

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.447 OF 2007

Tuesday, this the 30th day of September, 2008.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

P.N.Bhaskaran
Junior Engineer E/M
Jaya Bhavan
Kaduvinal P.O., Vallikunnam
Kayamkulam - 690 501 : Applicant

(By Advocate Mr. CSG Nair)

v.

1. Union of India represented by the Secretary
Ministry of Defence
South Block, New Delhi - 110 001
2. Controller of Defence Accounts (Funds)
Meerut Cantt. Meerut
3. Defence Pension Disbursing Officer
NSS Union Building
Thirunakkara, Kottayam
4. Garrison Engineer (Air Force)
Pulayanarkotta, Thuruvikkal P.O
Trivandrum - 695 031 : Respondents

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The application having been heard on 17.09.2008, the Tribunal on 30.09.2008 delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant's contention is that excess payment of Dearness relief made to him already stood adjusted/recovered from his defence pension in instalments from Dec 95 to Dec 98, and the current recovery from the final payment of GPF amount towards the same dues amounts to double recovery, which is impermissible. The respondents' contention is

that the amount recovered from the pension was credited to the applicant's GPF A/c in 93-94 on the condition that in case the order of the Tribunal in TAK 732/87 was set aside by the Apex Court, the said amount would be in the nature of public money and if not the money of the subscriber. Ultimately the Apex Court set aside the order in TAK 732/87 and as such, the amount recovered from the Pension account of the applicant and credited to GP Fund would become recoverable with interest, as the same is a public money. Again, independent of the above transaction, an amount of Rs 500/- + interest Rs 60/- was found excess credited in the individual GPF account in the year 1993-94. As such, the amount of Rs 560/- plus interest Rs 1519 was also recovered from the GPF at the time of settlement of the GPF case.

2. The question is whether the contention the respondent is correct.
3. Brief Facts: The applicant is an Ex-Serviceman. On his retirement from Indian Air Force in 1981, he joined the Military Engineering Service as Junior Engineer in 1985. He had retired from the said service as Junior Engineer E/M on 30-04-2006.
4. On his retirement, the applicant was issued a DD for Rs 8,69,016/- towards the G.P. Fund credit balance of Rs 8,51,580/- plus CGEIS the CGEIS of Rs 17,436/-. On his enquiry, the applicant came to understand that a sum of Rs 1,16,040 was deducted from the GPF Account of the applicant towards the recovery of arrears of dearness relief paid to him on his defence pension from 1994-95 onwards. According to the applicant the excess amount paid to him stood already recovered from his



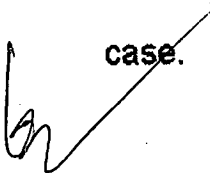
pension account in instalments and such, the amount now recovered from the GP Fund is a double recovery. Hence this OA claiming the following relief: -

(a) To direct the 2nd and 3rd respondents to refund the amount recovered from the applicant towards alleged payment of dearness relief, along with 12% interest per annum till the date of payment.

(b) To direct the 2nd respondent to pay interest for the balance in GPF to the credit of the applicant till the date of final payment.

5. Respondents have resisted the O.A. In their interim reply they have stated that dearness relief on pension amounting to Rs 38,118/- was recovered from the applicant and credited to the GP Fund Account No. 1081593 by the respondents. In other words, the amount has been recovered from one account and credited to other accounts i.e. GPF account of the subscriber on the condition that in case the order on TAK 732/87 is set aside, then it will be public money otherwise it will be the subscriber property. Since the order in TAK 732/87 were set aside by the Apex Court Rs 38,118/- along with interest Rs 75,843/- being public money were correctly recovered by this office at the time of final settlement of his GPF A/c and credited to Government Account so no double recovery has been made by the respondents.

6. It has further been contended by the respondents that an amount of Rs 500/- plus interest of Rs 60/- was found excess credited in the applicant's GPF account in the year 1993-94. As such, the amount of Rs 560/- plus interest Rs 1519/- also deducted during final settlement of GPF case.



7. The applicant has filed his rejoinder in which he has stated that the excess amount of dearness relief stood recovered already in instalments @ Rs 300/- per month for three years from his defence pension commencing from December 1995 to December 1998 and details as noted in the relevant file of the 3rd respondent have been furnished. The noting reflects as under, vide para 2 of rejoinder: -

S.B.T. Thamarakulam
A/c No. 700

G.E. Cochin	Rs.
To G.P.F. A/c No. 1081593L wef 2/83 to 12/93	38,118
Paid by Sy. Bill.	
1.1.94 to 31.8.94 1034 x 8	8,304
D(Paid by Sy. Schedule)	
Arrears of DR 7/94 + 8/94	200
1.9.94 to 31.12.94 1138 x 4	4,552
1/95 to 2/95 1138 x 2	2,276
	<hr/>
	15,332/-
3/96 onwards no DR	
Total DR 38118 + 15332	53,450/-
Recovery may be effected at Rs 300/- pm w.e.f. 1/96	

8. The applicant has annexed a copy of the relevant SB Account passbook for the above period vide Annexure Annexure A-8.

9. In the subsequent reply filed on 27th June, 2008, the respondents have repeated the same contention as contained in their interim reply and in addition they had stated that the applicant's subscription to the GP Fund account from March 2005 to January 2006 was at the rate of Rs 5000/- per month.

