

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 260/00336 of 2020

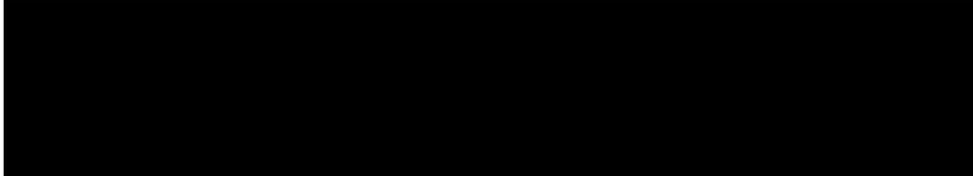
Reserved on 08.04.2024

Pronounced on 09.04.2024

CORAM:

THE HON'BLE SHRI SUDHI RANJAN MISHRA, MEMBER (J)
THE HON'BLE SHRI PRAMOD KUMAR DAS, MEMBER (A)

Shushil Kumar Senapati, aged about 39 years, S/o.-



.....Applicant

VERSUS

1. Union of India, represented through its Secretary, Dak Bhawan, Sansad Marg, New Delhi, PIN 110001.

2. Chief Post Master General, Odisha Circle, At/P.O. Bhubaneswar, Dist. - Khurda, PIN - 751001.

3. Director of Postal Services, Sambalpur Region, Sambalpur, PIN - 768001.

4. Superintendent of Post Offices, Sambalpur Division, Sambalpur, PIN - 768001.

5. Postmaster, Jharsuguda HO, Jharsuguda - 768201.

.....Respondents

For the applicant : Mr. C.P.Sahani, Counsel

For the respondents: Ms. S.B.Das, Counsel

O R D E R**PRAMOD KUMAR DAS, MEMBER (A):**

The respondents vide letter No. WL/RO/26-PMG(NFPE)/2017 dated 21.11.2019 (A/9), advised the applicant, a Postal Assistant of Station Road, Jhalsuguda SO, to open one POSB account for credit of his salary for the months of February to April, 2019 instead of acceding to his request to credit his salary for the said period in his SBI Account.

2. According to the applicant, the non-credit of his salary for the months of February to April, 2019 is intentional, deliberate and malafide exercise of power by the respondents and, hence, by filing the instant OA, he has prayed to quash the communication dated 21.11.2019 (A/9) and, as result, to direct the respondents to credit his salary for the period February to April, 2019 with 18% interest. In support of his prayer for interest, he has relied on the decision of the Hon'ble Supreme Court in Civil Appeal No. 399/2021 in SLP (C) NO. 12553/2020, dated 08.02.2021 (**State of Andhra Pradesh & Anr. Vs. Smt. Dinavahi Lakshmi Kameswari**) and the order of the Hon'ble High Court of Orissa in WP(C) No. 1553/2017 dated 27.05.2022 (**Sovakar Guru Vs. State of Odisha & Ors.**).

3. Counter by the respondents, rejoinder by the applicant and reply to rejoinder by the respondents have been filed. The respondents have also filed a date chart-note of submissions. Ld. Counsel for the respective parties have placed their respective stand based on the pleadings and documents filed in support thereof. Having heard them at length, perused the records.

4. According to Ld. Counsel for the applicant, applicant has been taking his salary through his SBI account since 2014 but from July, 2018 onwards the DDO forcibly started crediting his salary in his POSB account without his consent. Applicant objecting to the same made application on 09.02.2019 requesting to credit his salary in his bank account. He subsequently closed his POSB account. Thereafter, the respondents became vindictive against him and the DDO again vide Annexure-A/1 asked the applicant to open POSB account for credit of his salary. Since his salary for the month of February, 2019 was not disbursed, he made a complaint on 09.03.2019 (A/2) for non-grant of his salary. Despite his repeated requests before the higher authorities to credit his salary in his bank account, his salaries for the month of March and April, 2019 were also not paid. When the wife of the

applicant made a complaint on Centralized Public Grievance Redress and Monitoring System, Respondent No. 4 vide Annexure - A/5 requested respondent No.5 to credit the salary of the applicant in his bank account. Thereafter, the salary since May, 2019 onwards was credited to his bank account. But, his salary for the period in question was not credited to his bank account. When the applicant requested to credit the withheld salary for the months of February to April, 2019, he has repeatedly been asked to open one POSB account for grant of the withheld salary. According to the Ld. Counsel for the applicant, the said action is quite illogical, illegal, unjustified and mala fide only to harass the applicant. Hence, according to Ld. Counsel for the applicant, since the entire action smacks malafide, the same is vitiated in law and, therefore, the applicant is entitled to his salary for the months of February to April, 2019 along with interest.

