

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/01713/2018

DATED THIS THE 28th DAY OF JUNE, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Sri.Maneesh Agnihotri
Aged 48 years
S/o Sri R.K.Agnihotri
Regional Provident Fund Commissioner
Bhavishya Nidhi Bhavan
Raja Ram Mohan Roy Road
Ashok Nagar
Bengaluru:560 001.

....Applicant

(By Advocate Sri P.A.Kulkarni)

Vs.

1. Union of India
to be represented by its Secretary
Ministry of Labour & Employment
Shram Shakti Bhawan
Rafi Marg
New Delhi-110 001.
2. Employees Provident Fund Organisation
by its Central Provident Fund Commissioner
Ministry of Labour & Employment
Government of India
Bhavishya Nidhi Bhawan
No.14, Bhikaji Cama Place
New Delhi: 110 066.

...Respondents

(By Advocate Sri Pundikai Ishwara Bhat, Smt.Shwetha Anand for R2 & Sri K.Dilip Kumar)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

Based on the details furnished in the OA and the reply statement, the facts of the case are as follows:

The applicant while functioning as Regional Provident Fund Commissioner-II, in-charge of Sub-Regional Office Employees' Provident Fund Organization, Bhopal (M.P.) detected certain fraudulent payments in respect of PF claims pertaining to the period 1999 to 2002-03. On 18.8.2005, he sent a DO communication to the EPFO, Regional Office Indore about some of the fraudulent payments made by Sri Gajendra Chouhan, SSA who was earlier posted at SRO Bhopal while being posted in SRO, Gwalior(Annexure-A1). In addition to above, he sent a letter(confidential report) on 11.11.2005(Annexure-A2) to the Central Vigilance Commission(CVC) in the capacity of 'whistleblower', based on which the CBI launched criminal prosecution which ended in conviction of all those involved in the organisation and other outside conspirators. CVC recognizes the applicant's role in uncovering the extent of fraud and observes that the role played by him cannot be ignored. It has taken note of the applicant's initiative in bringing out the fraud and preserving the documents calling for vigilance investigation and rendering full co-operation. Accordingly, it has given first stage advice(Annexure-A5) stating that launching of prosecution against the applicant is not called for. However, CVC was of the view that since the applicant was working as Asst. Provident Fund Commissioner(Accounts) in the said office during the relevant period, initiation of departmental enquiry may be necessary to find out whether there was any mistake on the part of the applicant relating to the fraud committed by the case worker. Based on the CVC's first stage advice only disciplinary action came to be initiated against the applicant under Rule 10 of EPF Staff (CCA) Rules 1971 on the following articles of charge:

“While functioning as APFC (Accounts) in Sub-Regional Office Bhopal during the year 2000-2003, acted in gross and willful negligence of duties and responsibilities mandated by the MAP on APFC (Accounts), his duty work in the

best interest of EPFO and its Members, his duty as a supervisory officer to ensure conduct of his sub-ordinates; that his actions (omissions and commissions) were unfair to his duties and responsibilities, were without due care and attention and unlike what a prudent person would do and, as a result, his actions can't be categorized as honest, bonafide or reasonable; that his actions (omissions and commissions) were in effect a participation in and facilitation of the processing, authorization, sanction and pay out of 46 fraudulent PF claims with the aid of manipulated and falsified internal data/documents; that his actions (omissions and commissions) caused a wrongful pecuniary loss to Employees' Provident Fund Organization equivalent to a sum of Rs.1,53,78,885.

Thus, failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of an employee of the Central Board of Trustees, EPF, and he failed to take all possible steps to ensure integrity and devotion to duty of his sub-ordinates and thereby violated rule 3(1) (i), 3(1) (ii), 3(1) (iii) and 3(2) (i) of the CCS (Conduct) Rules 1964 which are applicable, mutatis mutandis, to employees of Central Board, EPF by virtue of regulation 27 of the EPF (Staff and Conditions of Service Regulations, 1962.”

