

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/428/2012

Order Reserved on: 29.11.2018

DATE OF ORDER: 20.12.2018

CORAM

**HON'BLE MR. SURESH KUMAR MONGA, JUDICIAL MEMBER
HON'BLE MR. A. MUKHOPADHAYA, ADMINISTRATIVE MEMBER**

Panna Lal Jain S/o Shri Ganpat Lal Ji, aged about 60 years, R/o Plot No. 9, Opposite Head Post Office, Sawai Madhopur Road, Tonk and voluntary retired on 01/10/2011 from the post of Assistant Post Master, Tonk Head Post Office, Tonk.

....Applicant

Mr. C.B. Sharma : counsel for applicant.

VERSUS

1. Union of India through its Secretary to the Government of India, Department of Posts, Ministry of Communications and Information Technology, Dak Bhawan, New Delhi – 110001.
2. Chief Post Master General, Rajasthan Postal Circle, Jaipur-302007.
3. Post Master General, Rajasthan Southern Region, Ajmer – 305001.
4. Superintendent of Post Offices, Tonk Postal Division, Tonk – 304001.

....Respondents

Mr. R.P. Singh, proxy for
Mr. Neeraj Batra : counsel for respondents.

ORDER

Per: Suresh Kumar Monga, Judicial Member

The pleaded case of the applicant herein is that he was initially appointed as Postal Assistant in the respondent-department in the year 1974. He was placed in higher pay scales after completion of 16 and 26 years of service in the year 1990 and 2000. Thereafter, he was granted the benefit of MACP

Scheme on completion of 30 years of service in the year 2004 and there was nothing adverse against him during his entire service career. It has further been averred that while working as Assistant Post Master, Tonk Head Post Office, Tonk, he sought voluntary retirement on 24.06.2011. His said request for grant of voluntary retirement was accepted by the competent authority and he was given retirement with effect from 01.10.2011 with the direction to respondent no. 4 that before relieving him it should be ensured that no Government dues are to be recovered and no vigilance / disciplinary / court case is pending or contemplated against him. Pursuant to the order of his voluntary retirement, he was relieved from service on 01.10.2011. It has further been pleaded that the respondent no. 4 prepared and submitted the documents with the Director of Accounts (Postal) for grant him the retiral benefits. A sum of Rs. 5,52,420/- was approved towards gratuity. Since the said amount was not released to him immediately after his retirement, therefore, he made a request on 12.01.2012 for releasing the said amount. The respondent no. 4 vide his letter dated 23.02.2012 demanded an undertaking from the applicant for affecting recovery of some amount in respect of a fraud case pertaining to Nayagaon Branch Post Office. After repeated requests made by the applicant, a sum of Rs. 5,24,799/- was released by the respondents on 19.04.2012 after withholding an amount of Rs. 27,621/- i.e. 5% of the total amount of gratuity. Thereafter, the respondents directed the applicant to deposit a sum of Rs. 33047/- on 29.05.2012 so that the withheld amount of the gratuity could be released. It has further been averred that the applicant was not responsible for any fraud case and

respondents withheld the amount of gratuity just to harass him. Finally, the respondents issued an order dated 08.06.2012 (Annexure A/1) directing the applicant to deposit a sum of Rs. 33047/- within a period of 15 days and a threat was also given in the said letter that in case said amount is not deposited then the matter will be reported to the police for registration of an FIR against him. Aggrieved by the said action of the respondents, the applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The respondents by way of filing a joint reply have joined the defence and opposed the Original Application with the assertions that the case with regard to embezzlement was entrusted to ASPO, Sub Division Tonk for investigation and after investigation he submitted a preliminary report on 29.08.2011 in which it was established that there was a huge misappropriation of Government money in the MGREGA accounts from 01.04.2009 to 17.06.2011 by Shri Hari Narayan Swamy, GDS BPM Nayagaon due to the negligence of the applicant who failed to check the total of the NREGA list received from the Nayagaon Branch Post Office. It has further been averred in the reply filed by the respondents that during the aforesaid period, the applicant submitted a notice on 04.06.2011 seeking voluntary retirement with effect from 01.10.2011. Till then the investigation was not completed and total amount of fraud was also not established, hence, the applicant was permitted to take voluntary retirement on 01.10.2011. After submission of the report by the ASPO Sub Division Tonk on 29.08.2011, it came to the notice that there was a fraud of an amount of Rs. 560181/- out of which a sum of Rs. 394946/- was recovered from Shri Hari Narayan Swamy and

