

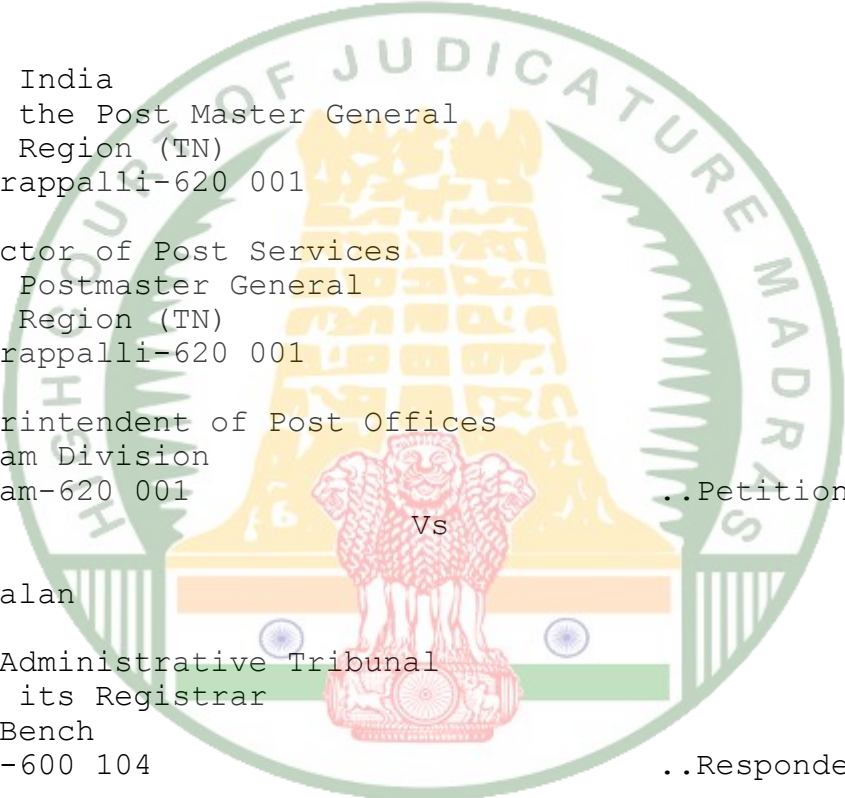
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Writ Petition No.9073 of 2017
and WMP.No.10017 of 2017

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- 1.Union of India
Rep. By the Post Master General
Central Region (TN)
Tiruchirappalli-620 001
- 2.The Director of Post Services
O/o.The Postmaster General
Central Region (TN)
Tiruchirappalli-620 001
- 3.The Superintendent of Post Offices
Srirangam Division
Srirangam-620 001 ..Petitioners
- Vs
- 1.S.Dhanabalan
- 2.Central Administrative Tribunal
Rep. By its Registrar
Madras Bench
Chennai-600 104 ..Respondents

Prayer :- Writ Petition filed praying to issue a Writ of Certiorari calling for the records of 2nd respondent and quash the order dated 22.07.2016 in OA/310/00495/2015 as the same is unsustainable.

For Petitioners : Mr.V.P.Sengottuvel

For Respondents : Mr.R.Malaichamy for R1
R2-Tribunal.

ORDER

(Order of the Court was made by
HULUVADI G.RAMESH, J.)

The 1st respondent in this case was initially appointed as Time Scale Postal Assistant on deputation to Army Postal Service Centre with effect from 19.09.1981. Later, the date of appointment has been changed as 01.09.1981 instead of 19.09.1981. The case of the 1st respondent/applicant before CAT is that he had completed 26 years of service in Postal Assistant Cadre as on 01.09.2007 and he is, therefore, entitled for financial upgradation under BCR scheme on the crucial date as on 01.01.2007.

2. The Petitioners would contend that the applicant entered into the Department as Group D Staff on 25.02.1976, he was promoted to the cadre of Postal Assistant w.e.f., 01.09.1981, completed 16 years of service on 01.09.1997. He was considered for financial upgradation under TBOP Scheme from 01.01.1999, since, he was under currency of punishment in view of pending Departmental disciplinary case and further his 26 years of service was completed only on 27.09.2007.

