

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 94/2000 and CP(C) No. 21/2000 in O.A. No. 94/2000

FRIDAY THIS THE 25TH DAY OF AUGUST, 2000.

C O R A M

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

P.V. Paulose S/o late Varkey
Retired Drawing Teacher
Government High School, Agatti
residing at Pullakudiyil House
Kombanad P.O.: Vengoor,
Perumbavoor

Applicant

By Advocate Mr. V. R. Ramachandran Nair

Vs.

1. Union of India represented by
the Secretary
Ministry of Home Affairs
New Delhi.
2. The Administrator
UT of Lakshadweep
Kavarathi
3. Director of Education
Administrastion of the
U.T. of Lakshadweep
Kavarathi.
4. Accountant General
Kerala, Ernakulam Branch
Cochin-682 015
5. Accounts Officer (P&A)
Principal Pay & Accounts Office
Kavarathi Island-682 555
6. The Headmaster,
Government High School
Agatti.

Respondents

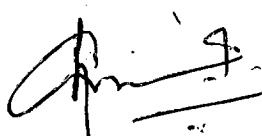
By Advocate Mr. P.R. Ramachandra Menon, ACGSC

The Application having been heard on 1.8.2000, the Tribunal
delivered the following on 25.8.2000.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

This Original Application is made by the applicant
aggrieved by the order No. F.No.1/3/95-GHSA/438 dated
29.1.99 (Annexure A-12) issued by the 6th respondent and
order No.Pen/75/99 PAOL dated 3.11.99 issued by the 5th



respondent and seeks to quash the same to the extent they effect the recoveries towards excess Provident Fund Payment, interest and penalty and to direct to the respondents to pay the revised pensionary benefits of the applicant.

2. The applicant retired from service as Drawing Teacher from 6th respondent High School on 31.1.12996 afternoon. By A-4 application dated 22.7.1995 applicant applied for withdrawal of Rs.1,45,000/- from his General Provident Fund (GPF for short) account on account of superannuation and the same was sanctioned by the 3rd respondent by A-6 order dated 19/Nil/1995 and he received the amount. Soon after retirement, applicant was sanctioned the pension, Death-cum-Retirement Gratuity (DCRG for short) commuted value of pension (CVP for short) etc. From DCRG amount of Rs. 1,12,857/- an amount of Rs. 3000/- was withheld and the balance was paid by A-7 order dated 18.3.96. Accountant General, Kerala-fourth respondent-wrote to the Head Master with a copy to the applicant by letter dated 7.5.96 to the effect that the applicant had been paid an excess amount of Rs. 36,987/- and requested the Head Master to recover the amount from the applicant. By A-9 letter dated 13.8.96 Head Master advised the applicant that an amount of Rs. 35,340/- was to be remitted for settling the GPF account. Applicant wrote A-11 letter dated 18.1.99 addressed to sixth respondent that the said excess amount maybe recovered from pay revision arrears. Fifth respondent by A-13 order dated 3.11.1999 directed the sixth respondent to recover an amount of Rs. 55,122/- from the applicant which included Rs. 17,329/- as interest and Rs. 2453/- as penal interest calculated upto 31.10.1999. It was also stated in A-13 that the applicant was to issue a declaration to recover the balance amount from the CVP arrears. According to the



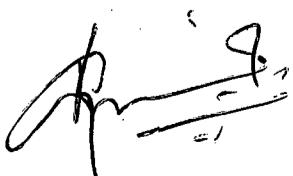
applicant as interest was worked out on the alleged GPF overdrawn, interest in the arrears of pension, gratuity, commutation, etc. were also granted to the applicant from the dates they became due, i.e. from October, 1997. Applicant submitted that he was being paid pension in the revised pay scale with effect from 1.1.96 less commuted value of pension based on the enhanced pension even though commuted value of pension had not been paid. Hence, the applicant sought the following reliefs.

- i) To call for the records leading upto Annexure A-12 and Annexure A-13 and quash the same to the extent it order recovery of Rs. 55122/- from the applicant's DCRG and CVP
- ii) To issue a direction to the respondents to pay the entire amounts of commutation and gratuity based on the revision of pension with 18% interest from 1.10.97 to till the date of payment.
- iii) To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- iv) To award cost to the applicant.

3. On 8.3.2000 an interim order was issued by this Tribunal directing the respondents to disburse to the applicant the commuted value of pension within ten days. Alleging non-compliance of this order applicant filed CP(C) No. 21/2000. Respondents covered this aspect in the reply statement to the O.A. CP(C) No.21/2000 is also being disposed of by this order.

