

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. No.2314 of 2018

Orders reserved on 24.05.2019

Orders pronounced on : 28.05.2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Vishnu Dutt aged 60 years
S/o Late Shri Mannu Ram,
R/o 1092/31, Baba Kharak Singh Marg,
New Delhi-110001.

....Applicant

(By Advocate : Shri G.D. Chawka)

VERSUS

1. Union of India
through Secretary,
Ministry of Defence,
South Block, New Delhi-110011.
2. JS & CAO
Ministry of Defence,
Dalhousi Road, New Delhi-110011.
3. DDOA (Cash)
Directorate of Administration
IHQ, MOD (Navy)
New Delhi-110011.

.....Respondents

(By Advocate : Shri A.K. Singh)

O R D E R

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

- (i) To quash and set aside the impugned order No.DA/Ch/1372/VD dated 23.05.2018 issued by DDOA (Cash) Directorate of Administration (Cah) MOD, Navy IHQ, 'A' Block, New Delhi.

(ii) To direct R-3 i.e. DDOA (Cash) Directorate of Administration IHQ, MOD (Navy) to immediately release the following pending retiral dues of the applicant:

a)	Leave Encashment	Rs.4,21,939
b)	CGEIS	Rs.33,158
c)	Recoveries made from the salary of the applicant and held with the office	Rs.50,000

(iii) To direct R-3 to pay interest @ 12% to the pending retiral dues upto the actual date of payment.

(iv) Any other relief/ order in favor of the applicant as deemed fit and just by this Hon'ble Tribunal in the circumstances and in the interests of justice.

2. The grievance of the applicant, who retired from the post of Senior Secretariat Assistant from the office of the respondents on 28.2.2018, in this case is against the action of the respondents vide which they withheld the amount of Rs.4,21,939/- of his leave encashment, Rs.33,158 of CGEIS and also against the action of the respondents for withholding of an amount of Rs.50,000/- recovered from his salary.

3. The relevant facts of the case are that applicant was posted to IHQ Ministry of Defence (Navy) w.e.f. 4.8.2016 and prior to this posting, following recoveries as communicated by his previous administrative officer, were being made from his pay and allowances as detailed below:-

Sl. No.	Name of Co-operative Society	Execution case number	Amount
1.	Delhi State Cooperative Bank Ltd.	996/AR/ARB/08-09 dated 22nd March 2010	2,000/-

2.	Dhan Sanchai Cooperative Thrift & Credit Society Ltd.	1281/09-10/1857 dt. 21 st July 2010	1,000/-
3.	Dhan Sanchai Cooperative Thrift & Credit Society Ltd.	1352/08-09 dt. 29 th July, 2010	500/-
4.	Dhan Sanchai Cooperative Thrift & Credit Society Ltd.	1350/08-09/18158 dt. 07 th October 2010	500/-

4. Out of the above four cases, the recoveries had already been completed in execution case number 996/AR/ARB/08-09 dated 22nd March 2010 and hence, in this case the recovery was not further continued. Later on in the same execution case, the Court of Assistant Collector Grade-II, Cooperative Societies has issued an order to remit a sum of Rs.5240/-, which was recovered from the pay and allowance of the individual and remitted to the Court. In response to the remitted amount, the Court has issued "No Dues Certificate" on 16.10.2017. Therefore, the execution case shown at Sr. No.1 above was closed. Out of the other three cases pertaining to Dhan Sanchai Cooperative Thrift and Credit Society, recovery initiated ordered by the Court, one of the case has already been completed. In the other two cases, i.e., execution case no.1350/08-09/22939 & 1281/09-10/22938 the recovery continued. Keeping in view the retirement of the individual, this office wrote to Assistant Collector Grade-I, to finalize the total amount of recovery due from the individual, considering all the three cases of the society in totality and intimate this office a final amount due from the individual.

