

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00356/2015

Thursday, this the 13th day of June, 2019

**Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member**

A.Rajendran, aged 60 years
S/o.M.Arockiam
Sorting Assistant (Retired), Head Record Office
RMS TV Division, Trivandrum- 695 001
Residing at T.C 12/1576, R.C.Street
Kunnukuzhy, Trivandrum – 695 035 **Applicant**

(By Advocate Mr.Shafik M.Abdulkhadir)

V e r s u s

1. Union of India, represented by the Chief Post Master General, Kerala Circle, Trivandrum – 695 033
2. The Director of Postal Services (HQ)
Office of the Chief Post Master General
Trivandrum – 695 033
3. The Senior Superintendent of Railway Mail Service
RMS TV Division, Trivandrum – 695 036
4. The Head Record Officer
RMS TV Division, Trivandrum – 695 001
5. Sri.R.Vijayan Nair
Head Record Officer
RMS TV Division, Trivandrum – 695 001 **Respondents**

(By Advocate – Mr.Sinu G Nath,ACGSC for R 1-4 & Mr.Vishnu S Chempazhanthiyil for R5)

This Original Application having been heard on 11.6.2019, the Tribunal on 13.6.2019 delivered the following:

ORDER

Per: Mr.E.K.Bharat Bhushan, Administrative Member

Original Application No.180/00356/2015 is filed by Shri.A.Rajendran,

.2.

retired Sorting Assistant, Head Record Office, RMS TV Division, Trivandrum against the allegedly illegal recovery of Rs.88,090/- from his DCRG by the 4th respondent in order to remit the same to the loan account to Ananthapuram Co-operative Society and rejection of his objections by communication dated 19.9.2014 by the 3rd respondent, a copy of which is available at Annexure A-1. The applicant is further aggrieved by letter dated 10.11.2014 issued by the Accounts Officer of the 2nd respondent, rejecting his appeal submitted to respondent no.2 (Annexure A-2). Further, applicant is also aggrieved by the letter dated 9.3.2015 issued by first respondent rejecting his claim for disbursement of Rs.88,090/- recovered from his DCRG benefits (Annexure A-3).

2. The applicant had attained superannuation on 31.5.2014 while working as Sorting Assistant in HRO, RMS TV Division, Thiruvananthapuram. While in service, he had stood surety for a loan (C.C.467/2003) availed by one Smt.Sini Mohan B.R from Ananthapuram Co-operative Society, Kaithamukku. From the year 2007 until the retirement date, the HRO had deducted an amount of Rs.500 per month from the salary of the applicant as per the terms and conditions stipulated in Annexure A-4 certificate in view of default of loan by principal debtor Smt.Sini Mohan B.R.

3. It is submitted that the applicant and the 4th respondent were on inimical terms due to Union rivalries and when the applicant was due to retire, the 4th respondent addressed a letter dated 24.4.2014 to the Secretary of Co-operative Society seeking information as to the dues to be credited in

.3.

the loan account in which the applicant had stood as a surety. A copy of the same is at Annexure A-5. The letter written by the Branch Manager of Co-operative Society intimating that an amount of Rs.88,090/- was outstanding is copied at Annexure A-6.

4. On his retirement on 31.5.2014, applicant had appeared before the 4th respondent on 5.6.2014 to receive the gratuity amount of Rs.6,46,140/- authorised for payment. An amount of Rs.28,940/- was due to the department, being departmental dues. The 4th respondent is alleged to have personally obtained applicant's signature on the acquittance rolls. Applicant was told that he was entitled for a sum of Rs.6,17,201/-, but was paid only an amount of Rs.5,29,110/- and on query, it was informed that as per Annexure A-6 communication from Co-operative Society, an amount of Rs.88,090/- due to the Society had been kept aside for repayment to that entity. No consent from the applicant had been obtained for the purpose. The applicant protested that HRO had not given any undertaking to the Society to recover the dues from the applicant's DCRG benefits and is travelling beyond his limits. Later, the applicant came to know that his loan account was closed on 5.8.2014 through the issue of cheques dated 11.6.2014.

