

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.4031/2014

Order reserved on 4th December 2017

Order pronounced on 11th December 2017

Hon'ble Mr. K.N. Shrivastava, Member (A)

Brijesh Singh

Aged 62

Designation – Retired MW – Tec GR-I Diesel Shed

s/o late Shri Vasu Dev

r/o B-102, Gali No.4

Surya Vihar, Part II

Faridabad

..Applicant

(Applicant in person)

Versus

1. Union of India (Ministry of Railway)
Through the General Manager (Railway)
Northern Railway, Baroda House
New Delhi

2. The Divisional Railway Manager
Northern Railway,
State Entry Road, New Delhi - 55

..Respondents

(Mr. Shailendra Tiwary and Mr. A K Srivastava, Advocates)

O R D E R

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

“(a) Issue appropriate direction, directing the respondent to release the DCRG amount Rs.4,17,631/- with further interest @ 21% applicable from 01/07/2012.

(b) Pass an order/direction to revise the PPO and make the payment of arrears w.e.f. 01.01.2006.

(c) Pass an order/direction to release/handover the registered documents of Applicant property, deposited at the time of sanctioning HBA as the same is already cleared.”

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant retired from the service of respondents – Railway Department from the post of MW-Tech. GR-I Diesel Shed, Tuglakabad, New Delhi on 30.06.2012 on attaining the age of superannuation. Following his retirement, Annexure A-1 (colly.) Pension Payment Order (PPO) was issued to him indicating therein the following retiral benefits to be paid to him:-

S.No.	Item	Amount	Remarks
1.	Provident Fund (PF)	Rs.264066	
2.	Leave Encashment	Rs.175068	
3.	GIS	Rs.40474	
4.	Commutation	Rs.301671	
5.	DCRG	Rs.417631	

2.2 The grievance of the applicant is that the respondents have although released all his retiral dues but have not released the DCRG amount of ₹4,17,631/-. The DCRG amount was not released by the respondents apparently due to an execution order passed by an Assistant Collector, Cooperative Society Grade-I, Govt. of NCT of Delhi vide order dated 30.05.2012 (page 109 of the paper book) whereby the respondents were directed to recover a sum of ₹1,85,089/- from the applicant as on 30.06.2012 towards the loan taken by the applicant from Bhai Mati Dass Co-operative Urban Thrift & Credit Society Limited ('BMD CUT&CSL' for short).

2.3 The applicant has mentioned in paragraph 4.3 of the O.A. that he had availed a House Building Advance (HBA) of ₹2,20,200/- on 07.07.2003 from the respondents and had paid the entire loan amount leaving a meager balance of ₹8,013/- as on August 2011. He has further stated therein that although the HBA clearance certificate has been issued to him on 02.01.2013 but he is ready to pay any balance amount by cash if the authority so desired.

2.4 In paragraph 4.6 of the O.A., the applicant has stated that the BMDCUT&CSL had filed an Arbitration Case No.659/Ar/Arb/08-09 against the applicant for alleged default in repayment of the loan amount. On 27.08.2008, an Award was passed in the aforesaid arbitration proceedings wherein it was held that all the defendants shall pay jointly and severally an amount of ₹1,45,575/- within 30 days from the date of the Award. However, the applicant has averred that he came to know of the *ibid* Award when a notice under Rule 132 of the Delhi Cooperative Societies Rules 2007 dated 07.10.2010 was passed by the Assistant Collector, Cooperative Society Grade-I whereby attachment of salary and allowance to the extent of ₹1,43,298/- was ordered. Apparently, the notices/summons pertaining to arbitration proceedings were sent at the old residential address of the applicant and since he had shifted to another place, he could not receive them. Copies of the Award dated 27.08.2008 and execution order passed by the Assistant Collector, Cooperative Society Grade-I dated 07.10.2010 are at Annexure A-3 (colly.) (pages 44 – 50 of the paper book).

2.5 The applicant challenged the aforesaid Annexure A-3 (colly.) Award dated 27.08.2008 before the Hon'ble Delhi High Court in W.P. (C)

No.2934/2014, who disposed of the said W.P. vide order dated 07.12.2015.

The operative part of the order reads as under:-

“12. In view of above, we direct as follows:-

(i) The award dated 27th August, 2008 passed by the arbitrator, order dated 8th January, 2014 passed by Delhi Cooperative Tribunal and the warrant of attachment dated 7th October, 2010 are hereby set aside and quashed.

