

**CENTRAL ADMINISTRATIVE TRIBUNAL****MADRAS BENCH****OA/310/00161/2019****Dated the 3<sup>rd</sup> day of January, Two Thousand Twenty****CORAM: HON'BLE MR. T. JACOB, Member (A)**

T.K.Venkateswaran,  
SPM, Pammal (Retd),  
No. 134A, Yeshwanth Nagar,  
1<sup>st</sup> Street, Selaiyur,  
Madambakkam, Chennai 600126.

....Applicant

By Advocate M/s. S. Arun

Vs

1.Union of India, rep by,  
Chief Postmaster General,  
O/o. CPMG,  
Tamilnadu Circle,  
Chennai 600002.

2.General Manager,  
Postal Accounts & Finance,  
Tamil Nadu Circle,  
Chennai 600008.

3.The Senior Superintendent of Post Offices,  
Tambaram Division,  
Tambaram 600045.

....Respondents

By Advocate Mr. K. Rajendran

**ORDER**

**(Pronounced by Hon'ble Mr. T. Jacob, Member(A))**

The applicant has filed this OA under Sec 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :

"To set aside Memo No.C/2-33/12-13 DCRG dated 18.06.2018 and Memo No.C/2-33/17-18 dated 02.07.2018 issued by the 3<sup>rd</sup> Respondent and consequently direct him to settle his Death cum Retirement Gratuity quantified at Rs. 4,60,037/- (sic) including interest at the rate of 12% per annum till the date of actual payment and pass such other orders as are necessary to meet the ends of justice."

2. The facts of the case as stated by the applicant are as follows:

The applicant superannuated on 30.11.2012 from the Department of Posts as a Sub-Postmaster. By an order dated 25.10.2016, he was imposed with a punishment of 20% cut in his pension for a period of two years on conclusion of Rule 14 major penalty proceedings related to Charge Memo dated 29.04.2011. He was further imposed with a punishment of 20% cut in his pension for a period of two years on conclusion of Rule 14 major penalty proceedings related to Charge Memo dated 28.09.2012 by order dated 01.02.2017. The 2<sup>nd</sup> respondent vide his Order dated 05.03.2018 authorized the 3<sup>rd</sup> respondent and instructed him to sanction the applicant's Death Cum Retirement Gratuity (DCRG) quantified at Rs.4,60,037/- to the applicant. The 3<sup>rd</sup> respondent instead of acting as per the instructions of the 2<sup>nd</sup> respondent, passed the impugned Memo No.C/2-33/12-13 DCRG dated 18.06.2018 whereby he set off his Death Cum Retirement Gratuity quantified at Rs. 4,60,037/- towards his Postal Co-

operative Bank dues. Applicant submitted a representation dated 27.06.2018 to the 2<sup>nd</sup> respondent and sought immediate payment of his Death cum retirement Gratuity amounting to Rs. 4,60,037/-. The 3<sup>rd</sup> respondent vide his impugned Memo No. C/2-33/17-18 dated 02.07.2018 rejected the request of the applicant for payment of DCRG dues purportedly on the ground that since he availed loans from Postal Co-operative Bank, his DCRG dues will be set off for satisfying the Co-operative Bank Loan dues. The applicant once again vide his additional representation dated 11.08.2018 sought payment of his DCRG dues. When applicant vide his representations dated 27.06.2018 and 11.08.2018 pointed out the specific order of Government of India instructing not to effect recovery from DCRG dues of Central Government servants for dues pertaining to Co-operative societies, the 2<sup>nd</sup> respondent justified his action in doing so by relying on the alleged declaration given by applicant to the Postal Co-operative Bank to effect recovery from his DCRG dues. Hence he has filed this OA seeking the aforesaid relief on the following grounds:-

