

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE
ORIGINAL APPLICATION NO.170/00759/2019
DATED THIS THE 31st DAY OF JANUARY, 2020
HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER
HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

Divakar Morey
S/o. Late Shri R.Krishnaji Rao
Aged 61 years
647, 11th Main, HAL II Stage
Indiranagar
Bangalore-560038.

....Applicant

(Party-in-Person)

Vs.

1. Union of India
The Secretary
Dept. of Atomic Energy
CSM Marg, Mumbai-400020.
2. The Chairman
Nuclear Power Corporation of India Ltd.
Anushaktinagar
Mumbai-400094.

...Respondents

(By Advocates Sri Vishnu Bhat, Sr.PC for R1 & Sri R.V.Naik for R2)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that while working as Senior Manager (Finance & Accounts) in the Nuclear Power Corporation of India Ltd.(NPCIL), Mumbai from June 1999 to May 2001, he was wrongly and illegally terminated from service for being a whistleblower who had exposed scams of Rs.1000 Crores. Prior to this he worked in the Indian Petrochemicals Corporation Ltd.(IPCL), Nagothane, Maharashtra from Sept. 1992 to May 1999 under EPC Act 1952. Consequent on joining the service in NPCIL at Madras Atomic Power Station, Kalpakkam in June 1999, the credit in his Provident Fund(PF) account was transferred to the

respondent Corporation by transfer certificate for Rs.130639/-(Annexure-A1). Subsequently a further amount of Rs.35042/- was sent to his PF account from his previous employer IPCL to the respondent Corporation in full and final settlement of his dues. In the mean time, he was transferred to Mumbai from Kalpakkam. As such, the Kalpakkam unit had transferred the above amount to Mumbai office through letter dtd.17.1.2001(Annexure-A2). However, the respondents have not included the amount of Rs.35042 in the PF balance for the year 2000-2001. It is a very serious lapse to exclude any part of contribution from PF account as per PF Act 1925. The PF final balance with interest as on 10.5.2017 as worked out by him amounts to Rs.39.03 lakhs(Annexure-A3). The applicant made several petitions and phone calls to the respondents. After 4 years, the respondents sent an amount of Rs.49566/- as final settlement during January 2004(comprising of employee share only) as on 31.5.2001 through their letter at Annexure-A4. Since the same amount was released without including interest and certain illegal deductions were made, the applicant has refused to take the amount and returned the Demand Draft. Thereafter, the applicant made several petitions and phone calls. Then the respondents sent only Rs.23,838/- by cheque dtd.25.7.2008 on 16.10.2008(Annexure-A5) as final settlement. The statement was unacceptable and incorrect. Unauthorised deductions were made towards transfer TA advance, LTC advance, salary advance, Motor Car advance etc. The applicant accepted the amount, without prejudice to his claims in view of his financial troubles. Aggrieved by the injustice caused, the applicant had filed a Writ Petition before the Hon'ble High Court of Karnataka during November 2009 which is disposed of on the ground of jurisdiction with liberty to approach proper forum(Annexure-A6). Thereafter, the respondents made another final settlement

of Rs.19888/- (instead of taking the entire balance of Rs.243580/- as on May 2001) and total amount of Rs.36633/- was paid by Demand Draft on 17.12.2001 by adding 8% interest for each year from 1.4.2002 to 1.12.2009. In fact, the interest for delay of 8 years is 25% p.a. as per the EPF Act 1952. Unauthorised deductions made towards salary advance, motor car advance, TA advance etc. are totally barred under Sec.3(1) of PF Act 1925. PF accumulations cannot be attached by any court or can be delayed indefinitely.

2. The applicant submits that vide transfer advice dtd.16.3.2001 of the NPCIL Mumbai HQ, he was transferred to Rajasthan Unit of Kota Plant and his PF balance Rs.196272/- was transferred to RAPP 3&4 Rajasthan Unit(Annexure-A7). When he approached the Hon'ble Employees Provident Fund Tribunal, the said Tribunal directed him to approach the appropriate forum for getting his grievance redressed(Annexure-A8). Then he approached the Tribunal in OA.No.370/2017 which is disposed of with a direction to the respondents to properly examine and settle his PF claims vide order dtd.23.8.2018(Annexure-A11). Subsequent to this order, the respondents vide communication dtd.14.11.2018(Annexure-A12) informed the applicant that he has already been paid all the claims which is due to him and nothing remains outstanding. The applicant submits that the respondents in their communication have furnished the statement of FY 2000-01 ledger card instead of furnishing a date wise consolidated statement of the total PF amount due to the applicant. Compared to original 2000-01 ledger card(Annexure-A13), the manipulation is evident in the communication of the respondents. To cover up their manipulation, the respondents have now shown Rs.15688 in February 2001 under Employee subscription and Rs.19354 under Employer subscription totalling to Rs.35042/-.

