

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 8th day of September, 2008

ORIGINAL APPLICATION NO. 147/2007

CORAM:

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

P.S.Agarwal
s/o Late Shri Chandmal Aggarwal
r/o 54-A, Paanch Sheel Colony,
Makadwali Road,
Ajmer, retired as Head Clerk,
CPWD, Ajmer.

.. Applicant

(By Advocate: Shri Sumit Khajuria, proxy counsel for
Ms. Swati Bhati)

Versus

1. Union of India
through the Secretary of Ministry of Urban
Development,
Nirman Bhawan,
New Delhi.
2. Pay and Account Office (N-2),
PAO, M/o Urban Development and Poverty
Alleviation,
East Block-IV,
Level-6, R.K.Puram,
New Delhi.
3. Central Public Works Department,
Ajmer Central Division
through Ex. Engineer,
Collectorate Crossing,
Opposite Collectorate,
Ajmer.

.. Respondents

(By Advocate: Shri D.C. Sharma)

62

ORDER (ORAL)

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

- (i) By an appropriate order or direction the Original Application of the applicant may kindly be accepted.
- (ii) By an appropriate order or direction the respondents be directed to make the payment of due G.P.F. balance amounting to Rs. 13776.00 along with its interest thereon and the authority letter (Annex-A/1) may kindly be suitably modified accordingly.
- (iii) By an appropriate order or direction the letters/orders (Annexures A/3, A/5, A/6 and A/7 issued by the respondent No.2 refusing the genuine claim of the applicant of his G.P.F. balance amount may kindly be quashed and set aside.
- (iv) Cost through out may also kindly be awarded to the poor applicants; and any other order direction or relief which may be deemed fit in the circumstances may also kindly be passed in favour of the applicants in the larger interest of equity justice and law."

2. Briefly stated, facts of the case are that the applicant while working as Head Clerk, Central Public Works Department, Ajmer sought voluntary retirement on 31.8.2008. Consequent upon his voluntary retirement, he applied for final payment of General Provident Fund (GPF) amount. On receipt of GPF final withdrawal application of the applicant, case of the applicant was considered by the appropriate authority in the light of provisions made under Rule 34 (3) (iii) of General Provident Fund (CS) Rules, 1960 and it was

noticed that in the year 1978-79, the amount of interest admissible was only Rs.167/- whereas it was inadvertently read as Rs. 1,671/-. This resulted into a net difference of Rs. 1,504/-. Thus in the year 1978-79 the balance credited was shown as Rs. 3570/- excluding advance of Rs. 1170/- whereas closing amount of GPF pertains to the year 1978-79 was actually Rs. 2066/-. This wrong closing balance of Rs. 3570/- instead of Rs. 2066/- was shown as opening balance in the year 1979-80. This mistake continued till 31.8.2000 i.e. the date of voluntary retirement of the applicant, when upon review of the matter, it was found that payment to the tune of Rs. 13776/- has wrongly been credited into GPF account of the applicant which is required to be rectified and it was after rectification that the correct amount of GPF of the applicant was authorized for payment. Since, according to the applicant, he was paid less amount of GPF whereas he ought to have been paid a sum of Rs. 31,900/- but he has been paid only Rs. 18,147/-, he made a representation to the authorities to make payment of balance amount. Since nothing was heard, the applicant made a complaint before the District Consumer Forum which vide its order dated 26.7.2004 directed the respondents to pay sum of Rs. 13776/- with interest at the rate of 9% from due date and also awarded a cost of Rs. 1000/-. Against the aforesaid order passed by the District Consumer Forum, Ajmer,

the respondents filed appeal before the Consumer Disputes Redressal Commission, Rajasthan, Jaipur whereby it was urged that the District Consumer Forum has no jurisdiction to decide such claim. The appeal filed by the respondents was allowed vide judgment dated 22.1.2007 holding that dispute of the applicant does not fall within the preview of the Consumer Protection Act. It is thereafter the applicant has filed this OA thereby praying for the aforesaid relief.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have stated that the applicant was made correct payment of GPF amount after verification of account. The variation of Rs. 13,776/- was also explained to the applicant in detail by sending copy of the worksheet pertaining to ledger account as well as the final payment calculation sheet of recast. The respondents have also placed on record copy of the ledger for the year 1978-79 as Ann.R2 with the reply. The respondents have further stated that the applicant was also under obligation to intimate the error after receiving the annual statement of GP Fund for the year 1978-79 as to the sudden rise in the amount of interest to the extent of Rs. 1,671/- against the total deposit of Rs. 2,213/- at the end of 1977-78. The respondents have further stated that in

the subsequent couple of years also the amount of interest was not going to this extent of Rs. 1617/- at any stage despite increase in the amount of deposits. Thus, according to the respondents, conduct of the applicant to keep the Government in dark and concealing the vital monetary fact for his benefit is also making him liable for suitable action.

4. The applicant has also filed rejoinder thereby reiterating the averments made in the OA and also taking additional ground that the amount of GPF was deducted without giving fair opportunity to the applicant when the mistake was committed by the respondents, as such, the applicant is not liable for the same.

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

6. I am of the view that this is a case which deserves out right rejection. The applicant has himself placed on record a letter dated 2.12.2003 (Ann.A6) which has been addressed to the applicant by the Pay and Accounts Officer, New Delhi. At this stage, it will be useful to quote this letter in extenso which will have bearing in the mater and thus reads:-

"To

Sh.P.S.Agarwal,
549-A, Panchsheel Colony,
Rajeev Marg,
Makarwati Road,
Ajmer-305001.

Sub: Revision of GPF Final Payment Case of
Sh.P.S.Agarwal, Retd. Head Clerk, A/c No.11036.

