

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 812 of 1995

Allahabad this the 10th day of December 1997.

Hon'ble Mr. D.S. Baweja, Member (A)

K.V. Prasad, R/o 51, Muir Road, Allahabad.

Applicant

By Advocate Sri A.R. Lall Srivastava

Versus

1. Union of India through the Secretary to Government of India, Ministry of Urban Development, Nirman Bhawan, New Delhi.
2. The Pay & Accounts Officer, C.P.W.D.(N.Z.) East Block No.4, R.K. Puram, New Delhi-22.
3. The Executive Engineer, C.P.W.D. Allahabad Central Division, 76 Lukerganj, Allahabad.

Respondents

By Advocate Sri N.B. Singh

O R D E R

By Hon'ble Mr. D.S. Baweja, Member (A)

The applicant while being employed as Upper Division Clerk under the respondent no.1 i.e. Secretary to Government of India, Ministry of Urban Development, New Delhi, retired from service on 01.2.1984. The applicant was subscribing under General Provident Fund (for short G.P.F.) account no.FWE/UMF/249 allotted by the Director of Audit, New Delhi. The G.P.F. account of the applicant was transferred to the Accountant General II, U.P. Allahabad. Consequent to the departmentalisation of Union Accounts, the balances standing in the G.P.F. account of the applicant with Accountant General II, U.P.

Allahabad was transferred to the Pay & Accounts Officer, C.P.W.D., New Delhi. As a result of transfer of the G.P.F. account from Director of Audit to Accountant General U.P. II and then to Pay & Accounts Officer, C.P.W.D., New Delhi, discrepancy relating to the missing credits and less calculation of interest occurred. The applicant was paid the amount to his credit in the G.P.F. account after recasting the account from 1970-71 onwards. The payment arising on account of missing credit and debits of the earlier period, were made to the applicant from time to time over a period starting from the 1984 till 1993. The respondents vide letter dated 15.7.1994 at annexure A-1 have advised the applicant that all the claims made by him for the missing credits and the interest thereon have been settled and nothing more is payable to the applicant. The applicant was not satisfied with the action taken by the respondents and has been representing repeatedly over several years stating that there are still claims pending to the applicant. Due to non-action ^{being} taken by the respondents, this O.A. has been filed feeling aggrieved by the alleged non-payment of the dues claimed by the applicant, on 14.8.1995. The applicant has brought out the details of the claims due from the respondents in para 6.6 of the O.A. pertaining to the residual claim on account of interest as detailed in annexures A-4, A-8, A-9, A-10 A-14 and A-15 of the O.A. The claims due on various items of the credits have been brought out in para 4.7 with supporting details in appendix C, D, E, G, H, I and J of the O.A. The summary of these claims has been brought out in para 4.8 of the O.A. which includes the claim for less payment of the interest on account of delay in the payment of D.C.R.G., Group Insurance Scheme and payment of commutation of pension. (V)

2. The applicant has sought the following reliefs:-

- (a) to direct the respondents to make the payment of various claims to the applicant.
- (b) to direct the respondents to pay the penal interest at the market rate on the claims outstanding for payment from the date of retirement till the date of actual payment.

3. The respondents have contested the O.A. by filing the counter-affidavit through Sri N.K. Kumar, Controller of Accounts, Ministry of Urban Affairs & Employment, Government of India, New Delhi. The respondents submit that G.P.F. account of the applicant after 01.7.1976 was being maintained by the respondent no.2 and before that, the same was being maintained by the Accountant General, U.P. The respondents admit that there were lot of missing credits and debits in the G.P.F. account as the same had not been received ^{from} the office of the Accountant General, U-P. At the time of retirement, the G.P.F. account of the applicant was recasted upto 1970-71 onwards and the payment was arranged to the applicant. Subsequently based on the available record, the G.P.F. account was recasted from 1960-61 onwards and taking into consideration the representations made by the applicant, the payments due including the interest have been made to him and nothing more is due to him. The respondents have refuted item by item, the claim of the applicant ~~900~~, made in para 6.6 and 6.7-- in the O.A. The respondents further contend that the payment of the interest at the rate of 20% claimed by the applicant is not admissible to the applicant as per the extant rules. In view of these facts, the respondents plead that the applicant is not entitled for any of the

reliefs prayed for and the application is devoid of merits and deserves to be dismissed. The respondents have also opposed the application being not maintainable as it is barred by limitation.