Therefore, the applicant again wrote a letter dtd.18.12.2018(Annexure-A14) to the respondents requesting to settle his claim of an amount of Rs.39.03 lakhs as on May 2017 which is still due to him. The respondents have also not released EGLIS balance of Rs.2880/- since the last 18 years, which is a very serious omission on the part of the respondents. The applicant submits that he was terminated from service because he was a whistle blower and as though his termination was not sufficient, he was harassed and victimized by depriving him of his legitimate PF claims. Incidentally several other employees were also meted out similar treatment when they tried to expose the misdeeds of the respondents and as a consequence some of them committed suicide and others died under mysterious circumstances as reported in various media reports(Annexure-A15). Since the applicant's claims are not being settled since 19 years in spite of directions of this Tribunal, the applicant again filed the present OA seeking the following relief:

- i. *Hold & declare that the deductions made under various heads in the Order No.NPCIL/RR site/dgm(f&a)/2008/s/2075 dt.16.10.2008(Annexure-A5) from PF amount payable to the applicant as null & void in accordance with the Provident Fund Act 1925.*
 - ii. *Call for the records leading to issue of the letter dtd.14.11.2018(Annexure-A12) and after perusal, issue a writ of certiorari or any other order or direction setting aside the same as arbitrary and issued without application of mind.*
 - iii. *Issue a writ in the nature of mandamus directing the respondents to settle his provident fund claims immediately with 25% interest per annum, besides recover penal damages.*
 - iv. *Pass such order as this Hon'ble Tribunal deems fit in the facts and circumstances of the case.*
3. On the contrary, the respondents have submitted in their reply statement that the applicant has wrongly invoked the jurisdiction of this Tribunal as the Nuclear Power Corporation of India Limited(NPCIL) has not been notified as an organisation u/s 14(2) of the Administrative Tribunal Act, 1985 and therefore not

amenable to the jurisdiction of this Tribunal. NPCIL is a corporation registered under the Companies Act, 1956 and not a Department of Govt. of India. It is not included in Appendix VI of the CAT Rules(Annexure-R1). Hence, the OA is not maintainable. The respondent No.1 is unnecessarily impleaded in this application which may be deleted from the party array.

4. The respondents submit that the applicant who joined the service of the respondents on 3.3.1999 at the Madras Atomic Power Station(MAPS), Kalpakkam was transferred initially to NPCIL Head Quarters, Mumbai and subsequently to Rajasthan Atomic Power Station at Kota and he was terminated during his probation. During his posting at MAPS, he sought an advance of an amount of Rs.1,32,000/- for repayment of Car Loan availed by him from his previous employer. The said amount was sanctioned to the applicant for which he had executed an agreement dtd.26.6.1999 in favour of the respondent Corporation along with a guarantor with an agreed rate of interest @ 15% p.a. It is submitted that at the time of his termination, the principal outstanding balance of his car advance was Rs.1,16,820/- and the interest amount payable was Rs.55,941/- @ 15% as on 1.6.2002. The applicant was required to refund the entire outstanding balance of car advance, but he failed to refund the same to the respondent Corporation. As a result, Original Suit No.159/2003 was filed against the applicant and his guarantor in the Court of Sub-ordinate Judge, Chengalpattu, Tamil Nadu for the recovery of the aforesaid amount. It was finally withdrawn by the respondent Corporation on the basis of a letter dtd.3.5.2005(Annexure-R2) of the applicant consenting that he will adjust his car advance outstanding from his provident fund amount lying with the 2nd respondent and further requested to discharge his guarantor from his liability

under the agreement dtd.26.6.1999. In pursuance of the order dtd.23.8.2018, the applicant was issued a letter dtd.14.11.2018(Annexure-A12). Further, in an internal enquiry, the General Manager(F&A), Rajasthan Atomic Power Station by a letter dtd.24.1.2019(Annexure-R3) confirmed that there were no dues payable to the applicant. The said letter clearly shows the amounts recoverable from the applicant at Rs.2,01,626/- inclusive of various advances obtained by the applicant and the amount payable at Rs.2,25,464/- and the balance amount of Rs.36,633/- which was paid vide DD dtd.17.12.2009. The transfer of the amounts from his previous service are all given due credit, while arriving at the amount payable and the claim for interest at 25% per annum is totally unjustified. Further the Hon'ble High Court in WP.No.14110/2009 has recorded the fact of payment of Rs.36,633/- and has granted liberty to the applicant to sue for recovery of any amount due to him. The words 'to sue for recovery' means filing a civil suit for recovery, if any and not an application before this Tribunal or another Writ Petition before the High Court of Karnataka, as the claim was disputed. The applicant relief on Section 3(1) of the PF Act which bars any attachment by a Court, whereas in the present case there is no attachment by a Court, in fact a letter requesting adjustment of the amounts payable by the applicant from the PF account was given by the applicant. His further claim of Rs.39.03 lakhs as on May 2017 is imaginary. It is also denied that the respondents have fabricated ledger card for Financial Year 2000-01. Likewise, claim for balance of Rs.2880/- under EGLIS(Employees Group Linked Insurance Scheme) is denied and his claim of being a whistle blower is also denied. Therefore, the OA is liable to be dismissed.

5. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that when the earlier OA.No.370/2017 filed by him was disposed by this Tribunal, the 2nd respondent is precluded from raising the issue of jurisdiction of this Tribunal to adjudicate the OA. The applicant was an employee of the 2nd respondent corporation and not an employee of the Dept. of Atomic Energy. This contention of the respondents is totally wrong for the reason that the respondent Corporation is very much under the administrative control of the 1st respondent and it is a well settled principle that in all such litigations the controlling authority at the Govt. level is also made as a party in the proceedings and the 2nd respondent is not justified in contending that the 1st respondent may be deleted from the party array.
6. The applicant submits that the respondents have failed to explain until now as what happened to Rs.35042/- received from the previous employer IPCL in January 2001. They miserably failed to explain as to how Rs.19888/- remained unpaid when they first settled his claim. This was paid only in December 2009 after 9 years with just 8% interest. They also failed to furnish the consolidated date wise statement of total amount due and total paid and made it abundantly clear that there are no further dues outstanding. There is lot of discrepancy between fabricated unsigned Ledger Extract 2000-01 and the original Ledger copy of 2000-01 available with the applicant. The 2nd respondent has manipulated EPF ledger 2000-01 by wrongly showing that the amount of Rs.35042/- was already received and credited in February 2001 itself. Only to escape from the interest and penalty liability for 19 years, this manipulation is done. The balance amount of Motor Car advance for Rs.116820/- was outstanding as on date of his termination on 31.5.2001. But the respondents

have wrongly deducted excess amount of Rs.154143/- (interest up to December 2001) which is incorrect. All amounts under the column 'Amount payable' is the balance amount payable as on 31.5.2001. Hence, the Motor car advance balance is wrongly taken as on December 2001 at a higher amount which is not proper. Any deduction from the PF account under the extant statute is totally prohibited under PF Act 1925 & PF Act 1952. The respondents have not settled the CGEIS amount of Rs.2880/- since last 20 years. There is a delay of 19 years in settling the PF account which constitutes criminal breach of trust under Section 405, 406 & 409 of IPC. On the contention of the 2nd respondent that the deduction of Motor car advance from the PF account of the applicant is as per his consent, the applicant submits that the consent was obtained under duress and he did not give it voluntarily for deduction of Motor car advance. But surprisingly so many other illegal deductions are also made like LTC advance, Transfer TA advance, Salary Advance etc, which are illegal. The applicant is unemployed since last 20 years and is facing lot of hardships. Now he is a senior citizen. He was harassed by depriving him of his hard earned money. The applicant relied on the Hon'ble Apex Court judgment in *McLeod Russel vs. RPFC Jaipalguni in SSC Appeal No.5927/2014* in support of his contention.

7. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. In this case, the respondents had originally challenged the jurisdiction of this Tribunal since NPCIL has not been notified as one of the organisations brought under the Central Administrative Tribunal's Act 1985. The same point was agitated before this Tribunal in OA.No.370/2017 and vide order dtd.23.8.2018, this Tribunal at para-6 & 7 has ordered as follows including the point relating to the jurisdiction:

6. Ignorance of law is no excuse, and, if the applicant has been challenging his case in the wrong fora, it cannot extend the period of limitation available for seeking a remedy. Thus this case, prima facie, appears to be barred by period of limitation. The applicant has also not given very convincing argument to support that this Tribunal has jurisdiction, except by saying that there has been a decision by the Madras Bench of this Tribunal in O.A. No. 1488/1993 (P. Ravindran vs. NPCIL), which was challenged by the NPCIL before the Hon'ble High Court of Madras in W.P. No. 15509 of 1998. However, taking a lenient view, and in consideration of the fact that the applicant is a senior citizen who has been agitating this case for long, we dispose off this matter as follows:

7. We find that the difference between the applicant's claim and what the respondents have admitted, is an amount of Rs. 14777/- (without considering the interest). This is the difference between the principal amounts of Rs. 243203 claimed by him in Annexure A-3 and Rs. 49566 + 158972 (Annexure R-6) + 19888 (Annexure R-7) = Rs. 228426, as admitted by the respondents. The applicant had agreed to have the car advance deducted, though he claims, it was done under duress. Be it as it may, the applicant has nowhere said that this amount was not due from him. The fact remains that the respondents have not explained what happened to Rs. 35042/- allegedly received by them from the IPCL and how Rs. 19888/- remained unpaid at the time when they first settled his claim. The interest of justice will therefore, be served in this case by directing the respondents to provide one full consolidated date-wise statement of the total PF amount due and paid to the applicant to make it abundantly clear that there are no further outstanding dues. If the accounts reveal that any amount is still due to be paid, the same shall be paid to him with interest at the prevalent PF interest rate. The respondents will do so within one month from the date of receipt of a copy of this order.

