

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 021/00471/2016

Date of CAV: 20.11.2018

Date of Pronouncement: 22.11.2018

Between:

1. B.S. Krishna, S/o. B. Venkatesham,
Aged 40 years, Occ: Loco Pilot (Goods),
O/o. the Chief Crew Controller,
South Central Railway, Sanathnagar.
2. M.M. Hussain, S/o. M.A. Abbas,
Aged 34 years, Occ: Loco Pilot (Goods),
O/o. the Chief Crew Controller,
South Central Railway, Sanathnagar.
3. N. Sampath Kumar, S/o. Kommalu,
Aged 41 years, Occ: Loco Pilot (Goods),
O/o. the Chief Crew Controller,
South Central Railway, Kazipet.
4. K. Venkata Ramana, S/o. K. Bullaiah,
Aged 41 years, Occ: Loco Pilot (Goods),
O/o. the Chief Crew Controller,
South Central Railway, Sanathnagar.
5. Galeeb Saheb Shaik, S/o. Saida Saheb,
Aged 38 years, Occ: Loco Pilot (Goods),
O/o. the Chief Crew Controller,
South Central Railway, Sanathnagar.
6. K. Ramesh Kumar, S/o. A. Agamaiah,
Aged 38 years, Occ: Loco Pilot (Goods),
O/o. the Chief Crew Controller,
South Central Railway, Sanathnagar.
7. P. Sampath Kumar, S/o. late Sri Ramulu,
Aged 37 years, Occ: Loco Pilot (Goods),
O/o. the Chief Crew Controller,
South Central Railway, Sanathnagar.
8. K.V. Somasundara Rao, S/o. K.V.V. Ganeswara Rao,
Aged 37 years, Occ: Loco Pilot (Goods),
O/o. the Chief Crew Controller,
South Central Railway, Sanathnagar.
9. N. Chandraiah, S/o. N. Sailu,

Aged 39 years, Occ: Loco Pilot (Goods),
O/o. the Chief Crew Controller,
South Central Railway, Sanathnagar.

10. B. Venugopal, S/o. B. Durgaiah,
Aged 36 years, Occ: Loco Pilot (Goods),
O/o. the Chief Crew Controller,
South Central Railway, Sanathnagar.

11. I. Srinivas, S/o. I. Veera Swamy,
Aged 38 years, Occ: Loco Pilot (Goods),
O/o. the Chief Crew Controller,
South Central Railway, Sanathnagar.

12. Ch. Krishna, S/o. Ch. Pentaiah,
Aged 33 years, Occ: Loco Pilot (Goods),
O/o. the Chief Crew Controller,
South Central Railway, Sanathnagar.

... Applicants

And

1. The Union of India, Represented by
The Chairman, Ministry of Railways,
Railway Board, Rail Bhavan, New Delhi.
2. The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
3. The Divisional Railway Manager,
South Central Railway, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.
4. The Senior Divisional Finance Manager,
South Central Railway, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.
5. The Secretary,
Ministry of Finance, North Block,
New Delhi.
6. Pension Fund Regulatory & Development Authority,
Plot No. 6, ICADR Building,
Vasant Kunj Institutional Area, Phase – II,
Vasant Kunj, New Delhi – 110 070.

... Respondents

Counsel for the Applicants ... Mr. KRKV Prasad

Counsel for the Respondents ... Mr. N. Srinivasa Rao, SC for Rlys
Mrs. K. Rajitha, Sr. CGSC for RR 5 & 6

CORAM:***Hon'ble Mr. B.V. Sudhakar, Member (Admn.)******Hon'ble Mr. Swarup Kumar Mishra, Member (Judl.)*****ORDER*****{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }***

The OA is filed for not uploading the recoveries made from the salaries of the applicants in respect of National Pension Scheme regularly, leading to unjustifiable financial loss to the applicants

2. Brief facts of the case are that the applicants are working as Asst. Loco Pilots in the Respondents organisation. The deductions made under National Pension scheme (NPS) from the monthly salary have to be invested by the Pension Regulatory Development Authority (PFRDA) on behalf of the applicants and the number of units of investment along with the Net Asset value (NAV) is to be let known to the applicants through transaction statements for keeping a watch on NAV and the number of units acquired. At the time of retirement 40 percent of the NAV is invested by PFRDA for paying monthly pension and the rest 60 percent is released to the employee as per version of the 6th Respondent. The monthly deductions were made from the date of joining the NPS from the salary of the applicants but they were not reflected in the respective transaction statements generated by the Central Record Keeping Agency (CRA) of PFRDA. The applicants brought this to the notice of the Respondents by recording the same in the grievance book maintained for crew members and followed it up by representations dt 15.7.2013, 10.2.2014, 24.3.2014 and 3.6.2014 to the concerned in the Respondent organisation. An on line representation regarding investment of Rs 48,678 from the amounts deducted monthly from August 2008 to October 2010 was made by