(ii) The petitioner shall file his defence/reply before the arbitrator within a period of four weeks from today.

(iii) The respondent may file rejoinder thereto before the next date of hearing. The parties shall appear before the arbitrator on 16th December, 2015 for further proceedings.

In case, Sh. Krishan Sethi, who was appointed arbitrator in case No. 659/AR/R/08-09 is not available to conduct the arbitration proceedings, a direction is issued to the Registrar of Cooperative Societies to appoint an arbitrator afresh within a period of four weeks from today and inform the parties about the same. In such an eventuality, the parties may file pleadings in terms of our order with the office of Registrar of Cooperative Societies in the arbitration case noted above, who shall place the same before the Arbitrator.

(iv) The new arbitrator, who is appointed would be required to issue a notice to both the parties in accordance with law and to ensure service thereof before proceeding in the matter.

(v) All notices on the petitioner shall be served at the address disclosed in the writ petition which, we are informed by learned counsel is the permanent address of the petitioner.

(vi) The petitioner shall deposit an amount of Rs.50,000/- with the respondent-society within a period of four weeks from today without prejudice to his rights and contentions. Learned counsel for the respondent submits that the petitioner had also deposited Rs.40,000/- pursuant to the orders of Delhi Cooperative Tribunal. These payments shall be subject to adjustment which may be effected after final adjudication of the claim of the society. In case, the arbitration proceedings culminate in an order favourable to the petitioner, needless to say that the respondent-society would be liable to refund the sum with interest as is found appropriate.”

The applicant duly complied with the *ibid* order of the Hon'ble Delhi High Court and deposited an amount of ₹50,000/- with the BMDCUT&CSL.

2.6 As directed by the Hon'ble Delhi High Court, the recovery matter was re-adjudicated by a new Arbitrator in Arbitration Case No.659/AR/ARB/08-09 and vide his Award dated 23.07.2016, the Arbitrator has ordered as under:-

“The Bhai Mati Dass Co-Operative Urban Thrift & Credit Society Ltd. has filed petition for recovery of Rs.2,05,754/- with cost of proceedings applicable future interest on the claimed amount with further interest @ 14.40% + 3% (penal interest) = 17.40% from filing of the petition till the realization of the amount etc. totaling to Rs.2,05,754/- as on 10.05.2016 from the above named parties has/have been admitted by Asst. Registrar Co-operative Societies under Section 70 of DCS Act, 2003 and has been referred for adjudication u/s 71 of the undersigned.

In exercise of the powers conferred on me as Registrar's nominee Arbitrator Summons were sent to all the parties to appear before me on 14.05.2016 at 11.00 A.M. Sh. Krishna Mohan Pandey representative appeared from the claimant Society and principal debtor appeared with a request to give him one more date, so the next date of hearing was fixed on 04.06.16 at 11.00 A.M. On this date both parties were appeared and defendant again requested for the next date for written reply. So, the next date of hearing was fixed on 25.06.16 at 11.00 A.M. On this date representative of the claimant society was present, defendant was present along with his council and submitted his vakalatnama, also requested again for the next date for briefing his own account in society. So, next date of hearing was fixed on 09.07.16 at 11.00 A.M. On this date both parties were appeared and requested court to give them one last date for settlement of accounts. So, the next date of hearing was fixed on 23.07.16 at 11.00 A.M. On this date principal debtor was present and authorised representative of the caliment society was also present with a request letter not to initiate any proceeding in this case as the Principal Debtor has cleared his dues full and final.

So, I Jagdish Prasad Aggarwal, Arbitrator having considered the facts of the case as brought out and gone through the relevant record placed before me, pass the NIL award in the favour of claimant Society.”

From, the *ibid* Award of the new Arbitrator, the issue of outstanding dues of ₹2,05,754/- from the applicant has got completely settled.

3. Pursuant to the notices issued, the respondents entered appearance and filed their counter reply as well as an additional affidavit.

4. The thrust of the contention of the respondents is that they could not release the DCRG amount of the applicant due to the execution order dated 07.10.2010 passed by the Assistant Collector, Cooperative Society Grade-I, Govt. of NCT of Delhi in his capacity as Arbitrator and due to a specific direction issued by the Arbitrator vide order dated 30.05.2012 addressed to the respondents to recover an amount of ₹1,85,089/- from the retiral dues of the applicant for settling the outstanding dues of BMDCUT&CSL. It is further stated that after the matter has been settled by the Hon'ble Delhi High Court vide its order dated 07.12.2015 and thereafter by the new Arbitrator vide the Award dated 23.07.2016, the respondents have taken necessary action to release the DCRG amount to the applicant.