2. The applicant had denied the allegation in his written statement dtd.1.9.2010 stating that issuance of charge memo is a case of his victimization/persecution. As he acted in good faith, he should be provided the protection under section 18 of the EPF & MP Act 1952 and also under Central Act No.17/2014 of the Whistle Blower's Protection Act 2011. The inquiry officer had submitted his report stating that charge levelled against the applicant is proved. The Central Provident Fund Commissioner has passed the punishment order dtd.3.6.2014(Annexure-A6) in the name of Chairman CBT EPF imposing the penalty of 'reduction to a lower stage in the time scale of pay by two stages for a period of two years without cumulative effect and it will not adversely affect his future increments of pay'. The applicant had filed appeal to the appellate authority. He also filed OA.2431/2013 before the CAT, Principal

Bench questioning the legality and correctness of the initiation of disciplinary proceedings under charge memo dtd.12.8.2010 which was not approved by the Chairman CBT EPF i.e. Labour & Employment Minister(LEM) of Govt. of India. During the pendency of the OA, the appeal filed by the applicant was considered by Hon'ble LEM exercising the powers of Appellate Authority vested under Rule 23 of the EPF Staff (CCS) Rules 1971 and quashed the penalty order holding it as ab-initio-void vide order dtd.11.12.2014(Annexure-A7) but without any justification reserves the liberty to the disciplinary authority for taking disciplinary action afresh under the rules. In view of the appellate authority's order, the OA 2431/2013 filed by the applicant was disposed of by the CAT, Principal Bench on 16.8.2016(Annexure-A8) with liberty to seek remedial measures in the event fresh disciplinary proceedings are initiated against him. Thereafter the applicant was promoted as RPFC-I by office order dtd.3.6.2015(Annexure-A9).

3. The applicant submits that since the appellate authority reserved the liberty to the disciplinary authority for taking fresh disciplinary action, the disciplinary authority is seeking to proceed against the applicant with the same charge sheet dtd.12.8.2010 after obtaining the necessary approval from the Chairman, CBT EPF. Since the disciplinary authority decided to impose the penalty based on the IO's report, it is difficult to assume that if the proceedings are allowed to be held once again DA may change his views as he has already made up his mind in the matter. Therefore, permitting for fresh inquiry would be a pure harassment to the applicant and hence he filed the present OA seeking the following relief:

a. Call for the records and proceeds from R-2 relating to charge memo dtd.12.8.2010 with all the official correspondences at the end of the concerned office of the Hon'ble Minister of State for Labour and Employment/Chairman CBT.

b. Hold that there exists no justification for proceeding with the disciplinary proceedings in terms of the Govt. of India Ministry of L&E New Delhi order dtd.11.12.2014 in File No.C-11016/1/2007-SS-I Annexure-A7 herein.

c. Quash the order bearing F.No.C-11016/1/2007-SS-I, dtd.11.12.2014, Annexure-A7 passed by Government of India Ministry of Labour and Employment New Delhi R-1 herein so far as it pertains to providing liberty to the Disciplinary Authority to take disciplinary action afresh against the applicant.

d. Direct the respondents to put an end to the disciplinary proceedings initiated against the applicant under the charge memo dtd.12.8.2010 in No.Vig.VI(1)2010/3181.

4. The respondents in their reply submit that the OA is not maintainable inasmuch as there is no cause of action and the applicant has raised baseless and unwarranted grievances without any legal basis against the respondents. The applicant is challenging the order passed by the Ministry of Labour & Employment, 1st respondent vide dtd.11.12.2014 whereby liberty was granted to the disciplinary authority to take disciplinary action afresh against the applicant. As such the OA filed belatedly in the year 2018 is barred by limitation and hence is liable to be dismissed on this ground alone as the Hon'ble Supreme Court also held in the matter of *DCS Negi Vs. UOI in SLP(C) No.7956/2011* that the Tribunal cannot admit an application unless the same is made within the time specified in clause (a) and (b) of Section 21 (1) or Section 21(2) or an order is passed in terms of sub-section(3) for entertaining the application after the prescribed period.

5. The respondents submit that when the case was listed on 7.11.2018, there was no notice and hence no occasion for the respondents to apprise the Tribunal about the facts of the case. But on that day, the Tribunal has given interim order staying the effects/operation of the order dtd.11.12.2014 till the next date without hearing the respondents. By subsequent order dtd.6.12.2018, the Tribunal has passed

another stay order against the disciplinary proceedings initiated on 12.8.2010 against the applicant without even considering the plea of the 2nd respondent. Hence, both the stay orders are liable to be vacated.

