

(53)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

O.A.No. 177 of 1995.

Date: 31 July, 1996.

Between:

M.V.S. Rao.

..

.. Applicant.

and

1. The Joint Controller, Defence Accounts (Funds), Meerut Cantt. 25001, U.P.
2. The Controller-General, Defence Accounts, West Block-5, R.K.Puram, New Delhi 110 066.
3. The Secretary, De/tt. of Pensions & Pensioners' Welfare, Union of India, 6th Floor, Nirvachan Sadan, Ashok Road, New Delhi 110 001 Respondents.

Counsel for Applicant:

Sri C.Suryanarana and Sri R. Yogender Singh.

Counsel for Respondents:

Sri V.Bhimanna, Standing Counsel for respondents.

ORDER BY:

HON'BLE SHRI R. RANGARAJAN, MEMBER (A)

:-

JUDGMENT.

The applicant joined in Military Engineering Service (MES for short) as Architect in June, 1965. He retired as Senior Architect (S.G) in December, 1988. It is stated that he was making his contribution to his General Provident Fund Account (G.P.F. for short) from 1966 onwards. The applicant has enclosed G.P.F.

Statement of Account for the year 1978-79 to 83-84 (Annexure A-1(a) to A-1(f) of the D.A.). He has also enclosed his GPF statement of Account for the year '87-88 and for the year 88/89 as Annexures A-1(g) and A-1(h) to the D.A. In the G.P.F. Account for 1987-88, at the time of closing, the balance was shown as Rs.42,000/- and the closing balance for 1988-89 is shown as Rs.52,653/- When the applicant retired in December, 1988, his GPF Account was closed and an amount of Rs.11,944.00 was released as the balance available in his G.P.F. Account. The applicant submits that he has to be paid the balance of Rs.52,000.00 or near about the figure as per the GPF statement Account for the year, 1988-89 (A-1(h) and the payment of Rs.11,944/- is wrongly calculated and hence the total amount available in his G.P.F. Account was not fully released and the balance amount has been kept back illegally by the respondents. He submits that there is no entry made in the Balance Sheet at the time of closing each year in regard to the excess crediting in his GPF Account. He further submits that deduction of the alleged excess amount credited to his account and the interest thereof after several months after closing of the balance sheet and issue of the statement on the basis of the closure of the balance sheet is irregular and illegal. He also

D

submits that once the balance sheet is approved, no change can be made in the balance-sheet thereafter. For this, he relied on Rule 15(2) of the General Provident Fund (Central Services) Rules, 1960. He also submits that whenever there was an error in the ^{G.P.F} statement supplied to him, he had represented to the concerned pointing out the error in the said statement. As a proof of that statement he produced the representation dated 23--4--1968 wherein the balance in his GPF Account for the year, 1966-67 was shown as Rs. 11,944.00.

2. The applicant submitted a number of representations to Respondent No.1 (Annexure A-4) to Respondent No.2 (Annexure A-8) and Respondent No.3 (Annexure A-9) requesting them to release the kept-back amount over and above the amount of Rs.11,944.00 paid to him at the time of his retirement. He was informed by the impugned letter No.GP/MES/I/2/400004 dated 16--12--1991 (Annexure A-11) that he is entitled for an amount of Rs.11,944/- only at the time of his retirement and that was paid to him. The details of the excess crediting in his P.F. Account for various years from 1973-74 to 1984-85 and the interest accrued thereon upto 5/89 was also informed to him as an annexure to the impugned letter. In the impugned letter, it was brought to his notice that he failed to bring to the notice of the authorities if there was any discrepancy in his GPF statement supplied to him within three months

12

58

: 4 :

from the date of receipt of C.C.O.-9. Thereafter also, he submitted representations to Deputy Secretary to Government of India, Ministry of Personnel, Public Grievances and Pension for settling his outstanding dues. (Annexure A-12) He also represented his case to Respondent No.1 and Respondent No.3 by representation at Annexure A-13, A-14 and A-15. But it is stated that these representations went unanswered.

3. Hence, aggrieved by the above, he has filed this O.A., for setting aside the impugned letter No.GP/MES/I/2/400004 dated 16-12-1991 issued by Respondent No.1 (Annexure A-11) for a declaration that he is entitled for payment of the G.P.F. balance of Rs. 52,653/- as on 8-4-1989 shown in Annexure A-1(h) together with the interest thereon at 18% per annum.

