

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00681/2018

Jabalpur, this Thursday, the 04th day of July, 2019

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

P.K. Das
S/o Late Shri N.P. Das
Aged about 68 years,
Ex-Postal Assistant
R/o H.No.2000/32,
Panchsheel School Road
Lalmati, Jabalpur 482001
Mobile No.7389996790

-Applicant

(By Advocate –**Shri J.B. Singh**)

V e r s u s

1. Union of India, through Secretary
Department of Posts, Dak Bhavan
Sansad Marg, New Delhi 110 001

2. Postmaster General Indore Region Indore 452001

3. Director of Accounts (Postal)
4th Floor, Dak Bhavan, Hoshangabad Road
Bhopal 462012

4. Senior Superintendent of Post Offices
Jabalpur Division, Jabalpur 482001

5. Senior Postmaster
Head Post Office Jabalpur 482001

- **Respondents**

(By Advocate –**Shri Surendra Pratap Singh**)
(*Date of reserving the order:-22.01.2019*)

O R D E R

By Ramesh Singh Thakur, JM:-

By way of this Original Application the applicant is challenging the order dated 22.10.2001 (Annexure A/1) issued by respondent No.1 and order dated 14.03.2018 (Annexure A/4) issued by respondent No.4 whereby it has been ordered that the monthly pension of the applicant be withheld permanently and his entire gratuity is also forfeited permanently.

2. The applicant has prayed for the following reliefs:-

“8(i) Quash the impugned order dated 22.10.2001 (Annexure A-1) issued by the Respondent No.1 being illegal, unjustified and arbitrary after the setting aside the order of conviction dated 30.09.1997 and applicant being acquitted from all the charges.

(ii) Quash the impugned order dated 14.03.2018 (Annexure A-4) issued by the Respondent No.4 being illegal, unjustified and arbitrary due to having been rendered infructuous;

(iii) Order to pay all the terminal benefits including pension, gratuity, leave encashment etc. having became due on the date of ‘Compulsory Retirement’ i.e. 01.10.1997 as per rule;

(iv) Order for regularization of suspension period from 10.11.1993 to 30.09.1997 as per rule 54 of FR & SR.

(v) Any other order/orders which this Hon'ble Court deems fit and proper;

(vi) Cost of the petition may also kindly be awarded.”

3. Brief facts of the case are that the applicant was appointed as Postal Assistant under Jabalpur Division since 08.08.1980. While working as Office Assistant the applicant was placed under suspension with effect from 10/11.11.1993 due to pendency of disciplinary proceedings. Meanwhile a criminal case was also registered against the applicant by the CBI under case No.RC41(A)/93-JBR dated 29.10.1993. Later on, a charge sheet under Rule 14 of the Central Civil Services (Classification, Control and Appeal) , 1965 was served upon the applicant and on conclusion of the disciplinary proceedings, the applicant was ‘Dismissed from service’ with effect from 01.10.1997 by order dated 30.09.1997. Subsequently the penalty of ‘Dismissal from service’ was modified into ‘Compulsory Retirement’ in appeal and the applicant has been paid provisional pension with arrears

from 01.10.1997. Due to conviction of the applicant in Special Case No.4/95 vide order dated 30.09.1997 of the CBI Court, the monthly pension of the applicant was withheld permanently and entire gratuity forfeited permanently by an order of the respondent No.1 dated 22.10.2001. The applicant filed Criminal Appeal No.2184/1997, Hon'ble High Court Jabalpur set aside the order of conviction dated 30.09.1997 passed by the CBI Court and the applicant has been acquitted from all the charges by order dated 06.01.2009 (Annexure A-2). The applicant thereafter preferred representation on 08.04.2009 to Respondent No.4 for releasing pension. The applicant again preferred application to respondents No.4 & 5 on 12.12.2017 (Annexure A-3) for paying the pension since October, 2001 being admissible as per rules due to conviction of order. Vide order dated 14.03.2018 (Annexure A-4) the respondents have reiterated the order dated 22.10.2001. Hence this Original Application.