5. In response to the same, a communication with execution case number 1350/08-09/22939 dated 22nd January 2018 and 1281/09-10/22938 dated 22nd January 2018 from Registrar Co-operative Society was received wherein the respondents' office was directed recovery of an amount of Rs.1,40,388/- and Rs.1,08,911/- respectively in total from the salary and other benefits allowances of the individual. It is also directed therein not to release his allowances and funds, till the said amount is recovered.

6. In another case, the Court of the Assistant Collector Grade-II, Cooperative Societies, Delhi vide their order no.5745/AR/ARB/07-08 dated 4th January 2018, directed the respondents' office to recover an amount of Rs.1,08,548/- in total from the allowance and funds etc. and the same not to be released before issue of the 'No Dues' from the Court. This case was separate from the execution cases mentioned in para 3 above. Subsequently, vide Court of the Assistant Collector Grade-II, Societies, Delhi, letter in execution case no.5745/AR/AR/07-08 dated 5th February 2018, it was clearly instructed that in view of the retirement of the individual, the allowances and other funds of the individual must not be released by the respondents, till the whole amount is recovered. Again another communication from the said Court vide their letter dated 3rd April, 2018 was received with the same instructions however, instead of Rs.1,08,548/-

the due amount was mentioned as Rs.1,12,209/- . Since the order was received in February 2018 only, i.e., in the month of retirement of the applicant, no recovery was possible from the regular pay and allowance of the applicant. The applicant was communicated the content of these letters by the respondents with a direction to settle the issue and obtain NOC from the said Court so as to enable them not to withhold his terminal amounts like leave encashment etc. accruing on his superannuation. However, no communication of settlement or no objection certificate has been received by the respondents till date and hence, his leave encashment and CGEGIS amounts have been withheld as per the directions of the said Court.

7. In the meanwhile, a letter from the advocate of the applicant was received by the respondents in this context, which was replied by the respondents by saying that since withholding of the leave encashment amount of the applicant was on the instructions of the said Court of Registrar Co-operative Societies, the amount can be released after issuance of NOC from the Court only.

8. We have heard learned counsel for the parties and perused the material placed on record.

9. Counsel for the applicant submitted that action of the respondents withholding the amounts of leave encashment,

CGEIS as well as Rs.50,000/- recovered from the salary of the applicant, is arbitrary and unlawful. He referred to the provisions of Rule 9 of the CCS (Pension) Rules, 1972. He further submitted that applicant has not taken loan from the cooperative society based on any guarantee given by his office, therefore, his office, i.e., respondents have no legal authority whatsoever to withhold retiral dues of the applicant.

9.1 In support of the claim of the applicant, learned counsel for the applicant placed reliance on the decision of the Hon'ble Madhya Pradesh High Court in Writ Petition No.1220/2015 (**S.K. Garg vs. Central Bank of India and others**) dated 5.5.2015

10. On the other hand, counsel for the respondents submitted that the applicant has mentioned the details of the cases and recoveries thereof pertaining to the execution cases concerning 'Dhan Sanchai Co-operative Thrift and Credit Society only. However, the applicant has not mentioned anything about the execution case no.5745/AR/ARB/07-08 dated 5th February 2018 pertaining to Delhi State Cooperative Bank Limited in which the Court has clearly instructed the respondents not to release his allowance and funds till the amount is fully recovered which entails to suppression of fact. He further submitted that the respondents had received the following letters from the learned Court of the Assistant

Registrar Cooperative Society in connection with making of recovery of dues from the applicant:-

