

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT
HYDERABAD

(56)

~~XXXXXXXXXX~~ / ORIGINAL APPLICATION NO. 668 of 1989

DATE OF ORDER: 25.5.1990

BETWEEN:

Mr. T.Kumara Das

APPLICANT(S)

and

Secretary, Ministry of Water Resources,
New Delhi and 3 others

RESPONDENT(S)

FOR APPLICANT(S): Party-in-person

FOR RESPONDENT(S): Mr. Naram Bhaskar Rao, Addl. CGSC

CORAM: Hon'ble Shri B.N.Jayasimha, Vice Chairman
Hon'ble Shri D.Surya Rao, Member (Judl.)

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Bench^{es} of the Tribunal?
5. Remarks of Vice-Chairman on columns 1,2,4 (to be submitted to Hon'ble Vice-Chairman where he is not on the Bench)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI D.SURYA RAO, MEMBER(JUDL.)

The applicant herein is a retired Chief Engineer ¹⁰ who was working in the Central Water Commission, Hyderabad prior to his retirement. His claim is that he retired in service with effect from 31.5.1988. The balance of amount lying in the applicant's General Provident Fund Account as on 31.5.1988 was Rs.1,40,097/-. This comprises of a principal amount of Rs.1,37,350/- as per the GPF account furnished to the applicant ^{as} on 31.3.1988 and the interest @ 12% p.a. for April & May, 1988. The GPF amount due to him was released on two different dates viz., Rs.1,19,015/- on 3.5.1989 and Rs.31,096/- on 7.7.1989 that is in all a sum of Rs.1,50,111/-. The applicant states that 12% interest was allowed to him by the PAO for the period June 1988 to December 1988 constituting a sum of Rs.10,014/-. His grievance is that interest beyond December 1988 on the principal sum viz., from January 1989 till April 1989 constituting Rs.7,472/- ~~was~~ calculated at the current market rate of 16% p.a. is due to him. He also claims that he is entitled to the interest on the amount of Rs.31,096/- from May 1988 @ 16% p.a., which comes to Rs.829/-. Thus, he claims an amount of Rs.8,301/- with interest on the date ^{16% p.a.} ~~G.P.F. amount due to him~~ accumulated for the period from January 1989 till the full payment is made viz., 7.7.1989. The applicant alleges that release of the GPF amount by July 1989 was only after several letters and visits to Delhi and after personally contacting concerned officers of the Pay & Accounts Office, Central

Water Commission and the Director of Audit (CWM). The applicant also alleges that from the death-cum-retirement gratuity, a sum of Rs.1,000/- was withheld to meet unassessed dues, if any. This amount has to be released on the issue of 'No Demand Certificate' or automatically on the expiry of 6 months after retirement. The No Demand Certificate was issued to all concerned on 21.6.1988. ~~The 2nd respondent has not refunded the withheld amount of Rs.1000/- till now.~~ The applicant, therefore, claims that he is entitled to the said sum of Rs.1,000/- plus interest thereon from 21.6.1988 upto the actual date of payment @ 16% per annum. He has also claimed that he is entitled to a sum of Rs.939/- which was deducted from his DCRG alleging short recovery of Income ~~now entitled to encashment of the EL Tax.~~ The applicant also claims ~~the earned leave~~ at his credit in respect of the continuous service rendered under the State ~~from his joining in Govt. of India~~ Government of Tamil Nadu and ~~that he is entitled to get it in cash.~~

2. On behalf of the respondents a counter has been filed denying the claims of the applicant. Insofar as the payment of interest on GPF amount is concerned, it is contended that the interest is not payable since the delay in payment of GPF was only due to the acts or delay attributable to the applicant. ~~were~~ It is stated that there ~~are~~ certain irregularities ~~noticed~~ in regard to the GPF contributions made by the applicant viz., (1) he had not contributed the GPF credits during the period of his foreign service from August 1977 to September 1981 (2) There were certain irregular credits made in the GPF amount viz., cash deposits through challans amounting to Rs.6,700/- in February, 1986, Rs.8200/- in March 1987 and Rs.8000/- in March 1988 (3) Non-credit of terminal gratuity ranging between 10% to 25% of basic pay for the years of service to the GPF account of the applicant. It is stated that as per Para IV of the terms and conditions of deputation, the applicant was required to deposit ~~the~~ the amount of terminal gratuity in Indian rupees

