

**CENTRAL ADMINISTRATIVE TRIBUNAL****PATNA BENCH, PATNA****O.A. No. 050/00010/2014 with MA 04/2016**

Reserved on : 19.09.2017

Date of Order: 05.12.2017

**C O R A M****HON'BLE MR. A.K. UPADHYAY, ADMINISTRATIVE MEMBER****HON'BLE MR J.V. BHAIKAVIA, JUDICIAL MEMBER**

1. Smt. Shukla Mukherjee Daughter of Late S.C. Goswami, Sister of Late T.K. Goswami, Section Supervisor, Office of the Regional Provident Fund Commissioner, Employees Provident Fund Organisation Bhavishwa Nidhi Bhawan "R" Block Road No.-6, Patna (Bihar), Resident of Flat No.-203, Sara Apartment, Punaichak, Patna-800023.  
..... Applicants.

By Advocate :- Shri M.P.Dixit;

-Versus-

1. Union of India through the Secretary, Ministry of Labour, Government of India, New Delhi.
2. The Central Provident Fund Commissioner, Employees Provident Fund Organisation, New Delhi.
3. The Regional Provident Fund Commissioner-I, Employees Provident Fund Organisation, Regional Office, Bhavishawa Nidhi Bhawan, "R" Block Road No.-6, Patna (Bihar).
4. The Assistant Provident Fund Commissioner(Admin), Employees Provident Fund Organisation, Regional Office, Bhavishawa Nidhi Bhawan, "R" Block Road No.-6, Patna (Bihar).
5. Sri P.C. Pati, Regional Provident Fund Commissioner-I, Employees Provident Fund Organisation, Regional Office, Bhavishawa Nidhi Bhawan, "R" Block Road No.-6, Patna (Bihar).

..... Respondents.

By Advocate :- Shri Prashant Sinha.

**O R D E R****Per J.V. Bhairavia, M (J) :-** In the present case, the applicant is

aggrieved by the order of dated 14.06.2010 passed by respondent no.5

whereby an amount of Rs.2,41,181/- has been deducted from the DCRG. As such, the applicant prays for the relief(s) in para 8 of this O.A :-

*“8.1. That your Lordships may graciously be pleased to quash and set aside the impugned order dated 15.06.2010 as contained in Annexure A/9 paragraph no.2 under which the recovery of Rs.2,41,281.00 has been made from the Death Cum Retirement Gratuity.*

*8.2. That your Lordships may further be pleased to direct the respondents to make payment of up-to-date interest on G.P.F for the year 2009-10 and subsequently period also without any further delay.*

*8.3. That the respondents further be directed to pay the invalid pension in favour of the applicant as per Annexure A/3 and Annexure A/4 as the deceased employee has already declared permanently disabled by the Medical Board.*

*8.4. That the respondents be further be directed to treat the deceased employee voluntary retired from 01.02.2010 instead of 01.02.2009 with all consequential benefits.*

*8.5. That your Lordships may please to quash and set aside the order dated 20.05.2016 issued by the respondents as contained in Annexure 8 of the supplementary written statement being unjust, illegal and unconstitutional and bad in law.*

*8.6. Any other relief or reliefs including the cost of the proceeding may be allowed in favour of the applicant.”*

2. An M.A 04/2016 has also been filed by the applicant for incorporating some amendment in para 3. The said M.A is allowed.

3. The brief facts of the case as submitted by the applicants are as below:-

[i] Late Shri T.K. Goswami who was unmarried and was working as Supervisor, office of the Regional Provident Fund Organisation, Patna , said T.K. Goswami had nominated his

sister's name in as nominee on 14.07.2004 (Annexure A/1).

Accordingly, his sister is the applicant herein.

[ii] On 07.10.2008, the employee submitted an application for voluntary retirement with effect from 01.02.2009 due to his disablement ( Physically Handicapped). Annexure A/2 refers. Thereafter, the respondent no.2 issued a letter dated 31.12.2008 (Annexure A/3) with a direction for obtaining necessary medical certificate in form-23. Thereafter, on 05.01.2009, respondent no.3 sent a letter to the Director in chief, Health Department, Govt. Of Bihar for issuance of medical certificate in Form-23. Annexure R/4 refers. However, the applicant failed to obtain the same due to employees strike. Thereafter, the employee consulted Dr. Madan Prasad, MO., Lok Nayak Jai Pakash Hospital, Rajbanshi Nagar, Patna whereby he was declared permanently disabled person which was communicated to respondents on 09.02.2009.