5. On the other hand, according to Ld. Counsel for the respondents, previously, the departmental employees of Department of Posts including Gramin Dak Sevak were getting their salary either through Bank Accounts of Post Office Saving Bank Accounts (POSB). As the POSB Account is own service of the Department of Posts with core

banking facility and ATM service, direction was issued by Circle Office, Bhubaneswar vide Letter No- SB/VR-1/2015 dated 23.07.2017 to all staffs including Gramin Dak Sevaks and departmental employees to open POSB account for credit of their salary to promote POSB Account. After which, salary of all the staffs was being drawn and credited in their respective POSB account except some needy cases. The salary of the applicant was also being credit in his POSB Account No- 1091294361 since July, 2018. Thereafter, the Applicant submitted an application dated 09.02.2019 to Respondent No-4 requesting credit of his salary in his State Bank of India Account without any satisfactory ground. In the HRMS software, if any employee wants to take the salary from any other Bank, one "Bank key" is required which is supplied by TCS (Tata Consultancy Services) and it takes some time. Further, the Director of Accounts (Postal), Cuttack locks the HRMS software after 20th of every month, for which it was not possible to perform any modification after that. The Applicant himself closed his POSB Account No- 1091294361 on 26.02.2019 intentionally. The salary of the applicant for the month from February, 2019 to April, 2019 was drawn by the Postmaster, Jharsuguda HO and processed for credit in POSB

account but the same could not be credited by the DA (P), Cuttack due to closure of the POSB account by the applicant. It has been submitted that from May, 2019 onwards the salary of the applicant is being credited in his SBI Account, but the applicant has not received his salary for the month from February, 2019 to April, 2019 till date. Since, there is no technical provision in HRMS pay roll system to credit the salary of back period in other bank account, which was drawn for credit in POSB account, the applicant was repeatedly instructed vide Postmaster Jharsuguda letter No- PM/Staff-Corr/2019 dated 05.03.2019 (A/1), SPOS, Sambalpur letter No- 245 dated 16.04.2019 (A/4) and RO, Sambalpur letter No- WL/RO/26-PMG(NFPE)/2017 dated 21.11.2019 (A/9) to open a POSB account and intimate the account number. But the applicant did not pay any heed to such request and as such the salary for the period in question has not been credited in his favour. Accordingly, it is contended that in the aforesaid circumstances, for non-credit of his salary the respondents cannot be held responsible and, therefore, the payment of interest as prayed for by the applicant has no legs to stand.

6. Admittedly, the applicant has not been paid his salary for the months of February to April, 2019, which he was lawfully entitled to. The reason scribed by the respondents for the non-credit of his salary was due to non-opening of POSB account. However, it is admitted by the respondents that, subsequently, his salary from May, 2019 onwards has been credited to his Bank account furnished by him. Payment of salaries and/or pension is unexceptionable. Salaries are due to the employee for the service rendered. Thus, entitlement of an employee or an ex-employee to his salary or pension, as the case may be, is an intrinsic part of his right to life under Article 21 and right to property under Article 300 A of the Constitution. This Tribunal is aghast to note that even through the applicant had rendered service, his salaries for the months of February to April 2019 have not been paid to him till date and the reason furnished by the respondents is that the salary could not be credited in absence of POSB account notwithstanding the position that the salary for the subsequent months have been credited to the bank account furnished by the applicant. More evidently, the reasoning given by the respondents is not at all acceptable for the reason that whenever the salary is withheld for any reason and

subsequently, the salary is released but the employee concerned requests for credit of the salary to some other account, the same is being credited. Further, whenever the salaried employee dies, the arrear salary is also paid to the legal heirs in another account but it is not known as to how the respondents department defend their action of non-payment of the salary on the pretext that the same was not credited due to non-furnishing of POSB account, at the cost of repetition, when his salary for the subsequent month is being credited in his bank account. Further, it also discernible from Annexure-A/5, a letter of Respondent No.4 dated 30.04.2009, that instruction to deposit the salary in POSB account is purely promotional in nature. Thus, it can safely be said that non-credit of the salary for the period from February to April, 2019 is highly illegal and arbitrary and delay and laches is attributable to administrative actions across different levels and the same cannot be the reason to withhold the salary of an employee who worked for the period in question. The facts remain that there was delay in making payment of salary with or without intention is immaterial and, admitted position of record is that the payment was not made on due date and there was no disputed position of facts

involved in the case. In view of the above discussion, the applicant is entitled to the salary is not in dispute. Now the question arises for payment of interest as claimed by him. For this purpose, we would like to take the extract of the decision of the Hon'ble Apex Court in the case of **State of Andhra Pradesh & Ors. Smt. Dinavahi Lakshmi Kameswari**, Civil Appeal No. 399/2021, Arising out of SLP(C) No. 12553 of 2020, relied on by the applicant, which is as under:

“14 The direction for the payment of the deferred portions of the salaries and pensions is unexceptionable. Salaries are due to the employees of the State for services rendered. Salaries in other words constitute the rightful entitlement of the employees and are payable in accordance with law. Likewise, it is well settled that the payment of pension is for years of past service rendered by the pensioners to the State. Pensions are hence a matter of a rightful entitlement recognized by the applicable rules and regulations which govern the service of the employees of the State. The State Government has complied with the directions of this Court for the payment of the outstanding dues in two tranches. Insofar as the interest is concerned, we are of the view that the rate of 12% per annum which has been fixed by the High Court should be suitably scaled down. While learned counsel for the respondents submits that the award of interest was on account of the action of the Government which was contrary to law, we are of the view that the payment of interest cannot be used as a means to penalize the State Government. There can be no gainsaying the fact that the Government which has delayed the payment of salaries and pensions should be directed to pay interest at an appropriate rate.

15. We accordingly order and direct that in substitution of the interest rate of 12% per annum which has been awarded by the High Court, the Government of Andhra Pradesh shall pay simple interest computed at the rate of 6% per annum on account of deferred salaries and pensions within a period of thirty days from today. This direction shall, however in the facts and circumstances, be confined to categories 3, 4, 5 and 6 of GOMs No 26 dated 31 March 2020. We clarify that interest shall be paid to all pensioners of the State at the rate of 6% per annum on the deferred portion, for the period of delay. Having regard to the prevailing bank interest, the rate of 12% per annum which has been fixed by the High Court, would need to be and is accordingly reduced.”

7. Further, the Hon’ble High Court of Orissa in the case of **Sovakar Guru Vs. State of Odisha and Ors**, WPC (OA) No. 1553/2017, relied on by the Ld. Counsel for the applicant has held as under:

“15. The present case is a clear example of inexcusable departmental delay. Even if it is assumed that the representations made by the petitioner were actively catered to, this cannot be an excuse for lethargy of the department because rules/instructions provide for initiation of process much before retirement. The exercise which was to be completed much before retirement was in fact started long after petitioner's retirement. It is imperative that an interest @ 6% per annum is to be made bearing in mind the decision of the Hon'ble Supreme Court in the case of State of Andhra Pradesh & Anr v. Smt. Dinavahi Lakshmi Kameswari.

16. Accordingly, insofar as the interest rate is concerned, this Court is of the view that the relief sought at the rate of 18% per annum be suitably scaled down. This Court,

accordingly, directs the State to pay simple interest computed at the rate of 6% per annum on account of deferred salaries within a period of 30 days from today.

8. It is also noticed that this Tribunal vide order dated 23.12.2022 had advised the applicant to open a POSB account to enable the respondents to take appropriate action. Applicant through additional affidavit dated 24.02.2023 intimated that in obedience to the direction of the departmental authorities he had immediately opened POSB Account No. 4627039146 on 26.11.2019 but the pay, in question, was not disbursed. Vide reply dated 03.04.2023, to the additional affidavit of the applicant, respondents submitted that first departmental payment was made into the said account on 09.12.2021 and by that time the matter was already subjudice before this Tribunal. This submission of the respondents is not at all convincing especially in view of the order of this Tribunal dated 23.12.2022.

9. In view of the facts and law discussed above, the impugned order dated 21.11.2019 is hereby quashed. Respondents are hereby directed to immediately credit the salary of the applicant in his bank account where his salary from May, 2019 is being credited along with 6% interest from the date it became due till the salary for the months

February to April, 2014 is actually is credited. Liberty is also granted to the authority concerned to recover the interest amount to be paid to the applicant as directed above from the officers/officials responsible for not crediting the salary atleast when the salary of the applicant for the month of May, 2019 was being credited in his bank account. However, looking at the suffering and mental agony of the applicant as well as for the lackadaisical approach of the respondents, this Tribunal is also compelled to impose a cost of Rs. 5,000/-, which shall be recovered from the erring officer(s) and shall be paid to the applicant. The entire exercise, however, shall be completed within a period of 30 days from the date of receipt of a copy of this order, failing which the applicant shall be entitled to 12% interest in place of 6% as directed above.

10. With the observations and directions made above, this OA stands allowed. No costs.

(Pramod Kumar Das)
Member (Admn.)

(Sudhi Ranjan Mishra)
Member (Judl.)

RK/PS