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4. Respondents 1 to 3, 5 & 6 filed reply statement and resisted the claim of the applicant. It was submitted that the applicant had applied for withdrawal of Rs. 1,45,000/from his GPF account on 22.8.95 and not on 22.7.95; in support of which Annexure R-1 was enclosed with the reply statement. They submitted that GPF account in respect of other than Group 'D' employees for the period upto 31.3.96 was maintained by the Accountant General, Kerala. According to them the contention of the applicant that he depended upon the GPF account slip issued to him regarding the eligible amount and provident fund was not fully correct in that the subscriber must know the amount subscribed to the account and advance/withdrawal if any taken from his account by him every year. As per Rule 39(2) of GPF (CS) Rules, 1960, applicable in this case, subscribers should satisfy themselves as to the correctness of the annual statement and errors should be brought to the notice of Accounts Officer within three months from the date of receipt of the statement as per Govt. of India decision under Rule 39. Similarly, if any subscriber found that the balance at his credit as shown in the Annual account statement is less than what he had actually subscribed/withdrawn or is otherwise incorrect he should immediately submit a representation to the Head of Office. Hence, the applicant was totally liable for the debits missed to account or for incorrect credits. Admitting that applicant had agreed to recover the amount from his pay revision arrears, it was submitted that the applicant was very well aware of the fact that he would not be getting such a huge arrears merely for one month i.e. from 1.1.96 to 31.1.96. By A-13, 5th respondent had called for a declaration from the applicant authorising to recover the balance amount from the commuted value of pension due to him consequent on revision of pay/pension. The applicant had not

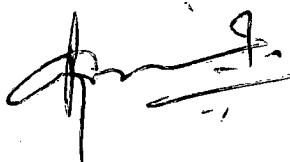


furnished the declaration called for by the Pay and Accounts Office. Thus, the delay for the payment of pensionary benefits was caused by the applicant himself. Revised pensionary benefits on the basis of Fifth Central Pay Commission recommendation had been calculated but the amount could not be released for want of his undertaking to recover the excess payment of GPF payment from his revised commuted value of pension arrears as DCRG amount due to him was not sufficient to adjust the excess payment. Respondents produced as Annexure R-3 copy of letter dated 3.11.99 (which we find is the same as A-13 one of the impugned orders). It was submitted that as per legal advice received by the Secretary from the Additional Central Government Standing Counsel while he was in camp at Kochi and as per instructions, the Accounts Officer (Pay & Accounts) Kavaratti released the arrears of CVP after withholding Rs. 16,854/- being balance of excess GPF drawn by the applicant. A copy of Special Seal Authorisation Pen/Rev/15/99-PA) 1910 dated 7.4.2000 had been sent to the Director of Education also by the Accounts Officer along with copy of letter sent to Central Pension Accounting Officer, New Delhi on 7.4.2000. The GPF account of the applicant had not been closed by the Accountant General. From the records transferred by the Accountant General to the Principal Pay and Accounts Office, Kavaratti he had a minus balance of Rs. 36,987/- as on 31.3.1996. The interest thereafter also was to be added. The total outstanding amount including interest upto 10/99 came to Rs. 55,122/- According to the respondents the applicant did not have any legal/enforceable cause of action and the Original Application was devoid of any merits and hence prayed for dismissal of the O.A..

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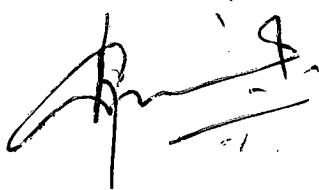
5. Fourth respondent filed reply statement in which it was stated that consequent on the departmentalisation of accounts of the Union Territory of Lakshadweep, the GPF Accounts with all registers and files as on 1.4.96 had been transferred to the Pay and Accounts Office, Lakshadweep Administration from his office. On verification of the closure file of the applicant after its receipt, it was seen that there was an over drawal of amount from the GPF Account of the applicant consequent on the sanctioning of non-refundable advance of Rs. 1,45,000/- during the month of November, '95. Due to the non-receipt of withdrawal details of Rs. 40,000/- which was sanctioned and drawn and paid by the U.T. of Lakshadweep in January, 1993, this debit was not adjusted in 1992-93 accounts, hence credit card with inflated figure of Rs. 40,000/- plus interest thereon were issued to the applicant in 1992-93 and 1993-94. The adjustment of the missing debit of Rs. 40,000/- was specifically recorded in the Annual statement for 1994-95 issued by the applicant. Later on receipt of the withdrawal particulars, the debits of January, '93 was adjusted in March, 1995 and credit card showing a closing balance of Rs. 79,847/- was issued in 1994-95. By this time the applicant was already sanctioned the non-refundable advance of Rs. 1,45,000/- resulting in minus balance in his account. While closing the GPF account of the applicant it was noticed that an amount of Rs. 36,987/- was paid to him in excess. An amount of Rs. 1,647/- was adjusted from the withheld amount of DCRG, thus leaving balance of Rs. 35,340/-.