4. The applicant has filed the rejoinder-reply, reiterating the submissions made in the O.A. while controverting the submissions of the respondents.

5. I have heard Sri A.B.L. Srivastava, learned counsel for the applicant and Sri S.K. Anwar, proxy to Sri N.B. Singh, counsel for the respondents. A careful consideration of the arguments advanced ^{during hearing} and the material brought on record, has been done.

6. Counsel for the applicant during the arguments relied upon the following judgments in support of his submissions:-

- (i) Dwarka Nath Sharma Vs. U.O.I. & Others (1990) 12 A.T.C. 705 (S.C.)
- (ii) Vimla Sharma Vs. State of Uttar Pradesh 1991 S.C.C. (L & S) 704
- (iii) Shri P. Samajdar Vs. U.O.I. & Others A.T.J. 1997(1) C.A.T. 562
- (iv) S.V. Sundaram Vs. U.O.I. & Ors. (1994) 26 A.T.C. 184
- (v) Bhalchandra Chintaman Gadgil Vs. U.O.I. & Others A.T.J. 1997(2) C.A.T. 303 (Full Bench)

7. Before going into the merits of the case, the plea of limitation raised by the respondents, shall be gone into. From the facts of the case, it is noted that the applicant had retired from service on 01.2.1984. The applicant was not paid the full amount of the G.P.F. to his credit as there was some missing credits and debits

due to non-receiving of the details from Accountant General, II, U.P. where G.P.F. account of the applicant ^{being} was maintained prior to 1976. It is noted from the material brought on record ^{by the respondents} as well as by the applicant that the payments on account of the missing credits and debits and interest thereon, have been made to the applicant from 1984 onwards on various dates. The applicant has been repeatedly representing about the non-payment of the interest accumulated on the missing credits adjusted after several years. The respondents as per letter dated 05.2.92 advised to the applicant that all the payments as due, have been made to the applicant and in case some ^{are} more payments due to him, he should advise the same. On further representation made by the applicant, on 15.7.94, (Annexure A-1), it is noted that further payment to the applicant was made as per cheque dated 03.2.1994 and it was again advised that no more payment is due to the applicant. From these details, it is noted that the respondents have been keeping the issue alive for a period of 10 years since the retirement of the applicant and releasing payments due on account of missing credits and interest thereon from time to time keeping in view, the representations made ^{reply to the} by the applicant. The last representation is dated 15.7.94 and after this the applicant has filed the present O.A. on 14.8.95. Though it is conceded that the issue about the non-payment of the G.P.F. on account of missing credits and the interest ~~there~~ ^{is} pertaining to the period of 1984 but the respondents have been delaying the matter in arranging the payment for several years. The applicant has been deprived of a rightful claim of his settlement due on which he was entitled for the interest ^{therefore,} during the service period, I am of the opinion that the limitation impediment should not come in the way of

claiming the payments as alleged to be due to the applicant so far as the payments with regard to missing credits and the interest there on are concerned. The applicant has also claimed the payment of the interest for delay in payment of D.C.R.G. , Group Insurance and commutation of pension. The details have been indicated in paras 4.7 (B-2), (D-3), and (D-4) of the O.A. From the details furnished, it is revealed that the payments of these amounts have been made in the year 1984. Though for the other claims on account of missing credits, as stated earlier, there appears a delay on the part of the respondents for arranging the payment ~~spanning~~ spanning several years, but the payment of these amounts has been done immediately after retirement. The applicant has brought out the delay of delays which shows ~~a~~ a few months only. The applicant has not explained as to why he did not agitate the matter for claim of the interest in delay of these payments for several years till filing of the present O.A. Since there was no dispute about the payment of these dues, I am of the view that the claim for the payment of the interest as detailed in para 4.7(B-2), (D-3) and (D.4) is hit by the limitation and, therefore, not maintainable.

