

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 222 / 2004

Monday this the 17th day of July, 2006

CORAM :

**HON'BLE Mr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

**K.K.Gopalan
(Retired Assistant,Office of the Assistant Garrison Engineer),
Kanara House, Pazhuvil West
Trichur District**

Applicant

(By Advocate Ms.P.V.Asha)

Versus

**1. Union of India represented by Secretary
to Government
Ministry of Defence
New Delhi**

**2. The Controller of Defence Accounts(Funds)
Meerut**

**3. Assistant Garrison Engineer (I)(P)
AFTC Complex, Jalahalli (West)
Bangalore – 560 015**

Respondents

(By Advocate Mr. Varghese P.Thomas, ACGSC)

**The application having been heard on 17.07.2006, the Tribunal on
the same day delivered the following :**

ORDER

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

**The grievance of the applicant as stated in his Original
Application is that a sum of Rs.16,451/- was effected as recovery
on account of alleged excess subscription of Rs.27/- in the year
1972-73 and Rs.1,131/- in the year 1976-77. The balance amount
constitutes interest on the alleged excess subscription.**

2. The applicant retired as Assistant from the Office of the Respondent No.3 and his Provident Fund Account was being maintained by Controller of Defence Accounts (Funds), Meerut. The applicant superannuated on 31.05.2003. When he was awaiting the payment of his Provident Fund credit balance, CDA(Funds), Meerut by communication dated 09.06.2003 reflected a sum of Rs.85,711/- as total credit and in the statement a sum of Rs. 842/- under the Head "Excess subscription Rs.27/- and refund Rs.20/- in 1972-73 and another sum of Rs.15,609/- as excess refund of Rs.1,131/- in 1976-77 were shown as recoveries. The above stated alleged excess payment and excess refund, according to the applicant cannot be true since the earlier annual statements for 2002-03 indicated Rs.1,02,515 as closing balance and no mention had been made in regard to the aforesaid alleged excess subscription etc. The applicant submitted a representation on 23.09.2003 pointing out the recovery effected inspite of the annual statement of 2002-03. CDA (Funds) Meerut by his letter dated 05.12.2003 informed the applicant giving the details of his arriving at a sum of Rs.16,451/- as the amount recoverable from the applicant. The applicant has thereafter penned a representation dated 25.12.2003 claiming the amount withheld by CDA(Funds) Meerut where after CDA(Funds) Meerut referring to the legal notice caused to be issued by the applicant informed the Advocate that as per printed instructions on the reverse side of CCO-9 the subscriber himself is responsible as to the correctness of the statement and errors if any should be brought to the notice of CDA (Funds) concerned within three months from the date of receipt of the statement. It has also been

stated that Office of the CDA(Funds) reviews all final settlement cases at the time of their superannuation i.e on receipt of final settlement cases and there is no check at their end to scrutinise every CCO – 9 at the time of despatch. Their letter dated 11 December, 2004 (Annexure A-6) refers.

3. The applicant has filed this O.A with a prayer to declare that recovery of Rs.16,451/- from his General Provident Fund Account is illegal and accordingly to quash and set aside order dated 09.06.2003 and also to direct respondents to refund the amount recovered from the applicant with interest.

4. The respondents have resisted the Original Application. They also almost repeated the reply of the CDA(Funds) to the applicant's Advocate stating that the subscriber alone is responsible, and to substantiate the same, true copy of CCO-9 has been annexed to Annexure R-1. The applicant has filed rejoinder and relied upon the decision of the Apex Court reported in 2003 (2) KLT 706 at Page 718 wherein it was held that a recovery of excess payment of pay etc. cannot be made.

5. Arguments were heard and documents perused. The learned counsel for applicant submitted that no notice was issued before effecting any recovery nor the recovery pertains to any period of the recent past. It was therefore, argued that the authorities cannot at this distance of time recover unilaterally the amount of alleged excess subscription etc.

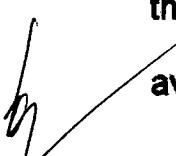


6. Per contra the learned counsel for respondents submitted that provision insists in Rule 71 and 73 of CCS (Pension) Rules, 1972 for recoveries/adjustments from out of the terminal benefits (Gratuity) of any excess government dues which includes excess payment on account of pay etc.

7. The arguments of the learned counsel for respondents has to be summarily rejected since the case does not pertain to adjustment or recovery from the gratuity or pension. It is only in respect of payment of Provident Fund credit balance.

