

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 138 / 2008

Thursday, this the 5th day of February, 2009.

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HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

K.J.Mathew,^{Mail}
Retired Overseer,
Mundakayam Post/Sub Division,
Residing at: Kooramattathil House,
Kovappally.P.O.
Kanjirappally.Applicant

(By Advocate Mr P.C.Sebastian)

v.

1. The superintendent of Post Offices,
Changanassery Division,
Changanassery – 686 101.
2. The Postmaster,
Kanjirappally Head Post Office,
Kanjirappally.
3. The union of India represented by
Secretary to Govt. of India,
Ministry of Communications,
Department of Posts,
New Delhi.Respondents

(By Advocate Mr TPM Ibrahim Khan, SCGSC)

This application having been finally heard on 6.1.2009, the Tribunal on 5.2.2009delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Applicant's grievance is against the Annexure A-5 letter by which he was informed by the the respondent No.1 i.e. Superintendent of Post Offices, Chenganassery Division that in terms of the Prohibitory Order

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No.SDT/KLM/3910/04-05 dated 8.1.2008 issued by the Special Deputy Tahsildar (RR), Kollam, for recovery for an amount of Rs.77,215/- plus interest @ Rs.23/- per day from 1.5.2007 till the date of recovery, the Post Master, Kanjirappally has been instructed to pay only the balance amount, if any, from the amount of Rs.80,300/- due to him, being cash equivalent of leave salary.

2. After the retirement of the applicant as Mail Overseer, Mundakayam Postal Sub Division under the administrative control of the 1st respondent on 30.4.2007, he was sanctioned all the retiral benefits including pension, DCRG, commutation pension, leave encashment etc. Before his retirement, vide the Annexure R-1 letter dated 8.1.2007, the Special Deputy Tahsildar (RR), KSFE Ltd. Kollam, issued a Prohibitory Order stating that the applicant had failed to pay the arrears on account of Chitty-15/2000-41 amounting to Rs.77,215/-. The applicant was, therefore, prohibited and restrained from receiving DCRG from the 2nd respondent. The 2nd respondent was also prohibited and restrained from making the payment of DCRG to the applicant. However, the 2nd respondent did not act upon the aforesaid prohibitory order and released the DCRG admissible to the applicant after his retirement. Thereafter, he was sanctioned Rs.80,300/- as leave encashment vide Annexure A-2 letter dated 11.5.2007. Realising the mistake of releasing the DCRG to the applicant inspite of the Annexure R-1 Prohibitory Order, the respondent No.2 did not release aforesaid amount of Rs.80,300/- sanctioned to the applicant on account of leave encashment. Since the said amount was not received by him, he made the Annexure A-3 representation to the 1st respondent on 31.5.2007. Thereafter, the 1st respondent informed the applicant by the impugned Annexure A-5 letter dated 6.2.2008 that he will be paid only the balance amount, if any, from the leave encashment amount of Rs.80,300/- after deducting the amount of Rs.77,215/- plus interest @ Rs.23/- per day from 1.5.2007.

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3. According to the applicant, he was only a co-surety for a sum of rupees one lakh which was paid by the KSFE Limited, Kanjirappally to one Shri Jiji Thomas, subscriber of Chitty No.15/00-41. Consequent upon the default of Shri Jiji Thomas in repaying the amount, recovery proceedings were initiated by the Special Deputy Tahsildar (RR), KSFE Ltd. Kollam, and issued Prohibitory Order dated 20.10.2004 to the 2nd respondent to recover a sum of Rs.2500/- per month from the applicant's pay until further orders. Applicant had challenged the aforesaid order before the Hon'ble High Court in Writ Petition No.(C) 14010/2006 and the High Court has stayed the revenue recovery proceedings finding that no proceedings have been initiated against the principal debtor who is employed under the State Government. According to the applicant, the Annexure A-5 prohibitory order is nothing but an attempt to over reach the aforesaid Writ Petition pending before the High Court. He has also submitted that under the provision of Rule 39 of CCS(Leave) Rules, 1972, he is entitled to get the cash equivalent of earned leave at his credit at the time of retirement and the said statutory provision does not allow authorities to withhold or make recovery from such entitlement except under sub rule (3) which is extracted below:

"(3) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is possibility of some money becoming recoverably from him on conclusion of the proceedings against him. On conclusion of the proceedings he will become eligible to the amount so withheld after adjustment of Government dues, if any."