5. Applicant preferred a complaint about this matter to the 3rd respondent and the said complaint dated 1.8.2014 is copied at Annexure A-9. Therein, applicant has specifically maintained that as per settled law, no recovery is to be effected on pension or retirement benefits. Unfortunately, 3rd respondent refused the applicant's request for action.

.4.

6. It is maintained that as per Rule 120 & 121 of P&T Manual Vol.IV, only departmental dues are authorised to be recovered. Also under Rule 73 of CCS Pension Rules it is stated that "Co-operative Societies are not government organisations and any dues to them cannot be treated as 'dues to government'. No recovery of such dues cannot be made from death cum retirement gratuity benefits. "

7. By making mandatory recovery from the applicant's DCRG, respondent no.4 has committed an illegality. The applicant's further representation dated 28.8.2014 (Annexure A-10) was also rejected and thereupon applicant approached the first respondent through representation dated 5.12.2014 (Annexure A-11). The resultant orders at A-1, A-2 and A-3 justify the illegal recovery from his legitimate dues of DCRG which is not mandatory as per law. In two Original Applications, viz; O.A 543/2004 and O.A 1017/2011, this Tribunal has maintained that recovery of any sums other than government dues from DCRG is illegal. The 4th respondent has travelled beyond his mandate due to Union rivalry in order to damage the interests of the applicant.

8. A reply statement has been filed on behalf of respondent nos.1-4 wherein the contentions made in the Original Application have been disputed. It is stated that the applicant had given an undertaking to the Ananthapuram Co-operative Society Ltd to the effect that he will be a surety in respect of loan No.C.S.467/2003 availed by one Smt.Sini Mohan.B.R (Annexure R1(a). At the time of availing the said loan, the 4th respondent on

.5.

a request from the applicant, had given an undertaking to the said Society that consistent with Section 37 of Act XXI of 1969 (The Kerala Co-operative Societies Act), recovery shall be effected from the salary of the applicant towards repayment of loans/advance on request from the Society subject to the availability of net sufficient take home salary. A copy of the Non-Liability Certificate issued by the 4th respondent is at Annexure R1(b). The 4th respondent had been officially requested by letter dated 15.1.2007 to recover a sum of Rs.2000/- every month till the loan was fully discharged (Annexure R1(c)). As the take home salary of the applicant was not sufficient to effect recovery at the rate as stipulated, recovery was reduced to the rate of Rs.500/- and initiated from the month of August 2007 onwards and this arrangement continued for the next 7 years, during which time the applicant never raised any protest.

9. As the DDO, the 5th respondent, who had taken charge as HRO on 9.2.2011 noticed that the recoveries made from the salary of the applicant would not be sufficient to discharge the liability of the applicant as he was due to retire in few months. He addressed the Co-operative Society on the impending retirement of the applicant. The Society replied as per letter dated 20.5.2014 (Annexure A-6) that if necessary, the remaining defaulted amount may be recovered from his retirement benefit as he was the surety for the loan. When he retired on superannuation on 31.5.2014, an amount of Rs.6,46,140/- was sanctioned to him as retirement gratuity. The payment of the gratuity was effected to the applicant on 6.6.2014 and the acquittance roll was duly signed by the applicant, a copy of which is available at

Annexure R1(e). The applicant entrusted a sum of Rs.88,090/- in respect of the loan amount due with the 4th respondent which was remitted to the Society and the loan was closed on 5.8.2014. The applicant changed his attitude immediately afterwards and preferred Annexure A-9 complaint to respondent no.3, falsely alleging abuse of power by respondent no.4. However, the 3rd respondent, after due examination, came to the conclusion that there had been no misconduct on the part of respondent no.4.

10. The respondents strongly disputed the term “illegal recovery” used by the applicant. There had been no recovery effected from the gratuity as alleged and he had received the full amount of Rs.6,17,200/- as per the acquittance roll. Thereupon, out of his own volition, he had entrusted Rs.88,090/- with respondent no.4 towards settlement of the loan account in the Society.