5. When the case was taken up for hearing the arguments of the parties on 04.12.2017, Mr. Shailendra Tiwary, learned counsel for respondents produced a photocopy of the bank passbook of the applicant indicating that a sum of ₹4,15,336/- towards the DCRG has already been released and credited to the account of the applicant. This factum has been acknowledged by the applicant. It was stated by Mr. Tiwary that after the execution order dated 30.05.2012 was received from Assistant Collector, Cooperative Society Grade-I, Govt. of NCT of Delhi, the respondents had

duly issued a show cause notice dated 19.06.2012 (page 104 of the paper book) to the applicant in this regard.

6. Mr. Tiwary vehemently argued that there was no laxity on the part of the respondents in releasing the amount of DCRG and that no sooner the issue of outstanding dues of BMDCUT&CSL from the applicant got settled, the respondents have released the DCRG amount to him.

7. The applicant appeared in person and argued his case. He submitted that for no fault of his, the DCRG amount has been released to him belatedly by the respondents, and hence he is entitled for payment of interest on the delayed release of DCRG. He vehemently argued that the Arbitrator had not made him a party in the arbitration proceedings initiated at the behest of the BMDCUT&CSL, and hence he had no knowledge of the arbitration Award and execution order dated 07.10.2010 passed by the Arbitrator. He further stated that no sooner he came to know about the execution order dated 07.10.2010 through the show cause notice dated 19.06.2012 issued to him by the respondents, he approached the Hon'ble Delhi High Court in W.P. (C) No.2934/2014 and thereafter in terms of the order dated 07.12.2015 of the Hon'ble High Court in the said W.P., he deposited an amount of ₹50,000/- with BMDCUT&CSL and finally the new Arbitrator vide Award dated 23.07.2016 has issued the NIL Award in favour of BMDCUT&CSL.

8. I have considered the rival arguments of the parties. As per Annexure P-1 (colly.) PPO dated 30.06.2012, the applicant was entitled for receiving an amount of ₹4,17,631/- towards the DCRG on his retirement. This

amount has subsequently been recalculated as ₹4,15,336/- and released to the applicant on 11.10.2017 as per the information obtained by the respondents from the bank in which the applicant has got his account. The applicant does not have any issue to raise with regard to a minor differential between the amount finally released and the amount as indicated in Annexure P-1 (colly.) PPO as to the DCRG amount payable to him. Hence, it can be safely assumed that the amount of ₹4,15,336/- released was the final DCRG amount payable to the applicant and has since been paid to him.

9. The only issue remains to be considered is as to the eligibility of the applicant for receiving interest on the delayed release of the DCRG amount to him. As mentioned hereinabove, the contention of the respondents is that the delay has taken place on account of an explicit direction received from the Assistant Collector, Cooperative Society Grade-I, Govt. of NCT of Delhi vide order dated 30.05.2012 (page 109 of the paper book) for recovery of an amount of ₹1,85,089/- from the applicant as on 30.06.2012 towards outstanding dues of BMD CUT&CSL from him, and that the respondents could not have released the DCRG amount unless the *ibid* direction got executed. The moot point to be noted here is that the total amount payable to the applicant towards DCRG as per respondents' own calculation was ₹4,15,336/-, whereas the amount, directed to be deducted from the applicant by the Assistant Collector, Cooperative Society Grade-I vide order dated 30.05.2012, was only ₹1,85,089/-. Nothing prevented the respondents from retaining this amount from the DCRG of the applicant and releasing the balance to him even after the receipt of the Assistant

Collector's order dated 30.05.2012. The balance amount releasable at that time was slightly over ₹2,00,000/-. Hence, I am of the view that the applicant is entitled for payment of interest on the differential amount from July 2012 to September 2017 (5 years and 3 months).

10. In the conspectus of discussions in the pre-paragraphs, this O.A. is disposed of with a direction to the respondents to pay interest @ 8% p.a. on the balance amount of ₹2,30,247 (₹4,15,336 - ₹1,85,089) for a period of 5 years. It is clarified that the total period for payment of interest from July 2012 to September 2017 comes to 5 years 3 months but considering the fact that a statutory time limit of 3 months is provided for release of DCRG, it is considered reasonable to award interest for a period of 5 years only.

No order as to costs.

(K.N. Shrivastava)
Member (A)

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