8. With regard to the limitation, the applicant has cited two judgments - Of the Hon'ble Supreme Court, Dwarka Nath Sharma Vs. Union of India and Others (1990) 12 A.I.C. 705(S.C.) and Vimla Sharma Vs. State of U.P. 1991 S.C.C. (L & S) 704. In the judgment of Dwarka Nath Sharma, the facts of the case are distinguishable from /the present case. The issue involved in this judgment ~~was~~ concerned to the seniority which was being changed

from time to time. In the present case as already held above, the limitation is applicable to the claim of the interest for delay in the payment of D.C.R.G., Group Insurance and commutation of pension, and these payments were made in the year 1984 and, therefore, there was no change in the stand of the respondents as in the respect of the claims on account of the missing credits. In view of this, this judgment is of no help to the case of the applicant. The second judgment cited is in case of Vinla Sharma. Here the Hon'ble Supreme Court allowed the claim of the appellant on the ground that latches cannot come in the way of granting the relief as the non-denial would be discriminatory and unjust to the petitioner. In the present case, the question of discrimination does not arise and, therefore, this judgment also does not come to the rescue of the applicant with regard to the limitation.

9. Coming to the merits of the case, it is noted that the applicant has given the details of the pending claims under the two headings namely Residual claim on account of interest as brought out in para 6.6 and supported by the details in the various annexures and claim due to various items of the credits as per para 4.7 with details furnished in appendices to the O.A. The respondents on the other hand have contested the claim of the applicant giving itemwise reply to the claims made in para 6.6. and 6. 7 and concluding that no further payment is due to the applicant on account of missing credits as well as the interest payable on the same. I have gone through the details furnished by either of the parties and find that the averments made by either ^{of the} parties are confusing and vague. The

applicant has furnished the details of the claims made by him. Similarly the respondents^{have} also furnished the details in their own way without bringing out the comparative position of the claim made by the applicant and the payment actually made as considered due by the respondents. With these averments and reconciling the details with regard to the claims made, it is difficult to^{go} into the merits of the claims of the applicant or to accept the contention made by the respondents that no payment is due to the applicant and all the claims made in various representations have been settled. However, it is quite clear from the rival contention that the applicant has been making representation with regard to the non-payment of the missing credits and not allowing the interest as due for account of the G.P.F. account in the respective years. As late as in the year 1994, as is clear from the annexure A-1, the respondents have made a payment of Rs.1107.00 as per the cheque dated 03.2.1994 subsequent to their reply dated 05.2.92 at annexure R.A.-1. In such a situation, it is considered expedient to issue direction to the respondents to reconcile the position with regard to payments claimed by the applicant and payments actually made by the respondents. This reconciling would be done by associating the applicant alongwith the concerned departmental representative within a period of 3 months taking into consideration the claims made by the applicant in paras 6.6 and 6.7 of the application. Incase any payment becomes due to the applicant, the same will be arranged to the applicant within a period of 1 month after completion of reconciling. Incase, no payment becomes due, the detailed reply shall be given to the applicant within a period of 3 months from the date of receipt of this order.

10. The applicant has cited two judgments of the Tribunal as detailed earlier with regard to the payment of G.P.F. and the account of the missing debits. In the case of 'P. Samajdar (supra)', the applicant had a grievance for non-payment of G.P.F. on account of non-transfer of the account from the different places where the applicant had worked. The direction had been issued to the respondents to pay the applicant his accumulation of G.P.F. money alongwith the interest as per rules. What is held in this case, supports the view taken above in the present case. In the case of 'S.V. Sundaram Vs. U.O.I. & Others (1994) 26 A.T.C. 184', the issue involved was the non-payment on account of missing credits ^{as} represented by the applicant. The respondents had explained that the necessary details were being collected for establishing the claim of the applicant. This explanation was rejected and a direction was issued to make payment ^{per} as the claim made by the applicant. The present case is distinguishable from the facts of this case as the respondents have made the payments as considered due and contest the claim of the applicant, stating that all the payments have been made. In view of this, the ratio of this case is not applicable to the present case. Keeping in view the facts and circumstances of the present case, the directions as detailed above for reconciling the claim, would meet the ends of justice.

11. The applicant has claimed the interest at the market rate for the delay in payment of the dues from the due date of payment i.e. the date of retirement. Keeping in view what is held by the Full Bench in the judgment of 'Bhalchandra Chintaman Gadgil (supra)' the applicant shall be entitled for the interest of 12%

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for the delay in payment from the date of retirement. However, the payment of the interest for the late accountal of the missing credits in the respective years shall be governed by the extant rules.

12. In the light of the above, the O.A. is partly allowed with the direction as contained in paras 9, 10 and 11 above. No order as to costs.

[Signature]
Member (A)

/M.M/