

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.200/02

Friday this the 18th day of June 2004

C O R A M :

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR. S.K.HAJRA, ADMINISTRATIVE MEMBER

V.A.Mathew,
Upper Division Clerk,
Regional Provident Fund Commissioner Office,
Bhavishya Nidhi Bhavan, Kaloor, Kochi-17. Applicant

(By Advocate Mr.Vellayani Sundararaju)

Versus

1. Union of India represented by
Secretary to Government,
Ministry of Labour,
New Delhi.
2. The Regional Provident Fund Commissioner,
Bhavishya Nidhi Bhavan, Pattom,
Thiruvananthapuram.
3. The Additional Central Provident Fund
Commissioner (HR) and Appellate Authority,
Bhavishya Nidhi Bhavan - 14,
Bhikaji Cama Palace,
New Delhi - 110 066.
4. Mr.P.Sudhakar Babu,
Regional Provident Fund Commissioner (I)
Bhavishya Nidhi Bhavan, Pattom,
Thiruvananthapuram. Respondents

(By Advocate Mr.C.Rajendran,SCGSC [R1]
& Mr.N.N.Sugunapalan [R2-3])

This application having been heard on 18th June 2004 the
Tribunal on the same day delivered the following :


O R D E R

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

The applicant a U.D.C. in the Regional Provident Fund
Commissioner's Office, Ernakulam has filed this application under
Section 19(3) of the Administrative Tribunals Act challenging the

legality, propriety and correctness of the order dated 4.7.2000 (Annexure A-1) of the 2nd respondent imposing on him a penalty of withholding of two increments for one year without cumulative effect as also the order dated 27.12.2001 of the 3rd respondent confirming the penalty in appeal. The factual matrix can be briefly stated as follows :

2. The applicant was in the year 1999 working as Legal Assistance in the legal cell of the EPFO at Trivandrum. On 1.6.1999 one Shri.R.Bhojarajan, Enforcement Officer, Kollam sent a letter to Shri.P.N.Somarajan, Assistant Provident Fund Commissioner (APFC for short) (Legal) stating that the Consumer Dispute Redressal Forum (CDRF for short), had issued non-bailable warrant against the Regional Provident Fund Commissioner in E>P.No. 162/98 and requesting that a stay order from the Hon'ble High Court if obtained be forwarded so that it could be filed before the CDRF. A stay order in the matter was issued by the Hon'ble High Court of Kerala in CMP No.22054/99 in OP No.13654/99 on 4.6.1999 and the same was received on 8.6.1999. This having been sent to the legal cell was received by the Legal Assistant, V.A.Mathew, the applicant on 9.6.1999 who on the same day prepared a draft affidavit and placed before the APFC (Legal). Although APFC (Legal) cleared and forward the same to Controller of Pension, as the Controller of Pension was on leave and returned only on 21.6.1999 the affidavit along with stay order could be forwarded to the EO, Kollam only on 23.6.1999. The Execution Petition before the CDRF was posted on 29.6.1999 on which date only the affidavit and stay order were filed before the Forum. The police visited the Office of the Regional Officer



on 2.7.99 and coming to know of the stay order returned. Alleging that the applicant did not show diligence in ensuring that the affidavit and stay order were presented before CDRF promptly and therefore showed lack of devotion to duty, a notice under Rule 12 of the EPF (CCA) Rules, 1971 was served on the applicant. The applicant submitted his explanation wherein he explained that he promptly prepared draft affidavit on the same day and placed before the APFC (Legal), that after receipt of the affidavit after vetting and signature the same was immediately forwarded to EO, Kollam and that the delay happened on account of the Controller of Pension being on leave and EO, Kollam not caring to place it before the CDRF on time and the counsel not being present. The explanation having been found not satisfactory the 2nd respondent issued Annexure A-1 finding the applicant guilty and imposing on him the penalty. The appeal was rejected by Annexure A-2 order. Aggrieved the applicant has filed this application seeking to have the impugned orders set aside, alleging that although he has acted promptly and carefully on account of the delay and dereliction of duty on the part of others he has been wrongly punished and that the appellate authority did not apply its mind to this aspect.

3. The respondents have filed a reply statement in which it is contended that the impugned order has been passed after considering the representation with due application of mind and therefore no intervention is called for.

4. We have gone through in detail the pleadings and all the documents that are available on record and have heard the

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arguments of Shri.Vellayani Sundararaju, learned counsel of the applicant and Shri.Gopinath Balakrishnan who appeared on behalf of Shri.N.N.Sugunapalan the counsel of the respondents. Learned counsel of the applicant taking us through the impugned orders, the appellate orders as also the other material papers highlighted the facts that the applicant had on receipt of the stay order and the material papers on 9.6.1999 prepared a draft affidavit and presented it on the same day before the APFC for approval and that without any loss of time when the affidavit was received after approval and signature transmitted the same to EO, Kollam and argued that in the light of these undisputed facts the decision of the disciplinary authority that the applicant was guilty was per verse and the appellate authority's order is also vitiated by non-application of mind. Learned counsel of the respondents, on the other hand, argued that the applicant being the Legal Assistant whose sole function is to deal with court matters he should have seen that the affidavit and stay order are presented before the CDRF, Kollam and therefore the failure in doing so amounts to lack of devotion and dereliction to duty, and therefore the impugned orders cannot be faulted.

5. In the light of the facts and circumstances emerging from the materials on record and the submissions of the learned counsel we find considerable force in the arguments of the learned counsel for the applicant that the delay in presenting the affidavit and the stay order before the CDRF, Kollam cannot in anyway be attributed to the applicant. We find that the applicant immediately after the matter came before him prepared the draft affidavit and placed it before the APFC. This

affidavit was cleared by the APFC on the next day and it was forwarded to Controller of Pension who unfortunately happened to be on leave. On getting the affidavit back after approval and signature the applicant did not lose any time to see that it was sent to EO, Kollam. The EO, Kollam who had requested in Annexure R.2 (a) letter addressed to the APFC (Legal) to forward the stay order, if any, to be presented before the CDRF should not have wasted any time on receipt of the same on 24.6.1999. We find that the stay order and the affidavit were presented only on 29.6.1999. Thus it is evident from the material on record that the delay was attributable not to the applicant but to others. The disciplinary authority as also the appellate authority did not unfortunately appreciate this vital aspect of the matter. Their decision that the applicant was guilty, therefore, is not based on any material that would enable a reasonable person to reach that conclusion.

6. In the light of what is stated above, we find that Annexure A-1 and Annexure A-2 are unsustainable in law and therefore we set aside the same with consequential benefits to the applicant. There is no order as to costs.

(Dated the 18th day of June 2004)


S.K. HAJRA
ADMINISTRATIVE MEMBER

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A.V. HARIDASAN
VICE CHAIRMAN