a sum of Rs. 165235/- was yet to be recovered. The applicant failed to verify the NREGA lists received from Nayagaon Branch Post Office, which facilitated the BPM to commit fraud in the Branch Post Office and, thus, the applicant was also found responsible for not carrying out the proper checks during his duty and, therefore, his share in loss was arrived at Rs. 33047/-. The applicant was requested to deposit the said amount. However, he failed to deposit the same and, thus, while releasing amount of DCRG to him, a sum equivalent to 5% of the said amount was withheld. With all these assertions, the order of recovery dated 08.06.2012 (Annexure A/1) for a sum of Rs. 33047/- has been sought to be justified and a prayer for dismissal of the Original Application has been made.

3. Heard learned counsels for the parties.

4. Learned counsel for the applicant submitted that before passing the order dated 08.06.2012 (Annexure A/1) neither any inquiry was conducted nor the principles of natural justice were followed by the respondents. He further submitted that a sum of Rs. 27,621/- has been illegally withheld by the respondents out of the amount of gratuity payable to the applicant. Learned counsel further submitted that the order dated 08.06.2012 (Annexure A/1) cannot be sustained being contrary to the principles of natural justice and the respondents are liable to release the withheld amount of gratuity to applicant.

5. Per contra, learned counsel for the respondents submitted that the applicant remained negligent as he failed to check the NREGA list received from Nayagaon Branch Post Office and, therefore, he was found to be a subsidiary offender as per the

report submitted by ASPO Sub Division Tonk. He further submitted that the respondents are well within their rights to affect a recovery of Rs. 33047/- from the applicant.

6. Considered the rival contentions of learned counsels for the parties and perused the record.

7. Admittedly, the applicant was granted voluntary retirement with effect from 01.10.2011. A perusal of the order dated 11.08.2011 (Annexure A/2) reveals that the notice dated 24.06.2011 given by the applicant seeking voluntary retirement with effect from 01.10.2011 was accepted by the Director Postal Services, Rajasthan Southern Region, Ajmer. While passing the order dated 11.08.2011, a further direction was given to ensure that no Government dues are to be recovered from the applicant before he is relieved for voluntary retirement and no Vigilance/ Disciplinary/ Court case is pending or contemplated against him. It also requires to be noticed here that the preliminary inquiry report with regard to embezzlement of funds by Shri Hari Narayan Swamy was submitted by ASPO, Sub Division, Tonk on 24/30.08.2011 (Annexure R/1) i.e. much prior to the date of the applicant's retirement i.e. 01.10.2011. In any case, before giving effect to the order of voluntary retirement from 01.10.2011, the competent authority also must have ensured that no Government dues are to be recovered from the applicant and no Vigilance / Disciplinary / Court case is pending against him. It is also not disputed by the respondents that before passing the order of recovery dated 08.06.2012 (Annexure A/1) for a sum of Rs. 33047/-, neither any inquiry was conducted nor any opportunity of hearing was afforded to the applicant in order

to comply with the principles of natural justice. It has not even been established on record by the respondents that how the applicant was held to be subsidiary offender in a fraud committed by Shri Hari Narayan Swamy. The respondents have even failed to point out that how the amount of recovery to the tune of Rs. 33047/- has been worked out by them. In this view of the matter, we are of the considered opinion that the order dated 08.06.2012 (Annexure A/1) passed by the respondents in order to affect the recovery of a sum of Rs. 33047/- cannot be sustained being contrary to the principles of natural justice.

8. Accordingly, the present Original Application is allowed. The order dated 08.06.2012 (Annexure A/1) is hereby quashed and set aside. The respondents are directed to release the withheld amount of gratuity to the tune of Rs. 27,621/- with interest @ 06% per annum to the applicant within a period of two months from the date of receipt of a certified copy of this order. No order as to costs.

(A. MUKHOPADHAYA)
ADMINISTRATIVE MEMBER

(SURESH KUMAR MONGA)
JUDICIAL MEMBER

Kumawat