4. The respondents have filed their reply. In the reply respondents have submitted that the applicant was issued charge sheet and was dismissed from service vide order dated 22.07.1997. The applicant preferred appeal, which was rejected by the appellate authority. The applicant preferred petition to Member (P) Postal Services Board New Delhi his punishment order was modified into compulsory retirement and applicant was paid provisional pension from 01.10.1997 onwards. In between a criminal case was registered by the CBI Jabalpur in the year 1993 and applicant was convicted by the CBI Court vide judgment dated 30.09.1997 for a period of three years RI and fine of Rs.15000/- under Section 409 IPC. Due to conviction the pension of the applicant was withheld and entire gratuity of the applicant had been forfeited vide order dated 22.10.2001 (Annexure A-1). It has been submitted by the respondents that this Original Application is hopelessly barred by limitation.

5. It is submitted by the respondents that two departmental inquiry was initiated against the applicant but he has not disclosed the second inquiry in which the penalty was imposed by the competent authority. The first charge sheet was issued against the applicant under Rule 14 of the CCS (CCA) Rules, 1965 in the year 1994 and during pendency of departmental inquiry the other charge sheet under Rule 14 CCS(CCA) Rules, 1965 was issued against the applicant in pension fraud case of Jabalpur Headquarter. In which charge sheet was issued by SSPO Jabalpur Memo dated 27.12.1995/16.01.1996 (Annexure R-1). In which applicant has been awarded punishment of Dismissal from service vide order dated 22.07.1997 (Annexure R/2).

6. Another disciplinary proceeding under Rule 14 CCS(CCA) Rules, 1965 was also initiated against him vide office memo dated 08.11.1994 (Annexure R-3). The applicant submitted representation which was received on 22.11.1994 (Annexure R/4). But the instant departmental

enquiry was suspended vide office order dated 25.07.1997 (Annexure R-5), due to award of punishment of dismissal with immediate effect. It is submitted that the punishment of dismissal was passed by the competent authority and the same was modified by the Member (P) and the same was modified and converted into compulsory retirement by order dated 22.03.2000. Due to modification of punishment the applicant was treated as compulsory retired employee w.e.f.22.07.1997 and pension and DCRG was paid by Deputy Director (Postal) Bhopal dated 04.01.2001. In the meanwhile, the criminal case was registered by CBI Jabalpur under Case No.RC/41/A/93/JBR on 19.10.1993 and the applicant was punished and convicted by the court of CBI. The department had taken decision vide memo dated 12.10.2000 under Rule 9 of the CCS (Pension) Rules, 1972. Due to conviction the pension of the applicant was withheld and entire gratuity of the applicant had been forfeited vide order dated 22.10.2001 (Annexure A-1).

Hence, applicant cannot claim the benefit of pension because of the order dated 22.10.2001 has not been cancelled or modified.

7. The applicant has filed the rejoinder to the reply filed by the respondents. It has been specifically submitted by the applicant that the respondent No.1 has ordered that the monthly pension of the applicant be withheld permanently and entire gratuity be forfeited permanently. It has been specifically submitted by the applicant that memo dated 17.10.1994 which was served upon the applicant, after completion of inquiry, report was submitted on 08.03.2001 (Annexure R/7) and case was further submitted to CPMG Chattisgarh Circle Raipur on 12.06.2001 (Annexure R/6). The second memo dated 08.11.1994 (Annexure R/3) for which representation was preferred on 21.11.1994 (Annexure R/4) and the proceedings as per memo dated 25.07.1997 (Annexure R/5) was suspended. The third memo dated 27.12.1995 (Annexure R/1), the final order against this charge sheet has been passed as dismissal by

order dated 22.07.1997 (Annexure R/2) which has been modified in to compulsory retirement as per directorate order dated 22.03.2000 (Annexure R/6). It has been clearly mentioned by the applicant that there is no penalty pending against the applicant on which basis his terminal benefits including pension may be withheld. On 06.01.2009, Hon'ble High Court has set aside the conviction order dated 30.09.1997 issued by the CBI Court and applicant acquitted from all the charges. So, the applicant has become entitled for payment of provisional pension as per Rule 69 of CCS (Pension Rules) 1972 irrespective of the fact that two cases of the disciplinary proceedings are pending against the applicant but the respondents did not pay the same causing great injustice with the applicant. Though the respondents had paid provisional pension at the rate of Rs.1495/- per month on the basis of order issued by the Deputy Director of Accounts (Postal) Bhopal as per letter dated 13.03.2001 (Annexure R/6) but this payment has been stopped as per order dated 22.10.2001

