

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 103/06, 153/06, 156/06 & 165/06

THURSDAY, THIS THE 15th DAY OF JUNE, 2006

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

O.A.No. 103/2006

- 1 Elizabeth Johnson
Deputy Office Superintendent
Office of the Commissioner of Central Excise
Central Revenue Building
IS Press Road,
Cochin-682 018
- 2 C.P. Jexon
Lower Division Clerk
Office of the Commissioner of Central Excise
Central Revenue Building
IS Press Road,
Cochin-682 018
- 3 V.G. Sajan
Sepoy
Office of the Commissioner of Central Excise
Central Revenue Building
IS Press Road,
Cochin-682 018
- 4 T.H. Michel
Superintendent of Central Excise
Moovattupuzhya Division
Moovattupuzha
- 5 P.O. Krishnankutty
Sepoy
Central Excise Divisional Office
Moovattupuzha
- 6 D.S. Vasanthakumar
Sepoy
Central Excise Divisional Office
Moovattupuzha

Applicants

By Advocate Mr. C.S.G. Nair

Vs.

- 1 Commissioner of Central Excise
Central Revenue Building
IS Press Road,
Cochin-682 018
- 2 The Chief Accounts Officer
Office of the Commissioner of Central Excise
Central Revenue Building
IS Press Road,
Cochin-682 018
- 3 Assistant Commissioner of Central Excise
Moovattupuzha Division,
Moovattupuzha
- 4 Union of India
represented by the Secretary
Department of Revenue
North Block
New Delhi-110 001

...Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

O.A. 153/06

- 1 Joseph Rolent Paduva
Sepoy
Office of the Commissioner of Central Excise
Central Revenue Building
IS Press Road,
Cochin-682 018
- 2 M.G. Andrew Paul
Sepoy of Central Excise
Ernakulam I Division
Central Excise Bhavan
Kathrikadavu
Cochin-17
- 3 P.B. Sabu
Sepoy of Central Excise
Ernakulam I Division
Central Excise Bhavan
Kathrikadavu
Cochin-17

4 G.Manoj
 Sepoy of Central Excise
 Cherthala Range
 Cherthala. Applicants

By Advocate Mr. CSG Nair

Vs.

1 Commissioner of Central Excise
 Central Revenue Building
 IS Press Road,
 Cochin-682 018

2 The Chief Accounts Officer
 Office of the Commissioner of Central Excise
 Central Revenue Building
 IS Press Road,
 Cochin-682 018

3 Assistant Commissioner of Central Excise
 Ernakulam-Divison-I
 Central Excise Bhavan
 Kathrikadavu
 Cochin-17

4 Assistant Commissioner of Central Excise
 Ernakulam II Division
 Central Excise Bhavan
 Kathrikadavu
 Cochin-17

5 Union of India
 represented by the Secretary
 Department of Revenue
 North Block
 New Delhi-110 001 .. Respondents

By Advocate Mr. Sunil Jose,ACGSC

O.A. 156/2006

A.V. Joseph
 Senior Tax Assistant
 Service Tax Division
 Central Excise Bhavan
 Kathrikadavu
 Cochin-682 017 Applicant

By Advocate Mr. CSG Nair

Vs

- 1 Commissioner of Central Excise
Central Revenue Building
IS Press Road,
Cochin-682 018
- 2 The Chief Accounts Officer
Office of the Commissioner of Central Excise
Central Revenue Building
IS Press Road,
Cochin-682 018
- 3 Assistant Commissioner of Central Excise
Service Tax Division
Central Excise Bhavan
Kathrikadavu
Cochin-17
- 4 Union of India
represented by the Secretary
Department of Revenue
North Block
New Delhi-110 001

• Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

O.A. 165/2006

I.S. George
Sepoy of Central Excise
Ernakulam II Range
Central Excise Bhavan
Kathrikadavu
Cochin-682 017

Applicant

By Advocate Mr. CSG Nair

Vs.

- 1 Commissioner of Central Excise
Central Revenue Building
IS Press Road,
Cochin-682 018
- 2 The Chief Accounts Officer
Office of the Commissioner of Central Excise

Central Revenue Building
IS Press Road,
Cochin-682 018

3 Assistant Commissioner of Central Excise
Ernakulam II Division,
Central Excise Bhavan
Kathrikadavu
Cochin-17

4 Union of India
represented by the Secretary
Department of Revenue
North Block
New Delhi-110 001

By Advocate Mr. TPM Ibrahim Khan, SCGSC

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

All the applicants are working under the first respondent. They were sanctioned special advances under the GPF Rules and are aggrieved by the show cause notice issued by the second respondent for recovery of the entire amount from their salary from February, 2006 onwards. Since the reliefs asked in all these OAs are identical and the grounds urged are also identical, they were heard together and are being disposed of by this common order.