3. The other contention raised on behalf of the Petitioners/Department is that the 1st respondent was not given promotion as the conduct of the said individual was under investigation from the year 2003 as he has committed fraud on the OAP Money Order Payment while he worked as SPM of Veppur SO and was issued with Rule 14 Charge sheet in continuation of investigation on 31.03.2008. It is further submitted that though no charge sheet is pending against the official on the date he is due for promotion, his conduct is under investigation with effect from 2003 as he has committed fraud in payment of Old Age Pension Money Order while he worked as SPM, and the fact that he has committed fraud is accepted by himself in his written statement dated 03.07.2003. Thereafter, inquiry commenced and since the fraud is committed in old age pension money order, it took time to collect the details of money orders, paid vouchers etc and thereafter, to issue charge sheet.

4. Considering the gravity of proven charges, the third petitioner herein-Superintendent of Post Offices, Srirangam, in F/III/4/03-04 dated 26.02.2010 imposed penalty of removal from service. Challenging the said order dated 26.02.2010, the 1st respondent herein filed an appeal in Memo No.STC/3-18/2010 dated

03.09.2010. The Director of Postal Services/2nd respondent herein/Appellate Authority, exercising the powers conferred under Rule 27 of CCS(CCA) Rules, 1965, modified the punishment of removal from service to that of compulsory retirement.

5. The 1st respondent moved Central Administrative Tribunal seeking direction to the respondents to grant BCR benefit since he has completed 26 years of service as on 01.01.2007 and the consequential service benefits.

6. The Central Administrative Tribunal, by its order dated 22.06.2016, pointed out that the issue has been dealt by Tribunal in various OAs wherein it has been held that once an employee completes 26 years of satisfactory service, he has to be granted BCR scheme benefit from the date of completion of such 26 years and accordingly, directed the respondents to grant BCR benefit on the day the applicant/1st respondent herein completed 26 years of service as on 01.01.2007 and consequently pay the arrears of pay and allowances to the applicant and to revise and re-fix the retirement service benefits including pension and pay the arrears of pension etc., to the applicant. Challenging the said order, the Department/Petitioners are before this court.

7. The learned counsel appearing for the 1st respondent relied upon the order of this court passed in W.P.No.4934 of 2017 dated 28.02.2017, to contend that in similar circumstances, the applicant who completed 26 years of service cannot be viewed different from that of other similarly placed persons and a Division Bench of this court, following the order passed by the Tribunal, which was also confirmed by this Court, dismissed the Writ Petition filed by the Department.

8. However, according to the learned counsel appearing for the Union of India/Petitioners submits that the case on hand is entirely on different aspect and the 1st respondent herein found to have committed misconduct and for the proven charges, he was imposed punishment of removal from service.

9. In our view, the order of the Central Administrative Tribunal appears to be little lenient in this regard. When 1st respondent was found that he has committed misappropriation of Rs.17,800/- regarding old age pension money orders, it is a serious misconduct and a matter of embezzlement and in such circumstances, directing the department to grant BCR benefit on the ground that he had completed 26 years of service, is not

appropriate. The misappropriation committed by the 1st respondent is during the period 2002-2003 and as such the order passed by the 2nd respondent-Tribunal is not appropriate. Accordingly, the order dated 22.07.2016 passed in O.A./310/00495/2015 on the file of Central Administrative Tribunal is quashed. The Writ Appeal stands allowed. No costs. Consequently, connected WMP is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

nvsri

TO

- 1.The Post Master General, Central Region (TN)
Tiruchirappalli-620 001.
- 2.The Director of Post Services,
O/o.The Postmaster General
Central Region (TN), Tiruchirappalli-620 001
- 3.The Superintendent of Post Offices,
Srirangam Division,
Srirangam-620 001
- 4.The Registrar, Central Administrative Tribunal,
Madras Bench
Chennai-600 104

+ 1 cc to Mr. V.P. Sengottavel, Advocate SR.83814
+ 1 cc to M/s. R. Malaichamy, Advocate SR.83502

सत्यमेव जयते

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