He has, therefore, submitted that the action of the 1st respondent in instructing the 2nd respondent to make recovery from his leave encashment is illegal. He has also sought a direction to the respondents to effect the payment of the amounts due to him on account of leave encashment in terms of the Annexure A-2 order dated 11.5.2007 with interest at the rate as deemed fit and just.

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4. Respondents in the reply have submitted that in terms of the Prohibitory Order earlier issued earlier by the Special Deputy Tahsildar (RR), KSFE Ltd. Kollam, an amount of Rs.32,500/- was recovered from the applicant's salary and Rs.32,266/- (32,500-32,666 = 234 being the DD Commission) was remitted to the KSFE, Kollam. Against the aforesaid Prohibitory Order and the action of the Department, the applicant filed W.P.(C) No.14010/2000 before the Hon'ble High Court of Kerala and he obtained an interim order on 31.5.2006 against any recovery from the applicant's pay. Thereafter, the said Tahsildar issued the Annexure R1 Prohibitory Order directing the 2nd respondent to recover an amount of Rs.77,215/- plus interest @ Rs.23/- per day from 1.5.2007 till the date of recovery from the DCRG of the applicant or to withhold the entire amount of DCRG whichever is less and remit it to its office. However, as an omission, no recovery was made from his DCRG as per the aforesaid Prohibitory Order and the entire amount of the DCRG was released to the applicant on 4.5.2007. The said Tahsildar has again, vide Annexure R-2 dated 31.12.2007 wrote to the 2nd respondent that just because the Hon'ble High Court has stayed all the proceedings regarding recovery, they could not have released the terminal benefits of the applicant. He has also informed them that an amount of Rs.82,850/- plus interest @ Rs.23/- per day as on 1.1.2008 was outstanding against him. The respondents have further submitted that in view of the above facts and circumstances, the cash equivalent of the leave salary amounting to Rs.80,300/- sanctioned to the applicant on 11.5.2007 was kept undisbursed and no action was taken on his Annexure A-4 representation dated 1.10.2007 seeking payment of the sanctioned amount of leave encashment. On the other hand, the 1st respondent directed the 2nd respondent to recover the amount as stated in the said Prohibitory Order from the amount due to applicant on account of leave encashment and remit the same to the Special Deputy Tahsildar (RR), KSFE Ltd. Kollam and accordingly the 2nd respondent recovered the amount of

Rs.80,300/- and remitted it by SBT DD No.059410 dated 25.2.2008.

5. We heard the learned counsel on both sides. Undisputably the applicant was a co-surety to Shri Jiji Thomas who was a subscriber to Chitty No.15/2000-41. He was well aware of the prohibitory order dated 8.1.2007 issued by the Special Deputy Tahsildar (RR), KSFE Ltd. Kollam, which was much before his retirement. The 2nd respondent was duty bound to recover the amount from the DCRG, but it was not done because of some unintentional omission. When the applicant was aware of such a prohibitory order, either he should have brought it to the notice of the 2nd respondent and not to have received the DCRG released to him or he should have taken proper steps for challenging the same, particularly in view of the Writ Petition No.(C) 14010/2006 filed by him before the Hon'ble High Court of Kerala. But he did not do so. Thereafter, the respondents sanctioned the leave encashment to the tune of Rs.80,300/- to the applicant on 11.5.2007 but it was not disbursed to him because of the pending prohibitory order and kept the amount with them till 24.2.2008. When the Special Tahsildar has again reminded the department, the 1st respondent directed the 2nd respondent to make the recovery from the leave encashment amount sanctioned to the applicant and remit to KSFE. Accordingly, the 2nd respondent recovered the amount of Rs.80,300/- and remitted it with the Special Deputy Tahsildar (RR), KSFE Limited, Kollam. We do not find any illegality in the aforesaid action of the respondents. This O.A is, therefore, without any merit and it is dismissed accordingly. There shall be no order as to costs.

6. However, this order will not come in the way of the applicant to challenge the legality or the appropriateness of the Special Deputy Tahsildar (RR), KSFE Limited, Kollam in issuing the Annexure R-1 Prohibitory Order dated 8.1.2007 to the 2nd respondent, if so advised.


K NOORJEHAN
ADMINISTRATIVE MEMBER


GEORGE PARACKEN
JUDICIAL MEMBER