O.A.103/2006:-

2 There are six applicants who are working in different offices under the first respondent. They had applied for special advances from the GPF which were sanctioned by the second respondent vide orders at Annexure A-1 to A-6, on various occasions in the year 2004-05. They have been issued show cause notice by the second

respondent on the direction of the first respondent vide Annexures A-7 to A-12 asking them to show cause as to why the outstanding amount out of the special advances should not be recovered with interest and penal interest from their salary of February, 2006 onwards.

O.A. 153/2006:

3 All the four applicants in this O.A. are Group-D employees working in the office under the first respondent. They were sanctioned special advance under Rule 12 of the GPF Rules 1960 by Annexures A1 to A4 and show cause notices have been issued to them by Annexure A-5 to A-8 for recovery of the outstanding amounts with interest and penal interest. They had submitted a reply in A-9. Except to the first applicant, no reply has been given. The first applicant is being informed about the amount to be recovered as per the provisions of law.

O.A. 156/2006:

4 The applicant herein is working under the first respondent as a Senior Tax Assistant who applied for sanction of special advance which was granted by Annexure A-1 order and utilised for medical treatment. While so, a show cause notice was issued by Annexure A-2 as to why the outstanding amount of the advance sanctioned to him should not be recovered with penal interest. A reply has been submitted to the show cause notice but by Annexure A-4 the first respondent directed the third respondent to recover the amount as per provisions of the GPF Rules.

O.A 165/2006

5 The applicant is a Sepoy under the first respondent. He was sanctioned an advance by Annexure A-1 order dated 9.8.2005 and it has been utilised for the purpose for which it was applied for. A show cause notice in Annexure A-2 has been issued as to why the outstanding amount should not be recovered with interest and penal interest. A reply was given at Annexure A-3 and vide Annexure A-4 the first respondent directed the third respondent to recover the amount as per the provisions of the law.

6 The reliefs prayed for in all the OAs are for quashing the show cause notices being illegal and arbitrary. The Tribunal has already stayed the recovery proceedings.

7 The common contention of the respondents is that though the advances were sanctioned earlier, it was noticed on subsequent scrutiny that the applicants have overdrawn the advances as the outstanding balances are more than the credits available in their GPF accounts. A table showing the credit balance as on December, 2005, the recovery pending on the same date and the difference between the recoveries and the allowed amount has been filed along with the reply statement in all the cases. The respondents hold that, since the advances have been wrongly sanctioned action had to be initiated under sub rule 3 of Rule 13 of the GPF Rules 1960, according to which the disallowed amounts should be recovered in lump sum or in monthly installments not exceeding 12 and the employee has been given option before effecting the recovery. The

recoveries of the disallowed amount being under Rule 13(2) of the GPF Rules 1960 and in view of the clear provision of the law the contentions of the applicants is not at all correct. The sanctioning authority has got all the powers to order recovery of the over payment after following the procedure prescribed under the rules. No arbitrary action has been taken to harass the subscriber as alleged by the applicants. When the ineligible amount has been allowed, the sanctioning authority can very well demand recovery of the excess sanctioned amount. As regards interest, they have drawn attention to sub Rule 7 of Rule 11 of the GPF Rules according to which the subscriber if found to have drawn from the fund any amount in excess of the amount standing in his credit from the date of drawing the over drawn amount shall be repaid by him with interest therein in one lump sum or in installment which can be ordered to be recovered from the emoluments of the subscriber and the rate of interest of such excess amount will be 2.5% over and above the normal rate of the advance under the sub rule (1). Hence it is contended that the applicants are not entitled to any of the reliefs prayed for in the O.As.

8 Rejoinder has been filed by the applicants in O.A. 103/2006 stating that the averments of the respondents are absolutely wrong and misleading. They have averred that the particulars of the balance credits and the advance sanctioned would show that the advance sanctioned was within 50% in respect of four applicants and only 53% and 73% of the balance in credit in respect of the other two

applicants and the maximum limit of advance prescribed under the rule is 90% and by no means it could be concluded that the applicants have over-drawn from their funds. They have also pointed out that no orders disallowing the advances have been passed under Rule 13 as alleged by the respondents. Therefore the action of the first respondent is patently illegal.

9 During the arguments, the learned counsel for the applicants stressed the same point that in none of the cases there was any over-drawal of amount in excess of the credit balance, in the accounts of the applicants. They have filed statements of GPF advances in respect of the first applicant in O.A. 103/2006 as a specific case to prove the point. The respondents side maintained that their action was well within the provisions of the rules and that there was nothing wrong in as much as the sanctioning authorities have wrongly and inadvertently sanctioned some ineligible amount and the position was being rectified in accordance with the rules.