[ iii] In the meanwhile, the Health Department, Govt. of Bihar referred the matter to the Superintendent, Patna Medical College Hospital, Patna on 14.05.2009. where Medical Board was constituted on 30.10.2009, in which Shri T.K. Goswami appeared before the said Board and after check up he was declared permanently disabled person. Accordingly a report was sent on 11.12.2009 to Director-In-Chief, Health Department, Government of Bihar. In spite of that report, the respondents did not pass any order of voluntary retirement.

Thereafter, the employee submitted a representation on 19.01.2010 for grant of invalid pension and retiral benefit.

[ iv ] On 28.01.2010, the employee received a letter from respondents asking him to submit a representation by 06.02.2010 with explaining the reason for his absence as the respondents have neither received any letter of his permanently disablement nor any application for extension of earned leave.

[ v ] The employee, submitted another representation dated 04.03.2010 to respondent no.5 in response to it he received two letters dated 19.03.2010 and 09/12/04.2010 respectively whereby the said employee has been retired voluntarily with effect from 01.02.2009 on domestic ground. The applicant was paid GPF amount Rs.11,29,622/- vide cheque dated 06.05.2010 which should be 13 lacs as per the applicant. Subsequently, the respondents issued office order 14.06.2010 which emerges that Rs.2,41,181.00 has been recovered from the DCRG against payment of salary from February 2009 to January 2010.

[ vi ] The said employee thereafter submitted a representation on 04.07.2010 regarding invalid pension as well as for payment of voluntary retirement benefit from 01.02.2010 instead of 01.02.2009 thereafter his sister submitted a representation on 06.09.2010 . The said employee T.K. Goswami died on 16.09.2010.

[ vii ] It is further submitted by the applicant that in pursuance to subsequent order dated 04.07.2014 passed by Regional Provident Commissioner-I, Bihar, Patna. The respondents had re-worked out the accounts of settlement of dues and place the copy of accounts statement dated 20.05.2016 by which recovery of Rs.2,36,612/- has been issued towards over payment, the said decision has been also challenged by the applicant in this application. It is submitted that the action of the respondents is against the provisions of the rules and the legitimate right of the applicant's brother has been deprived due to wrong illegal interpretation made out by the respondents. Therefore, the reliefs sought in this O.A be pleased to be granted.

4. In contra, the respondents have filed their written statement and supplementary written statement and have submitted that :-

[4.1] Mr. T.K. Goswami had applied for grant of voluntary retirement with effect from 01.02.2009 vide his application dated 13.10.2008-07.10.2008. On 31.12.2008, the applicant was referred by the Regional Office Patna vide letter dated 05.01.2009, to Medical Board with a request to issue a medical certificate so that invalid pension can be given to Shri T.K. Goswami. The Medical Board issued the medical certificate on 17.02.2010.

[4.2] The department vide letter dated 19.03.2010, accepted the V.R.S of applicant on domestic ground with effect from 01.02.2009. On receipt of retirement order dated 14.06.2010, the applicant submitted his pension papers and accordingly his pension was started. The applicant was paid full salary upto 31.10.2010 and the excess salary paid to him was recovered from 01.02.2009 to 31.01.2010 was recovered from his gratuity.

[4.3] The applicant on 15.07.2010 submitted a representation for invalid pension as well as fixation of VRS w.e.f 01.02.2010 which was replied by the department vide letter dated 11.08.2011 stating that his voluntary retirement was accepted under FR56 read with Rule-48 of CCS (Pension) Rule 1972 w.e.f. 01.02.2009 and the salary paid from 01.02.2009 to 31.01.2010 had been recovered from his gratuity as his special disability leave was not granted by the EPFO.

[4.4] The learned counsel for respondents further submitted that the applicant had not specifically mentioned that he be given VRS under Rule-38 of CCS (Pension) Rule, 1972.

