

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

OA No. 060/00523/2015

Date of decision-16.11.2017

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

...

Jamil Khan Son of Sh. Kutab Din aged 48 years, resident of House No. 598, Milk Colony Dhanas, Chandigarh.

...APPLICANT

BY ADVOCATE : None.

VERSUS

Regional Provident Fund Commissioner SCO 4-7, Sector 17 D, Chandigarh.

...RESPONDENT

BY ADVOCATE: Mr. Adarsh Malik, Advocate.

ORDER

...

SANJEEV KAUSHIK, MEMBER(J):-

By means of present O.A, the applicant has challenged the correctness of impugned order dated 03.02.2011 (Annexure A-1) vide which the respondents have ordered recovery of Rs. 18000/- from him and order dated 03.06.2015 (Annexure A-2) vide which the respondents have ordered recovery of Rs. 30,684/- from his salary for the month of June, 2015.

2. Brief facts of the case are that the applicant joined the Employees Provident Fund Organization (EPFO) as LDC on 17.05.1990. He got several promotions during his service career. The Central Board of Trustees of EPFO approved Manual of Accounting Procedure on 02.12.1997. There are two wings i.e. Reconciliation Wing/Record Wing i.e custodian of the ledger cares which exhibit the balance of the PG member and Settlement Wing for settlement of claims members. The applicant while working in Accounts Section 12 received the claim for refund of provident accumulation from the reconciliation wing of the

office along with the verified closing balance upto the year 1997-1998 in respect of PF member Sh. Gurnam Singh A/C No. PN/4715/1602. The applicant processed the claim for further for payment of Rs. 46,962/- and submitted for further scrutiny and checkin to the Section Supervisor who further submitted to the AAO. The claim was passed for payment of Rs. 46,962/- by the A.O. Respondent no. 2 issued letter dated 01.02.2007 to Sh. Gurnam Singh intimating him that he has been over paid an amount of Rs. 30,000/- due to the fact that advance received by him on 28.01.2000 is not taken into account while refunding the PF accumulation amounting to Rs. 46962/-. He was requested to refund Rs. 57635/- being overpaid amount of Rs. 30,000/- along with interest. Thereafter, the applicant received letter dated 28.01.2008 from respondent no. 2 intimating that the applicant and Smt. Anita Sharma, AAO overpaid a sum of Rs. 30,000/-to the member at the time of final settlement, to which the applicant replied vide letter dated 10.03.2008 by clarifying his position. Vide office note dated 03.02.2011, the applicant was informed that Over Payment Review Committee in its meeting held on 13.01.2011 decided to recover Rs. 18000/- from him as his share towards overpayment to Sh. Gurnam Singh in the final settlement of PF account. Thereafter, applicant submitted the representation which was rejected by the Regional P.F. Commissioner II vide order dated 23.03.2011. He was again advised by Assistant P.F. Commissioner to deposit an amount of Rs. 30327/- otherwise the amount will be recovered from his salary for the month of Feb, 2014. Thereafter, the applicant asked for relevant documents and personal hearing. He was informed by Assistant P.F. Commissioner that the matter was again considered by the Over Payment Review Committee in its meeting held on 25.04.2014 and found no merit in his submission and vide order dated 03.06.2016,

further recovery of Rs. 30,684/- was ordered to be recovered from applicant. Hence the present O.A.

3. No body puts in appearance on behalf of the applicant even when the case is called second time. Accordingly, we have heard learned counsel for the respondents.

4. On the commencement of hearing, learned counsel for the respondents has produced a copy of order dated 11.04.2016 passed in O.A No. 060/00914/2015 (titled **Gurnam Singh Vs. Regional Provident Fund Commissioner, Chandigarh**) by the co-ordinate Bench of this Tribunal wherein also same impugned order was challenged by the applicant therein and after considering the matter in detail, this Tribunal dismissed the O.A being devoid of merit. The impugned order dated 03.02.2011 was served upon the applicant and Mr. Gurnam Singh for the same act. He, therefore, prayed that present O.A be dismissed in same terms as in case of Gurnam Singh (supra).

5. We have given our thoughtful consideration to the entire matter and have perused the pleadings as available on record.

