

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

O.A. 682/2000

DATE OF DECISION: 06-5-2003

D.K.Banskars Bhusawal

APPLICANT

Shri S.P. Saxena

ADVOCATE FOR THE APPLICANT

Vs.

CENTRAL RAILWAY & OTHERS

RESPONDENTS

SHRI R. SHETTY

ADVOCATE FOR RESPONDENTS

C O R A M

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

- (i) To be referred to the reporter or not?
- ii) Whether it needs to be circulated to other Benches of the Tribunal?
- (iii) Library

K.V. SACHIDANANDAN
MEMBER (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

OA No.682/2000

Dated... 06th MAY... 2003..

C O R A M

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

D.K.Baviskar (Retd.)
15 Block
Rajesh Cycle Mart
Varangaon Road
Bhusawal (Dist. Jalgaon)

Applicant

(By advocate Mr.S.P.Saxena)

Versus

1. Union of India through the
Secretary, Ministry of Railways
Rail Bhavan, New Delhi.
2. The General Manager
Central Railway
Mumbai CST.
3. Divisional Railway Manager
Bhusawal Division (C.Rly.)
Bhusawal (Dist.Jalgaon).
4. Senior Divisional Accounts Officer
Bhusawal Division (Rly.)
Bhusawal (Dist.Jalgaon)

Respondents.

(By advocate Mr.R.R.Shetty)

The application having been heard on 20th March 2003, the
Tribunal delivered the following on, 2003.

O R D E R

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

Applicant who was an A.C.Driver in 1991-92 finally, retired on superannuation on 30.6.94 and is a pensioner of the respondent department. He was contributing certain amounts towards General Provident Fund (A/c No.0224773) through deductions from his salary every month. The employer was duty bound to maintain a clear and proper account of all contributions of each of the employees towards the GPF and further in case of any temporary or final withdrawals, the relevant entry of such withdrawals was to be recorded in the ledger. The respondents were required to issue an annual statement of the GPF account to the employees

showing all the entries of contribution, interest accrued and withdrawal details, in addition to opening and closing balance of each year. In the applicant's case, the respondents had not been issuing the GPF annual statement on regular basis. Applicant submits that his monthly contributions to his GPF account made through salary did not seem to have been entered/endorsed in the provident fund ledger and particularly his GPF account. On his retirement, he was paid a very meagre amount of Rs.12,463, which according to the respondents, was in full payment. According to the applicant, the amount came to Rs.51,774/-. This calculation was done with the assistance of local advocate and himself. The inspection records were reported to have been produced in OA 333/96 filed by the applicant earlier. According to him, only a partial record was made available from which the figure had been worked out. Had the respondents made available the complete record, the figure would have been much higher, stated the applicant. In the GPF ledger the name of one Deoram Kisan Patil (Name of the applicant is Deoram Kisan Bawiskar) had been confused with that of the applicant since these two names were having great similarity. It was quite possible that due to the negligence or casual approach of the dealing clerk who maintained the GPF ledger, some of the contributions to GPF made by the applicant through his salary might have been erroneously or deliberately recorded in the GPF account of the other employee, contended the applicant. The applicant further submitted that the other employee Deoram Kisan Patil had been frequently making temporary withdrawals from the GPF account and some of the debit entries of withdrawals made by him were erroneously entered into the account of the applicant. The respondents were totally responsible for the mess created in not properly recording the

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credit and debit entries of the applicant's fund. The applicant submitted that his leave account was also not maintained properly by the respondents and at the time of his retirement he had not been paid any leave encashment by the respondents on the ground that there was no balance of leave to his credit at the time of retirement. The encashment of leave came to Rs.33,808 according to the applicant's calculation shown by him in his representation dated 14.12.98. According to him, he was indirectly punished for the negligence and inefficient maintenance of important record related to GPF as well as leave account. Applicant filed OA No.333/1996 before this Tribunal and this Tribunal disposed of the OA by its order dated 9.10.96. Upon the said order, he filed a review petition No.67/97 seeking a direction to the respondents to allow him to examine the original pay sheets for the period 1982 to 1.7.94, the ledger of the GPF account of the applicant, the original service book of the applicant and other list of documents. The Tribunal issued certain directions to the respondents and the applicant along with his representative had visited the office of the respondents as per the directions of the Tribunal and many of the documents could not be produced as they were not available for inspection. Therefore, the applicant submitted a representation giving a full detail of various discrepancies. As the respondents did not pass any order on the representation, the applicant filed contempt petition No.56/99 before this Tribunal and this Tribunal passed A-5 order dated 2.6.2000 rejecting it but granting liberty to the applicant to file fresh application in regard to his grievance. Therefore, the applicant has filed this application seeking the following reliefs:

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- a) To allow the application.
- b) To direct the respondents to produce full and complete record of applicant's GPF account, GPF ledger entries, including details of his monthly contribution during his service as well as withdrawals, if any, from GPF account by him, supported by his withdrawal applications, before the Tribunal and after perusal of the above records/documents, the Tribunal may quash the letter dated 2.2.2000.
- c) To declare that the applicant is not paid his GPF amount in full and to direct the respondents to pay the balance amounts of GPF to the applicant after correcting his account credits.
- d) To declare that the applicant is entitled for encashment of earned leave for 240 days at the time of his retirement.
- e) To grant 18% interest on all retirement benefits paid to the applicant belatedly effective from his date of superannuation i.e. 30.6.94.

