

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 490/97

Dated Monday the 29th day of November, 1999.

CORAM

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K.S.Sajeev
S/o Sreedharan
Net Maker
Integrated Fisheries Project
Kochi-16.

...Applicant

(By advocate Mr T.C.Govindaswamy)

Versus

1. Union of India through
the Secretary to the Government of India
Ministry of Agriculture
Department of Agriculture & Cooperation)
Krishi Bhavan, New Delhi.
2. The Director
Integrated Fisheries Project
Kochi-16.
3. Accounts Officer
Integrated Fisheries Project
Kochi-16.
4. The Regional Provident Fund Commissioner
Kaloor
Kochi-17.

...Respondents.

(By advocate Mr Govind K.Bharathan, SCGSC for R1 to 3)
Mr N.N.Sugunapalan for R4)

The application having been heard on 29th November, 1999,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

Applicant who commenced his career as a casual labourer under the second respondent in August 1986 was granted temporary status in September, 1993 and absorbed in regular service with effect from March, 1995. He was not enrolled as a member of the Employees Provident Fund which according to the applicant he was entitled to even as a casual labourer. For his repeated representations made to the Regional Provident Fund Commissioner, the latter issued A-1 letter dated 21-1-97 to the second respondent requesting him to enrol the applicant as a member of the Employees

Provident Fund from 9/86 to 8/93 and also to remit the arrears without delay under intimation to him. Accordingly, the second respondent issued A-4 letter dated 11-2-97 with a copy to the Assistant Provident Fund Commissioner informing that as per the discussion held with the Enforcement Officer who visited the office (Integrated Fisheries Project) on 3-2-97 it has been decided to recover the contribution towards Employees Provident Fund Scheme in respect of the applicant for the period from 9/86 to 3/95 amounting to Rs. 9143 in 19 instalments at the rate of Rs. 500 in 18 instalments and Rs. 143 in the 19th instalment from his pay and allowances with effect from February 1997. The applicant made representations to the second respondent as also to the fourth respondent requesting not to make any recovery from his pay and allowances. The applicant was given A-7 order dated 19-2-97 informing that the recovery could not be postponed further. Applicant is aggrieved by these two orders at A-4 and A-7 and has filed this application for a declaration that the deduction of Rs. 500 from the salary of the applicant as indicated in A-4 is arbitrary, contrary to law and illegal and for setting aside A-4 and A-7 and for a direction to the second respondent to remit the entire contribution payable by the employer and the employee to the Employees Provident Fund account forthwith.

2. It has been alleged in the application that in terms of Rule 32 of the Employees Provident Fund Scheme, 1952, the employee and the employer are bound to remit the contributions towards the fund and that the employer has no right to recover the contributions from future wages excepting with the written consent of the inspector. As such consent has not been obtained, the applicant alleges that the second respondent is not entitled to make recoveries as per A-4 order.

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3. In the reply statement filed on behalf of respondents 1 to 3, it has been contended that as the applicant was a casual labourer working in the Marketing Section of the Project, he was not entitled to be enrolled as a member of the Fund, that on the repeated requests of the applicant and on receipt of A-1 letter from the fourth respondent and after discussion with the Enforcement Officer, a decision was taken to enrol the applicant and to remit the arrears by recovering the employee's share in monthly instalments and that the action taken was in accordance with the rules and bonafide.

4. The fourth respondent in his separate reply statement stated that the action of the second respondent in recovering the dues from the pay and allowances of the applicant is not in order and that the second respondent had been by R-4(A) letter informed not to do so.

5. We have carefully gone through the pleadings and the materials available on record and have also considered the rules on the subject. We have also heard the learned counsel appearing for the parties. It is evident from the materials placed on record that the applicant was not enrolled as a member of the Fund in the year 1986 on the presumption of the second respondent that he was not entitled to be so enrolled. It was only because of the consistent demand of the applicant to enrol him as a member that a decision was taken to enrol him and to remit the arrears from 1986 onwards recovering from the pay of the applicant the employee's share of contribution. From the letter dated 13.3.95 of the applicant at Annexure R-2(A) addressed to the Regional Provident Fund Commissioner, it is seen that the applicant had requested that that the employer, The Director of the Integrated Fisheries Project be directed to make deductions for the

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petitioner's casual service for the period upto 1-9-93 and remit the same with the employer's contribution towards the Fund. It is pursuant to the above request made by the applicant and on the basis of the directions given by the fourth respondent which is referred to in A-1 that the applicant was enrolled as a member of the Fund and on the basis of the discussions with the Enforcement Officer, steps were taken for recovery of Rs. 9143/- being the arrears of employee's share of the subscription for the period from 9/86 to 3/95. Rule 32 of the Employees Provident Fund Scheme only states that the recovery from future wages of the employee shall be made only with the consent of the Inspector in writing. It is evident in this case that it was at the request of the applicant that a decision was taken to recover from his pay and allowances the arrears of subscription for the period when he was a casual labourer and to make payment towards the Fund. The applicant having requested the fourth respondent to direct the second respondent to make deductions from his casual service and to make payment of the subsequent employee's share as also employer's share cannot now be permitted to disown his liability to pay his part of the contribution. If the second respondent is directed to pay the entire contribution of employee's as also the employer's share, that would result in unintended and undeserving benefit to the applicant and detriment to the public exchequer which cannot be allowed.

6. In the conspectus of the facts and circumstances, we are of the considered view that the action taken by the second respondent in making the recoveries from the wages of the applicant to make the employee's share of subsequent contribution towards the Employees Provident Fund Scheme cannot be faulted. However, it is the bounden duty of the

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respondents to make the payment of the entire contribution of employee's as well as employer's share with interest in lumpsum. The remittance of the arrears of subscription for the period 9/86 to 8/93 should be made by the second respondent in a lumpsum though the second respondent may recover the arrears of employee's share of subscription from the pay and allowances of the applicant in instalments as indicated in Annexure A-4.

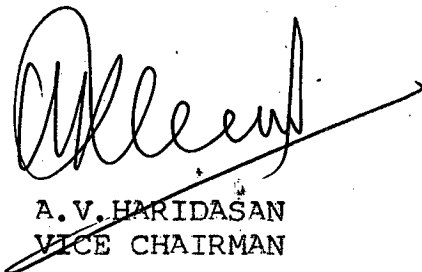
7. In the result, while declining to grant the reliefs as sought in this application, the application is disposed of directing the second respondent to make remittance of the arrears of subscription as per rule without delay.

No order as to costs.

Dated 29th November, 1999.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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Annexures referred to in this order:

- A-4: True copy of the memo bearing No.nil dated 11-2-97 issued by the 3rd respondent.
- A-7: True copy of the memo bearing No.D4/2-1/90-91/530 of 19-2-97 issued by the 3rd respondent.
- A-1: True copy of the letter No.KR/3250/Enf1(6)97/11736(a) dated 21.1.97 issued by the 4th respondent.
- R-2(A): True copy of the representation dated 13-3-95 submitted by the applicant before the 4th respondent.
- R-4(A): True copy of the letter No.KR/3250/Enf.1(97) dated 7.5.97 issued by the 4th respondent to the applicant.