8. The learned counsel for respondents in addition submitted that even in terms of Section 72 of the Contract Act any payment made by mistake to a party is liable to be refunded. This argument has no relationship with the issue involved and has therefore to be rejected.

9. A perusal of the General Provident Fund Act read with its attendant rules reveals that GP Fund Ledger card, on the basis of which PF statement is prepared is closely scrutinised by atleast three parties. Undemeath the GPF ledger code space is provided to reflect the entry in the ledger column as "posted by", "checked by" and "examined by" the respective officers in the Office of the CDA(Funds). It is the entry made in this ledger code i.e is transposed in the form of annual statement and made available to the subscriber. This statement is authentic in so far as the availability of credit balance in the Fund Account is concerned. For



example, Rule 15 (2) of the Provident Fund Rules stipulates, " whenever a subscriber is in a position to satisfy the competent authority about the amount standing to his credit in the GPF Account with reference to the latest available statement of the GPF Account together with evidence of contribution....." Thus, the applicant who has been receiving the statement year after year is entitled to believe the entries made therein as correct, accurate and authentic.

10. It has been argued and also it has been the stand of the respondents in the counter that it is the responsibility of the individual to point out any errors to the notice of the department. CCO-9 instructions (Annexure R-1) have been relied upon in this regard. Instructions No.8 thereof reads as under :-

" Cases relating to missing credits, intimation of incorrect withdrawals, non transfer of asset etc. if taken up after three years of the casualty, will not be entertained and total responsibility in this regard will rest with the subscriber/unit concerned." This clause ensures the responsibility of taking up the matter for correction of the fund statement not only upon the subscriber but also upon the unit concerned. Vide Clause 5 of instructions it was only a request to the subscriber to satisfy himself/herself as to the correctness of the statement and error if any, to be brought to the notice of CDA (Funds) concerned or the data processing Controller within the months. Thus the stand taken by the respondents is unsustainable.

11. It is trite knowledge that apart from three officials being involved in the posting of entry in the GPF ledger and in

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preparation of the statement, annual auditing takes place when the entries made in the ledger are duly verified.

12. That proper maintenance of the GPF ledger and accounts reflects all the transactions is ensured upon by the officials in the Accounts Department is emphasised in Government of India, Department of Administrative Reforms O.M.No.F.16(2)-Pension Unit/82 dated 21.12.1982 which provides for fixing up the responsibility for any overpayment etc. against the administrative and accounts authorities.

13. All the above will show that it is entirely for the respondents to ensure maintenance of accurate account and the subscriber is entrusted with the responsibility of only pointing out the missing credit etc. within three months from the date of receipt of the annual statement. The subscriber has right to presume that the entries made in the Provident Fund statement are accurate. It may be seen that in the instant case, the recovery effected does not relate to the recent past but dates back to 1972-73 and 1976-77. It is not expected of the applicant to keep a track of the entire statement at this distance of time and the applicant is entitled to rely upon the latest statement. As such, even from the point of view of the date when the alleged error took place, it is late on the part of the respondents to turn around and put the blame on the applicant. Thus, mistakes, if any, in not detecting the alleged excess subscription/refund etc. is attributable to the respondents and they



cannot be allowed to encash their own mistake. In Nirmal Chandra Bhattacharjee & Ors Vs. Union of India & Ors (1991 Supp (2) SCC 363) the Apex Court has held that "the mistake or delay on the part of the department should not be permitted to recast on the applicant." Similarly in Bhoop Vs. Matadini Bhardwaj (1991-2 SCC 128) the apex Court has held "the learned Single Judge in the High Court rightly held that a party cannot be made to suffer for any fault of her own."

14. In view of the above, the OA is allowed. Deduction of Rs.16,451/- effected from the Provident Fund Account of the applicant is declared as illegal. It is further declared that the applicant is entitled to payment of the said amount. This amount which has not been paid to the applicant from the date of his retirement shall be deemed to be in the credit in his Provident Fund Account retained by the Accounts authorities and as such, the same is refundable to the applicant alongwith interest at the same rate as applicable for GPF for the years 2002-03, 2003-04, 2004-05 and 2005-06. The respondents, while refunding the aforesaid amount of Rs.16,451/- shall increment the same by adding the interest at the specified rates of interest on GPF for the aforesaid years or at 9% interest as claimed by the applicant whichever is less. Time calendared to complete this exercise is three months from the date of receipt of this order.

15. In the aforesaid circumstances and on the grounds that

interest has been levied on the amount refundable to the applicant,
there shall be no order as to costs.

Dated, the 17th July, 2006.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.B.S.RAJAN
JUDICIAL MEMBER

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