- a) Action of the 3<sup>rd</sup> respondent in setting off Applicant's DCRG dues in order to satisfy Postal Co-operative dues is unjust and arbitrary and is contrary to rules. It is appropriate here to mention that as per Government of India, Ministry of Finance, U.O. No. 2896-ETA/60, dated 31.08.1960, in File No. 10(14)-E.V./60 Co-operative Societies dues are not classified as "Government Dues" warranting recovery from Death cum Retirement Gratuity of the Central Government Servant.
- b) The reasoning of the 3<sup>rd</sup> respondent to rely on the alleged declaration given by applicant to Postal Co-operative Bank to recover its dues from

arrears of his DCRG is unjust and arbitrary as such view is not backed up by any statutory provisions either in CCS (Pension) Rules, 1972 or in connected Government of India Orders.

c) The action of the 3<sup>rd</sup> respondent to rely upon the alleged declaration given by applicant to Postal Co-operative Bank to recover its dues from arrears of his DCRG may be valid if there is provision in CCS (Pension) Rules, 1972 or Government of India orders related to it gives any rights to parties to create agreements contrary to general rules governing payment of Death cum Retirement Gratuity. But such a provision is not available either in CCS (Pension) Rules or in Government of India Orders relevant to the subject.

3. In support of his case, learned counsel for applicant relies upon the following decisions :

i. Judgment of the Hon'ble Supreme Court dt. 04.11.2008 in CA Nos. 6440-41 of 2008 SLP © Nos. 797-798 of 2006 in SBCRP Nos. 26 of 2005 & 208 of 2003 in the case of Radhey Shyam Gupta Vs. Punjab National Bank & Anr. [CDJ 2008 SC 1851]

ii. Judgment of Hon'ble High Court of Calcutta dt. 18.01.2018 in MAT No. 1522 of 2017 with CAN No. 8857 of 2017 in the case of United Bank of India Vs. Bidyut Baran Haldar & Ors [CDJ 2018 Cal HC 008]

iii. Judgment of Ernakulam Bench of CAT dt. 13.06.2019 in OA 356/2015 in the case of A. Rajendran Vs. Union of India & Ors [CJD 2019 CAT ERNAKULAM 016]

iv. Judgment of Ernakulam Bench of CAT dt. 21.03.2012 in OA 1017/2011 in the case of C.Gopalan Vs Union of India & Ors [CDJ 2012 CAT ERNAKULAM 228]

4. The respondents have filed reply. It is submitted that the retirement gratuity of Rs. 4,60,037/- was sanctioned to the applicant vide 3<sup>rd</sup> respondent's

memo no. C/2-33/12-13 dated 18.06.2018 with a direction to recover a sum of Rs. 4,80,000/- towards Tamil Nadu Circle Cooperative Bank Ltd (TNCPC) bank dues, Rs. 15,402/- towards overpayment of pay and allowances and Rs. 83,230/- towards overpayment of provisional pension. It is submitted that the recovery of TNCPC dues of Rs. 4,80,000/- from retirement gratuity was ordered based on the demand notice dated 20.03.2018 received from TNCPC Bank, Chennai-1. The bank authorities also sent a copy of declaration given by him on 07.10.2010 while availing loan of Rs. 4,00,000/- when he was in service in which he agreed for recovery of bank dues from DCRG amount, Bonus, Commutation of Pension, leave salary, monthly pension or any other sum that becomes payable subsequent to cessation of duties. Though the retirement gratuity was sanctioned, the applicant has not taken payment yet. Even after his retirement this office receives demand notices from the TNCPC Bank in which the due amount suitably increases from time to time due to accrual of interest. As per the latest demand notice dated 23.05.2019 a sum of Rs. 5,10,224/- is due to be paid by him. Despite knowing very well that he is having TNCPC loan dues on the date of his retirement from service and its penal interest, if not paid also leviable, the applicant did not make any arrangement to settle the dues on his own. As the applicant did not take payment till date, no amount towards TNCPC bank dues was recovered and remitted to the society. The other dues viz, over payment of pay and allowances and provisional pension also remains unadjusted till date as he did not take payment. Now the applicant aggrieved over the

