

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 275/2001

Tuesday this the 16th day of October, 2001.

CORAM

HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

S.Damodaran
Ex-Permanent Auditor
Defence Accounts Department
Thiruvananthapuram.
R/o T.S.Bhavan
T.C.2/497 Medical College P.O.
Thiruvananthapuram-11.

Applicant

[By advocate Mr.M.Rajasekharan Nayar]

Versus

1. Union of India represented by
Secretary
Ministry of Defence
New Delhi.
2. Controller General of Defence Accounts
West Block-5
R.K.Puram
New Delhi.
3. Controller of Defence Accounts
Southern Command
No.1, Finance Road
P.B.No.23, Pune.
4. Controller of Defence Accounts
506, Annasalai, Thynampett
Chennai.
5. Joint Controller of Defence Accounts(Funds)
Merut Cantonment. Respondents

[By advocate Mr.S.K.Balachandran, ACGSC]

The application having been heard on 16th October, 2001, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant who was working as permanent auditor in the Defence Account Department, Thiruvananthapuram has filed this Original Application aggrieved by A-1 order dated 21.10.95 issued by the Local Audit Officer, seeking the following reliefs:



- i. Quash A-1 by an appropriate order or direction.
- ii. An order directing the respondents to pay the provident fund amount from 1980 onwards with statutory interest till the entire claim is satisfied.
- iii. Such other reliefs which are just and equitable and the facts of the case may require, and
- iv. Award all costs of the proceedings to the applicant.

2. Applicant was working as permanent auditor in the Defence Accounts Department in the office of the Local Audit Office (Army), Thiruvananthapuram. On 7.5.80 he was involved in a criminal case under section 302 IPC. He was suspended from service on 7.5.80. Subsequently he was dismissed from service on 3.1.81 (Learned counsel for the applicant submitted that this date should be read as 3.12.81). While the applicant was in prison, he sent A-2 letter to GDA West Block, R.K.Puram, New Delhi to disburse his provident fund amount with interest and allied benefits. No action was taken by the respondents at any point of time to disburse the amount which was due to the applicant. Applicant was released from the prison by the end of 1994. The applicant was paying his PF contribution to the concerned authority up to 30.4.80. On 21.10.95 a Demand Draft bearing No.266080 for Rs. 8177/- was sent to the applicant which was received by him under protest. Applicant sent a legal notice on 17.2.98 and 12.5.98 claiming a sum of Rs. 39,597 up to 1998. According to him, respondents were bound to calculate the interest at the end of every year on the principal sum outstanding in the previous year. He filed a suit before the Principal Munsiff's Court, Thiruvananthapuram (OS 1547/98). The said suit was dismissed as not maintainable in view of the Section 28 of the Administrative Tribunals Act 1985 by A-4 judgement dated 11.1.2001. Applicant claims that



he is entitled to get interest from 1980 onwards. He relied on Rule 11 sub Rule (2) read along with sub rule (4) of the General Provident Fund (Central Services) Rules as the payment was delayed due to the failure of the concerned officers.

3. Respondents filed reply statement resisting the claim of the applicant. According to them the date of dismissal of the applicant was 1.12.1981

4. Heard learned counsel for the parties. Shri M.Rajasekharan Nayar, learned counsel for the applicant after arguing the matter at length submits that in terms of Rule 11 (4) of General Provident Fund (Central Services) Rules the applicant is entitled to get interest. According to him, as the Accounts Officer has failed to intimate the applicant in accordance with Rule 11 (4), interest is payable as per the said Rule. He also refers to Section 2 (e) of the Provident Funds Act (19 of 1925) to show that Provident Fund includes the subscriptions and the interest thereon. Shri S.K.Balachandran, learned counsel for the respondents submits that interest on provident fund has been paid in full as per the extant orders on the subject, i.e. up to 12/81. As the applicant had not signed the final settlement paper, interest from 1/82 to 18.4.94 was not allowed. He refers to Government of India's decision No.2 appearing in page 76 of Swamy's Compilation of General Provident Fund Rules, 23rd Edition - 1999. He submits that final payment entails two essential requirements before the amount becomes payable (i) the subscriber should have retired or quit service, and (ii) he should submit an



application in the prescribed form in writing for final payment. In this case the applicant filed his application for final settlement only on 19.4.94. Hence the applicant was entitled for interest up to 12/81, date of dismissal and from the date of signing final settlement paper leaving one month for processing the case i.e. from 19.5.94 to the date of releasing the payment i.e. from 31.3.2000 and payment by way of credit balance and interest with effect from 19.5.94 to 31.3.2000 had already been made to the applicant as per the extant orders on the subject. As the delay in submission of his General Provident Fund final settlement papers was on the part of the subscriber, he was not entitled for payment of further interest as per decision No.2 under Rule 34 of GPF Rules. The learned counsel cited the judgement of Punjab & Haryana High Court in the case of Mohinder Singh vs. The State of Punjab and others reported in SLR Vol.15 1976 (2) 644.

