

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 265 OF 2011

Tuesday, this the 25th day of July, 2012

CORAM:

HON'BLE Ms.K NOORJEHAN, ADMINISTRATIVE MEMBER

N.A Nair
S/o Late Shri N N Nair
Additional Central Provident Fund Commissioner (RTD)
Kovilakam
Opp: Sahrudaya Hospital
Tathampally P.O
Alappuzha – 688 013

(By Mr.N.A Nair, Party-in-person)

Versus

1. The Chairman
Central Board of Trustees
Employees' Provident Fund Organisation
Bhavishyanidhi Bhavan
14, Hudco Vishala
Bhickaji Cama Place
New Delhi – 110 066
2. The Central Provident Fund Commissioner
Employees Provident Fund Organisation
Bhavishyanidhi Bhavan
14, Hudco Vishala
Bhickaji Cama Place
New Delhi – 110 066
3. The Regional Provident Fund Commissioner I
Employees' Provident Fund Organisation
37, Royapettah High Road
Chennai – 600 014

(By Advocate – Mr.N.N Sugunapalan,Sr. with Mr.S Sujin)

The application having been heard on 25.07.12., the Tribunal on the same day delivered the following:

ORDER**HON'BLE MS.K NOORJEHAN, ADMINISTRATIVE MEMBER**

1. The applicant is aggrieved by the recovery of Rs.1,41,156/- from his DCRG.
2. The applicant while functioning as Additional Provident Fund Commissioner, in the scale of pay of Rs.37400-67000 with a grade pay of Rs.8700/-, in charge of Tamil Nadu, Kerala and Pondichery States with Headquarter at Chennai, superannuated from service on 31.05.2010. He reports to R2, the Central Provident Fund Commissioner, while R3 is the Drawing and Disbursing Officer in the Chennai Regional Office. The applicant avers that the Employees Provident Fund Organisation (EPFO for short) is a statutory unfunded autonomous body created under the Central Statute Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and it is administered by the Central Board of Trustees, constituted under Section 5D (3) of the Act. The service conditions are specified by the Central Board as per the powers vested under Section 5D(7) of the Act. The administrative expenses of the Organisation including pay, pension and other allowances including Travelling Allowances are met from the administrative charges collected from the clientele of the Organization under para 39 of the Employees' Provident Fund Scheme, 1952. It is framed under the Act by the Central Government in exercise of powers conferred by Section 5 of the Act. The present rate of administrative charges collected is 1.10 percent of the wages of the members enrolled under the Act and the Schemes. Therefore, according to the applicant it is not funded from the Consolidated Fund of India. The applicant was holding the post of Additional Central Provident Fund Commissioner for the period from 26.02.2009 to 31.05.2010. The jurisdiction was spread over 17 Regional and Sub -Regional offices and the district offices attached. As per the Travelling Allowance



Regulations, he was entitled to travel by any air line in the public and private sector, operating regular flights to the destinations. In fact, due to lesser expenditure for travel by private air lines, utilization of private air lines was encouraged by the respondents' organisation. The applicant traveled on 26 occasions by air and had drawn travel expenses in respect of 23 journeys. He was a self drawing officer. While so, the Financial Advisor and Chief Accounts Officer of the Organisation circulated on 14.05.2010 (Annexure A-1) an O.M dated 13.07.2009 (Annexure A-2) from the Department of Expenditure, restricting air travel of employees of Government of India and funded central autonomous bodies by private airlines to be applied to the officers of the Organisation with effect from 13th July, 2009. Annexure A-2 letter was circulated by an officer of the rank of applicant without getting the mandatory approval from R2. The Drawing and Disbursing Officer, R3, issued a notice to the applicant intimating recovery of Rs.1,16,156/- incurred towards TA expenses. The applicant submitted his Annexure A-5 representation to R-2. No reply was received. However, R3 had issued a general circular vide Annexure A-6 dt. 03.01.2011, modifying the instructions and permitting travel by private airlines wherever necessary. According to the applicant this Annexure A-6 circular has the effect of regularising his travel by private airlines for the period from 13th July 2009 to 14th May 2010. According to the applicant, R3 had misinterpreted the Annexure A-6 order making it effective prospectively from 06.12.2010 and insisted on the recovery of Rs.1,16,156/- from his DCRG. Hence applicant has filed this Original Application seeking a direction to the respondents to release the recovered amount of Rs.1,41,156/- with 15% interest as admissible under Rule 68 of Central Civil Services (Pension) Rules, 1972.

3. The respondents contested the Original Application and filed reply

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statement. They concede that while EPFO receives administrative charges to meet the expenditure and maintain their accounts, there is a contribution of 1.16% to pension fund by Government of India. On this account they refute the contention of the applicant that the contribution and administrative charges collected are not a part of the public account i.e; Consolidated Fund of India. According to the EPF Conditions of Service Regulations, 2008, the Central government Rules as set out under Schedule I & II of said regulation are mutatis mutandis applicable to the officers/employees of the EPFO. Therefore, the applicant, when he was working as Additional Central Provident Fund Commissioner was expected to travel only by Air India both for official tour and LTC. They submitted that the applicant was informed about the recovery and in the absence of any communication from him, the recovery was effected. They further added that R2 has obtained certain relaxation from the Department of Expenditure to allow the officers of EPFO to travel by private airlines subject to certain conditions. This can take effect only from the date of issue of the order by the Department of Expenditure in December 2010 and not earlier. According to them the journey performed by the applicant both official and LTC by private airlines when Air India flights are available cannot be treated as official exigency, his act was irregular and in complete deviation of the Government of India instructions. They also controverted the stand of the applicant that EPFO is akin to PSU. According to them the EPFO is not PSU or autonomous body but a statutory body/semi/quasi government body.