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which he had received from the foreign employer for the service rendered by him from August 1977 to September 1981 in Nigeria on returning to India after expiry of foreign service. The amount of gratuity was to be paid back along-with other pensionary benefits when he was finally retired from Government service. But the applicant did not deposit the said amount in his GPF account. It is alleged that on his return to India in 1981 and his continuance in service from 1981 to 1988, he did not contribute towards fund and deposit the terminal gratuity under the terms and conditions of his foreign assignment. The applicant had also violated the provisions of GPF Act by his non-subscription to the fund for about 4 years and 2 months. The details of the irregularities were communicated to the applicant on 4.5.88. He replied on 30.5.1988 that he had not contributed to the fund presuming that it is optional. It is stated that ~~as~~ since the applicant has violated the provisions of the GPF Act, it became necessary for referring the case to various authorities. ~~As such~~ The applicant did not seek ~~as~~ relaxation from the Ministry of Finance for non-contribution of GPF as required under Rule 37. This ^{also} delay is clearly attributable to the applicant. It is stated that as per GPF ledger cards received from DACW&M on scrutiny, it was observed that a debit of Rs.20,000/- was missing, hence a clarification was sought from CWM, New Delhi on 3.4.1989. However, the available balance of Rs.1,19,015/- was allowed to the applicant on 15.3.1989 and the interest was allowed upto December 1988 withholding the amount of debit of Rs.20,000/- with interest. The clarification was subsequently received that only a sum of Rs.11,630/- was actually paid to the applicant and the balance of Rs.8,370/-

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was converted into final withdrawal of temporary advances taken by him. Thereafter, authority ~~Repayment~~ was issued for payment of residual balance of Rs.31,096/- and interest was allowed upto December 1988 vide letter dated 15.5.1989. It is therefore stated that there was no delay on the part of the Department for finalising the GPF case of the applicant. Insofar as the deduction of Rs.939/- from DCRG towards Income Tax is concerned, it is stated that the applicant has misused the facility of GPF Scheme provided by depositing his private money into the account for claiming the relief of Income Tax admissible under Clause 80-C of the Income Tax Act, 1961. He deposited a sum of Rs.6,700/-, 8,200/- and Rs.8,000/- between 1986 and 1988 at the close of financial years. It is stated that subscription to the fund should only be from his salary and not from anywhere else. The applicant has sought to treat the GPF account as Savings Bank Account thereby clearly violated ^{Insofar as the leave earned by him in the service of} the provisions of the GPF Act. It is stated that the applicant cannot be allowed to carry forward the leave unless the State Government agrees to bear the leave ^{in respect of} salary charges in respect of carry forward leave. The PWD, ^{the Dept} Madras under whom the applicant was working has not agreed to pay the leave salary charges on the ground that the applicant has resigned his appointment in Tamil Nadu PWD. The applicant was informed of this vide Commission's letter dated 30.1.1989.

3. We have heard the applicant who argued this case in person and Shri Naram Bhaskar Rao, Additional Standing Counsel for the Central Government/Respondents. The first question which arises for consideration is whether the applicant is entitled to interest on GPF accumulations for

the period after January 1989. The only ground on which the respondents denied him his right is that the applicant has contributed to the delay. As already stated supra, it is alleged that the applicant ought to have made certain contributions while he was in foreign service, that he had made certain irregular credits through challans during the end of financial years 1986, 1987 and 1988 and that the credit of terminal gratuity ranging between 10% to 25% of basic pay was not made. Admittedly, these irregularities by the applicant were during his service and the Department could well have compelled the applicant to make the relevant deposits or made recoveries from his salary to this effect. Further, if irregular credits were made by way of challans, instead of recovery from salaries, the Department should have immediately objected to the same. Instead, these credits were taken into account and included as a part of his GPF contributions as indicated in the final account rendered soon after his retirement informing him that balance to his credit was Rs.1,40,097/-. These amounts admittedly are the monies of the applicant and he is entitled to the refund of the same immediately after retirement. No provision has been pointed out to us either in the GPF Rules or in the instructions that because of the irregularities committed by the applicant, payment of the GPF amounts lying to his credit could be either withheld or appropriated by the Government. It is only if this was permissible that the respondents could have withheld the GPF amount lying to the credit of the applicant. Once it is admitted that money of the applicant to the tune of Rs.1,40,097/- was lying to his credit and available on the date of retirement, it was the duty of the respondents to repay the said amounts within a reasonable time failing which he would be entitled to interest thereon. The fact that there were irregularities

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in the past during the service of the applicant in regard to making deposits cannot be a ground for withholding the entire GPF amount which would/otherwise earned him interest if the amounts were paid to him and available in his hands. The respondents have paid the interest due to the applicant from the date when it was due till December 1988 i.e., for a period of six months from June to December 1988. Thereafter, further payments have not been made. There appears no reason why the interest beyond January 1989 should also not have been paid to the applicant when the amounts were shown as lying in the account and were known to the Pay & Accounts Officer. It would follow, therefore, that the applicant is entitled to the interest on the GPF amount due to him viz., on the sum of Rs.1,19,015/- from 1.1.1989 till 31.4.1989. He would also be entitled to the interest on the sum of Rs.31,096/- from 1.1.1989 to 30.6.1989. The applicant has claimed interest @ 16% p.a. We would, however, allow the payment @ 12% per annum as stipulated in the GPF Rules for the belated payments.