[4.5] It is submitted that vide order dated 04.07.2014 the Regional Provident Fund Commissioner-I, Bihar, Patna had reconsidered the entire case and passed the proper order. (Annexure A/2 of w.s refers). It is further submitted that in pursuance to the said order dated 04.07.2014, the date of

retirement of the employee namely T.K.Goswami was modified to 07.02.2010 from 01.02.2009, the entire calculation had been re-worked out because the concerned employee was continuously absent from 01.02.2009 to 16.02.2010. His period of absence was regularised through Earned leave and Medical leave in his account as on 01.02.2009. Even after availing the entire earned leave and medical leave, there was a period of absence, which was regularised through grant of extra ordinary leave. The salary payable to the concerned employee for the period from 01.02.2009 to 16.02.2010 was Rs.3,41,480/- however, this payable salary warranted that leave encashment payable to the official earlier, to the tune of Rs.2,01,842/- as on 01.2.2009, was required to be recovered. Further more, the pension paid to the official for the period 01.02.2009 to 16.02.2010 was also due for adjustment against the salary payable to him. According to the entire calculation, indicated that Rs.79,804/- was payable to late T.K.Goswami in totality but the office erroneously made payment of Rs. 3,16,416/- without adjusting leave encashment and recoverable pension. Therefore there is no amount to due to late T.K.Goswami. However, on the contrary Rs.2,36,612/- is to be recovered from the applicant i.e Smt. Shukla Mukherjee nominee of late T.K.Goswami who had received the erroneous payment. To substantiate this submission the respondents has relied upon the order dated 04.07.2014 and statement of accounts dated

20.05.2016 (referred Annexure A & B respectively of w.s and supplementary w.s). The respondents have submitted that the applicant is not entitled for any relief.

5. The applicant has filed rejoinder to the written statement and submitted that the respondents have recently paid the PF amount without interest and provided calculation sheet but the major amount i.e Rs.2,41,281/- recovered against paid salary for the period beyond the actual date of accepting VR upto the date the decision of VRS has been taken. The salary paid to the applicant after performance of duty cannot be recovered.

6. The respondents have denied the contention of applicant.

7. We have heard the parties and perused the records of the case. In the present case, the factual matrix of the case on hand it emerges that :-

[7.1] The late employee was working as Section Officer in the office of Regional Provident Fund Commissioner, Employees Provident Fund Organisation because of his physical handicappedness, his physical disability was very serious and gradually advancing and become worse due to advancement of age. Therefore, he had applied for VRS on 07.10.2008 and requested the competent authority to consider his application for Voluntary Retirement with effect from 01.02.2009. (Annexure A/1 refers).

[7.2] In response to his application, the respondents i.e Assistant Provident Fund Commissioner (ADM), Patna (Respondent no.4 herein) vide letter dated 31.12.2008 (Annexure A/3 refers) informed the said T.K.Goswami that as he had applied for VR on P.H. ground thus he is entitled to get invalid pension and for that purpose he was directed to appear before Medical Board, Patna and obtain necessary medical certificate in Form no.23., the said authority had also informed the Director in Chief of the Medical Board, Health Department, New Secretariat Patna on 05.01.2009 and informed that the T.K.Goswami has applied for retirement on PH ground under VRS Scheme with effect from 01.02.2009. His date of birth as recorded in service book is 14.08.1951. On account of bodily infirmity which permanently incapacitates him from service and by considering the application of Mr. Goswami it was requested to issue medical certificate in Form no. 23 so that invalid pension can be given to the applicant.

[7.3] It also reveals from the records that the medical certificate was issued to the applicant by the Medical Board only on 17.02.2010. Vide order dated 19.03.2010, the application for VRS of Shri T.K.Goswami was accepted w.e.f 01.02.2009.

[7.4] On receipt of retirement order dated 14.06.2010, Shri T.K.Goswami has submitted his pension papers and accordingly, his pension was started.

[7.5] The said employee did not perform his duty for the period 01.02.2009 to 31.02.2010 during this period he remained absent in service. However, that since Shri T.K.Goswami had been paid full salary upto the 31<sup>st</sup> January 2010 the excess salary purported to have been paid to him from 01.02.2009 to 31.01.2010 was ordered to recover from his Gratuity.

