

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. No. 138 of 1996.

Present : HON'BLE DR. B.C. SARMA, ADMINISTRATIVE MEMBER.

Shri Kumud Ranjan Bhowmik
S/o- Late Narendra Kumar Bhowmik
last worked as - Sr. Accountant,
Pay & Accounts Office, Ministry of
Health & Family Welfare, Govt. of
India, 15/1, Chowringhee Squire
(5th Floor), Calcutta- 700 069,
resident of - P-644A, Block 'C',
New Alipore, Calcutta- 700 053.

... .. A p p l i c a n t

- V e r s u s -

1. Union of India, through the Chief
Controller of Accounts, Principal
Accounts Office, Ministry of Health
& F.W, Nirman Bhavan, New Delhi 110 011.
2. Controller of Accounts,
Principal Accounts Office, Ministry
of Health & F.W. Nirman Bhawan, Room
No. 313-D, New Delhi 110 001.
3. Pay & Accounts Officer,
Pay & Accounts Office, Ministry of Health
& F.W., Govt. of India, 15/1, Chowringhee
Squire, Calcutta- 700 069.

... .. R e s p o n d e n t s.

For Applicant : Mr. P.K. Munsii, Counsel.

For Respondents : Mr. M.S. Banerjee, Senior Counsel.

Heard on: 20.11.1996.

Date of Order : 20.11.1996.

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Dr

O R D E R

1. This application has been filed by the applicant being aggrieved by the non-payment of outstanding G.P.F amounting to Rs. 35,169/- from his account payable upto October, 1995 with interest upto the date of its disbursement.

2. The applicant was a Senior Accountant in the Pay & Accounts Office under the Ministry of Health & Family Welfare at Calcutta, and he retired from service on attaining the age of superannuation on 31.10.1995. The applicant avers that although he had retired on that date, he had received the final payment of G.P.F. against his G.P.F. Account No. CAL/HFP/9 by Order dated 10.11.1995 issued by the respondent no. 3 ~~and~~ apprising him to draw a sum of Rs. 2,88,735/- representing the amount of the deposits with interest calculated upto October, 1995. It is the specific contention made by the applicant that the respondents have illegally withheld Rs. 35,169/- for disbursement from his G.P.F. account. Being aggrieved thereby, the instant application has been filed with the prayer that a direction be issued on the respondents to release the balance amount G.P.F. calculated as Rs. 35,159/- and the issue of calculation sheets accordingly along with interest.

3. The case has been contested by the respondents by filing a reply. The respondents contend that it is incorrect that the applicant would be entitled to Rs. 35,169.00 more, as contended by him. The calculation of self-prepared G.P.F. made Annexure 'B' to the application is not correct and authentic, and the respondents contend that a copy of the authentic calculation of the G.P.F. ^{amount} account of the applicant has been annexed and marked as Annexure 'R-2' to the reply. The case of the respondents is that the applicant was a dealing assistant in the establishment and he was entrusted with the work of drawing Pay Bills and it was

of subscription to G.P.F. to the competent authority. The applicant wilfully and deliberately did not do so with some ulterior motive. It is further stated that the Internal Audit Wing of the organisation in their audit report for the year 1990-91 in para-2 clearly mentioned that in case of the applicant, Senior Accountant GPF A/C. No. CAL/HFP/9, there ~~was~~ ^{to the} over subscription ^{have} fund which should not be taken place — and, therefore, the calculation of interest should not be done on the basis of the total amount in the coming years. The Internal Audit Wing further observed and directed that the excess subscription should also not be taken into consideration for Income Tax as having in G.P.F. From the audit report it will further appear that excess deduction ~~of~~ G.P.F. was made in respect of other two employees namely, Sarbasri - Ban Behari Adhikari and Sankar Kr. Banik and the applicant, who was holding the post of Senior Accountant and dealing with the work of Pay Bills in the office on receipt of the Audit Report started subscribing @ Rs. 250.00 per month from August, 1991 till May, 1992. According to the respondents, the applicant, being a Senior Accountant working in the Establishment, got adjusted the entire sum of over-payment in respect of Sarbashri - Ban Behari Adhikari and Sankar Kr. Banik and wilfully and deliberately did not adjust the entire overpayment made in his own case. According to them, therefore, the applicant had acted mala fide and in violation of the rules in not adjusting the entire over-payment made in his G.P.F. in terms of the audit objection. The applicant also did not recast his Income Tax calculation in his own case on the basis of objection made by the Audit Wing. The respondents, therefore, averred that the balance amount of G.P.F. to which the applicant is entitled ^{to} Rs. 30,568/- and not Rs. 35,169/- as ^{contended} appended by the applicant in the application. They have, therefore, prayed for dismissal of the application on the ground that it is devoid of merit.