the 1st applicant ventilating the grievance that it caused financial loss due to belated investment. There being no response, the first applicant when he sought information under RTI Act about investments made from the monthly salary deductions plus the matching contribution made by the Respondents, he was informed that a sum of Rs 97,356 was uploaded to NSDL/CRA on 25.9.2013, thus confirming the fact that the monthly deductions made were not invested in time causing loss. The Respondents gave the impugned replies dt 6.8.2014 & 1.10.2014 to the 1st applicant stating that they cannot do anything about the deferred investments made. Aggrieved over the same the present OA is filed.

3. The contentions of the applicant is that as per OM dt 2.9.2008 of the Ministry of Finance on the 30th of every month the NPS amount deducted should be deposited and w.e.f 1.7.2008 it was reiterated that there should not be any delay in uploading the NPS funds by the Bill passing authority. The delay in uploading the data causes loss to the applicants in terms of NAV and number of units allotted. Despite frequent representations made the Respondents inaction to take remedial steps has led to enormous loss to the applicants for no fault of theirs, is the sum and substance of applicants contentions. In particular the 1st applicant made a number of representations to offset the financial loss but there being no relief and that the other applicants are also facing a similar predicament, they plead that the Tribunal should step in and do justice.

4. The Respondents contend that the delay in uploading the recoveries is because of delay in furnishing the PRAN (Permanent Retirement Account Number) number by the applicants and also because of their failure in not reviewing the accounts online though being educated and responsible Govt. Servants. There is no provision to offset purported loss due to delayed investments. When recoveries of colleagues were getting uploaded timely the

recoveries of the applicants alone getting rejected clearly indicated that there is no lapse on part of the Respondents. System accepts deposits only when a PRAN number is furnished. It is not possible to calculate the NAV on investments which have not been made. The recoveries made were placed in a non-interest bearing deposit account of the Respondents. The applicants recording their grievance in the grievance book is vague and the applicants should have reviewed the investment online. The applicants have not ventilated their grievances to NSDL or to the respective administrations in time. When brought to the notice of the Respondents they did take action as was possible at that juncture of time. The OMs issued by the Ministry of Finance are general guidelines to all other Central Ministries and not specific orders. Sixth Respondent has claimed that the issue is an internal matter between the applicants and their employer and that they did enact their role properly.

5. Heard the learned Counsel and went through the documents on record. Ld. counsel for the applicants has demanded that having effected the monthly deductions from salary promptly, the loss caused by delayed uploading of NPS data leading to deferred investments, has to be borne by the Respondents. Ld. counsel for the Respondents vehemently argued that without providing the PRAN number there is no scope to invest and that the applicants are responsible for the consequential loss. There is nothing that the Respondents can do about it.

6. A reading of the PFDA act indicates that under section 20, ten percent of the salary (Basic + DA) of an employee is deducted and along with employer's matching contribution is credited to the trustee Bank of the NPS Trust, which are made available to the pension funds for investment in debt and equity instruments in certain ratios. Based on the information made available about the contribution of the subscriber to the CRA by the PAO, the units are allocated to

the subscriber. As per OM no. 1 (7)2003/TA/Part file /279 dt 2.9.08 of Ministry of Finance the PAO should upload the subscriber contribution details on NPSCAN and obtain Transaction ID by the 25th of each month. This is a mandatory requirement in order to ensure that there is no loss to the subscribers. Further remittances of NPS contributions through RTGS/NEFT should be credited to the account of the Trustee bank by the PAO on the last working day /salary payment day of each month for that month. This is to ensure that Pension contributions are invested timely to fetch returns to subscribers and that such funds do not lie idle, to the detriment of the subscribers. In fact as per O.M No.1(2) E.V.2008 it has been informed that Ministries /Department may constitute a committee headed by JS (Admin) & Pr. CCA/CCA to monitor the registration/regular upload of data and fund transfer to ensure that no delay occurs. Further vide O.M dt 10.7.2011 bearing No 1 (5)/E.V/2011, it has been informed that Financial Advisers, shall with regard to the implementation and monitoring of NPS in their Ministries /Departments, submit a quarterly report to Secretary (Expenditure). It was also stipulated that the Principal Accounts office shall continue as the oversight authority for NPS. It should be noted that these OMs were issued to ensure discipline among the offices which are responsible for timely upload of the data and transmitting of the funds to trustee bank. Above all as per clause 2 (g) of Section 20 of the PFDA Act, the Respondents have to discharge the role of an intermediary and therefore all regulations thereof apply. For protection of subscribers the PFRDA (Redressal of Subscriber Grievance) Regulations, 2015 has been notified and the subscriber is entitled to remittance of the pension contributions without delay. The NPS scheme has been adopted by the Respondents. They have to discharge the duties and responsibilities assigned to them under the provision of the act. The Ministry of Finance is the