recovery of society dues in the DCRG payable to him and approaches this Hon'ble Court through this OA. It is further submitted that the Ernakulam CAT case cannot be compared with this case. While the dues due to the State Government Society was discussed in the Ernakulam case, the dues to be paid to the Tamil Nadu Circle Postal Co-operative Bank, which was formed by the Postal Employees for the benefits of employees of the Postal Department (and no other person other than the employees can transact in the Bank) is discussed in the case. Unlike the other bank's due, the payment due for the society is recovered every month as per the notice received by the TNCPC while disposing salary payment, even showing them as out of accounts in the salary slip. The applicant in this OA has also given declaration for recovery of dues of the TNCPC from his gratuity amount. In view of the above, the respondents pray for dismissal of the OA.

5. Learned counsel for respondents relies upon the following decisions :

“i. Judgment of Hon'ble Madras High Court dated 17.02.2009 in WP Nos. 30864 of 2008, 1547 & 2596 of 2009.

ii. Judgment of Hon'ble Madras High Court dated 25.01.2010 in WP Nos. 7335 and 18976 of 2009.

iii. Judgment of Hon'ble Madras High Court dated 27.01.2011 in WP No. 28417 of 2010.”

6. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

7. Encroachment upon the DCRG money of a Central Government employee is prohibited by the statutory rules vide the CCS (Pension) Rules. These Rules provide as under:-

"71. Recovery and adjustment of Government dues:

(1) It shall be the duty of the Head of Office to ascertain and assess Government dues payable by a Government servant due for retirement.

(2) the Government dues as ascertained and assessed by the Head of Office which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of the [retirement gratuity] becoming payable.

(3) The expression 'Government dues' includes

(a) Dues pertaining to Government accommodation including arrears of licence fee, if any;

(b) dues other than those pertaining to Government accommodation, namely, balance of house building or conveyance or any other advance, overpayment of pay and allowances or leave salary and arrears of income tax deductible at source under the Income Tax Act, 1961 (43 of 1961)."

8. In addition, certain dues such as dues payable to local bodies and cooperative societies have been held to be not Government dues. (Ministry of Finance U.O. No. 2896-ETA/60 dated 31-08-1960 in File No. 10(14)E V/60. And, the expression 'Government dues' does not include dues while on deputation save when the Central Government Servant gives in writing admitting the dues and for adjustment for such recovery from the DCRG, vide Ministry of Finance OM No. F 14(9)-E V/66 dated 02-09-1967.

9. Expressions "Government" and "Government dues" referred to in Rule 71 and 73 are defined in Rule 3 of the CCS(Pension) Rules, 1972 as under:

(i) Government means the Central Government

(ii) Government dues means dues as defined in sub rule (3) of Rule 71.

10. In fact, even in respect of Central Government dues, if there be a dispute and the government servant refuses to admit the dues as payable, or refuses to agree for adjustment of such dues from his gratuity, such dues could be recovered either by persuading him to agree for such adjustment or else only by seeking recourse to courts of law. (Ministry of Finance letter No. F 7(28) E V/53 dated 25-08-1958).

11. As regards following the precedents, Jyoti Chit Fund (*supra*) case refers to the Gratuity payable under the Payment of Gratuity Act, which Act does not govern the applicant, as his case is covered only under the CCS(Pension) Rules, 1972. Again, in so far as the decision in the case of Radhey Shyam Gupta (*supra*) is concerned, the same too relates to a nationalized bank which is not governed by the CCS(Pension) Rules, 1972. We may, of course, follow the ratio therein, subject to the conditions that the same is not inconsistent with the statutory provisions. For, as held by the Apex Court in the case of State of Madhya Pradesh vs Devendra (2009) 14 SCC 80,

"14. Needless to say, the directions are subject to provisions of the Act, the Regulations and the Code. In case of conflict statute itself prevails."



12. In so far as the decision of Radhey Shyam Gupta (*supra*) relied upon by the counsel for the applicant, the ratio could be applied to the facts of the present case as the Pension Rules, as stated above give some immunity to the Gratuity from attachment or recovery/adjustment save certain Government dues.