6. Being relevant, the important paras of the order dated 11.04.2016 is reproduced below:-

"11. Counsel for the applicant contended that the applicant processed the claim of Gurnam Singh member on the basis of balance amount as verified by the Reconciliation Wing in the duplicate ledger card (Annexure A-9) in which the debit entry of Rs. 30,000/- was not reflected and, therefore, there was no fault of the applicant. The contention cannot be accepted because the respondent has asserted in the written statement that Reconciliation Wing was to verify the claim up to the financial year for which accounts had been reconciled whereas for subsequent period, the Settlement Wing had to check the transactions. In the instant case, advance of Rs. 30,000/- was paid to Gurnam Singh member on 25.01.2000 i.e. in the financial year 1999-2000 for which accounts had not been reconciled. Consequently, officials of the Settlement Wing including the applicant had to check the transactions from the withdrawal/advance register but they did not do so. The applicant cannot take any benefit of the fault of the Reconciliation Wing in

preparing the duplicate ledger card although original ledger card was also available, because for the fault of the Reconciliation Wing also, action has been separately recommended by the Committee. However, it has to be reiterated that it was the duty of the Settlement Wing including the applicant to have verified the advance of Rs. 30,000/- from withdrawal/advance register which was not done. Consequently, officials of the Settlement Wing including the applicant have been rightly held liable to make good the loss on account of excess payment of Rs. 30,000/-. In this view of the matter, contention of counsel for applicant that there was no negligence of the applicant cannot be accepted.

12. Counsel for the applicant contended that recovery of loss amount amounts to minor penalty, but procedure for imposing the said minor penalty has not been followed. However, recovery of loss can also be made under common law without resorting to procedure for imposition of minor penalty because recovery of loss would not amount to penalty in that event. Moreover, in the instant case, the representation made by the applicant against the proposed recovery was reconsidered by the Committee and has been rejected. Thus, the applicant has availed of opportunity of representing his case.

13. The plea of the applicant that the balance amount of Rs. 10,751/- paid in the year 2003 to Gurnam Singh member could be adjusted against the over payment of Rs. 30,000/-, cannot be accepted because the said excess payment was detected in the year 2007-08 i.e. long after the balance additional amount of Rs. 10751/- had been paid to the member in the year 2003.

14. The plea of the applicant that the respondent has not taken any step to recover the excess amount from Gurnam Singh member also cannot be accepted in view of letter dated 01.2.2007, 8.4.2008, 29.07.2008 and 12.8.2011 (Annexures R-1 to R-4) written by the respondent to Gurnam Singh member for depositing the excess amount with interest. However, it turned out that the said member was not staying at the addresses available in the records as reported by the Area E.O. Consequently, the amount could not be recovered from the said member.

15. Counsel for the applicant also contended that the applicant is not liable to pay interest because he did not utilize the amount in question. This contention is also devoid of substance because the respondent was deprived of using the amount of Rs. 30,000/- and consequently the respondent is entitled to be compensated by way of interest to be recovered from the applicant and others.

16. Counsel for the applicant cited judgment of Hon'ble Andhra Pradesh High Court reported in 1999 (5) ALT 570 titled "K. Subba Rao Vs. A.P.S.R.T.C." and judgments of the Tribunal in O.A. No. 060/00507/2015 "R.C. Rattan Vs. Union of India & Ors.", in O.A. No. 1208/2000 "Lekshmi G. Vs. Union of India & Ors." and in O.A. No. 496/2008 "B.R. Verms Vs. Union of India & Ors." However, the same have no relevance to the facts of the case in hand.

17. Counsel for the respondent rightly pointed out that if the applicant had checked the withdrawal register (copy Annexure RA), the applicant would have come to know of the amount Rs. 30,000/- taken as advance by Gurnam Singh member.

18. Counsel for the applicant also submitted that the excess amount has been apportioned among three officials as per circular dated 26.03.2009 (Annexure A-10) i.e. 60% from the Dealing Clerk, 30% from the Section Supervisor (the applicant) and 10% from the Accounts Officer, but this circular dated 26.3.2009 is not applicable because the excess payment was made in the year 2001. The contention although apparently attractive cannot be accepted. The apportionment as per this circular has been considered to be fair and reasonable and has been devised accordingly. Consequently, even if the said circular is held to be not applicable to the excess payment in the instant case, even then the underlying principle regarding apportionment among different officials, being fair and reasonable, has been rightly followed in the instant case as well.

19. Counsel for the applicant pointed out that the amount of Rs. 9000/- has already been recovered from the applicant. If it be so, the respondents shall not be entitled to recover the same again. In fact, if amount of Rs. 6164/- has also been recovered already, the same shall also not be recoverable from the applicant.

20. For the reasons aforesaid, we find no merit in the instant O.A. which is accordingly dismissed. However, it is reiterated that amount already recovered from the applicant out of the disputed amount shall be adjusted and shall not be recovered again from the applicant. There shall be no order as to costs."

6. Considering the above narrated facts of the case and the order dated 11.04.2016 passed by this court as relied upon by the respondents, we are in agreement with the submission made by the respondents and are of the view that the present case is squarely covered by the decision as rendered in case of Gurnam Singh (supra) and the same is dismissed in the same terms. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 16.11.2017.

`jk'