5. I have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have perused the documents brought on record. While the applicant is basing his claim for payment of interest on Rule 11 (2) & (4), the respondents are also basing the same set of rules for denying interest to the applicant. Rules 11 (2) and (4) read as under:

"11. Interest.

(2) Interest shall be credited with effect from last day in each year in the following manner:-

- (i) on the amount to the credit of a subscriber on the last day of the preceding year, less any sums withdrawn during the current years interest for twelve months;



- (ii) on sums withdrawn during the current year interest from the beginning of the current year up to the last day of the month preceding the month of withdrawal;
- (iii) on all the sums credited to the subscriber's account after the last day of the preceding year - interest from the date of deposit up to the end of the current year;
- (iv) the total amount of interest shall be rounded to the nearest whole rupee (fifty paise counting as the next higher rupee):

Provided that when the amount outstanding to the credit of a subscriber has become payable, interest shall thereupon be credited under this rule in respect only of the period from the beginning of the current year or from the date of deposit, as the case may be, up to the date on which the amount standing to the credit of the subscriber became payable."

(3) X X X X X

"(4) In addition to any amount to be paid under Rule 31, 32 or 33, interest thereon up to the end of the month preceding that in which the payment is made, or up to the end of the sixth month after the month in which such amount, became payable whichever of these periods be less, shall be payable to the person to which such amount is to be paid.

Provided that where the Accounts Officer has initiated to that person (or his agent) a date on which he is prepared to make payment in cash, or has posted a cheque in payment to that person, interest shall be payable only up to the end of the month preceding the date so intimated, or the date of posting the cheque, as the case may be:

Provided further that where a subscriber on deputation to a body corporate, owned or controlled by the Government or an autonomous organization registered under the Societies Registration Act, 1860 (21 of 1860) is subsequently absorbed in such body corporate or organization with effect from a retrospective date, for the purpose of calculating the interest due on the Fund accumulations of the subscriber the date of issue of the orders regarding absorption shall be deemed to be the date on which the amount to the credit of the subscriber became payable subject, however, to the condition that the amount recovered as subscription during the period of commencing from the date of absorption and ending with the date of issue of orders of absorption shall be deemed to be subscription to the Fund only for the purpose of awarding interest under this rub-rule.

Note:- Payment of interest on the Fund balance beyond a period of 6 months may be authorized by-



- (a) the Head of Accounts Office (which expression includes the Pay and Accounts Officer, where there is one) up to a period of one year; and
- (b) the immediate superior to the Head of Accounts Office (which expression includes a Controller of Accounts, where there is one or the Financial Adviser to the concerned Administrative Ministry or Department) up to any period;

after he has personally satisfied himself that the delay in payment was occasioned by circumstances beyond the control of the subscriber or the person to whom such payment was to be made and in every such case the administrative delay involved in the matter shall be fully investigated and action, if any required, taken."

6. As is evident, Rule 11 (2) deals with interest on subscription and repayment of any amount withdrawn etc. What is relevant in this case is Rule 11 (4) dealing with interest to be paid whenever a subscriber quits service (Rule 31), retires (Rule 32) or dies (Rule 34). Relying on Rule 11 (4) and Government of India decision No.2, respondents say that as the applicant made an application in the prescribed form only in 1994, he is not entitled for interest for the period from 1981 to 1994. From the note below the said Rule 11 (4), it is clear that there is no total prohibition of payment of interest beyond the period specified under the Rule viz. six months under the circumstances stated therein.

7. The applicant was admittedly in prison till 1994. The respondents would have definitely been aware of the applicant being in prison because they had dismissed him from service in December, 1981. No action appears to have been taken by the respondents for intimating the applicant about the PF amount on his dismissal. Nothing has been produced to show that they had sent the prescribed form to the applicant who was admittedly in prison, to be filled up by him for claiming the PF dues. Their



whole plea is that it is the subscribers' responsibility to claim the PF dues. The authority relied on by them is the Govt. of India's Decision (2). But I find that the said decision was issued by Department of Personnel & Training O.M.dated 5.8.1994, whereas the applicant was dismissed in 1981.

8. Section 4 of the Provident Funds Act (19 of 1925) reads as under:

"4. Provisions regarding repayments:- (1) When under the rules of any Government or Railway Provident Fund the sum standing to the credit of any subscriber or depositor, or the balance thereof after the making of any deduction authorized by this Act, has become payable, the officer whose duty it is to make the payment shall pay the sum or balance, as the case may be, to the subscriber or depositor, or, if he is dead, shall-....."

9. Thus, according to the Act, there is a duty cast upon the concerned officer to make the payment. Any rule made cannot absolve the officer concerned of his duty enjoined by this Act. As already stated, in this case, nothing has been produced to show that the prescribed form had been sent to the applicant to fill up the same. Moreover the applicant was admittedly in prison till 1994. So he could not have made the application on his own to receive payment in the prescribed form or approached the authorities for getting the forms etc. Therefore, it cannot be taken that it is the failure of the applicant alone which has caused the delay in making the payment. When the officer concerned has not done his duty to make the payment or initiated action to make the payment, it is to be taken that the authorities concerned have failed to make the payment in time.



10. I find in the judgement of the Hon'ble High Court of Punjab & Haryana the Hon'ble High Court after surveying rules 13.31 and 13.13 (4) of the Punjab State Provident Fund Rules applicable to the employees of the State of Punjab, of which I find Rule 13.13 (4) is similar to Rule 11 (4) of the General Provident Fund Rules, held as under:

"The only other question which remains to be determined is whether the provisions of sub-rule (4) of Rule 13.13 are mandatory or that in no case, can the interest be given to a subscriber beyond six months of the date of his retirement. It is well settled that the rules have

to be interpreted harmoniously. Sub-rule (4) of Rule 13.13 has to be construed in the light of the provisions of Rule 13.31 and Section 4 of the Provident Funds Act, 1925. Rule 13.31 read with Notes 1 and 2 and Section 4 of the Provident Funds Act, 1925, enjoin a mandatory duty on the Accounts Officer to repay Provident Fund to a subscriber with promptitude when the said payment becomes due. If in a given case, the Accounts Officer fails to take steps for the repayment of the Provident Fund, may be for reasons that the Government concerned had failed to pass necessary orders entitling the subscriber for the withdrawal of

the Provident Fund, in that case, it is difficult to construe the provisions of sub-rule (4) of Rule 13.13 to say the interest on the Provident Fund on the prescribed rate cannot be given for more than six months after the date of retirement..... It has been provided that when a subscriber is dismissed from the service of the Government but has filed appeal against his removal, the balance of his credit shall not be paid to him until the final orders are passed on his appeal. Interest shall, however, be paid.... If sub-rule (4) of Rule 13.13 is not interpreted harmoniously with the provisions of Rule 13.31 and Section 4 of the Provident Funds Act, 1925, the said rule shall have to be declared ultra vires because a subscriber whose money is utilized by the State Government cannot be deprived of the interest without any fault of his...."

10. In the light of the above analysis and the position of law as laid down in the above judgement, I hold that the applicant is entitled for the interest on the balance standing to the credit of his PF Account on the date of his dismissal



from the date one month after his date of dismissal to the date of payment of the amount. I also hold, any less amount authorized by A-1 is void. Respondents are directed to make the balance amount due to the applicant accordingly.

11. The OA is disposed of as above with no order as to costs.

Dated 16th October, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

APPENDIX

APPLICANT'S ANNEXURE

1. Annexure A1: True copy of the letter No.RAC/E/2/ALII dated 21.10.1995 issued on behalf of the respondents to the applicant.
2. Annexure A2: True copy of the letter sent by the applicant on 15.2.1982.
3. Annexure A3: True copy of the legal notice issued to the respondents on 17.2.1998.
4. Annexure A4: True copy of the judgement dated 11th January, 2001.

RESPONDENT'S ANNEXURE

5. Annexure R1: True copy of the Application dated 19.4.1994 submitted by the applicant.

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