

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.194 of 2006

Wednesday, this the 13th day of December, 2006

CORAM :

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

Latha.G

Senior Tax Assistant,

Office of the Commissioner of Central Excise,
Central Revenue Buildings,

I.S. Press Road, Kochi-18.

... Applicant.

(By Advocate Mr. C.S.G. Nair)

v e r s u s

1. Commissioner of Central Excise,
Central Revenue Buildings,
I.S. Press Road, Kochi- 682 018.

2. Chief Accounts Officer
Office of the Commissioner of Central Excise
Central Revenue Building,
I.S. Press Road, Kochi- 682 018

3. Union of India , represented by
The Secretary, Department of Revenue,
North Block, New Delhi

... Respondents.

(By Advocate Mr. T.P.M. Ibrahim Khan, SCGSC)

 The Original Application having been heard on 13.12.06, this Tribunal
on the same day delivered the following:

ORDER
HON'BLE DR. KBS RAJAN, JUDICIAL MEMBER

An erroneous interpretation of rules relating to advance from GP Fund account has forced the applicant to seek legal redressal from this Court.

2. The applicant has been a subscriber to her G.P. Fund and while one advance was under currency of repayment, she applied for and was sanctioned another advance (which is permissible under the rules) vide Annexure A-1 and this amount together with the outstanding amount of the previous loan was sought to be recovered from the applicant in monthly instalments. Recovery was also accordingly scheduled and commencement of recovery made. However, the respondents have, vide Annexure A-2 and Annexure A-4 orders (impugned herein), sought to recover the entire advance in one lump sum on the following ground:-

(a) It was found out that the applicant has overdrawn the advance. In other words, her outstanding balance is more than the credit available in her GPF accounts.

(b) As per Rule 12(2) the Head of the Department can allow upto 90% of the total credit balance available to an officer. But




in this case she has been wrongly sanctioned more amounts than the credit available to her. Therefore, the applicant has drawn an excess amount and is enjoying the undue benefit which is not due to her. The excess amount is rightly to be recovered from her salary and is to be credited to the Government account since the amount drawn by her does not belong to her.

3. The applicant has agitated against the aforesaid lump sum recovery through this O.A. By way of interim order, proposed lump sum recovery was stayed, vide order dated 27-03-2006.
4. Respondents have contested the OA on the ground stated above. Reply to that extent has been filed by them.
5. The counsel for the applicant has, at the time of arguments, referred to a decision of this Court which dealt with the same department and with reference to the same issue, vide order dated 15th June, 2006 in O.A. No. 103/06, 153/06 and 165/06.
6. Arguments were heard and documents perused. Earlier, the applicant was paid a G.P. Advance of Rs 60,000/- in November, 2004. Though the exact credit balance at the time of drawal of the aforesaid loan was reflected



in any of the documents, it is not difficult to work out the same. As on 31.03.2005, the credit balance was Rs 64,705/- vide Annexure A1. The monthly subscription , and recovery @ 2,000/- p.m for the period of Feb., 2004, Jan., 2004, Dec., 2003 and Nov., 2003 works out to Rs 8,000/-. For these months the monthly subscription @ Rs 1,000/- was Rs. 4,000/-. Thus, the credit balance **after payment of the previous advance of Rs 60,000** as of 30-11-2004 should have been Rs 64,705/- as reduced by Rs 12,000/-, which ^{is} the addition made to the fund credit after the date of payment of the previous loan and the same works out to Rs 52,705/-. Hence, the at the time of previous loan there were adequate credit balance i.e. Rs 52,705/- plus Rs 60,000/-. The loan paid by then was thus well within the 90% of the credit balance as on the date of sanction of the earlier loan. Now, after adding the monthly subscription and refund of a part of the previous loan, the credit balance happened to be Rs 73,705/- out of which Rs. 55,000/- has been granted as loan which again is well below 90% of the credit balance. The respondents have misunderstood the provisions relating to grant of advance inasmuch as they have taken into account the total amount due from the applicant including the outstanding balance of the previous advance and compared the same with the credit balance available, whereas it is to be with reference to the amount taken as loan and not to be incremented by the outstanding balance of earlier advance. Thus, there is absolutely no question of the applicant having drawn the amount of advance in excess of the credit balance, as contended by the respondents.



7. In view of the above, on the facts of the case, no lump sum recovery can be made from the applicant on the score that the earlier loan granted exceeded the credit balance. Identical issues were considered and O.As were allowed, vide order dated 15th June, 2006 in O.A. No. 103/06, 153/06 and 165/06.

8. The OA is, therefore, allowed. Impugned order dated 19-01-2006 (Annexure A-2) and 22-02-2006 (Annexure A-4) are hereby quashed and set aside. Respondents are directed to continue recovery of GP Fund advance only @ the specified rate as contained in the sanction order dated 09.08.2006 (Annexure A-1).

9. No costs.

(Dated, the 13th December, 2006)



Dr. K B S RAJAN
JUDICIAL MEMBER

cvr.