6. The respondents further submit that when the applicant came to know that the investigation report of the Vigilance Directorate had already been submitted on 19.10.2005, wherein the Vigilance had clearly mentioned the applicant's involvement in the fraudulent settlement of claims as Assistant Commissioner(Accounts), Bhopal and realising that he had come under the scrutiny of vigilance investigation in the matter, he wrote a letter to the CVC on 11.11.2005 under PIDR for gaining some mileage through benefit of doubt. This is an afterthought and action taken to save his own involvement in such a fraudulent activity. The respondents submit that the report of the preliminary investigation was submitted on 19.10.2005 which was prior to the applicant's letter to the CVC on 11.11.2005. Therefore, it was not the applicant who unearthed the fraud, it was detected during preliminary investigation carried out by the Vigilance. In the Articles of Charge framed against the applicant under charge memo dtd.12.8.2010, it is categorically mentioned that while he was functioning as APFC (Accounts) in Regional Office, Bhopal during the year 2000-2003, he acted in gross and wilful negligence of duties and responsibilities mandated by Manual of Accounting Procedure on APFC (Accounts). He was responsible to act as a Supervisory Officer to ensure the conduct of his sub-ordinates, however, his actions were in-effect a participation in and facilitation of the processing, authorisation, sanction and pay out of 46 fraudulent PF claims with the aid of manipulated and falsely filed internal data/documents. There were gross omissions and commissions that caused wrongful pecuniary loss to EPFO equivalent to a sum of Rs.1,53,78,885/- and

wrongful gains to all the accused persons who were involved in the fraudulent act. He failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of an employee of the Central Board, EPF and thus he failed to take all possible/effective steps to ensure integrity and devotion to duty of his subordinates and thereby violated Rule 3(1)(i), 3(1)(ii), 3(1)(iii) and 3(2)(i) of CCS (Conduct) Rules 1964 by virtue of Regulation 27 of EPF (Staff and conditions of Service) Regulations, 1962. The act of sanctioning fraudulent PF claims by the applicant does not attract the definition of discharging the services in 'good faith' nor gives any protection under Section 18 of the EPF & MP Act, 1952. Thereafter investigation was carried out by the CBI. On the recommendation of CBI for RDA against the applicant, a charge memorandum was issued on 12.8.2010 and a penalty was imposed upon the applicant vide order dtd.3.6.2014 which was challenged by the applicant before the Appellate Authority. On 11.12.2014, the Appellate Authority while finding that the charge memorandum dtd.12.8.2010 was never approved by the disciplinary authority, which is only a technical lacuna, had quashed the penalty order being void ab initio with a liberty to the disciplinary authority to take action afresh. Had it not been for the technical lacuna, the departmental proceedings would have been finalized in the year 2014 itself. The disciplinary proceedings is mandated against the applicant to examine the Articles of Charge and unless the disciplinary authority conducts an enquiry in accordance with the established rules, the incident of fraud cannot be properly investigated. Accordingly, in view of the orders of the appellate authority, a charge memorandum on same charges has been issued afresh upon the applicant on 20.12.2018. The time taken in issuing the charge sheet is due to different levels through which the disciplinary case has to be processed. There has been no intentional delay in

issuance of charge sheet. Therefore, the OA filed just to prevent or restrain the respondents from initiating disciplinary action against the applicant, is liable to be rejected with exemplary costs.

7. The applicant has filed rejoinder/written arguments reiterating the submission already made in the OA and submits that in spite of the stay granted by this Tribunal on further disciplinary proceedings, the 2nd respondent issued charge memo dtd.20.12.2018. Since the issuance of the charge memo is a case of per se contempt of this Tribunal's interim order of stay, a Contempt Petition No.10/2019 was filed on 16.1.2019. After receiving notice in the contempt petition, the authority retraced its step by withdrawing the charge memo(Annexure-RJ3). The applicant submits that this type of protracted disciplinary enquiry is clearly opposed by the Hon'ble Supreme Court in *P.V.Mahadevan vs. MD T.N.Housing Board in Civil Appeal No.4901/2005 [(2005) 6 SCC 636]* (Annexure-RJ4) holding that 'the protracted disciplinary enquiry against a Govt. employe should be avoided not only in the interest of the Govt. employee but in public interest and also in the interest of inspiring confidence in the minds of the Govt. employees'. If the facts in P.V.Mahadevan's case and in his case are compared, it is crystal clear that mistake is committed by the department in both the cases and therefore, as held by the Hon'ble Apex Court, the applicant should not be made to suffer on account of the same. There is inordinate delay in concluding the departmental enquiry and the explanation offered by the respondents in a very casual manner to overcome the delay is not convincing. Therefore, it is incorrect on the part of the 2nd respondent to contend that the OA is barred by limitation and the applicant may be granted with relief by quashing the order dtd.11.12.2014 in so far as it pertains to providing liberty to the disciplinary authority in taking fresh action against him.

8. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The respondents' Counsel has submitted a written argument note enclosing therewith the judgements of Hon'ble Apex Court which they rely on. In this case certain fraudulent payments were made during the period 1999 to 2002-03 and while the applicant was working in a Sub Regional Office(SRO) of EPF Organisation at Bhopal, he had sent a letter at Annexure-A1 dtd.18.8.2005 to the Regional Provident Fund Commissioner-I at Indore mentioning about his learning certain frauds by an assistant in the organisation of the respondents. On 19.10.2005, the Vigilance Directorate of the EPF Organisation submitted a preliminary investigation report regarding the fraudulent settlement of claims in SRO, Bhopal citing about 14 cases involving a fraud of Rs.56.87 lakhs. The names of the dealing assistants and the Section Supervisor are also mentioned in the vigilance report and it is also specifically stated that all the claims have been authorised by the applicant as Asst.Provident Fund Commissioner. It has also been noted in the same vigilance report that 'the applicant has first taken the initiative in bringing the fraud to light and though he had authorised the claims, he has taken administrative action in the right direction in preserving documents, calling for vigilance investigation and also rendering full cooperation to the undersigned'. The applicant had also forwarded a whistleblower complaint vide Annexure-A2 to the Central Vigilance Commissioner, New Delhi reiterating the same points and also admitting that some of the fraudulent cases were approved by him when he was posted as Assistant Commissioner there. He has also specifically requested the CVC to appreciate that in spite of the risk of facing action himself, he has promptly reported the matter in the interest of integrity and with a view to detect the true extent of the fraud in the department. The subsequent investigations had resulted in

the respondent organisation finding that a pecuniary loss of Rs.1.5 crore has been caused due to the fraudulent activities with respect to 46 fraudulent claims attributable to the applicant's office which resulted in Annexure-A6 order with a penalty of reduction to a lower stage by two stages for a period of 2 years without cumulative effect. This order was however set aside by the appellate authority vide Annexure-A7 since the original approval of the disciplinary authority was not taken before issuing of charge memorandum in the year 2010 thereby quashing the penalty order at Annexure-A6 however with liberty to the disciplinary authority to take disciplinary action afresh under the rules. Subsequent to all these developments, the applicant was also promoted to the next level of Regional Provident Fund Commissioner Grade-I vide Annexure-A9. Before granting this promotion, from the note file placed at Annexure-A10, it is clear that the disciplinary authority before issuing the charge memorandum has also noted as follows:

"I had given a personal hearing to Shri Maneesh Agnihotri. In view of the fact that Shri Maneesh Agnihotri is the whistleblower in the instant case without whom the fraud would not have been uncovered, we may reconsider issue of fresh charge-sheet."

9. After considerable passage of time after the stand taken by the respondents, in December 2018, a fresh charge memo was sought to be issued against the applicant taking a cue from the appellate authority's order dtd.11.12.2014 giving liberty to the DA to take disciplinary action afresh under the rules. As rightly contended by the applicant, the respondents have not initiated any action under the rules for taking any fresh action against the applicant almost for 4 years after the order of the appellate authority quashing the earlier punishment order. In any organisation if the department considers it serious enough to impose a punishment on a delinquent employee, any procedural lacunae should be covered quickly and

fresh charge memo should have been issued at the earliest point of time. However as seen in the noting at Annexure-A10, it is possible that the respondents also wanted to give the benefit of the fraud having been brought to light by the applicant himself. Even though the respondents claim that the Vigilance Department had only started the whole issue and that the applicant's letter to the CVC is one month after that, we cannot appreciate their contention since in the said vigilance report itself, a clear mention is made about the applicant's having taken the initiative in bringing the fraud to light and it is also admitted therein that these claims have in fact been also authorised by him. From the facts of the case, it is obvious that even though the applicant had joined the particular position in November, 2003 itself, he himself has brought to the notice of his higher officials the issue of the fraudulent claims only in August, 2005 and not immediately as claimed by him in the present application. However the fact still remains that when he came to know of it, instead of trying to protect himself further, he had obviously sent a letter at Annexure-A1 which was followed by a vigilance report in Annexure-A4 and his letter to the CVC vide Annexure-A2. The applicant would now contend that considering the penalty imposed on him in 2014, it is clear that the respondents themselves were not considering him the main culprit in the issue.