4. During hearing, Mr. Munsi, Id. Counsel for the applicant submitted that after the application was filed, the respondents have realised a sum of Rs. 30,568/-. However, according to Mr. Munsi, the balance amount of Rs. 35,169/- minus Rs. 30,568/- about Rs. 5,000/- is yet to be ~~realised~~ released by the respondents. Mr. Munsi also invited my attention to the - C. & A.G.'s decision as mentioned at para-1 at page 18 of Swamy's Compilation of General Provident Fund Rules (corrected upto 1st December, 1993). This decision states as follows :-

"Short or excess recovery of subscription may be regularised by adjustments in subsequent months or by actual cash payment - The Auditor-General has decided that the present practice of adjusting the over-payments or short payments of subscriptions to the General Provident Fund, by deduction from or addition to the subscription in the subsequent months is a correct method of working and should be observed whenever possible. There is, however, no warrant for refusal of cash payments or recovery if a subscriber so desires and that the rule based on the practice should not be quoted as authorising the Accounts Officer to do this."

This procedure applies mutatis mutandis to other Provident Funds."

Mr. Munsi, therefore, submits that there was no over-payment as contended by the respondents and it was ^{the} duty of the respondents to make adjustment as per the said instruction of C & A.G, which was not done.

5. The matter has been examined by me carefully after hearing the submission made by the learned for both the parties, perusing the records and considering the facts and circumstances of the case. The issue raised in this application is ^{very} simple and After payment of Rs. 30,650/- from the G.P.F. Account, which was the balance amount according to the respondents lying at the credit of the applicant, the applicant's ^{this case} dispute in ^{is only} about ^{release of} Rs. 5,000/- or odd. I note that the applicant

retired as a Senior Accountant from the Pay & Accounts Office of the Ministry of Health & Family Welfare. The respondents have averred in their reply that the applicant himself had the responsibility of preparation of the Pay Bills and, therefore, the applicant was also responsible for the preparation of the Pay Bills correctly in respect of himself. It is to be noted that the respondents have made serious allegation against the applicant as regards suppression of over-payments made by him for which he was primarily responsible since he was In-Charge of preparation of Pay Bills. I note that the respondents have also averred that similar over-payments were also made in respect of other employees as mentioned by the respondents at page-3 of the reply, but in their cases the adjustments were effected. The respondents averred that the applicant himself is responsible for the non-adjustment of the said over-payment in respect of the applicant himself. In this connection, my attention has been drawn to the Annexure 'R-1' to the reply, which is ~~an~~ an Audit Report for the year 1990-1991, by the Internal Wing of the Ministry of Health & Family Welfare. It appears from the said Report that the Audit has raised Objection in respect of excess deduction of G.P.F. subscription of the applicant ^{himself} and two other officers. It is difficult to believe that the applicant did not come to know about the said Report of Audit. In any event, after the reply has been filed, the applicant has not filed any Rejoinder refuting the allegation made by the respondents in their reply. I also note that the respondents have given the Adjustment Sheets at page 16 of their reply as regards interest of the G.P.F. accumulation and as a result of such adjustment, the balance amount releasable to the applicant has been computed at Rs. 30,568/- which has been disbursed already as per Mr. Munsif himself.



5. Under Section 114 (e) of the Indian Evidence Act, 1872 - a Judicial and Official ^{objection} shall be presumed to be correctly done. On the basis of such provision and also because of the fact that the applicant did not file any Rejoinder to the reply filed by the respondents, I do not have any hesitation to hold that the version given by the respondents is correct. The submission made by the applicant in regard to the balance amount of Rs. 5,000/- is not acceptable. Consequently, the application is liable to be dismissed.

6. For the reasons given above, I do not find any merit in the application. as regards ^{different} other prayer made by Mr. Munsif for the release of Rs. 5,000/- or odd from the G.P.F amount. The application is, therefore, dismissed. No Order is passed as regards costs.



(B.C. Sarma)
Member (A)
20.11.96.