13. In so far as DCRG governed by the CCS (Pension) Rules, 1972, the Apex Court has dealt with the same in the case of Jarnail Singh vs Secy, Ministry of Home Affairs (1993 (1) SCC 47, wherein the Apex Court has *inter alia* held as under:

"Rule 69(1)(c) provides that no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon. This provision is indicative of the power to withhold payment of gratuity and its payment being subject to the final outcome of any pending departmental or judicial proceeding against the Government servant. Rules 71 and 73 relating to recovery and adjustment of Government dues and the express provision in Rule 73(3) for adjustment of dues against the amount of death-cum-retirement gratuity payable to the Government servant also reinforce this conclusion. Article 366 of the Constitution of India contains the definitions for the purpose of the Constitution and there in clause (17) is defined 'pension' to include gratuity as well. This definition of 'pension' in the Constitution also indicates that conceptually the term 'pension' includes gratuity. In Rule 3(1)(O) of the Central Civil Services (Pension) Rules, 1972, the term 'pension' is defined to include gratuity except when the term 'pension' is used in contradistinction to gratuity, in consonance with the basic concept."

14. The dues in respect of which the third respondent vide his impugned order dated 18.06.2018 had set off the applicant's death cum Retirement Gratuity do not come within the above definition.

15. It is pertinent to mention here that the retirement benefits are hard earned benefits which accrues to an employee and are in the nature of 'property'. This right to property cannot be taken away without the due process of law as per the provisions of Article 300A of the Constitution of India. Further withholding or adjusting of gratuity and granting of provisional pension normally takes place only when some disciplinary proceedings or judicial (Criminal) proceedings are pending against the official retiring and the same had happened in due discharge of official duties.

16. The Hon'ble High Court of Calcutta in the case of United Bank of India Vs Bidyut Baran Haldar and others reported in CDJ 2018 Cal HC 008 has observed in para 28 as follows:-

"We may also note that Sec.60(1)(g) of the Code of Civil Procedure, 1908 makes gratuities immune to attachment in execution of a decree. Thus, even if the Bank files an appropriate legal proceeding for recovery of its dues from Bidyut and succeeds, the Bank would not be able to execute the order/decreed by attaching the gratuity amount payable to Bidyut. The Bank may execute such order/decreed by obtaining orders for attachment of other properties of Bidyut, attachment of which the law permits, but his gratuity cannot be touched. The immunity granted to gratuity under the said Act as also under the CPC is reflective of a public policy. Gratuity is paid to a retired employee by way of a social welfare measure to enable such employee to tide over the immediate financial crunch experienced by the retired employee by reason of cessation of a regular flow of monthly income. Hence, the Parliament deemed it fit and proper to grant immunity to gratuity against attachment. Thus, if the Bank cannot touch Bidyut's gratuity through court process, a situation where the Bank on its own attaches/adjusts/forfeits such gratuity cannot be countenanced in law. The Bank cannot achieve something

indirectly which it could not have achieved directly."

17. Having regard to the above facts and circumstances of the case, the points left to be considered in this OA are:

(i) When there is a statutory protection of DCRG whether consent given by the applicant for adjustment against the DCRG of the dues payable to the Tamil Nadu Circle Postal Co-operative Bank Ltd. could have overriding effect; in other words,

(ii) Whether a non statutory agreement between two parties could have precedence over a statutory provision?

(iii) Whether the Tribunal could be a party for breach of such contract.

