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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

OA NO. 2431/2002

This the 8<sup>th</sup> day of August, 2003

HON'BLE SH. KULDIP SINGH, MEMBER (J)

Dr. Krishnawtar Gupta,  
Son of Shri Sita Ram Gupta,  
R/o Flat No. B-73, Vasant Apartments,  
Plot No. C-58/2, Sector-62,  
Noida, U.P.

-Applicant

(By Advocate: Sh. N. Safaya)

Versus

1. Employees State Insurance Corporation,  
Through its Director General,  
Kotla Road,  
New Delhi.
2. The Joint Director (Finance)  
Employees State Insurance Corporation,  
through its Director General,  
Kotla Road, New Delhi.

-Respondents

(By Advocate: Ms. Jyoti Singh)

ORDER

By Sh. Kuldip Singh, Member (J)

Applicant has assailed an order passed by the respondents by which a sum of Rs. 1,09,780/- has been deducted out of his GPF Account.

Facts in brief are that the applicant was appointed as Insurance Officer, Grade-II in E.S.I. on 90 days basis and on salary which was less than regularly appointed officers. Applicant and other officers who were similarly placed filed an application before the Tribunal in No. T-492 in the said judgment this Tribunal had directed that the applicants shall be entitled to the same pay and allowances as is admissible to regularly appointed Doctors. The said judgment has also been affirmed by the Hon'ble High Court. The break in service was

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also regularised against leave of the kind due. Accordingly, respondents had also granted leave to the applicant for regularising their break in service.

3. After regularisation applicant had become entitled to arrears also and had also become entitled to deposit GPF from April 1987, i.e., on completion of one year continuous service from the date of initial appointment. It is further submitted that it is compulsory under the GPF Rules for the employees to deposit/contribute a certain percentage of the basic salary towards GPF. Respondents accordingly asked the applicant to contribute to the Provident Fund as per rules and sought to deduct the contribution out of the arrears. Applicant also requested for deduction as per rules and agreed for 100% contribution of the basic salary from April 1986.

4. After deduction of the amount respondents credited the amount with interest to which he had become entitled on account of contribution towards GPF but later on applicant was shocked when he received the earlier statement in 1998-99 which was issued in June 1999 in which the interest which has been credited to his account earlier for the period from 1986-87 to 1997-98 was deducted illegally, arbitrarily and without any valid reasons. Applicant also informed the respondents that the interest on the GPF contribution had become due under rules from the month in which the pay of the subscriber was due irrespective of the month in which it was actually withdrawn or paid. But the respondents had taken the stand that the interest could be paid only from the date when the GPF contribution was accepted from the applicant and was credited to the account of applicant.

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5. Since the applicant had challenged the order of deduction of Rs.1,09,780/- earlier in an OA but the Tribunal vide order held that in the event respondents seeks to deduct any amount from the applicant's GPF Account, they shall do so only after putting him to notice and giving him reasonable opportunity to file the reply. Thereafter a notice was also issued to the applicant and on the basis of the same the amount has been deducted. So applicant submits that the order of withdrawal of interest which was already credited to the GPF Account of the applicant is illegal because as per proviso to Rule 11 (3) of GPF Rules, 1960 the interest on subscription is payable from the month in which the leave salary is due under the rules irrespective of the month in which it has been actually drawn.

6. It is further submitted that since the respondents had been illegally treating the applicant as ad hoc and not deducting GPF on completion of one year then fault was on the part of the respondents which was set right by the Tribunal and applicant has been regularised from retrospective date. Applicant further submits that the OM of Govt. of India dated 14.10.74 also provides that even in the case of revision of pay scales the interest on the arrears of subscription should be payable from the month in which the pay under the revised pay rules was due irrespective of the month in which such arrears are actually credited.

7. Thus, it is submitted that since the services of the applicant had been regularised with retrospective date and applicant was entitled to receive the salary as a regular employee, so respondents were under an obligation to deduct

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the GPF and the applicant was entitled to interest thereon from the date from which month his salary was due and from which the GPF was to be deducted.

8. Respondents are contesting the OA. Respondents pleaded that the order of withdrawal of interest already credited to the GPF Account of the applicant is legal and it cannot be termed as illegal and bad in law as they submit that the deduction of the GPF for the period in dispute was necessitated due to regularisation of the services of the applicant with retrospective date and the deductions was made from arrears of salary and not from leave salary and not due to the non-drawl of pay and allowances. Respondents also referred to Rule 10(3) which prescribed that if a subscriber fails to subscribe from the date on which he is required to join the fund or is in default in any month or months during the course of year otherwise than is provided in Rule 7, the total amount due to funds on account of arrears of subscription shall with interest thereon at the rate provided in Rule 11 forthwith be paid by the subscriber to the fund are in default. It is submitted that since the applicant himself has faulted in subscribing the fund from the date, so it is the applicant who is liable to pay the interest to the fund.