2. Respondents have filed detailed reply statement contending that the relief sought by the applicant is not sustainable as the applicant had sought the relief by filing earlier OA No.333/96 alleging that he was not in receipt of GPF amount of Rs.50,000 and also aggrieved that he was entitled to 155 days of leave pay. Thereafter a review petition was filed by the applicant which was disposed of by this Tribunal and the order was later modified allowing the applicant to inspect the GPF ledger and he was directed to make a representation within one month from the date of order if after inspecting the said ledger, he was dissatisfied. According to the respondents, the applicant failed to make a representation within the time allowed i.e.16.11.98 but made only on 14.12.98. According to them, in the entire claim the difference was only Rs.587 and therefore there was a complete compliance of the direction of this Tribunal. The OA was liable to be dismissed. According to the respondents, the applicant was paid Rs.11552 only as GPF dues at the time of his retirement and the amount of Rs.51774 worked by the applicant was not as per the GPF ledger record but imaginary figure. They further contended

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that the applicant had foul played with D.K.Patil by quoting his GPF account number and withdrawn Rs.12000 in March 88 which was subsequently recovered and adjusted against D.K.Patil's account and there was no mischief done on the applicant. They contend that the applicant was granted full fledged liberty to inspect the ledger from 1977 onwards. So may miscellaneous applications were filed by the applicants, which were resisted by the respondents. One such application MA No.745/2000 was for a direction to the respondents to make available all documents/PF ledger/leave account records pertaining to the applicant for inspection by the applicant and his representative in respect of the period for which the above records were not shown to the applicant on earlier occasion. The respondents contend that this exercise was complied with by the respondents. Miscellaneous Petition No.847/02 was filed by the respondents for permission to bring on record the joint inspection report relating to the leave dues of the applicant. The same was produced by the respondents marked as R-1 & R-2. Another miscellaneous petition No.848/02 was filed by the respondents for permission to bring on record the joint inspection report relating to the PF dues of the applicant. 4th respondent also filed a separate written statement clarifying the points since he was dealing with the accounts.

3. I have heard Sh.S.P.Saxena, the learned counsel of the applicant and Sh.R.R.Shetty, the learned counsel for the respondents. The learned counsel took me through the pleadings, evidence and the material placed on record. The learned counsel of the applicant submitted that the amount that has been deducted from the salary of the applicant should have found a place in the

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GPF account and the records should have been kept by the respondents for ready reference and the applicant should have been allowed the benefits that he was entitled to and that therefore, the OA is to be allowed. Learned counsel for the respondents submitted that the applicant was taking advantage of the mischief that he has played with another person and finding fault with the respondents. On the other hand, the respondents had disbursed the eligible amount to the applicant at the appropriate time. As per the directions of this Tribunal, the applicant was even permitted to inspect the entire records kept by the respondents. A joint inspection report was prepared with reference to the relevant records and the applicant was required to make a fact finding exercise on the minute aspects of the accounting of the GPF and that of the leave register. Therefore, the OA deserves to be dismissed, contends the counsel for the respondents.

4. I have given due consideration to the arguments advanced by the counsel on either side. This is the third round of litigation. When the applicant approached this Tribunal earlier by filing OA 333/96, this Tribunal directed the respondents to dispose of the applicant's representation and further on a review petition No.67/97, this Tribunal directed that the applicant along with his representative should be allowed to inspect the relevant GPF ledger containing the GPF account and the applicant should submit his representation. The applicant submitted a representation on 14.12.98 alleging certain irregularities. It is pertinent to note that the joint inspection report was prepared by the counsel of the applicant with the help of the concerned railway staff, the copy of the said report is on file.

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On going through the same, I could find that during 1990-91, there was no difference in the GPF account but there was discrepancy of Rs.1730/- in GPF ledger in refund column. During the period 1992-93, there was a mistake in total of Rs.2243. On going through the pleadings, reply statement and the accounts submitted by the joint inspection report, I am of the view that the respondents' accounting system was not transparent. It is a fact that when an employee contributes to the GPF, the employer is the custodian and trustee of the fund. The purpose of the Fund which was constituted under a separate statute is to the benefit and to encourage the saving mentality of the employee thereby benefiting the employee as also the welfare of the nation. Therefore, the employer is the trustee of such fund/account. Any breach or suspicion in the entries made in the GPF account of any employee is a breach of trust as far as the employee is concerned and naturally that would tell upon the very reputation of the employer in keeping the confidence of the employees and the system as a whole. It is the duty of the respondents to maintain the accounts properly especially when there is a clause that every year the account should be updated and report thereof furnished to the employee. What is more surprising to me is that there was not even a pass book which the respondents could have issued to the employee for verification and updating the entries in the account. I find that there was negligence on the part of the respondents in making entries at the appropriate time in the ledger maintained by the respondents. Therefore there is a good ground for the applicant to agitate the issue since he is very much aggrieved by the alleged non entries of the payments made from time to time over the years. The