6. Applicant filed rejoinder in which it was submitted that as the applicant had agreed in writing to recover the amount if any drawn in excess which was also not acted upon by the authorities due to carelessness and callous

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indifference of the respondents the applicant was not at all liable for any excess withdrawal or for any delay in effecting recovery of the excess withdrawal in time. Enclosing A-15-a copy of a page of the pension book of the applicant- he submitted that arrears after fixation of pay had been paid to the applicant on 11.12.97 and therefore the fixation of pay of the applicant was already done and arrears worked out immediately when it became due on 1.10.97.

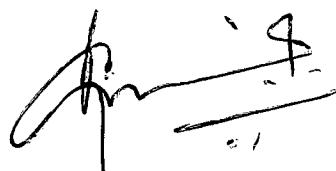
7. Respondents 1 to 3, 5 & 6 filed additional reply statement in which it was stated that the dues from the applicant on account of excess payment of GPF amount was worked as Rs. 55,122/- inclusive of interest @ 12% and penal interest @ 2.5% from February, '96 to October, 1999. Further, it was submitted that the various grievances regarding the implementation of the recommendation of the Fifth Pay Commission were finally settled by the Ministry of Personnel, Public Grievances & Pension, New Delhi by O.M. dated 17.12.98. even as per this O.M it was not decided whether the special pay the Islanders were drawing should be taken into account for calculation of pensionary benefits. Therefore, a declaration was sought from the employees on 1.4.99. On 3.5.99 the applicant by R-4 letter gave the reply and thereafter the pensionary benefits were calculated and completed on 3.11.99 and A-13 letter was issued to the applicant. Applicant without giving such authorisation approached this Tribunal by filing this O.A. In pursuance of the interim order of this Tribunal dated 8.3.2000, an amount of Rs. 1,16,875/- was ordered for drawal and accordingly authorisation was issued to the Central Pay Accounting Officer, who had issued the Special Seal authority on

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9.6.2000 (Annexure R-5) so also the Special Seal authority for revision of pension was issued by the Central Pension Accounting Officer on 17.5.2000 (Annexure R-6)

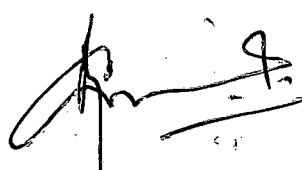
8. Heard the learned counsel for the parties. We have given thoughtful consideration to the submissions made by the learned counsel for the parties, the rival pleadings and have perused the documents brought on record.

9. The xxxx relief sought by the applicant is to quash A-12 and A-13 to the extent it orders recovery of Rs. 55,122/- from the applicant's DCRG and CVP. We find from the pleadings that the amount of Rs. 55,122/- consisted of Rs. 36,987/- overdrawn by the applicant on account of final withdrawal of Rs. 1,45,000/- from his GPF account on his superannuation less Rs. 1647/- adjusted from his withheld DCRG and interest and penal interest @ 12% and 2.5% respectively from February 1996 to October, 1999. We find that even though the above relief is sought for by the applicant he had not specifically denied the averment made in the reply statement made by the 4th respondent to the effect that till the credit card of 1994-95 the amount of Rs. 40,000/- withdrawn by the applicant in January, 1993 was not adjusted. In fact we find that the applicant himself had stated in the O.A. that he had received A-8. He had also advised the sixth respondent by his A-11 letter dated 18.1.99 that the amount of Rs. 35,340/- may be recovered from his Pay revision arrears. Moreover, when the applicant had received the annual statement of his GPF account for the year 1992-93 (Annexure A-2) and the same had not shown any withdrawal for the said year and when the applicant had applied and sanctioned a withdrawal of Rs. 40,000/- he should have immediately taken up the matter with the

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concerned officer for rectification of the mistake as per rules as it cannot be expected that the applicant who was a Teacher would not remember a withdrawal made by him. It is not that one makes a withdrawal of Rs. 40,000/- from one's GPF account every day, which would have been lost sight of by the beneficiary. Moreover, the inaction of the applicant in challenging A-8 dated 7.5.96 either departmentally or by filing an OA in this Tribunal immediately after receipt of A-8 also leads us to conclude that he had received more amount than what was actually due to him as GPF amount at the credit of his account on his superannuation. Even through this O.A. he is not challenging A-8 order. Thus, we hold that the applicant had received excess GPF amount of Rs. 36,987/- and after adjustment of Rs. 1647/- from the withheld amount of DCRG, the applicant owed Rs. 35,340/- to the respondents.

10. The next question that arises is whether the respondents were justified in charging interest to the overdrawn amount of Rs. 35,340/- @ 12% per annum and additional penal interest @ 2.5% per annum. We find that even though the applicant admits that he received the respondent's letters dated 7.5.96 (A-8) and 13.8.96 (A-9), there is no explanation from him as to why he responded only on 18.1.99 (A-11). In fact we find from A-7 that the applicant's DCRG was paid in March, 1996 and he was advised of the excess withdrawal from GPF in May, '96 (A-8) -within two months. The applicant did neither pay back the excess amount withdrawn nor had communicated with the respondents. We do not find any justification for the applicant's inaction in refunding the excess amount withdrawn. Even in the letter dated 18.1.99 there is no categorical consent expressed by him that the excess may be adjusted from the additional DCRG

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due to him on account of the accepted recommendations of the Fifth Pay Commission. Therefore, by A-12 letter dated 29.1.99 the sixth respondent advised the Principal Pay and Accounts Officer, Lakshadweep, Kavaratti to take urgent steps to adjust the overdrawn amount with interest from his revised DCRG or CVP arrears as arrears against Pay revision was stated as nil. We find force in the respondents' statement in the reply statement that " But he very well knew that he may not be getting such a huge amount as pay revision arrears just for one month from 1.1.96 to 31.1.96 (date of retirement)." In view of the foregoing there is justification in the respondents' action in charging interest from 1.2.96 to 31.10.99. In any case, from the averment of the applicant in the rejoinder it would appear that he was prepared for the adjustment of the due amount from the DCRG. Applicant's plea is that if he is liable to pay interest on the amount due from him to the Government, he is also due interest @ 18% on the additional retirement benefits amounts due to him by way of DCRG and CVP. According to him these amounts have become due to him from 1.1.96 or at least from 1.10.97 and hence interest is due to him from that date to the date of payment. Respondents would argue that just because arrears were to be worked from 1.1.96 to 30.9.97, the same did not mean the payments became due from 1.10.97. We find from the additional reply statement that detailed orders of the Government for implementation of Fifth Pay Commission recommendation on pensionary benefits were issued only on 27.10.97. In terms Government of India's decision (3)(iv) under Rule 68 of CCS Pension Rules appearing in Swamy's Pension Compilation on page 149 (13th Edition, 1993) in such cases, the enhanced gratuity is to be paid within a reasonable time of the issue of orders relating to revision of emoluments reckoning for gratuity or liberalisation of

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rules relating to entitlement of gratuity and the reasonable time had been specified as three months. Respondents plead that a number of clarifications arose relating to retirement benefits consequent on the Fifth Pay Commission's accepted recommendations and they were finally settled only by OM No. F.No. 45/10/98-P&W(A) dated 17.12.98 issued by the Ministry of Personnel, Public Grievances & Pension, New Delhi. Even then the question of inclusion or exclusion of special pay, the Islanders were drawing was not decided. Hence, they decided to obtain declarations from the applicant to the effect that there was no objection to settle the revised pensionary claim without reckoning the special pay for the time being, by letter dated 1.4.99 and 3.5.99. Applicant gave the declaration by R-4 letter dated 3.5.99 and thereafter on 3.11.99 the revised calculation were made by which Rs. 38,268/- became due to the applicant as increased DCRG. Even if the respondents may have a justifiable cause for the delay in finalising the revised retirement benefits, as per the Government of India's instructions referred to by us earlier, the same became payable to the applicant on 27.10.97 to be paid on or before 26.1.98. When respondents are charging interest from the applicant to the overdrawn amount of GPF upto 31.10.99, and the applicant's enhanced DCRG is not paid or adjusted against the applicant's dues, they also are liable to pay him interest. However, as the delay in computation of DCRG and other retirement benefits had been explained by the respondents, they are liable to pay only at the normal rate interest @ 12% per annum. However as the applicant was due to refund to the respondents the overdrawn amount of GPF, and the same should have been paid within a reasonable time of A-8 dated 7.5.96, we are of the view that the first charge on the enhanced amount of DCRG would be this outstanding amount. Viewed thus, we hold that

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no interest need be charged on the outstanding amount from the applicant and payable amount of enhanced DCRG to the applicant from 27.10.97.