9. I have heard the learned counsel for the parties and gone through the record.

10. The short question involved in this case is whether the applicant who was working initially on ad hoc basis and after his regularisation of services with retrospective effect by the order of the Tribunal which had been upheld at the

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appropriate levels also, the applicant is entitled to interest on GPF contributions from the date from which his salary ought to have been paid as a regular employee or from the date when contributions were actually made to the GPF after his regularisation.

11. There is no dispute about the fact that the applicant was initially appointed on ad hoc basis and his services have been regularised and the contribution to the GPF was made only after regularisation. Applicant has relied upon Rule 11 of the GPF Rules which deals with interest and referred to proviso to sub-Rule 3 of Rule 11 which provides that where there has been delay in drawal of pay or leave salary and allowances of subscriber and consequently the recovery of his subscription towards the fund was also delayed the interest on such subscription shall be payable from the month in which the pay or leave salary of the subscriber was due under the rules irrespective of the month in which it was actually drawn.

12. Counsel for applicant further stated that the applicant was appointed on ad hoc basis initially but was kept on ad hoc basis illegally, which grievance of the applicant has been redressed when he approached the Tribunal for regularisation of services and the order of the regularisation has been upheld and has also been implemented and the regularisation has also been allowed with retrospective effect. So the salary payable to the applicant had become due from the period when the applicant has been regularised and applicant has become liable to contribute towards GPF after one year of his continuous service and there was no delay on the part of the applicant to contribute towards GPF and delay, if any, in the

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drawal of pay or pay and allowances of the subscriber as a regular employee was on the part of the respondents. So the applicant is entitled to the interest on his subscription for the month for which his pay and leave salary has been drawn.

13. On the contrary, counsel for the respondents relied upon Rule 10(3) which prescribes that if a subscriber fails to subscribe with effect from the date on which he is required to join the fund then in that event he is not entitled to interest.

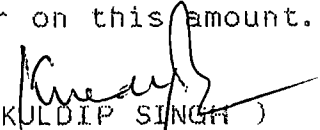
14. I have considered the rival contentions of the parties. The only question to be seen is whether there was any fault on the part of the applicant to subscribe to the fund or it was the respondent who had committed delay in drawal of regular pay and salary of the applicant and did not contribute to the fund. It is quite pertinent to note that applicant though was initially appointed on ad hoc basis has continued for sufficient long period and that is why his services have been ordered to be regularised with retrospective effect. The order passed by the Courts have also been implemented. Meaning thereby that the respondents were illegally holding out the applicant to be ad hoc employee whereas in law he had become a regular employee. That is why the Court had allowed the petition of the applicant and declared him a regular employee with retrospective effect. In this scenario the applicant cannot be attributed any fault on his part as if he has failed to subscribe to the fund. Rather the fault, if any, that way on the part of the respondents themselves and they have been illegally holding out that the applicant was an ad hoc employee and was not a regular employee. The plea of

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the applicant has been countenanced when the applicant has filed the earlier litigation. So by no means it can be said that it is the applicant who had defaulted and Rule 10 sub-Rule 3 could not be applied to deny him the interest.

15. On the contrary the proviso to Rule 11 sub-Rule provides that if there is a delay in drawl of leave salary and allowances to the subscriber and consequently there is a delay in the recovery of subscription towards the fund, the interest on such subscription shall be payable from the month in which the pay or leave salary was due under the rules. It means that after the judgment in the earlier litigation filed by the applicant for regularisation their remain no doubt that the applicant was entitled for regularisation with retrospective date and his pay should have been drawn by the respondents from the month from which it was due and subscription to the GPF fund should have been made from that very month. The delay in this case has occurred due to respondents illegally denying the right of the applicant for being regularised and drawing of his pay as a regular employee. So I have no hesitation to hold that the applicant is entitled to the interest and respondents cannot deduct the amount of sum of Rs.1,09,780/- and the respondents cannot recover the amount from the applicant.

16. Accordingly, I quash the show cause notice dated 6.3.2002 and ordder dated 28.5.2002 and respondents are further directed to restore the amount, if already deducted from the applicant. No order as to costs. However, applicant will not be entitled to any interest further on this amount.

  
( KULDIP SINGH )  
Member (J)

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