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presumption always is that the respondents are to specifically account for the entries made in the ledger because they are the custodians of the money. Moreover, what is being deducted from an employee as GPF subscription cannot be taken back immediately in the ordinary course. Considering the above aspects, I direct the Registry of this Tribunal to send a copy of this order to the Secretary, Ministry of Railways, to ensure that negligence as happened in this case should not occur in future with other employees' accounts. If precaution has already been taken in ensuring that the entries are properly made and pass books issued to the employees, it is very well. Otherwise, immediate steps may be taken and directions may be given to the concerned officers/authorities to issue pass books to the concerned employees and get the entries updated from time to time so that transparency and confidence of the system can be ensured. Coming to this case, I could see that some discrepancies have been pointed out in the joint inspection report with reference to the GPF account. Some of the observations made in the joint inspection report are worth quoting:

"On enquiry the matter could not be explained by concerned staff and therefore the credibility of the deductions of regular subscription from the pay bill of the applicant and their posting in the GPF ledger is suspicious and doubtful".

5. During 1984-85 there is a difference of Rs.200 in the opening and closing balance of GPF. In the year 1986-87, "the credibility of record is suspicious." During 1987-88, "it is clear cut manipulation in the account for the purpose of accommodating some other favourable person. On enquiry with the concerned staff no justification was given to the local inspecting party". For the year 1988-89. "under such



circumstances how this minus balance was wiped off with this meager amount of subscription and thereby shown the + balance of Rs.2421 and hence the credibility of entire record is suspicious". During the inspection of 1998 the record was not made available. During the inspection of 2002, "the source from where the amount has arrived at needs to be explained". In the joint inspection of 2002, it was revealed that the monthly subscription of Rs.191 and repayment of advance Rs.200 was not posted in the GPF ledger. Evidently though this inspection cannot be taken as gospel word, but coming to the credibility, from the joint inspection report, one could see that discrepancies were crept into the GPF account of the applicant, which the respondents are not able to explain. So is the case with the leave account of the applicant. Para 7 of the joint inspection report reads as follows:

"It is also surprising that during the inspection of 1998 the record shown by the Administration of the leave availed from 1979 does not tally with the leave shown availed in the service record of the appellant which made available during the joint inspection of 2002. Thus there are two different records of leave shown during the inspection 1998 and in the joint inspection of 2002. There is no trend to submit the application for the small period of earned leave and authority also does not entertain such application. In the instant case it is noticed that there is small spell of earned leave alleged to have been availed by the appellant. But on the perusal of Driver memo book, it is noticed that he was on duty for that small period. Hence the small period of the earned leave shown in service record is therefore not acceptable."

6. From the said report it is found that appellant is entitled to receive a salary for 199 days i.e. $240-41 = 199$ as per the above calculation. Though the Tribunal is not interested in making calculations, to put an end to the matter, it has become incumbent that the amount be calculated with reference to documents produced by the respondents/applicant and that of the



joint inspection report. Taking the entire aspect into consideration, I am of the view that the applicant who has been fighting this case for long even after his retirement would be entitled to get the following reliefs:

- (i) GPF total amount of Rs.51,774 out of which he has received a sum of Rs.12464 on 30.6.94 and subsequently Rs.2875 and interest Rs.10,088. Therefore, the applicant is entitled to receive Rs.26348 (Rs.12463 + Rs.2875 + Rs.10088 =Rs.25426: [Rs.51774 - Rs.25426 = Rs.26348].
- (ii) Regarding the leave account, it could be seen that the maximum period that can be kept is 240 days. The applicant has availed 40 + 41 days. On perusal of the statement showing the leave account and that of the joint inspection report, I find that the applicant would be eligible to 159 days (240-81 days) for which the respondents are liable to pay to the applicant. I do not endorse that the calculation shown in the joint inspection report as balance 199 days of leave is correct. I consider and stress that the long litigation by the applicant in this case will come to an end by this order.

7. I place on record my appreciation of presenting this case by Advocate Sh.R.R.Shetty (for respondents) in a very pleasing, encouraging and confident manner.



8. The respondents will calculate the benefits due to the applicant on the above two counts and disburse the same to the applicant as expeditiously as possible in any case within a period of three months from the date of receipt of a copy of this order. Since interest has already been paid, I do not think that any further payment of interest is required to be paid to the applicant but if the respondents fail to comply with this order within the stipulated period, the applicant would be entitled to get interest at 9% per annum from the date of default.

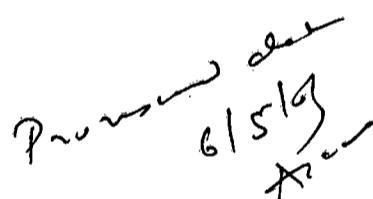
9. With the above observations, the OA is partly allowed. No order as to costs.

Dated.....



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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