11. It is to be recalled that the applicant had suo-motu decided to stand as surety for the loan availed by another individual and he does not dispute the failure on the part of the principal debtor to repay the amount. Under the circumstances, he is liable to return the sum. The 4th respondent whom he alleges to have acted to his detriment, was sympathetic enough to reduce the recovery from Rs.2000/- to Rs.500/- per month. This clearly does not show any malice on his part. The money paid to the loan account by which it is closed does not belong to the applicant as per his own admission.

12. The 5th respondent in his own individual capacity has also filed a reply

statement on the same lines as the other respondents. It is maintained therein that the applicant had deliberately included the 5th respondent in his personal capacity to damage him personally for being scrupulous in discharge of his official capacity as pay 'Drawing and Disbursing Officer/HRO'. At the same time, he has failed to implead either the Co-operative Society or the Principal debtor. The entry in the acquittance roll indicates the full amount of DCRG as drawn and this shows that there had been "no recovery" from the sum. The applicant had, out of his own volition, entrusted the loan amount due of Rs.88,090/- without any hesitation. Thereupon, he kept quiet until the loan account outstanding against him was closed and then moved against the 5th respondent through his representations. These representations were carefully considered and rejected by the official superiors in the department.

13. Heard Shri.Shafik.M.A, learned counsel for the applicant, Mr.Sinu G Nath, learned counsel for respondent nos.1-4 and Mr.Vishnu S Chempazhanthiyil, learned counsel for respondent no.5. Perused the records.

14. Shri.Shafik drew the attention of the Tribunal to Rule 73 of the CCS Pension Rules and the Government of India's decision following, which stipulates that:

"Dues to Municipalities and Co-operative Societies not treated as government dues. The arrears of water and electricity are dues of the Municipal Committees etc, which are local bodies and therefore not government dues. Similarly Co-operative societies are not government organisations and any dues to them cannot be treated as 'dues to government'. No recovery of such dues cannot be made from death cum retirement gratuity benefits."

15. This is a case in which respondent no.4, in particular respondent no.5, had shown great enthusiasm in order to recover the sum from the terminal benefits due to the applicant on retirement. While admitting that at the time of retirement, a sum was indeed due to the Society, there is no provision available to the respondents to recover the same from his DCRG. The decisions of this Tribunal in O.A 1017/11 was referred to by the learned counsel. Paragraphs 16 to 18 of the same reads as follows:

“16. The only point left to be considered is that the agreement executed between KSFE and the applicant provides for recovery of the dues by KSFE from the DCRG. The question is whether the same could be stultified by the applicant taking shelter under the protection available under the Pension Rules and whether the Tribunal could be a party for breach of such contract. Answer to this question is not far to seek. As discussed above, the CCS (Pension) Rules do not provide for adjustment from the DCRG of dues other than Government dues. As such, any term in the agreement or contract agreeing for such adjustments is contrary to the provisions of the Rules. In the case of **Union of India v. 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 *Mellis v. Shirley L.B.*) What is done in contravention of the provisions of an Act of the legislature cannot be made the subject of an action.

17. 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.

18. 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 can act upon such prohibitory orders or other directions issued on the strength of the Statutes of the State Government only if these are not inconsistent with the Central Statutes. Otherwise, they are

not under any legal obligation to the authorities to act contrary to the statutory provisions. This point is stressed here, as in many cases, the KSFE on the basis of the decision in Manni (*supra*) may, in all expectation, be getting agreement executed from the Central Government employees for such adjustment as they do in the case of State Government rules provide for such adjustment, while the CCS (Pension) Rules, 1972 do not so provide, 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.”