4. The main contentions of the applicant as shown in the Annexure A-1(h) are:

(i) There is no entry in regard to the excess credit to this Account in the balance-sheet at the time of closing the account each year. Deduction of the alleged excess amount and the interest thereon after several months of the closure of the balance sheet is irregular and illegal;

(ii) Once the balance-sheet is approved and closed, no change can be made in the balance-sheet thereafter in view of Rule 15(2) of the General Provident Fund (Central Services) Rules, 1960.

(iii) Whenever any discrepancy came to his notice in his GPF statement, he has informed the concerned accordingly and followed the extant Departmental Rules in this connection.

5. The Respondents have filed a detailed reply resisting the prayer. They have shown the excess amount credited to his GPF Account during various years from 1973-74 to 84-85 in pages 3 to 6 of the reply. They do admit that as per annexure A-1(h) the closing balance was shown as Rs.52,653/- including Rs.1680/- which was not paid at the time of final settlement of GPF assets. But they state that the excess amount credited in earlier years were not properly accounted and the excess amount credited also earned interest till the GPF amount was paid to him at the time of retirement. In view of the fact that the final account slip for the year 1988-89 (Annexure A-1(h) was wrongly computed, the same was reviewed and the excess amount credited during the past years and the interest accrued thereon were deducted from the closing balance of Rs.52,653/- and the remaining amount of Rs.11,944/- was paid to him as his contribution to the GPF. They also submit that as per Rule 39(2) of GPF (Defence Services) 1960, under which the applicant is governed,

12

"Subscribers should satisfy themselves as to the correctness of the annual statement and errors should be brought to the notice of the Accounts Officer within three months from the date of receipt of statement" It is their further submission that the applicant had failed to point out the discrepancy as per Rule and because of that failure, the recoveries had to be effected as per the impugned letter dated 16-12-1991.

6. Before we analyse this issue, the two instances of excess amount credited for two years which involved recovery of maximum interest may be studied as a test case to understand the issue involved.

7. In the year, 1977-78 an amount of Rs.8,748/- was found as excess amount posted but a debit to that extent due to refund of withdrawal at Rs.243/- for 4/77 to 2/78 and the balance of advance in 2/78 was not debited to that account. That ^{credited} ~~undebited~~ amount carried an interest of Rs.18,348/- upto 5/89. Hence the total amount of Rs.8,748/- plus Rs.18,348/- was deducted at the time of reconciliation while releasing the GPF amount to him at the time of his retirement (Para III at page 4 of the reply).

8. Similarly an amount of Rs.3,500/- withdrawn was not deducted and on that undeducted amount interest

D

61

was also paid from 2/77 to 5/89 and hence it became necessary to deduct an amount of Rs.3,500/- plus 5,863/- at the time of his retirement from his GPF Account (Para IV at page 5 of the reply).

9. The above two instances show that excess amount was credited to his account for which also, interest was paid. Though the applicant claims that no such excess amount was credited to his Provident Fund Account, no one can object to recover the excess amount and the interest if the excess amount thereon/is really credited as the Government cannot be forced to pay more than what is actually due to him. The other instances of excess payment mentioned in the reply is also similar. The applicant has not filed any rejoinder questioning the correctness of the above calculation. Though he filed M.A.140/95 in this O.A., praying for production of the pay bills to verify the statement of Account shown in impugned order at Annexure A-11, he has not given any in regard to the various documents that are to be produced. An order was given dated 22--2--1996 to produce records. On 15--3--1996, the records which were relevant by the respondents were produced before him. These records were seen by the applicant, his counsel and the respondents' counsel in the presence of an official who brought these records from Aligarh.

D

Though the respondents' counsel submitted that the learned counsel for the applicant was satisfied in regard to the veracity of the deduction as shown at Annexure A-11, the learned counsel for the applicant submitted that these are not the required records and also wanted to see certain

these records are voluminous one.

it was directed that the applicant may go to Allahabad on ~~to see the available records.~~ The M.E.S. Official who came from Allahabad with some records on 16-3-1996 was instructed to show the available records to the applicant and his counsel when they visit Allahabad in this connection. But on 23-7-1996, the learned counsel for the applicant submitted that he was not inclined to go to Allahabad to see any further record in this connection other than what he has seen already and that he will substantiate his case on the basis of the material available in the O.A., and the reply and also on the basis of the Rules. Hence it has to be held that the applicant has no other material other than what is already available on record and of Rule 15(2) of the G.P.F. (Central Services) Rules, 1960 to back him to get the relief.

(10. The main stay for the applicant to substantiate his case is that once the balance sheet is finalised it cannot be re-opened even if there is an error in the balance-sheet. For this he relied on the rule of 15(2) of the G.P.F. (Central Services) Rules, 1960.

D

63

A perusal of this Rules in my opinion ^{instructs} ~~use~~ that it has no nexus to the submission of the applicant's counsel as above. The learned counsel for the applicant has also not explained during the course of the argument, how this rule substantiates the statement that the Account once closed cannot be re-opened even if the debit/credit is wrongly entered. It only talks about the sanction for withdrawal within the prescribed ~~time~~ related issues. Hence reliance on this rule may not be helpful to the applicant.

11. The applicant's counsel further submits that deduction of excess amount and interest thereon after several months of the closure of the balance-sheet is irregular. As I have stated earlier, the Government cannot stand to lose in the transactions which will affect the public exchequer. There are so many employees in the Government and if mistakes in the balance-sheet is not allowed to be corrected when noticed, even after lapse of several months, the Government may have to pay huge amounts which is not contemplated in any rule. Hence, this submission also has no legs to stand.

12. Though the applicant submits that he has brought to the notice of the authorities whenever discrepancies were there in his GPF balance Account, no discrepancies in the GPF account statements for the instances mentioned in the impugned letter dated 16-12-1991 (Annexure A-11) was produced. The only

1

one letter produced is for the year 1966-67 and during that year no discrepancy is mentioned in the impugned letter.

Mere production of a document which is not even remotely connected to the order impugned cannot be a satisfactory proof for urging the relief asked for.

12. In view of what is stated above, the calculations shown by the respondents in the reply for paying him only Rs.11,944/- as GPF amount available in his account cannot be faulted. The respondents submit that the applicant failed to follow the rule 39(2) (Defence Services) Rules, 1960 as he did not bring to their notice, if there was any error in the annual of GPF Account statement/and hence he cannot now object if the entry in the GPF statement is corrected.

13. The Government Servants, most of them, do not keep any record for the amount credited to their GPF Account and withdrawal from that fund. They solely rely on the Account kept by the Government and strongly believe that the Govt. will not cheat them in maintenance of the Account. This throws a very heavy burden on the shoulders of the Government and especially the accounts department which maintains the GPF Account. They cannot post the credit and debit to the Account mechanically without ascertaining the correctness of such transaction. Even if the subscriber to the GPF Account has not brought to their notice any discrepancy in the ~~annual~~ statement of Account supplied to them, the concerned Departmental

authorities cannot escape the responsibility of reconciling the account periodically at the time of closure of Account and drawing of the balance-sheet not only for that year but also for the previous years. Though this will throw a little more burden ~~on~~ on the staff, this burden cannot be shirked in view of the reliance placed on them by the Provident Fund subscribers. Deducting a huge amount at the time of final settlement throws the subscriber to wilderness as his plans to settle his affairs on the basis of his calculation goes ^{away} away. Hence, the Department should caution the subscribers in regard to the balance amount in his Account much in advance after doing the reconciliation periodically as indicated above to enable the subscriber to plan his post-retirement period suitably.

14. In this case, the applicant was not informed at any time between 1973 and 1989 in regard to the excess credit to his GPF Account when the amount was paid to him as GPF amount was much lower than what he had expected and shown as balance of Rs.52,653/- in his account even in the statement of Account for 1988-89 (Annexure A-1(h) the applicant should have been upset. The respondents are fully responsible for not maintaining the account properly and their failure on this account cannot be condoned lightly. But the Government also

1

cannot be penalised to bear the full burden for the errors committed by the staff. Hence some token relief has to be extended to the applicant herein which will also act as a lesson to the respondents to discharge their duties diligently. In view of the above, *As deducted from his GPF A/c the applicant* I feel the total interest ^{of} all the items shown in the impugned letter dated 16--12--1991 should be reduced by 25%. This would mean that the interest shown in the impugned letter to be deducted from his GPF is only to the extent of 75% of the total interest. The 25% interest has to be remissioned and that should be paid to the applicant within three months from the date of receipt of this Order. As the staff concerned failed to note the discrepancy in the account right from 1973-74, they cannot be let off lightly. In order to ensure that such costly/grave mistakes do not recur in future, liberty is given to the respondents to realise this amount now paid to the applicant over and above Rs.11,944/- from these officials who failed in properly reconciling the GPF A/c of the applicant

15. In the result, the applicant should be paid 25% of the total interest shown as having been deducted from his GPF Account in the impugned letter dated 16--12--1991 in addition to the amount of

1

Rs.11,944/- already paid to him within three months from the date of receipt of a copy of this Order. The respondents are at liberty to realise this extra amount to be paid to the applicant in pursuance of the above direction from those officials either individually or collectively who failed in properly reconciling the GPF Account of the applicant periodically at regular intervals.

16. The O.A., is ordered accordingly.

No costs.


(R. RANGARAJAN)
MEMBER (A)

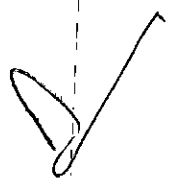
DATE:  JULY, 1996.

Pronounced in open Court.

sss.

After the Judgment was dictated and typed, the learned counsel for the applicant Mr. C.Suryanarayana, submitted some more points as additional written arguments at about 4-00P.M., today (30-7-1996).

The submissions made by the learned counsel as above were considered.



The first submission is that the provision of sub-rule (2) of Rule 15 of the G.P.F.(C.S) Rules, 1960 is to be observed, and if this is observed, there cannot be deduction from the Provident Fund Slip issued as per Annexure A-1(h). This has already been considered in para 10 of this judgment. Hence, no need to go further into this submission.

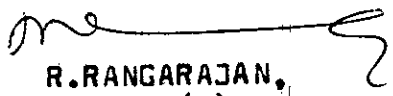
The learned counsel for the applicant submits that the necessary records i.e., Pay Bills etc., for verification were not shown. He states that even if he had visited Allahabad, he will not get those Pay Bills for verification. He also submits that the respondents have not produced the G.P.F. Schedules received from the Pay disbursing authority and if those have been produced, he would have shown that the impugned order is incorrect.

When he was asked to go to Allahabad and the respondents were instructed to show him the available records, the applicant did not go to Allahabad. He cannot now presume that his visit to Allahabad will be ineffective as necessary records will not be available at Allahabad. This point was also considered in para 9 above and for reasons stated above, no inference can be drawn.

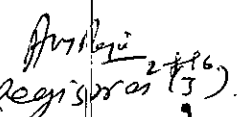
The applicant also relies on para 3 of Government of India's decision No.8 under Rule 12 of GPF(C.S) Rules published at page 125 of Chaudri's compilation

A

of the Civil Service Regulations Volume IV to state that "no interest will be charged on the temporary advances granted under the General or Contributory Provident Fund." He also relies on the decision No.9 of Government of India under the same rule to allow his O.A. It is not understood from the above in regard to the nature of advances granted to him and the recovery schedule. Had he filed a rejoinder on each and every item of deduction shown in the impugned letter dated 6--12--1991 (Annexure -11) with details, the case could have been considered in the light of the rejoinder. As he has not filed any rejoinder and even the present written statement also does not elucidate his contention no definite findings can be drawn on this contention. If the applicant is having the necessary record in this connection, he may separately approach the respondents by filing a representation to provide him necessary relief by way of reduction in the interest to be recovered, if admissible. Considering all these points only a direction was given to pay him back 25% of the total interest as having been deducted as per the impugned letter in addition to the amount of Rs.11,944/- already paid to him. In view of the foregoing, there is no need to consider the direction already given.


R. RANGARAJAN,
Member (A)

Date: 31 July, 1996.


Dy. Registrar (3)

contd... 16/-

O.A.177/95.

Copy to:-

1. The Joint Controller, Defence Accounts (Funds), Meerut Cantt. U.P.
2. The Controller General, Defence Accounts, West Block-5, R.K.Puram, New Delhi.
Weirare, Union of ~~XXXX~~ De/lt. of Pensions and Pensioners
Ashok road, New Delhi.
4. One copy to Sri. C.Suryanarayana, advocate, CAT, Hyd.
5. One copy to Sri. V.Bhimanna, Addl. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

Rsm/-

7/24
TYPED BY
COMPARED BY

07.177/95
CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

DATED: 31/7/96

ORDER/JUDGEMENT
O.A. NO./R.A./C.P. NO.

O.A. NO.

177/95

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS.

YLKR

II COURT

No spare copy