Sir,

I am to invite a reference to your letter No. Nil dt. 5.10.2003 regarding less payment of Rs. 13776/- while issuing final payment authority, consequent on your Voluntary Retirement from Govt. service on 31.08.2000.

Rule 34(3)(iii) of GPF (CS) Rules clearly states that Accounts Officer after verification with the ledger account issue an authority for the amount. Accordingly your GPF A/cs right from the year 1976-77 till date of retirement had been recasted and actual interest due on your deposits had been paid. Interest which had been inadvertently credited in your A/cs 1977-78 & 1978-79 withdrawn while issuing final payment authority.

Comparative Statement as detailed below for the year 1976-77 to 1978-79 where excess interest had been inadvertently credited will clear the position.

1976-77	Shown in the ledger earlier	Due as per recasting done
---------	-----------------------------	---------------------------

O.B.	2156	2156
Deposits	600	600
Interest @ 7.5%	131	130
	2887	2886
Less Advance in 6/76	900	900
	1987	1986

1977-78

O.B.	1987	1986
Deposits	885	885
Int. 8%	191	143
	3063	3014
Less Advance In 8/77	850	850
	2213	2164

Y

1978-79

O.B.	2213	2164
Deposits	856	856
Interest 8%	1671	180
	4740	3200
Less Advance	1170	1170
C.B.	3570	2030

From the above it will be cleared that interest amount alongwith interest credited on this amount from year to year which was inadvertently credited to your account and does not pertains to you has only been withdrawn. Your a/c has again been checked as it is found that Rs. 18741/- paid to you is correct.

Yours faithfully,
Sd/-

Pay and Accounts Officer"

Thus, from the portion as quoted above, it is evident that in the year 1976-77 opening balance was Rs. 2156/- and total amount deposited during the year was Rs. 600/- and applicant was entitled to interest of Rs. 131/- (Rs. 130/- after recasting). Similarly, in the year 1977-78 the applicant was awarded a total interest of Rs. 191/- when the opening balance was Rs. 1987/- and total deposits during the year was Rs. 885/- whereas in the year 1978-79 when the opening balance was about 2213/- and total deposit was Rs. 856/-, the applicant was awarded interest of Rs. 1671/- as against Rs. 131/-, which was awarded in the year 1976-77 almost for the same amount. Thus, it is clear case where the respondents committed a arithmetic mistake while crediting a sum of Rs. 1671/- as interest in the ledger book instead of Rs. 167/-, resulting into a difference of Rs. 1504/-. The respondents have also categorically stated that *u*

closing balance of Rs. 3570/- was shown as opening balance in the year 1979-80 instead of Rs. 2066, as such, this error in calculation continued till 31.8.2000 when GPF a/c of the applicant was recast on retirement of the applicant. The applicant has not pleaded in the OA as to how comparative statement as detailed in the said letter for the year 1976-77 to 1978-79 whereby excess interest had been inadvertently credited in the account/ledger of the applicant is wrong and on what basis the applicant is entitled to excess amount as prayed for. In the OA the applicant has raised a vague averment that a sum of Rs. 13,776/- as deducted by the respondents is illegal which cannot be accepted on the basis of letter dated 2.12.2003 (Ann.A6). Thus, the applicant was made aware as to how the error has crept in the GPF account of the applicant and what is basis of recasting the GPF amount at the time of final settlement of the case of the applicant at the time of retirement. Thus, it cannot be said to be a case where the applicant has not been given any opportunity and action of the respondents is arbitrary.

7. That apart, it is the applicant who is responsible for not pointing out the error in his GPF account for the year 1978-79. It may be stated here that annual statement of GPF is being issued by Accounts Department annually to every subscriber. The

16

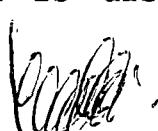
said statement contains opening balance, deposits during the year, advance/withdrawal during the year and interest on the opening balance as well as deposits during the year and total closing balance in a particular year. Such annual statement is issued in the prescribed proforma. The said statement also contains Notes and Acknowledgement slip. At this stage it will be useful to quote Note 3, which thus reads:-

"3. The subscriber is requested to satisfy himself/herself as to the correctness of the statement and to bring error if any to the notice of the Accounts Officer within three months from the date of its receipt."

In view of note-3, it was the duty of the applicant to inform the authority concerned regarding error which has crept in the annual statement of General Provident Fund for the year 1978-79 and to apprise the appropriate authority to rectify the mistake thereby showing the interest as Rs. 167/- instead of Rs. 1671/-. The applicant for obvious reasons did not point out the said glaring mistake in the statement for the year 1978-79 and also in the subsequent annual statements. Thus, the applicant cannot be allowed to derive the benefit of his own wrong thereby claiming higher amount of interest/much more amount which was wrongly credited in the ledger book by the respondents. It is neither case of the applicant nor it could be case of the applicant that such statement was not being issued by the Accounts

Officer annually. Thus, viewing the matter from any angle, I am of the firm view that it is the applicant who wants to derive the undue benefit from the error which has crept in his GPF ledger on account of bona-fide mistake of the respondents. As already state above, the annual statement of GPF was supplied to the applicant by the respondents every year. It was also duty of the applicant to bring such error to the notice of the authorities but the applicant kept silent. The applicant does not bring any such error to the notice of respondent rather he became party to these fraudulent entries which were made bonafidely by the respondents. Thus, from day one the applicant was aware that excess amount is being credited in his ledger book and it is not a case of such nature that applicant was not aware about this and as such the applicant being party to the fraud can not derive any benefit from bonafide mistake committed by the respondents in the manner suggested above. Thus, according to me, the applicant is not entitled to any such relief and case of such person was required to be dismissed at the threshold, even without issuing notice to the respondents.

8. For the foregoing reasons, the OA is dismissed with no order as to costs.


(M.L.CHAUHAN)
Judl.Member

R/