10 I have heard the learned counsel on both sides and perused the pleadings and the rule position as brought out by the respondents. The grant of advance from the GPF account in respect of the Central Government employees is governed by GPF (CS) Rules 1960 and it is a normal activity in Government offices. The powers of the sanctioning authority and the rights of the Government employee who are contributors of the fund are laid down precisely in these rules and they are intended to protect the contributors so that in the long run the employees would have a safety net to bank upon.

at the time of retirement. Therefore the restrictions by way of these provisions in the rules should be seen as intended to benefit the employees. In these cases before me, all the employees have applied for advances for reasons which are covered by the conditions under the rules. They have to be considered under Rule 12 of the GPF Rules, 1960. Rule 12 reads as under :

"(12)-Advances from the fund-

(1)The appropriate sanctioning authority may sanction the payment to any subscriber of an advance consisting of a sum of whole rupees and not exceeding in amount three months' pay or half the amount standing to his credit in the Fund, whichever is less, for one or more of the following purposes:-

X X X X X X X X X

(2)An advance shall not, except for special reasons to be recorded in writing be granted to any subscriber in excess of the limit laid down in sub-rule (1) or until repayment of the last installment of any previous advance.

(3)When an advance is sanctioned under sub-rule (2) before repayment of last installment of any previous advance is completed, the balance of any previous advance not recovered shall be added to the advance so sanctioned and the installments for recovery shall be fixed with reference to the consolidated amount."

X X X X X X X X X

11 It is seen that under sub rule 1 of Rule 12 an advance can be sanctioned to any subscriber not exceeding three months pay or half the amount standing to his credit in the fund, whichever is less. However, under sub rule 2 an advance can be sanctioned in excess of this limit for special reasons to be recorded in writing and when

by

such advance is sanctioned before repayment of the last installment of the previous advance, the balance outstanding will be added to the advance sanctioned and installment will be refixed. The sanction orders issued vide Annexures enclosed to the OAs would show that while issuing the sanction, sub rule 2 of Rule 12 has been taken into account in as much as the balance together with the advance sanctioned was fixed to be recovered in 36 monthly installments. Though sanction is issued under Rule 12 (1), subsequent action taken to refix the installments denotes that the sanction was considered under sub rule (2). However, while issuing the show cause notice, the respondents have taken the stand that though the sanction was issued under Rule 12(2), no special reasons were adduced for the said grant and the repayment of the loan installment of the previous advance was not adjusted. So essentially the stand of the respondents in the show cause notice is that though sanction was accorded under Rule 12(2) on further scrutiny it has been found that such a sanction was not warranted as there was no special reason recorded in writing and the recovery of the entire outstanding balance with interest and penal interest is proposed to be done. This order suffers from two infirmities. After admitting that the sanction was issued under Rule 12(2) after taking into account the special circumstances, after a lapse of time it is proposed to disallow the same on the ground that circumstances mentioned therein were not satisfactory. It was incumbent on the respondents to state particularly the reason for arriving at the conclusion in the

show cause so that the employee would respond to the same and having regard to the reply submitted by the employees, the amount could have been disallowed. In the reply statement the respondents have taken the stand in para 14 that the amounts sanctioned were in excess of the eligible limits and that there is no question of misutilisation. The language of the show cause notice and the submission by the respondents in the reply are contradictory. Secondly, in para 15 of the reply statement, it is stated that the excess amount is to be recovered from the salary and is to be credited to the Government account, since the amount drawn by them does not belong to them. It is surprising that the respondents should show such ignorance of the basic concept of the Provident Fund Rules and how any such amount can be credited into the Government account as the credited amounts in the GPF belongs to the subscribers and only held in trust by the Government.

12 The respondents have relied on Rule 13 for ordering the recoveries. Sub rule 3 of Rule 13 authorise the sanctioning authority to disallow any advance and to order repayment of the whole or balance of the amount withdrawn. The rule is extracted under:

“(3)If an advance has been granted to a subscriber and drawn by him and the advance is subsequently disallowed before repayment is completed, the whole or balance of the amount withdrawn shall forthwith be repaid by the subscriber to the Fund, or in default, be ordered by the Accounts Officer to be recovered by deduction from the emoluments of the subscriber in a lumpsum or in monthly installments not exceeding twelve as may be directed by the authority competent to sanction an advance for the grant of which, special reasons are required under sub rule (2) of Rule 12.

Provided that, before such advance is disallowed, the subscriber shall be given an opportunity to explain to the sanctioning authority in

writing and within fifteen days of the receipt of the communication why the repayment shall not be enforced and if an explanation is submitted by the subscriber within the said period of fifteen days, it shall be referred to the President for decision and if no explanation within the said period is submitted by him, the repayment of the advance shall be enforce in the manner prescribed in this sub-rule."