nodal Ministry which monitors and issues guidelines in the form of OM's for implementation of the scheme. It is incumbent on the Ministries and Departments to follow them. It is illogical on part of the Respondents to state that they are general in nature and not specific, thereby hinting at the fact that they are applicable to others and not to Railways. At this juncture it shall have to be made clear that this is not a scheme designed by the Respondents to say so. Once they adopt the scheme they are governed by the provisions of the act and the OM's issued in connection with the same by the nodal Ministry. There is no escape from this. The Respondents having deducted the amount they are bound to invest as per the provisions of the act. The OM's stated above puts the onus of responsibility on the Respondents and also the Act. It would not do that since the PRAN number was not provided they could not upload. If they could not upload then they should not have deducted. The Respondents should remember that the salary deductions made under NPS are meant for providing pension and disbursing terminal benefits. Honourable Supreme Court has observed that Pension is a invaluable property right. Such being its importance the Respondents need to bestow serious attention to such matters since their actions would decide the pension wealth of the applicants. Contrary to the said expectation, we found inaction on part of the Respondents in not uploading the deductions as per O.M dt 2.9.08 which invariably caused loss to the applicants. The head of the accounts wing along with others dealing with the issue have to own responsibility as per the OM's cited. Besides, the Respondents have been silent as to whether a committee has been constituted consisting of members from the accounts wing and the admin branch to monitor the scheme. Being an intermediary under the Act they have to take steps to see that the subscribers are not put to loss. The OM's have been issued to ensure discipline in implementing

the scheme. The way the Respondents have handled the grievance of the applicants, we are forced to observe that rigor and discipline in implementing the scheme is missing. We do agree that the applicants have to provide the PRAN number but they should not forget that as an intermediary they do have an equal responsibility to get the PRAN issued. Placing the funds in a non interest deposit account is not the proper way to deal with others money and more so of employees, as a model employer. After being entrusted with the responsibility to deduct from the salary, Respondents cannot shy away from the responsibility to follow it up and getting the amounts invested as per the provisions of the Act. It is wide of the mark, to blame the applicants totally and wash of their hands as if the Respondents have nothing to do if PRAN is not given. As per PFRDA (Redressal of Subscriber Grievance) Regulations, 2015 the subscriber is entitled to remittance of the pension contributions without delay. Thus it is clear that the onus of responsibility lies with the Respondents after having made the deductions. Respondents have men in place to ensure this. If they fail it is for the Respondents to examine as to why they failed and they should not penalise the applicants for abundant shortcomings on their behalf. Had they not deducted, the story would not have been different. The Respondents should not indulge in the luxury of following some provisions of the act and ignoring some other provisions. They did make the salary deductions but were lackadaisical in investing the same. Hence the Respondents are found wanting in discharging a sensitive assignment of safeguarding the pension wealth of the applicants by not following the OMs stated and the provisions of the PFDA act.

7. Thus based on the above the Respondents are directed to consider:

- i) To get in touch with the sixth Respondent and work out the returns on the deductions made as if they were uploaded to the CRA for

investment as per schedule on the due dates and pay the said amount, if any, due to increase in NAV and the number of units, to the applicants. Such a calculation to be done from the date of deduction made till the date of uploading the salary deductions to the NPS trust by the Respondents in respect of the applicants. The Sixth Respondent being an expert body we expect them to assist the Respondents in making the calculations in a fair manner to resolve the grievance.

- ii) It is open to the Respondents to fix responsibility on those who failed to act in time to get the deductions uploaded which caused loss to the applicants and recover the amount paid to the applicants based on (i) above from those responsible, in order to usher in discipline in implementing sensitive schemes relating to the pension of the employees and thereby offset the loss to the Respondents organisation.
- iii) Time permitted to implement the order is 7 months from the date of receipt of this order.

8. In the result, the OA is allowed with the above directions. No order to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 22nd day of November, 2018

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