cut in monthly pension, which we are sure is not the intent of the disciplinary authority. Further for the mistake of the respondents the applicant should not be penalised. In the case of *Nirmal Chandra Bhattacharjee v. UOI, 1991 Supp (2) SCC 363* the Apex Court has held “The mistake or delay on the part of the department should not be permitted to recoil on the appellants.” Further Hon’ble Supreme Court has observed in case of *M.V. Thimmaiah vs. UPSC, C.A. No. 5883-5991 of 2007* and *UOI vs. Sadhana Khanna, C.A. No. 8208/01*, that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.

V) Thus the mistake of the respondents in not properly framing the penalty order should not recoil on the applicant. The applicant has to undergo the actual penalty which the disciplinary authority has imposed. Therefore based on the aforesaid, the action of the respondents is arbitrary and illegal. The impugned orders vide Memo. No. 6729/Pen-VII/C.No.292/08-09/Con. Item No.600/12-13, dt. 27.11.2012 and Memo. No. 1331/Pen-VII/C.No.292/08-09/PPO No.22491, 17/19.06.2014 are quashed. The penalty was imposed on 17.08.2012 and its currency is over on 17.08.2015. Considering the above fact, respondents are directed to consider as under:

- i) To sanction and pay 40% of original pension as commutation from 1.1.2009 as per the commutation factor prevailing on that day;

- ii) To withhold 25% of the monthly pension arrived at after sanctioning 40% commutation from the Original pension, as per the Presidential order;
- iii) To refund any excess amount recovered from the monthly pension by implementing above.
- iv) With the above directions the OA is allowed. No order as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

Dated, the 22nd day of March, 2019

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