Sl. No.	Name of Co-operative Bank Ltd.	Execution case number	Amount
1.	Delhi State Cooperative Bank	5745/AR/ARB/07-08 dated 07-11-17	1,05,909/-
2.	Delhi State Cooperative Bank	5745/AR/ARB/07-08 dated 04-01-18	1,08,548/-
3.	Delhi State Cooperative Bank	5745/AR/ARB/07-08 dated 05-02-18	1,09,863/-
4.	Dhan Sanchai Cooperative Thrift & Credit Society Ltd.	1281/09-10/22938 dated 22 Jan 2018	1,08,911/-
5.	Dhan Sanchai Cooperative Thrift & Credit Society Ltd.	1350/08-09/22939 dated 22 Jan 2018	1,40,388/-
6.	Dhan Sanchai Cooperative Thrift & Credit Society Ltd.	1350/08-09/22939 dated 22 Jan 2018	1,40,388/-
7.	Delhi State Cooperative Bank	5745/AR/ARB/07-08 dated 03-04-18	1,12,209/-

10.1 Counsel for the respondents further submitted that it is only on the direction of the learned Court, which was required to be followed by the administration, they have withheld the aforesaid amount. Counsel also submitted that prior to withholding the amount, the applicant was intimated to settle the dues and obtain NOC from the Court to enable them not to withhold the amount. However, no communication of settlement of the dues or NOC from the Court was received till his retirement, i.e., 28.2.2018 or even till date. As such the aforesaid withheld amount can only be released to the applicant once the requisite NOC from the concerned Court is received.

10.2 Counsel for the respondents submitted that reliance placed by the applicant on the aforesaid decision of the

Hon'ble High Court of Madhya Pradesh in the case of **S.K. Garg** is based on peculiar facts and circumstances of that case and as such the same is not applicable to the facts of this case in which the payment has been withheld due to orders passed in execution proceedings.

11. Having regard to the above, it is evidently clear that the action of withholding of the said amount was taken by the respondents in pursuance to the orders passed by the learned Court of Asstt. Collector Grade-I, O/o the Registrar Cooperative Societies, Govt. of NCT of Delhi wherein it was ordered to withhold the amount of salary and other benefits of the applicant for full and final payment of the amount to be recovered. The applicant has himself stated in the OA that due to his sickness for sometime in 2006, he could not pay the monthly installments of repayment. It is trite law that retiral dues can be withheld only in accordance with law. It is not as if the respondents have refused to release the aforesaid withheld amount. The order dated 23.5.2018 impugned in this OA clearly intimated the applicant that since nothing has been received from the Court with regard to release of his leave encashment or otherwise, the applicant was advised to approach the learned Court for issuance of appropriate direction for release of the dues so that they may take necessary action accordingly.

12. The applicant has not averred anything in his pleadings about the status of settlement of the dues which has relation with the orders passed by the learned Court of Asstt. Collector Grade-I, O/o the Registrar Cooperative Societies in compliance of which the respondents had withheld the aforesaid amount of the applicant's leave encashment and CGEIS.

13. So far as reliance placed by the applicant on the decision of the Hon'ble High Court of Madhya Pradesh in the case of **S.K. Garg** (supra) is concerned, that was a case in which the Bank has not shown any legal and statutory provision which enables the Bank to withhold the said amount and the High Court held that "on the strength of alleged authorization letters, the said amount cannot be withheld. The said authorization letters, by no stretch of imagination, have any force of law. More so, when the petitioner has doubted the genuineness of said documents and has specifically stated in the rejoinder and in Annexure P/5 that said documents are not signed by him. Thus, in my view, the said documents cannot be a reason to withhold the petitioner's retiral dues." However, in the peculiar facts and circumstances of this case, the respondents have not withheld the pension but withheld the amount of his pay and allowances, i.e, leave encashment and CGEIS in compliance

of the orders of the competent Court. As such the said decision is not applicable to the facts of this case.

14. In the above facts and circumstances of this case, we do not find merit in any of the grounds taken in the OA to interfere with the impugned order. However, we direct the applicant to approach concerned authority with regard to the dues payable by him and thereafter take appropriate steps to clear the same and get the NOC from them. If the NOC is produced by the applicant, the respondents shall make payment of admissible withheld amount to the applicant within a period of 90 days from the date of receipt of NOC.

15. The OA is disposed of in above terms. There shall be no order as to costs.

**(Nita Chowdhury)
Member (A)**

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