[7.6] The said T.K.Goswami had submitted several representations by which had demanded benefit of invalid pension as well as fixation of VRS w.e.f. 01.02.2010, Due to late consideration of his application of VRS and same was allowed only on 14.06.2010 therefore from 01.02.2009 to 16.02.2010 the employee was required to be considered in service. The said request of the applicant was initially not considered by the competent authority and it was informed that his VRS was accepted under rule Under FR 56 read with Rule 48 of CCS Pension Rules 1972 with effect from 01.02.2009. His salary paid from 01.02.2009 to 31.01.2010 had been recovered from his gratuity amount because his special disability leave was not granted by the office of respondents and therefore, disability pension was not granted. Against the said action of the respondents, the late T.K.Goswami had submitted another representation to the respondent no.4 and other authorities for reconsideration his claim.

[7.7] It is noticed that vide order dated 04.07.2014 the respondents had reconsidered the entire case of the applicant and decided as under :-

“ Though Shri T.K.Goswami, Ex. Section Supervisor had not specifically mentioned that he be given VRS under Rule 38 of CCS (Pension) Rules, he is entitled for the same because this office had suo moto treated the same as an application under Rule 38 and in fact had referred him to medical board for that purpose. Thus, granting him VRS in March, 2010 with effect from February 2009 is unjustifiable under Rules specifically when three months notice under FR 56 read with Rule 48 of CCS (Pension) Rules had expired. Accordingly, it is ordered

*“(a) that in suppression of office order no.10 dated 09.04.2010 late T.K.Goswami, Ex. Section Supervisor, is retired under Rule 38 of CCS (Pension) Rules 1992 with effect from 17.10.2010 (A.N.)*

*(b) that the pension of late T.K.Goswami, Ex. Section Supervisor is modified to invalid pension.*

*(c) that interest of GPF contribution is payable upto 17.02.2010 (A.N.)*

*(d) that pay from 07.10.2008 to 17.02.2010 shall be regularised and over payment recovered from his gratuity.*

[7.8] The copy of above stated order dated 04.07.2014 was sent to the present applicant.

[7.9] Pursuant to aforesaid order dated 04.07.2014, the entire calculation of retirement benefit was re-worked out by the

respondents and a fresh details of accounts was prepared. It is noticed that substantially all the legitimate payment of late T.K.Goswami has been paid to the applicant and it was also found by the respondents that excess payment of Rs.2,36,612/- has been made which is ordered to be recovered from the gratuity.

8. It can be seen from the factual matrix of the case that the application of late T.K.Goswami for Voluntary Retirement due to bodily infirmity which permanently incapacitates can be considered under Rule 38 of CCS (Pension) Rule and therefore on receipt of the application of late T.K.Goswami he was directed to obtain necessary medical certificate in Form no. 23 from Medical Board, Patna. The late T.K.Goswami was aware about this fact that his application can only be considered under the provision of Rule 38 and therefore he had followed the procedure for obtaining necessary medical fitness certificate as stipulated in the Rule 38 and Form no.23. However, due to administrative reasons he could not obtain the said certificate before February 2009 and subsequently only in the month of February 2010 the Medical Board had issued the medical certificate to the applicant. It is also noticed that the late T.K.Goswami in fact not stated in his application to grant the benefit of VRS under Rule 38 and therefore inadvertently the respondents office had accepted the application of the applicant in accordance with FR 56 read with Rule 48 of CCS (Pension) Rules 1972 with effect from 01.02.2009 instead under Rule 38 of Pension Rules . Subsequently, the entire case was reconsidered by the respondent no.4 on the representation of applicant and as stated above

the final order dated 04.07.2014 was passed. It is observed in the said order that in suppression of office order dated 09.04.2010/16.04.2010 late T.K.Goswami Ex. Section Supervisor is considered to be retired under Rule 38 of CCS Pension Rules with effect from 17.02.2010 and the pension is modified to invalid pension. In our considered opinion, the said decision dated 04.07.2014 passed by the respondents is in accordance with the provision of Rule 38 of Pension Rules 1972 and rightly allowed the invalid pension as per provision Pension Rules. We do not find any infirmity in the reasons and conclusions arrived thereon in the said order dated 04.07.2014 by the respondents. So far decision of the respondents with regard to recovery is concerned, the said decision is found to be taken in accordance with Rules and at the earliest point of time, the excess amount paid to the sister of late T.K.Goswami is rightly ordered to be recovered. in view of provisions of Rule 38 of Pension Rules. Thus the submissions made by the applicant are devoid of merit.

9. In the result, O.A stands dismissed. No order as to costs.

[J.V. Bhairavia]/M(J)

[ A.K. Upadhyay ] M(A)

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