18. Answer to these questions is not far to seek. When provisions of any statute are superior to executive instructions or administrative orders, the question of a mutual agreement between the applicant and the cooperative thrift society having an overriding effect does not arise. The CCS (Pension) Rules do not provide for adjustment from the DCRG of dues other than Government dues. There is thus an immunity provided to the terminal benefits and pension for obvious reasons that such sums are meant to meet the needs at the old age. They are immune to attachment. Not only the gratuity in its own form, but even if it were converted into FD, the same too is immune to attachment or adjustment. In this regard, the decision of the Apex Court in the case of **Radhey Shyam Gupta v. Punjab National Bank, (2009) 1 SCC 376** is relevant. In that case, the Apex Court has held as under:-

“33. .... In other words, the High Court erred in altering the decree of the trial court in its revisional jurisdiction, particularly when the pension and gratuity of the appellant, which had been converted into fixed deposits, could not be attached under the provisions of the Code of Civil Procedure. The decision in *Jyoti Chit Fund case* [(1976) 3 SCC 607] has been considerably watered down by later decisions which have been indicated in para 22 hereinbefore

and it has been held that gratuity payable would not be liable to attachment for satisfaction of a court decree in view of proviso (g) to Section 60(1) of the Code.

**35.** We also agree with Ms Shobha that even after the retiral benefits, such as pension and gratuity, had been received by the appellant, they did not lose their character and continued to be covered by proviso (g) to Section 60(1) of the Code. Except for the decision in *Jyoti Chit Fund and Finance case* [(1976) 3 SCC 607], where a contrary view was taken, the consistent view taken thereafter supports the contention that merely because of the fact that gratuity and pensionary benefits had been received by the appellant in cash, it could no longer be identified as such retiral benefits paid to the appellant.

**36.** The High Court, in our view, erroneously proceeded on the basis that a concession had been made by the appellant that he was willing to have the decretal amount adjusted partly from his fixed deposits, which represented his retiral benefits and that..... “

As such, any term in the agreement or contract agreeing for such adjustment is contrary to the provisions of the Rules.

19. In the case of *Union of India vs A.K. Pandey* (2009) 10 SCC 552 the Apex Court has held as under:

"20. It is well established that a contract which involves in its fulfilment the doing of an act prohibited by statute is void. The legal maxim *a pactis privatorum publico juri non derogatur* means that private agreements cannot alter the general law. Where a contract, express or implied, is expressly or by implication forbidden by statute, no court can lend its assistance to give it effect. (See *Melliss v. Shirley Local Board* (1885) 16 QBD 446.) What is done in contravention of the provisions of an Act of the legislature cannot be made the subject of an action."

20. Thus, even if the applicant has consented for such a recovery, since there is a statutory prohibition for such adjustment (save Government dues), that part of

the contract is not capable of execution.

21. Now a word about the obligation on the part of the employer, i.e. the Postal Authorities to execute the provisions of the Pension Rules governing the Government servants with intent and spirit. They are not under any legal obligation to the Tamil Nadu. Circle Postal Co-operative Bank Ltd authorities to act contrary to the statutory provisions. While the CCS (Pension) Rules, 1972 do not so provide for adjustment of dues (save government dues) after getting the agreement executed from the Central Government employees such an agreement cannot be entered into and even if the employee agrees, the respondents cannot execute that part of the agreement as the same is contrary to the rules.

22. In the conspectus of the above facts and circumstances of the case and the Judgement of the Hon'ble Supreme Court and High Court of Calcutta, the OA succeeds. The impugned order dated 18.06.2018 and the Memo dated 02.07.2018 of the third Respondent which had set off the applicant's DCRG dues quantified at Rs.4,60,037/- towards dues of loan availed from Postal Co-operative Bank which is a socieity registered under Multi State Co-operative Socieities Act 2002 is without jurisdiction and is violative of the provisions relating to protection of gratuity available under the CCS (Pension) Rules,1972 and are accordingly quashed and set aside. The Respondent No.2 and 3 are directed to release the withheld terminal benefits of the applicant within a period of two months from the date of communication of this order. Failure to release the same within the aforesaid period would entail the liability of payment of

interest @ 9% from the 01-03.2017 (one month after imposition of the second punishment of 20% cut in his pension) till the date of payment.

23. The OA is allowed to the extent indicated above. No costs.

(T.Jacob)  
Member(A)  
-01-2020

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