(Annexure A/1) consequence upon conviction of the applicant by CBI Court Judgment dated 30.09.1997. So when the said conviction order has been set aside by the Hon'ble High Court as per order dated 06.01.2009 in Criminal Appeal No.2184/1997 further denial of payment is completely unjustified, illegal and arbitrary.

8. Respondents have also filed the additional reply to the rejoinder. The respondents have submitted that apart from criminal case registered by the CBI, another two departmental enquiry was initiated by the department against the applicant under CCS(CCA) Rules 14 which was suspended due to award order of penalty i.e. dismissal from service by the competent disciplinary Authority.

9. We have heard the learned counsel for both parties and have also gone documents annexed with the Original Application.

10. From the pleadings of this case, it is very clear that three charge sheet were issued against the applicant vide memo dated 27.12.1995, the applicant was dismissed from

service vide order dated 22.07.1997 (Annexure R/2) but the higher authority has modified the said order into compulsory retirement as per order dated 22.03.2000 (Annexure R/6). So, for other charges dated 17.10.1994 and 08.11.1994, the proceedings are still pending before the competent authority. It is relevant to mention that the punishment pertaining to charge memo dated 27.12.1995 has culminated into compulsory retirement. So, the applicant has been paid provisional pension with arrears from 01.10.1997. But due to conviction of the applicant in Special Case No.4/95 vide order dated 30.09.1997 of CBI Court, the monthly pension of the applicant was withheld permanently and entire gratuity was forfeited by the respondent No.1 dated 22.10.2001. It is also admitted fact that the Hon'ble High Court has set aside the conviction order dated 30.09.1997 issued by the CBI Court and applicant has been acquitted from all the charges vide order dated 06.01.2009 (Annexure A/2). Though the applicant has preferred representation on 12.12.2017

(Annexure A/3) to respondent No.4 and 5 but the same was rejected by the respondents and has reiterated the earlier order dated 22.10.2001 (Annexure A/1) whereas in the reply, the respondents had specifically submitted that there were two charge sheets which was yet to be finalized by the respondent-department. Charge memo dated 17.10.1994 has been submitted to CPMG Chhattisgarh Circle Raipur on 12.06.2001 (Annexure R/6) and charge memo dated 08.11.1994 in which the proceedings were suspended by memo dated 25.07.1997 (Annexure R/5). It has also come in the pleadings that the final order against the charge sheet dated 27.12.1995 whereby the applicant was dismissed vide order dated 22.07.1997 (Annexure R/2) and the same was modified to compulsory retirement as per Directorate order dated 22.03.2000. So, in view of this position, the order of the respondent department whereby the department has stopped granting provisional pension to the applicant as per Annexure A/1 and A/4, the counsel for the applicant has relied upon Rule 69 of the

CCS(Pension) Rules, 1972 wherein Rule 69 provides for provisional pension where departmental proceedings or judicial proceedings are pending. Admittedly the case of the applicant is that two proceedings are pending with the respondent-department where in one of the proceedings vide charge memo dated 27.12.1995 whereby the applicant was dismissed but later on the higher authority has modified the penalty to compulsory retirement. So the applicant is entitled for provisional pension in view of the Rule 69 of the CCS(Pension) Rules, 1972.

11. Resultantly in view of the above Annexure A/4 is quashed and set aside. Respondents are directed to grant provisional pension to the applicant as per Rule 69 of the CCS(Pension) Rules, 1972.

12. Accordingly, this Original Application is allowed. No order as to costs.

**(Ramesh Singh Thakur)
Judicial Member**

kc

**(Navin Tandon)
Administrative Member**