

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP-8189 of 2017 (O&M)
Date of decision: 03.07.2019**

C.B. Mittal

.... Petitioner

versus

Dakshin Haryana Bijli Vitran Nigam Ltd. and others

.... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Subhash Rana, Advocate
for the petitioner.

Ms. Chhavi Sharma, Advocate
for the respondents.

HARSIMRAN SINGH SETHI, J.

In the present writ petition, the challenge is to order dated 23.02.2017 (Annexure P/4) by which the recovery from the petitioner in respect of recovery amounting to Rs.55869/- from his retiral benefits has been held to be valid and correct. As per the averments made in the writ petition, petitioner was appointed on 11.04.1973 on the post of AFM and after getting promotion as J.E., he retired on 31.01.2008. The case of the petitioner was that while making the payment of pensionary benefits, a sum of Rs.55869/- were withheld by the respondents. He challenged the said action of the respondents by filing CWP No.25709 of 2016 and the said writ petition was disposed of by this Court on 13.12.2016 by giving directions to the respondents to decide the legal notice dated 01.04.2016 by passing a speaking order within a period of two months. In pursuance to the directions

given by this Court on 13.12.2016, respondent No.4 has passed an order on 23.02.2017 rejecting the claim of the petitioner. The so called speaking order passed by the respondent No.4 is as under:-

“Speaking orders in order to implement the orders of Hon'ble Punjab and Haryana High Court Chandigarh dated 13.12.2016 in CWP No.25709 of 2016 titled Sh C.B. Mittal, JC (retired) Versus DHBVN)

Sh C.B. Mittal, JE (F) S/O Sh Desh Raj retired from erstwhile UHBVNL now DHBVNL has filed a Civil Writ Petition No.25709 of 2016 in Hon'ble Punjab and Haryana High Court, Chandigarh regarding releasing of the amount so recovered by the Nigam from his retiral benefits. After the case sub-judice with the Court, Hon'ble Punjab & Haryana High Court, Chandigarh has been disposed of the Civil Writ Petition of the petitioner vide its order dated 13.12.2016 by giving direction to the respondent NO.4 i.e. Xen. Operation Division, DHBVN, Narwana “to decide the legal notice dated 01.04.2016 (Annexure P-2) by passing a speaking order within two months from the date of receipt of certified copy of this order after considering the case laws on the point as may be produced by the petitioner. Needless to say that a follow up action to be taken if the legal notice is positively decided in favour of petitioner.

In order to comply with the orders of Hon'ble Punjab and Haryana High Court, Chandigarh dated 13.12.2016, the speaking orders are required to be issued. As per instructions of the Nigam & to dispose off legal notice, the recovery of Rs.20,000(revenue audit para), Rs.18468/- (loss due to theft of inventory) and Rs.17401/- (intimated by Xen. Op. Divn. Palwal) (Total Rs.55869/-) made from the retiree is correct.”

Counsel for the petitioner argues that no justification/reason has been given while rejecting the claim of the petitioner for refund of amount of Rs.55869/- which was withheld by the respondents while making payment of pensionary benefits and the said order is totally cryptic and non-speaking.

Upon notice of motion, respondents have filed reply. In reply, the respondents have stated that a show cause notice was issued to the petitioner on 23.06.2004 which was decided on 22.11.2007, wherein, a recovery of Rs.71518/- was imposed upon the petitioner and, therefore, the amount was

rightly deducted.

I have heard learned counsel for the parties and have gone through the records with their able assistance. A bare perusal of the impugned order dated 23.02.2017 (Annexure P/4) shows that no reason has been given by the respondents as to on what account the recoveries were done and as to why the justification given by the petitioner that no recovery could have been done after his retirement was not accepted. The impugned order dated 23.02.2017 (Annexure P/4) is totally cryptic and non-speaking. Respondents have failed to record that there was any order, which has been passed by the competent authority, according to which, the amount so mentioned in the impugned order was liable to be recovered from the pensionary benefits of the petitioner.

The averments made in the reply that recovery was imposed upon the petitioner vide order dated 23.06.2004 (Annexure R/3), cannot be treated as justification for the reason that total amount withheld from the pensionary benefits of the petitioner is Rs.55869/-, whereas, the recovery as per order dated 23.06.2004 (Annexure R/3) is of Rs.71518/-. Furthermore, in the impugned order, there is no mention that the recovery from the retiral benefits of the petitioner is on account of order dated 23.06.2004 (Annexure R/3).

Keeping in view the above, the impugned order dated 23.02.2017 (Annexure P/4) is set aside. Respondents are directed to decide the claim raised by the petitioner by passing a speaking order giving details as to on what account the recoveries have been done by the respondents by

considering the pleas which have been raised by the petitioner. Let a speaking order be passed within a period of two months from the date of receipt of copy of this order. In case after the decision, it is found that the petitioner is entitled for any benefit of refund, the same shall also be extended to him within a period of one month thereafter.

The present writ petition is allowed on the above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

03.07.2019
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| 1. | Whether speaking/non-speaking? | Yes/No |
| 2. | Whether reportable? | Yes/No |