16. We are inclined to accept the same interpretation as the rule position stated is unambiguous. However, respondents have taken refuge under the argument that there had been no recovery *per se*. On the eve of his retirement, applicant had approached the 4th respondent and on estimating the DCRG due to him as Rs.6,17,200/-, he had signed the acquittance roll, a copy of which is available at Annexure R1(e). The respondents state that the applicant had handed over the balance amount due in the loan account to the 4th respondent for remitting to the Society, whereas the applicant states that it was forcibly recovered from him. In any case, there is no categoric evidence to show that he had protested against the action on the part of the respondent no.4 at that point and it was only later and that too, after the loan was closed on 5.8.2014, he decided to represent to his official superiors. There is also another aspect to the case which is somewhat beguiling. The applicant has no grievance against the principal debtor or against the Society for having actively participated in the “recovery”. All his ire is turned against respondent no.5 who happened to be respondent no.4 at that time. We do not know whether this is also part of the same Union rivalry which the applicant himself admits, exists between the two. While we have no difficulty in going by the settled law that 'recovery' from DCRG is

.10.

illegal, if it is to defray dues of Co-operative Societies, we see no evidence of this in the case and come to the conclusion that the applicant had not been forcibly deprived of any part of the DCRG amount. Instead, it appears that the applicant had himself handed over the sum which was remitted to the loan account in which he was a surety. Accordingly, we see no merit in the Original Application and dismiss the same. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

sv

List of Annexures

Annexure A1 - True copy of the letter No.Pen 841/RMS TV dated 19.9.2014 issued by the 3rd respondent

Annexure A2 - True copy of the letter No.AP/4-1/MISC/2013 dated 10.11.2014 issued by the Accounts Officer of the 2nd respondent

Annexure A-3 - True copy of the letter No.AP/4-1/MISC/20413 dated 9.3.2015 issued by the 1st respondent

Annexure A-4 - True copy of No Liability Certificate dated 29.11.2003 issued by Head Record Officer, RMS TV Division

Annexure A-5 - True copy of the letter dated 24.4.2014 issued by the 4th respondent

Annexure A-6 - True copy of the letter dated 20.5.2014 issued by the Br.Manager, Ananthapuram Co-operative Society, Kaithamukku

Annexure A-7 - True copy of the objection dated 24.7.2014 submitted by the applicant before the 4th respondent

Annexure A-8 - True copy of the statement of recoveries of the Ananthapuram Co-operative Society, Kaithamukku

Annexure A-9 - True copy of the complaint dated 1.8.2014 of the applicant submitted before the 3rd respondent

Annexure A-10 - True copy of the representation dated 28.8.2014 submitted by the applicant before the 2nd respondent

Annexure A-11 - True copy of the representation dated 15.12.2014 submitted before the 1st respondent

Annexure A-12 - True copy of the direct representation dated 10.2.2015 submitted before the Karnataka Chief PMG

Annexure A-13 - True copy of the letter No.General/Cashier dated 12.7.2014 issued by the 4th respondent

Annexure R1(a) - True copy of the surety agreement with Ananthapuram Co-operative Society Ltd.

Annexure R1(b) - True copy of the Non-liability certificate issued by the 4th respondent

Annexure R1(c) - True copy of the letter dated 15.1.2007 issued by Ananthapuram co-operative Society Ltd.

Annexure R1(d) - True copy of the letter dated 12.7.2007 issued by Ananthapuram Co-operative Society Ltd.

Annexure R-1(e) - True copy of the acquittance roll duly signed by the applicant

Annexure R5(a) - True copy of the surety agreement duly signed by the applicant

Annexure R5(a)(1) - English translation of Annexure R5(a)

Annexure R5(b) - True copy of the non liability certificate issued by the 4th respondent

Annexure R5(c) - True copy of the communication dated 15.1.2007 issued by the Ananthapuram Co-operative Society

Annexure R5(d) - True copy of the letter dated 12.7.2007 issued by the Ananthapuram Co-operative Society

Annexure R5(e) - True copy of the communication No.CS 467/03A/07 dated 15.1.2007 issued by the Ananthapuram Co-operative Society

Annexure R5(f) - True copy of Sanction Memo dated 5.6.2014 issued by the Senior Superintendent

Annexure R5(g) - True copy of the letter No.389/A-2/Super dated 22.5.2014 issued by the 4th respondent to 3rd respondent

Annexure A-14 - True copy of the salary certificate dated 29.11.2003 issued by the HRO of the 4th respondent

Annexure A-15 - True copy of the Agreement dated 16.12.2003 of the society

Annexure A-16 - True copy of the letter No.PEN 841/2014 dated 28.1.2015 of the 4th respondent

. . .