4. The next claim of the applicant is with regard to the payment of a sum of Rs.1,000/- withheld from the DCRG. The respondents have not denied that the said sum of Rs.1,000/- should have been paid to the applicant on receipt of a non-due's certificate. The amount was paid to the applicant only on 7.10.1989. The applicant claims that he is entitled to the interest @ 16% per annum from

~~21-6-1988~~ ~~21.6.1989~~, the date when no due certificate was issued.

The counter does not state why this amount was withheld for such a long period. The applicant is, therefore, entitled to the interest on this amount also @ 12% p.a., from ~~21.6.1989~~ to 7.10.1989.

21-6-1989 D

Corrected as
21-6-88 as
per Govt. order
Tribunal's order
dt 18-7-90 and
made in MA2989
W.O A668(89-
Correspondence issued
on 18-7-90

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5. Insofar as deduction of a sum of Rs.939/- from the DCRG towards Income Tax is concerned, the grievance of the applicant is that it was irregularly withheld and that a sum of Rs.8,000/- was paid by him in March 1988 as GPF Contribution was not taken into account and if this GPF amount is taken into consideration, he would not have been liable for this amount. The Department's case for not taking into consideration the sum of Rs.8,000/- paid by the applicant is that he had not deducted the same from his salary but paid the amount by a Challan. Whatever be the controversy even if an excess amount of Rs.939/- was deducted as Tax liability the applicant can always apply for refund of the amount. The grievance of the applicant is that, no Tax Deduction Certificate in regard to this sum of Rs.939/- which has been deducted was issued to him to enable him to claim refund on the ground that it has been deducted in excess by the respondents/department. There is no doubt that the respondents are liable to give him a Tax Deduction Certificate to the extent of this amount. The respondents are directed to issue the certificate of deduction of tax to the applicant for this amount if it has already not been done.

6. Insofar as the claim of the applicant for leave encashment for the leave earned or accumulated during the period of his service while in Tamil Nadu State Government, the applicant should have scrutinised his leave account and got the said leave credited to his leave account when he was in service after joining the Government of India if under the rules he was eligible to have such leave credit to his leave account. The applicant has not shown when he

To:

1. The Secretary, (Union of India) Ministry of Water Resources, Shram sakti Bhavan, Rafi Marg , New Delhi-110 001..
2. Pay & Accounts officer, Central Water Commission,R.K Puram, Sewa Bhavan, New Delhi-110 066.
3. The Chairman, Central Water Commission, R.K.Puram, Sewa Bhavan, New Delhi-110 066.
4. The Chief Engineer, Central water commission, Hyderabad 10-2-8/1, Santhi nagar, Hyderabad.
5. One copy to Mr. T.Kumara Das, S/o Sri A.Govindan Nair, Chief Engineer(Rtd.), Central water commission,Hyderabad, 2-2-18/31/C/4, Durgabai Deshmukh colony,Bagh amberpet, Hyderabad-500 013. (Party-in-person)
6. One copy to Mr.Naram Bhaskara Rao,Addl.CGSC,CAT,Hyderabad.
7. One spare copy.

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made such ^{re} relevant claim while in service and what has been doing all these years for enforcing such a right if any available to him. Obviously, his making such a claim after retirement is belated claim and cannot be entertained.

7. For the reasons given by us above, the claim of the applicant is partly allowed to the extent payment of interest @ 12% per annum due on the GPF accumulations and the gratuity amount of Rs.1,000/- as directed in paragraphs (3) and (4) supra. Insofar as the claim for refund of Rs.939/- withheld from the DCRG towards Income Tax is concerned, he is only entitled to a certificate that tax has been deducted at source to enable him to claim refund in respect of the said amount. The claim for encashment of leave, for the leave earned during the period of his service while in Tamil Nadu State Government is belated and cannot be entertained.

8. With these directions, the application is partly allowed. The parties are directed to bear their costs.

B.N.Jayashimha
(B.N.JAYASIMHA)
Vice Chairman

D.S.Rao
(D.SURYA RAO)
Member(Judl.)

Dated: 25 May 1990

D. S. Rao
For Deputy Registrar(J)
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CHECKED BY

TYPED BY:

COMPARED BY:

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH:HYD.

HON'BLE MR.B.N.JAYASIMHA: V.C.

HON'BLE MR.D.SURYA RAO:MEMBER:(JUDL)

A N D

HON'BLE MR.J.NARASIMHA MURTHY(M)(J)

A N D

HON'BLE MR.R.BALASUBRAMANIAN:(M)(A)

DATED: 25-5-90

ORDER/JUDGMENT:

M.A./R.A./C.A./No. in

T.A.No. W.P.No.

O.A.No. 668/89

Admitted and Interim directions issued.

Party Allowed with direction

Dismissed for default.

Dismissed.

Disposed of with direction.

M.A. ordered.

No order as to costs.

Sent to Xerox on:

