

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 29th day of September, 2005

ORIGINAL APPLICATION No.120/2005

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

Vijay Kumar Gupta
s/o Shri Kailash Chand Gupta
r/o 6-314, Vidhyadhar Nagar, Jaipur,
Ex-Branch Manager, ESIC, Jaipur,
Rajasthan.

.. Applicant

(Applicant present in person)

Versus

1. Union Government through
Secretary, Ministry of Labour,
Shram Shakti Bhawan,
New Delhi.
2. Director General,
ESIC Pachdeep Bhawan,
Kotla Road,
New Delhi.
3. Regional Director,
ESIC, Panchdeep Bhawan,
Bhawani Singh Road,
Jaipur

.. Respondents

(By Advocate: Shri U.D.Sharma)

ORDER

Per Hon'ble Mr. M.L.Chauhan

The applicant has filed this OA thereby praying for the following reliefs:-

1. The respondents may please be directed to make payment of interest on Rs. 678426/- for period 09.12.2003 to 09.08.2004 at the rate of 15% p.a.
2. The respondent may also be directed to pay interest on the amount worked out (at 1 above) for the period 10.08.2004 onwards i.e. till the date on which payment is proposed to be paid.
3. The respondent may also be asked to pay a sum of Rs. 20,000/- on account of damages for mental agony he suffered due to abnormal delay in release of his funds.
4. The respondent may also be asked to Rs. 20,000/- on account of compensation as the applicant was deprived by the misdeed of the applicant of his right to use his hard-earned savings.
5. The respondent may also be asked to pay a sum of Rs. 21,000/- on account of cost of this avoidable litigation and any other relief which hon'ble Tribunal may deem fit in this case."

2. Briefly stated, facts of the case are that the applicant while working as Branch Manager, ESIC, Jaipur, Rajasthan was dismissed from service w.e.f. 9.12.2003. The G.P.F. amount outstanding to his credit amounting to Rs. 6,78,462/- towards the final payment from his G.P.F. Account was paid to the applicant including interest upto November, 2003 on 10.8.2004. Since the applicant was not paid interest upto the date when the payment was made to him on 10.8.2004, he made representation to the respondents stating the claim of interest for delayed payment of GPF amount. However, the said request of the applicant was declined vide impugned order dated 28.1.2005 thereby stating that delay is not due to administrative reasons and it is attributed to the applicant who did

not deposited his outstanding advance timely. It is this order which is under challenge and the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The stand taken by the respondents is that the amount of Rs. 36,940 was outstanding against the applicant pertaining to the balance amount of interest on House Building Advance to the tune of Rs. 24,947/- and towards the Scooter Advance with interest thereon to the tune of Rs. 11,993/-. Since the aforesaid amount was recoverable from the applicant, he was advised vide letter dated 29.4.2004, 25.5.2005 and 14.7.2004 to clear the said outstanding due of Rs. 36,940/-. The respondents have placed on record these letters as Anxx. R/2, R/3 and R/4. It is the case of the respondents that instead of responding favourably to the aforesaid letters with a view to clear the way for the final settlement of his G.P.F. amount as well as outstanding dues of the Corporation, the applicant addressed a letter dated 26.7.2004 to the Director General, New Delhi wherein he gave a threat that in case his problem was not solved by 14.8.2004, he shall have no other option than to embrace the death for which the officers of the Regional Office, Jaipur named in the said letter shall be personally responsible. Copy of the said letter has been placed

as Ann.R5. It is further stated that thereafter the Regional Director, Jaipur has personally explained to the applicant on 30.7.2004 the entire matter in the proper perspective and advised him to liquidate the dues of the Corporation so that the final payment of his G.P.F. amount may be released without entering into further unnecessary correspondence, but the applicant stated that his financial position did not permit him to do so and insisted on the release of all the outstanding dues payable by the Corporation to him first. Thereafter the applicant vide his letter dated 9.8.2004 submitted a post dated cheque (dated 20.8.2004) for Rs. 34,384/- i.e. Rs. 36,940/- less the amount of Rs. 2556/- as per his claim of reimbursement of medical expenses pending with the Corporation towards the outstanding dues of the Corporation and, as such, the payment of the G.P.F. amount of Rs. 6,78,462/- was made to him on 10.8.2004. In reply to Para 6.4 of the OA, the respondents have also stated that though the order against the said dismissal was passed on 9.12.2003, the appeal against the said dismissal was rejected on 6.8.2004, as such it can be said that the dismissal had attained finality on 6.8.2004 only and as such, he was not entitled to any interest upto 6.8.2004. Thus, considering the matter from that point of view, the payment of G.P.F. amount to him on 10.8.2004 cannot be said to be a case of delay in making payment to him.

4. The applicant has filed rejoinder thereby refuting the submissions made by the respondents in the reply. It has been stated that total amount to the tune of Rs. 40,000/- on account of TA and medical reimbursement were pending with the department, as such, recovery of the outstanding dues could have been recovered and liquidated from the said amount instead of withholding the G.P.F. amount. As such, the action of the respondents is without any authority of law and the applicant is entitled to the interest w.e.f. 9.12.2003 to 9.8.2004.

5. I have heard the learned counsel for the parties and gone through the material placed on record.

5.1 Rule 31, 34 and Rule 11(4) of the General Provident Fund Rules (Central Service) Rules, 1960 (hereinafter referred to as GPF Rules) form the foundation of the claim of the applicant. It would be appropriate to quote them. Rule 31 of the GPF Rules reads as follows:-

“31. Final withdrawal of accumulations in the Fund

When a subscriber quits the service, the amount standing to his credit in the Fund shall become payable to him;

Provided that a subscriber, who has been dismissed from the service and is subsequently reinstated in the service shall, if required to do so by the Government, repay any amount paid to him from the Fund in pursuance of this rule, with interest thereon at the rate provided in Rule 11 in the manner provided in the proviso to Rule 32. The amount so repaid shall be credited to his account in the Fund.....”

5.2 Rule 34(1) so far as it is relevant reads as follows”

“34. Manner of payment of amount in the Fund

(1) When the amount standing to the credit of a subscriber in the Fund becomes payable, it shall be the duty of the Accounts Officer to make payment as provided in sub-rule (3)..

.....”

I shall advert to Rule 11(4) of the GPF Rules at later stage. From rearding of Rule 31 and sub-rule (1) of Rule 34 it is clear that the subscriber who has been dismissed from service, the amount of GPF standing to his credit shall be payable to him from the date of dismissal and in case he is subsequently reinstated in service he is required to refund the same with interest thereon at the rate provided in Rule 11 in the manner provided in Rule 34. Rule 34 mandate that when the amount standing to the credit of a subscriber became payable to the subscriber, it shall be duty of the Accounts officer to make payment in the manner as provided in sub-rule (3). Thus, from rule 34, it is clear that it is the duty of the Accounts Officer to make payment of the amount standing at the credit of the subscriber in the General Provident Fund when it became payable. At this stage, it may also be useful to notice that prior to the issuance of notification dated 15th November, 1996, the Accounts Officer has to make payment of G.P.F. amount only “on receipt of a written application in this behalf” from the subscriber, but the said words have been deleted by issuance of the aforesaid

notification which was published as S.O.No.3228 in the Gazette of India dated 23rd November, 1996. Thus, after November, 1996 it is the duty of the Accounts Officer to make payment of GPF amount to the subscriber. Viewing the matter from the aforesaid legal position, the submissions made by the respondents that the delay is attributable to the applicant as he has failed to clear the outstanding dues of Rs. 36,940/- and as such the GPF amount could not be released, cannot be accepted for more than one reason. Firstly, the applicant was for the first time intimated by the respondents to deposit the amount vide letter dated 29.4.2004 whereas he was dismissed from service on 9.12.2003 practically after a lapse of about 5 months followed by subsequent reminder, whereas the applicant was paid interest upto November, 2003. In any case, for outstanding amount of Rs. 36,940, the respondents could not have withheld the substantial amount of Rs. 6,78,462/- and it was permissible for them to make payment of the remaining amount after deducting the so called recovery of Rs. 36,940/. Further, this plea taken by the respondents is self contradictory to the stand taken by the respondents in the reply to para 6.4 whereby it has been stated that the appeal against the dismissal order was rejected on 6.8.2004. As such, the applicant was not entitled for interest up to 6.8.2004. The respondents have not shown any provision which justify withholding of the amount of GPF till

the dismissal of the appeal, as such the plea taken by the respondents is without any substance and deserves outright rejection. On the contrary there are instructions issued by the Govt. of India under Rule 31 which is to the following effect:-

“(1) Recovery of Government dues and final payment of GPF not to be mixed up – It is inconsistent with Section 3(1) of the Provident Fund Act, 1925, for Government to deduct any amount due to them by a subscriber from his accumulations in the General Provident Fund at the time of his retirement, or from undisbursed General Provident Fund accumulations payable to a subscriber’s nominee in the event of subscriber’s death in service or after retirement, as the case may be, even though the consent of the subscriber or nominee may have been obtained.

In case where the subscriber or nominee is willing to repay the amount due to Government, the best course is to treat the repayment as a second transaction. Thereafter the payee may be called upon to make good the Government dues.

.....”

5.3 Even on the basis of these instructions, the amount of GPF could not have been withheld on account of recovery of Government dues. Now the next question which is as to what relief the applicant is entitled for. As can be seen from the prayer clause, the applicant has prayed for interest on the aforesaid GPF amount w.e.f. 9.12.2003 to 9.8.2004 at the rate of 15% per annum and also a sum of Rs. 20,000 as compensation on account of mental agony and also Rs. 21,000 because of avoidable litigation. At the outset, it may be stated that this Tribunal has got no jurisdiction to entertain any claim for alleged damages as held by the Hon’ble Supreme Court in Maharashtra Public Service Commission vs. Dr. Bhanumati Puroshottam Rathore, 1997

SCC (L&S) 1131, as such the prayer made by the applicant in that behalf is hereby rejected.

5.4 Now the only question which requires my consideration is whether the applicant is entitled for payment of interest ^{on a sum of} ~~Rs.~~ 6,78,426/- for a period pertaining to 9.12.2003 to 9.8.2004 and if so for what period and at what rate? Before deciding this issue it will be useful to quote rule 11(4) of the GPF Rules so far as it is relevant which is in the following terms:-

“11. Interest

.....
(4) In addition to ~~any~~ amount to be paid under Rules 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 whom such amount is to be paid.

Provided that where the Accounts Officer has intimated 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 upto the end of the month preceding the date so intimated or the date of posting the cheque, as the case may be.

....
From perusal of the aforesaid provision, it is clear that the subscriber shall be entitled to interest in addition to any amount which became payable to him and such interest shall be paid thereon up to the end of month preceding that in which the payment is made or up to the end of six months after the month in which such amount became payable whichever of these periods is less. Admittedly, the applicant was dismissed from service w.e.f. 9.12.2003

and the amount which was lying in the credit of the applicant was became payable to him only thereafter. The said amount was paid to the applicant on 10.8.2004 beyond the period of six months, as such the applicant is entitled to interest in terms of Rule 11(4) of the G.P.F. Rules up to the end of sixth month after the month in which the said amount became payable.

6. In view of what has been stated above, it was incumbent upon the respondents to pay interest to the applicant as mandated in the statutory provisions. Accordingly, the OA is partly allowed. The respondents are directed to pay remaining interest on the G.P.F. amount which was payable to the applicant in terms of the provisions contained in Rule 11(4) of the GPF Rules up to the end of sixth month after the month in which the said amount became payable at the rate prevalent at the relevant time in respect of the GPF credit less the amount which has already been paid. Such payment shall be made within a period of two months from the date of receipt of this order.

7. The OA is accordingly disposed of with no order as to costs.



(M.L.CHAUHAN)

Member (J)

R/