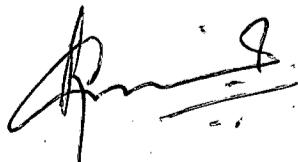
11. From R-6 we see that the applicant's revised pensionary benefits are as follows:

Revised Basic Pension Rs.4269/-w.e.f. 1.2.96

Revised Pension Commuted Rs.1707/-

Revised Reduced Pension Rs.2562/- w.e.f. 1.2.96

12. Further, the applicant was due Rs. 1,33,729/towards additional CVP. The Manager, State Bank of Travancore, Broadway, Ernakulam was directed by R-5 dated 13.6.2000 to credit to the applicant's account an amount of Rs. 1,16,875/towards differential commutation payable to him. Applicant was seeking interest on the CVP on the ground that without paying the enhanced CVP he was being paid pension in the revised pay scale w.e.f. 1.2.96 less commutation value of pension based on the enhanced pension. We find from A-15 filed by the applicant along with rejoinder (being a record of Pension disbursement) that the applicant received arrears of pension for the period from 1.1.96 to November 1997 amounting to Rs. 8285/- and from December, 1997 to March, 1998 he was receiving Rs. 5263/- per month as pension. As the reduced pension as per R-6 is only Rs. 2562/- per month and as the applicant was receiving Rs. 5263/- per month as pension by the document produced by him his statement that enhanced commuted value had been reduced from the pension without paying CVP does not appear to be correct and hence we hold that interest on CVP sought by the applicant is not tenable.

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13. In A-13 respondents have sought an authorisation for recovery of balance due from the applicant from the CVP arrears. The only reason given by the applicant is that he is also entitled for interest on the delayed payment of CVP is that he is not liable to refund anything. As we have held he is not entitled for interest on CVP, he may give the necessary authorisation adjusting the balance if any from the CVP.

14. In the light of the foregoing (i) we do not find any infirmity in A-12 letter and (ii) we direct (a) the respondents to reworkout the amount of excess GPF amount due from the applicant with interest due from 1.2.96 to 27.10.97 instead of Rs. 55,122/- shown in para 2 of A-13 & (b) respondents to adjust the amount due from the applicant as in (ii)(a) above from his enhanced DCRG amount and the balance amount if any due from the applicant's CVP amount still available with the respondents. Our above directions shall be complied with within a period of six weeks from the date of receipt of a copy of this order.

15. We dispose of the Original Application with the above directions with no order as to costs.

16. In view of our order on the O.A. as above, the CP(C) No. 21/2000 is not proceeded further.

Dated the 25th August, 2000.


G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

kmn

List of Annexures referred to in this Order

A2 True copy of Annual Statement of GPF for the year 1991-92 pertaining to the applicant issued from the office of the Accountant General, Kerala.

A4 True copy of Application form for withdrawal from GPF dated 22.7.95 submitted by the applicant

A6 True copy of order No.F.No.30/9/95/Edn dated 19/Nil/95 issued by the office of the 2nd respondent sanctioning the withdrawal from GPF account of the applicant.

A7 True copy of order No. PA 8/A/95-96/1700 dateds 18.3.96 by the office of the Accountant General, Kerala sacntioning the DCRG to the applicant

A8 True copy of order No. PA 14/CM(KL)/VIII/508/196 dated 7.6.96 issued from the AG, Kerala to the 6th respondent directing to recover an amount of Rs.36987 from the applicant.

A9 True copy of OM No.F.No.1/3/95 GHSA(2)/106 dated 13.8.96 issued by the 6th respondent requesting the applicant to remit an amount of Rs. 35340/- for settling the GPLF account.

A-11 True copy of letter dated 18.1.99 submitted by the applicant to the 6th respondent requesting to recover an amount of Rs. 35340/- from the pay revision of the applicant.

A-12 True copy of Order No.F.No.1/3/95-GHSA/438 dated 29.1.99 issued by the 6th respondent to the Principal Pay and Accounts, Lakshadeep with copy to the applicant directing to refund the excess amount of GPF.

A-13 True copy of order No. F.No.Pen/75/99 PAOL dated 3.11.99 issued by the 5th respondent to the 6th respondent directing to recover an amount of Rs.55122/-

A-15 True copy of the relevant page of the pension book of the applicant

R1 True copy of the application dated 22.8.95 submitted by the applicant.

R3 True copy of the letter No.Pen/75/99-PAOL dated 3.11.99 issued from the Principal Pay and Accounts Office, Kavaratti.

R4 True copy of the letter dated 3.5.99 sent by the applicant

R5 True copy of Special Seal authority for Revision dated 9.6.2000 issued by the Central Pension Accounting Officer.

R6 True copy of special seal authority for revision of pension dated 17.5.2000 issued by the Central Pension Accounting Officer.