10. The respondents have filed further written arguments emphasising that there has been delay of 1030 days in filing this OA by the applicant and no satisfactory explanation has been given for the delay. The applicant has however maintained that after having been given promotion in the year 2015 and the fact that the Appellate Authority had ordered for withdrawal of proceedings, he was under the impression that no further action would be taken in this regard but subsequently only in the year 2018, he had come to know informally about the initiation of the

further action and hence the delay in filing of the OA. The respondents would also claim that no prejudice is caused by the order of the Appellate Authority and that the applicant did not specify as to how the same could prejudice him. However, as we have seen, initiation of fresh proceedings at this juncture would certainly affect the promotional prospects of the applicant and as has been held in a number of cases by the Hon'ble Apex Court, there has to be a reasonable link between the alleged misconduct and the initiation of disciplinary proceedings. There has been a considerable delay of almost 4 years in the initiation of disciplinary proceedings and therefore, we cannot find fault with the applicant for having legitimate expectation that no further action would be initiated especially since within a year of the order issued by the Appellate Authority, he had in fact been promoted to the next level.

11. We have to now examine the necessity of protecting the interest of the respondents with the issue of the fraudulent claims leading to the huge pecuniary loss to the organisation. From the facts of the case, it is not apparent as to what action was taken against the other persons involved in committing the fraud, whether any recovery has been made from them etc. The apprehension of the applicant that the charge memo is being contemplated at a time when a further promotion is due for him is real and needs to be appreciated in the right perspective. The respondents have not bothered to act on their own orders of 2014 relating to the initiation of fresh disciplinary proceedings. This may be deliberate or otherwise and we cannot come to any judgment on this. The fact remains that there has been considerable delay in the initiation of proceedings and any initiation at this stage could jeopardize the rights of the applicant to be considered for further promotion. Having waited for almost 4 years, the respondents should not initiate any such disciplinary proceedings against the applicant at this stage especially in

view of the note of the then Disciplinary Authority vide Annexure-A10. The issue of fraud was brought to the notice of the respondents by the applicant only and the Annexure-A6 order which was subsequently withdrawn also adds force to the argument that the fault lay elsewhere and it is presumed that the loss to the respondent organisation was recovered by separate proceedings against the main culprits in the issue.

12. The OA is therefore allowed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/01713/2018

- Annexure A1: Copy of the report dtd.18.8.2005
 Annexure A2: Copy of the confidential report dtd.11.11.2005 submitted by the applicant to CVC new Delhi
 Annexure A3: Copy of the letter dtd.19.12.2005 from CVC to applicant along with typed copy
 Annexure A4: Copy of the preliminary investigation report dtd.19.10.2005 carried out by the EPFO Vigilance
 Annexure-A5: Copy of the CVC's first stage advice dtd.5.3.2007
 Annexure-A6: Copy of the penalty order dtd.3.6.2014
 Annexure-A7: Copy of the Appellate Authority order dtd.11.12.2014 along with typed copy
 Annexure-A8: Copy of the CAT PB order dtd.16.8.2016 in OA.2431/2013
 Annexure-A9: A copy of the promotion order dtd.3.6.2015 as RPFC-I
 Annexure-A10: Copy of the information received under RTI on 30.7.2015

Annexures with reply statement:

-NIL-

Annexures with rejoinder:

- Annexure-RJ1: Postal track record evidencing the service of Tribunal's notice to respondents 1 & 2 on 12.11.2018 itself
 Annexure-RJ2: Copy of the order sheet from 30.1.2018 to 6.12.2018 in the top noted OA
 Annexure-RJ3: Copy of the order dtd.1.3.2019 in CP.10/2019
 Annexure-RJ4: Copy of the Apex Court ruling in P.V.Mahadevan's case reported in (2005) 6 SCC 636

Annexures with written arguments note of the respondents:

- Annexure-1: Judgment copy of (2018) 16 SCC 721
 Annexure-2: Judgment copy of 1995 supp (3) SCC 231
 Annexure-3: Judgment copy of (2007) 15 SCC 627
 Annexure-4: Judgment copy of 1959 supp (2) SCR 476: AIR 1959 SC 798
 Annexure-5: Judgment copy of (2010) 5 SCC 349
 Annexure-6: Judgment copy of 1999 SCC Online Guj 143 : (1999) 2 GLH 952 : (2000) 41 91) GLR 46 : (1999) 3 GCD 1955
 Annexure-7: Judgment copy of (1987) 1 SCC 5