4. The applicant filed rejoinder and averred that 1.16% contribution by the Government of India as an aid or payment for achieving a social cause does not form part of the administrative charges collected and accounted as a separate fund of the Central Board outside the Consolidated Fund of India. The



applicant further avers that Annexure A-1 circular dated 14.05.2010 communicating Annexure A-2 OM can have only prospective effect from that date. The applicant averred that such TA benefit being allowed to 110 similarly placed serving as well as retired officers listed at Annexure A-10 with only his exception is not explained by the respondents.

5. The respondents filed additional reply statement, reiterating their stand that the rules applicable to central government employees as specified in schedule I & II shall apply to the employees of the EPFO also.

7. Arguments were heard and records perused.

8. The applicant has put forward two main grounds to show that the recovery of Rs.1,16,156/- towards TA/DA expenditure is illegal and arbitrary. His first contention is that the respondent organisation is a self financing one, his pay and allowances are not paid from Consolidated Fund of India, the EPFO being administered by the Central Board does not fall under the category of autonomous organisation as stated in Rule 208 ibid. Therefore, circulation of Annexure A-2 O.M dated 13.07.2009 of Department of Expenditure on travel by Air India on 14.05.2010 without the approval of R-2 (Annexure A-9(1)) was done only with the intention of harassing him and effecting recovery for the journeys made during the period from 13.07.09 to 14.05.10. According to him, the Central Board is the authority to decide service conditions as per powers conferred under Section 5(D)(7) of the Act. In support of his contention he cited the order of the Principal Bench CAT upholding the autonomy enjoyed by the Central Board in deciding the service conditions. The ratio decidendi of this order was applied by Madras Bench of CAT in O.A No.589/2009 and 675(A)/2009. He

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produced Annexures A-21 to 24, to point out that higher rates as compared to Central Government employees for transportation of personal effects and car, HRA and fixed medical allowance at Rs.1200/- per month are fixed by respondent organisation. That being the case, the Annexure A-2 OM from Department of Expenditure was not made applicable to the respondent organisation and hence not circulated earlier to 14.05.2010. He secured through RTI Act a copy of the noting made in Department of Expenditure on this issue on which Finance Ministry's approval was obtained and produced it at Annexure A-25(2/4). This shows that PSUs are not brought under the ambit of Annexure A-2 OM but autonomous bodies are covered. However, Annexure A-20 OM of Department of Expenditure was not circulated before 14.05.2010. It is seen that the second respondent i.e; the Central Provident Fund Commissioner, took up the issue with Secretary Department of Expenditure on 16.11.2010 for the first time, seeking exemption from operation of Annexure A-2 O.M, on the ground that travel by Air India involves more expenditure (Annexure A-6(3). It was agreed to by the Department of Expenditure vide Annexure A-6(5). The applicant avers that such approval shows that his plea that the employees used private airlines widely, prior to 14.05.2010 stands vindicated. Therefore, he contends that effecting recovery of TA expenditure incurred by him alone and not in respect of 110 employees who too used private airlines is absolutely discriminatory.

9. It is seen that the expenditure on account of his journey by private airlines in sectors not operated by Air India came to Rs.66,884/-. He contends that he has saved an amount of Rs.36,450/- by using the private airlines instead of Air India.

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10. What emerges from the above is that the respondent organisation did not insist on travel by Air India exclusively and that accounts for passing the TA bills of 110 employees. Only later, on circulation of Annexure A-2 O.M dated 13.07.2009 and receipt of numerous representations from officers, the second respondent tried to get an exemption for the respondents' Organization, which he received in the month of December 2010. I am inclined to accept the averment of the applicant that utilization of Air India exclusively was not insisted upon as a number of employees did use private airlines and their TA bills were passed without raising any objection. In respect of three retired officers also no objection was raised and no recovery was effected. Hence, I find force in the contention of the applicant that there was hostile discrimination to him.

11. In view of the foregoing, the second and third respondents are directed to refund Rs.1,16,156 towards TA expenditure which was recovered from his DCRG within a time line of two months from the date of receipt of a copy of this order. As far as Rs.25,000/- is concerned, it did not figure as the subject matter in this Original Application. It is shown that the amount is withheld towards dues towards staff quarters. It is presumed that whatever verification to be done is completed now and if there is no government dues towards the staff quarters, the amount of Rs.25000/- will also be refunded. Any delay in effecting the refund of recovered amount beyond 2 months from the date of receipt of a copy of this order will entail interest at the rate of 8% from 01.06.2010 till the date of refund. The Original Application is allowed. No Costs.

(Dated, this the 25th day of July, 2012)


(K NOORJEHAN)
ADMINISTRATIVE MEMBER