

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

HON'BLE MR. JUSTICE A.K. YOG, MEMBER (J).

Original Application Number. 530 OF 2002.

ALLAHABAD this the 30th day of *September, 2008.*

A.N. Awasthi, aged about 65 years, Son of Late D.N. Awasthi, resident of 117/Q/724, Sharda Nagar, Kanpur.

.....Applicant.

VERUS

1. Central Board of Trustees, Employees Provident Fund Organisation, Hudko Vishala, 14 Bhikaji Cama Place, New Delhi.
2. Central Provident Fund Commissioner, Hudko Vishala, 14, Bhikaji Cama Place, New Delhi.
3. Regional Provident Fund Commissioner, U.P., Nidhi Bhawan, Sarvodaya Nagar, Kanpur.

.....Respondents

Advocate for the applicant: Sri N. K. Nair.
Sri M.K. Upadhyaya

Advocate for the Respondents: Sri N.P. Singh

ORDER

Heard learned counsel for the parties at length. Perused the pleadings and the documents annexed with the O.A.

2. The impugned order dated 10.01.2002 shows that A.N. Awasthi/the applicant had made representations against recovery of charges on market rate for the period 19.04.1991 to 31.08.1994 when he over stayed in the residential quarter. Perusal of Annexure A-2 of O.A, which is a communication from Assistant Provident Commissioner

(headquarters) to the Regional Provident Fund Commissioner, Uttar Pradesh, with reference to the representation of the applicant, shows that decision was taken way back on 30.08.2001 which, as per endorsement made on the aforesaid Annexure A-2, was received by the applicant on 01.03.2002. From the above it is clear that the applicant had again agitated for redressal of grievance in the matter by filing subsequent representations.

3. On behalf of respondents Sri N.P. Singh, Advocate, has raised preliminary objection on the ground of the O.A being time barred.

4. He concedes that one year limitation (provided under A.T. Act, 1985) has to be computed from the date of communication of the order (in question) i.e. 01.03.2002. This O.A was presented in the Registry on 01.04.2002. There is a delay of one month and hence said O.A cannot be said to be highly belated. Considering that applicant had submitted subsequent representation in respect to which he received communication dated 10.01.2002, the Original Application is within time.

5. Learned counsel for the applicant argued that order to recover amount for the period he occupied residential quarter without authority has been passed without giving reasonable opportunity of hearing. He referred to the pleadings contained in paragraph 4(7) wherein it is contended that in similar facts and circumstances amount recovered has been refunded particularly in the case of one Sri A.C. Jana.

Am.

6. With respect to the last point (i.e. claim of parity), it will be seen that para 4(7) of O.A has been replied by the respondents in paragraph 15 of Counter Affidavit. For convenience, relevant extracts of para 4(7) of O.A and para 15 of Counter Affidavit are being reproduced: -

Para 4(7) of O.A:

".....On receipt of the said letter the applicant wrote back to the Regional Provident Fund Commissioner, U.P. , Kanpur on 25.04.1994 with reference to his earlier letter/representation dated 25.08.1993 drawing the attention of the Regional Provident Fund Commissioner U.P., Kanpur that the then Assistant Commissioner Shri A.C. Jana had in similar cases, after deduction of market rent/ damage from the concerned employee, refunded the amount recovered over and above the normal rent/license fee and that the records will prove this fact."

Para 15 of Counter Affidavit:

"That the contents of paragraph 4.7 of the O.A are not admitted as stated. The applicant mis-pleaded the rules for allotment of staff quarter for his convenience and killed the time for the sake of completion of his house which was under construction for a long ago.".

7. Other grievance of the applicant is that he was afforded no opportunity of hearing by the respondents before passing impugned order. Pleadings on the point are contained in paragraph 4(20) which is below reproduced: -

".....It may be mentioned that the applicant was not given any prior intimation regarding constitution of any such Committee, nor was the applicant given opportunity of hearing by the Committee.".

Aforesaid paragraph 4(20) has been replied vide paragraph 26 of Counter Affidavit, which reads: -

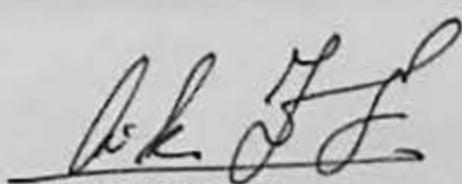
(Signature)

"That the contents of paragraph 4.19 and 4.20 of the O.A are matter of record , need no comments.".

9. In view of the above pleadings, this Tribunal has no option but to allow this O.A and direct the respondents' authority, namely Regional Provident Fund Commissioner, Kanpur/respondent No. 3, to decide grievance of the applicant afresh in accordance relevant rules after affording reasonable opportunity of hearing.

10. In view of the above, I direct the applicant to file certified copy of this order as well copy of this Original Application (with all annexure/s) alongwith additional representation (if so advised) before Regional Provident Fund Commissioner, Kanpur/respondent No. 3 within six weeks from today and respondent No. 3, provided certified copy of this order alongwith additional representation, if any, being filed within the stipulated period as contemplated above, shall decide the same exercising unfettered discretion by a reasoned/speaking order within three months in accordance with law. Decision taken shall be communicated to the applicant forthwith by registered post.

11. With the above observation, the O.A is allowed. No costs.



MEMBER- J.

/Anand/