13 It is to be borne in mind that sub rule 3 of Rule 13 can be applied to a particular advance which is found to have been wrongly granted. But it cannot be applied for recovery of outstanding balance of earlier advances which had been granted in accordance with the Rule. Hence, the procedure which has been adopted by the respondents for invoking Rule 13 for ordering recovery of all cumulative balances is not in order. If at all the advances sanctioned were found to have been not in order and it was decided to invoke Rule 13, the recovery would be applicable only to those advances which had been sanctioned wrongly as alleged and it cannot be applied retrospectively to all the previous advances which have been taken by the employee and the outstanding balance computed accordingly cannot be recovered under these rule. To take an illustrative example of the first applicant in O.A. 103/2006 , the following table would make the position clear:

<i>Name</i>	<i>Designation</i>	<i>Credit balance as on 12/2005</i>	<i>Amount outstanding as on 12/05</i>	<i>Present advance sanctioned</i>	<i>Amount ordered to be recovered</i>
Elizabeth Johnson	DOS	24,646/-	37800	18000	21551

13 It may be seen from the above that when an advance of Rs. 18000/- was sanctioned, the balance in her credit was Rs. 24,646/-

(the figure shown in Annexure R-2 filed by the respondents is Rs. 24,949/-) and it is within the 90% of the credit standing in her credit. Even if the respondents are taking the stand that she was eligible only for 50% of the credit, under Rule 12(1) she would have been eligible for an advance of more than Rs. 12,000/- on that date. Hence if any amount is to be considered as over drawn even according to the respondents stand, it would be only to the tune of Rs. 6,000/- whereas the amount now ordered for recovery is Rs. 21,551/- which figure has been arrived at by the respondents presumably by deducting the advance granted from the total advance outstanding against the applicant after consolidating all the previous balances. Such calculations made by the respondents are without reference to any rules and show utter disregard of rules and gross indifference and ignorance. Similar is the position in respect of the applicants in other cases. The difference between the amount sanctioned and the amount eligible under Rule 12 are more negligible than in the example given above. If at all any recovery was to be done, it could have been only of the balance between the sanctioned amount and the eligible amount calculated at 50% of the outstanding balance. As already discussed above even such a recovery can not stand in the face of the statement of the respondents themselves that there

↳ have been no ^{mis-} representations by the applicants on the grounds for _{to such} sanction, which points to the fact that the advances were sanctioned for special reasons which were ^{not} acceptable to the sanctioning authority at the time of sanction but later found unacceptable. Such

changes, according to the whims and fancies of the sanctioning authority have to be viewed with suspicion.

14 On the point of interest, the respondents have relied on Rule 11.

Rule 11 (7) reads as under:

"(7) In case a subscriber is found to have drawn from the Fund an amount in excess of the amount standing to his credit on the date of the drawal, the overdrawn amount, irrespective of whether the over-drawal occurred in the course of an advance or a withdrawal or the final payment from the Fund, shall be repaid by him with interest thereon in one lump sum or in default, be ordered to be recovered, by deduction in one lump sum, from the emoluments of the subscriber. If the total amount to be recovered is more than half of the subscriber's emoluments, recoveries shall be made in monthly installments of moieties of his emoluments till the entire amount together with interest is recovered. For this sub-rule, the rate of interest to be charged on overdrawn amount would be 2 ½% over and above the normal rate on Provident Fund balance under sub-rule (1). The interest realised on the overdrawn amount shall be credited to Government amount, under a distinct sub-head "Interest on over-drawals from Provident Fund" under the Head "049-Interest Receipts-C-Other interest receipts of Central Government-Other Receipts."

15 Interest can be levied under sub rule 7 of Rule 11 and credited to Government account in case a subscriber was found to have over drawn in excess of the amount available to his credit. If the respondents are relying on provisions under Rule 11, they cannot plead that the recovery is being made under Rule 13 and take recourse to the provisions of Rule 11. It is seen from the details in the pleadings that the applicants herein had not drawn amounts in excess of the amounts available at their credit for inviting action under Rule 11. On the whole, I find that the respondents have

misread and misinterpreted different provisions in the Rules and have tried unsuccessfully to justify their action in terms of provisions in the Rules taken out of context.

16 In the result, I am of the view that the impugned orders are not in accordance with rules on the subject and therefore deserve to be quashed. Accordingly, the impugned orders in all these OAs are quashed and the OAs are allowed. No costs.

Dated 15th June, 2006.

Sathi.Nair
SATHI NAIR
VICE CHAIRMAN

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