8. From the letter at Annexure-A12 dtd.14.11.2018, it appears that the respondents have claimed that no further amount is due to be paid to the applicant. The applicant has found fault with the EPF Ledger Card of 2000-2001 furnished along with this letter dtd.14.11.2018 pursuant to the orders of this Tribunal where he alleges that the missing amount of Rs.35042 as noted by this Tribunal in its order at para-7 has now been cleverly shown as employee and employers contribution in February 2001. The applicant alleges that this is totally different from the original signed extract of his ledger for 2000-2001 furnished vide Annexure-A13. It is obvious that there are discrepancies between these two Ledgers. While Annexure-A13 is the signed EPF Ledger account, the Ledger

card now given by the respondents appears to incorporate certain other details as rightly contended by the applicant. It is obvious that even though this Tribunal had ordered for clear one full date wise consolidated statement relating to the applicant, the respondents have not bothered to do so for the reasons best known to them. Therefore, we are unable to accept the contention of the respondents that there is nothing more to be settled to the applicant. Since we have already passed an order in OA.No.370/2017 which was not challenged by the respondents, we now deem it appropriate that the respondents should undertake the implementation of this Tribunal's order with the seriousness it deserves and work out the details correctly based on Annexure-A13 which has been furnished by the applicant and other details given by him in his application and work out the dues to him correctly and pay the balance due with interest at the prevalent PF interest rate. Their interpolation in the EPF Ledger card of 2000-2001 leads to the conclusion that this has been done only to avoid the payment of interest from the dates it is due and statement does not appear to be correct. It is also not clear as to why even these revised ledger card details are not incorporated in the provident fund slip for the year 2002-2003 and 2001-2002 since the payment was finally made only in the year 2008 after making certain deductions. We would not like the respondents waste any further time of this Tribunal in this simple matter of working out the details correctly and paying the balance due to the applicant with the interest due without any further delay. We are unable to consider the other point relating to the illegality of deducting certain advances etc., from the balance due at this point of time since the other option available to the applicant would have been to repay his advances instead of allowing the respondents to deduct the same from what was due to him from PF

and in one instance relating to the Motor Car advance, he had in fact permitted in writing the same deductions. After so many years, he cannot be allowed to go back on this stating that it was under duress etc. But apart from this, the PF contributions should be correctly worked out and balance, if any, due to him should be paid within a period of one(1) month from the date of issue of this order.

9. The OA is allowed to this limited extent. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00759/2019

- Annexure-A1: Transfer of PF balance Rs.130639/- by the previous employer – M/s.
Indian Petrochemicals Corpn Ltd., Nagothane
- Annexure-A2: Copy of the letter transferring Rs.35042/- by IPCL order of the Hon'ble
High Court at Bangalore
- Annexure-A3: Copy of net payable calculation
- Annexure-A4: Copy of the letter towards final settlement for Rs.49566/- dt.30.01.2004
- Annexure-A5: Copy of the order of final settlement by NPCIL dt.16.10.2008
- Annexure-A6: Copy of order of the Hon'ble High Court dt.29.8.2012
- Annexure-A7: Transfer of balance of PF amount from Mumbai NPCIL HO to RAPP 3&4,
Rajasthan
- Annexure-A8: Order of Hon'ble EPF Tribunal 27.3.2017

Annexure-A9: NPCIL PF scheme under the PF Act 1925

Annexure-A10: Letter of termination dtd.28.5.2001

Annexure-A11: Hon'ble Central Administrative Tribunal order dtd.13.11.2018

Annexure-A12: Reply of the respondent dtd.14.11.2018

Annexure-A13: Extract of original Ledger card 2000-01 & 02

Annexure-A14: Applicants letter dtd.18.12.2018

Annexure-A15: 28 Mysterious deaths at NPCIL & Dept. of Atomic Energy

Annexures with reply statement:

Annexure-R1: Copy of organisations notified under Rule 154(b)

Annexure-R2: Copy of the consent letter dtd.3.5.2005

Annexure-R3: Copy of the said letter of the General Manager (F&A)

Annexures with rejoinder:

-NIL-