10. Counsel for the applicant argued that rules relating to GP Fund are specific that no recovery could be effected from the same. Apart from

the same, in so far as the case of the applicant is concerned, the excess payment of Dearness relief stood already recovered from the Pension account and as such, there cannot be one more recovery.


11. Counsel for the respondents contended that the amount so recovered was credited to the GP Fund account in 93-94 and on audit verification, the above amount of Rs 38,118/- and two more erroneous crediting to the tune of Rs 500 plus Rs 50 in 92-93 were also located and all these together with interest accrued thereon were rightly recovered.

12. Arguments were made and documents perused. According to the applicant, the excess amount of Dearness relief amounting to Rs 38,118/- was recovered in monthly instalments along with further dearness relief granted from January 1994 onwards till February 1995. Details as noted from the relevant records were extracted in para 2 of the rejoinder and entries of deposit in the Savings Bank depleting the pension from Rs 890 to 590 for a few months go in tandem with the above noting. And there is no denial to the same in the reply filed by the respondents subsequent to the filing of the rejoinder. Thus, safely the above details could be taken as true.

13. According to the respondents, the amount credited to the GPF account exactly matching with Rs 38,118/- in 93-94 is the concrete proof that the amount recovered had been deposited in GP Fund Account. Here exactly lies the error on the part of the respondents. When recovery in instalments of the amount of excess Dearness was sought to be made from the pension account of the applicant only from 1996 onwards, there is no



question of the said recovered amount being deposited in the GP Fund Account in 1993-94 much anterior to the commencement of recovery! What probably has happened was that the amount of Rs 38,118/- was initially not paid to the applicant but under the Tribunal's order the amount became due. It was this amount in lump sum that was credited in the Fund Account with the condition that the same would be recovered in case the Apex Court sets aside the order. The Apex Court did set aside the order consequent to which the amount credited was to be recovered along with further Dearness relief paid to the applicant. It was this amount that had been recovered from the pension account of the applicant from December, 1995 to December 1998 as stated by the applicant in para 2 of his rejoinder. Thus, there has been once payment in lump sum of Rs 38,118/- as dearness relief credited to the GP Fund account and on the Apex Court's setting aside the order in TAK 732/87, there has been corresponding recovery from the pension account of the applicant at a later date in instalments. This would mean that no further amount from the GP Fund account towards the excess payment of dearness relief could be effected at the time of retirement of the applicant in 2006. Respondents may verify the same as to whether prior to depositing in the GP Fund Account, of the amount of Rs 38,118/- there was any payment of dearness relief to the applicant. If so, then again, the same cannot be adjusted from the G.P. Account as Provident Fund accumulation enjoys immunity from attachment, vide judgment of the Apex Court in the case of Union of India v. Radha Kissan Agarwala, (1969) 1 SCC 225. Again, Annexure A-6 government of India instructions dated 28th February 1945 relied upon by the applicant goes to show that it is inconsistent with Sec 3(1) of the Provident Funds Act, 1925 for Government to deduct any amount due to



them by a subscriber from his accumulations in the General Provident Fund at the time of his retirement. Thus in so far as the recovery of excess dearness relief to the tune of Rs 38,118/- is concerned, even if such an amount is due from the applicant, the same CANNOT be recovered from the Provident Fund Accumulations, which, as per the provisions of the Rules, have to be paid in tact without any truncation.

14. Coming to the adjustment of Rs 560 plus interest erroneously credited in the account of the Applicant in the years 1992-93, since it is not a recovery but only reconciliation of the account, there is no impediment in recovering the same from the Provident Fund.

15. Thus, **the O.A. is allowed** to the following extent that in so far as the amount of Rs 38,118/- plus interest recovered by the respondents from the P.F. accumulations, the same shall be refunded to the applicant with interest at the same rate as is available for any provident fund subscriber during the period of retention i.e. from April, 2006 till the date of payment. Respondents are directed to work out the interest and increment the amount recovered by that amount and pay the same to the applicant within a period of two months from the date of communication of this order. As regards the other amount of Rs 560/- plus interest, there shall be no refund.

16. No cost.

Dated, the 30th September, 2008.


Dr.K.B.S.RAJAN
JUDICIAL MEMBER