(2017) 06 DEL CK 0026

In the Delhi High Court

Case No : 8996 of 2014

L.D. JOSHI Vs CENTRAL PROVIDENT FUND COMMISSIONER? & ORS

Date of Decision : 09-06-2017

Acts Referred:

Citation : (2017) 06 DEL CK 0026

Hon'ble Judges : Anu Malhotra

Bench : SINGLE BENCH

Advocate : R.R.Rajesh, ?Ripu Daman?Bhardwaj, ?T.Archana

Judgement

1. The petitioner Mr. L.D. Joshi, who had joined respondent no. 6 i.e. M/s. BOSCH Limited at Hosur Road, Adugodi, Bangalore - 560030 formerly known as Motor Industries Company Limited (MICO) as Commercial Officer, was allotted employees EPF account no. KN/120/10857F and EPF contributions were made w.e.f. 01.09.1984. The petitioner was transferred to the company''s Delhi office i.e. M/s. BOSCH Limited at 85-A, Rashyamook, Panchkuin Road, New Delhi (arrayed as respondent no. 5) w.e.f. 01.04.1988 and a new EPF account number was opened with respondent no. 2, (RPFC Delhi North). Vide application dated 14.02.2008 (which date the respondents no.1-3 claim to be 01.05.2008), the petitioner applied for transfer of his EPF accumulations from the office of the Regional Provident Fund Commissioner, EPFO, Raja Ram Mohan Roy Road, Bangalore-560025 (arrayed as respondent no. 3) to the Office of the Regional Provident Fund Commissioner, Bhavishyanidhi Bhawan, 28,

Community Centre, Wazirpur, Industrial Area, Dellhi - 110052 (arrayed as respondent no.2) and an acknowledgement in relation thereto was issued by the Regional Provident Fund Commissioner, Bhavishyanidhdi Bhawan, 28, Community Centre, Wazirpur Industrial Area, Delhi-110052 (arrayed as respondent no. 2). It is submitted by the petitioner that despite reminders made by him by several personal visits to the office of the respondent no. 2, the transfer of his EPF account was not effected till June, 2008 and the petitioner was advised to get the transfer done by personally visiting the office of the Regional Provident Fund Commissioner, EPFO, Raja Ram Mohan Roy Road, Bangalore-560025 (arrayed as respondent no. 3) whereafter, the petitioner personally visited Bangalore in June, 2008 to ascertain the fate of his application seeking transfer of the account no. KN/120/10857F but it was informed that there was no information received from the petitioner''s former employer i.e. respondent no. 6 and he was assured that the transfer would be effected within a month. No transfer of the EPF account took place even thereafter and in March, 2011, the respondent no. 1 i.e. Central Provident Fund Commissioner, Employees'' Provident Fund Organization, Bhavishyanidhi Bhawan, 14, Bhikaji Cama Place, New Delhi - 110066 i.e. the Apex Authority under the EPF scheme published a notice captioned "Important Message for Employees'' Provident Fund Members" in the leading newspaper.

2. The message reads thus:

"In case no contribution has been made in the Provident Fund account continuously for 36 months, it will be identified as inoperative and interest would not be credited on such account after 36 months. This will come into effect from 01.04.2011."

Pursuant to the said notification, the petitioner tried to get the transfer of his EPF account no. KN/120/10857F effected, in order to avoid the loss of interest w.e.f. 01.04.2011 and the petitioner again visited Bangalore in June, 2011 to inquire from the respondent no. 3 about the transfer of his account to which he was informed that the necessary verification in Forms 5 & 10 from the petitioner''s former employer in Bangalore had not been received and the petitioner was advised to personally get them forwarded by his former employer, whereupon the petitioner states that he immediately rushed to the Head Office of his former employer at Bangalore and got the Forms 5 & 10 issued by the employer and delivered the same to the Assistant RPFC, who issued an acknowledgement dated 22.06.2011.

The EPF account of the petitioner was not transferred to Delhi till September, 2011. In the meanwhile, the petitioner left the services of M/s. BOSCH Limited (arrayed as respondent nos. 5 & 6) towards the end of December, 1989 and the last contribution made to the Delhi account was in January, 1990 and thereafter, there was no contribution to the EPF account made neither at the Bangalore office nor at the Delhi office but both the accounts were earning interest and the petitioner thus did not press for transfer of his account from the office of the Regional Provident Fund Commissioner, EPFO, Raja Ram Mohan Roy Road, Bangalore-560025 (arrayed as respondent no. 3) to the office of the Regional Provident Fund Commissioner, Bhavishyanidhdi Bhawan, 28, Community Centre, Wazirpur Industrial Area, Delhi-110052 (arrayed as respondent no. 2).

3. The respondent no. 3 in December, 2011 transferred a sum of Rs.2,03,548/- to the petitioner''s EPF account no. DL/4108/126 maintained with the respondent no. 2. On the petitioner''s inquiry from the office of the respondent no. 2 as to whether the accumulations of the Bangalore account had been credited to his Delhi account no. DL/4108/126, the petitioner was told that no such account no. DL/4108/126 existed in the records of the respondent no.2.

4. The petitioner has thus submitted that his EPF account no.

DL/4108/126 had disappeared without leaving any trace and that he suspected that the accumulations in his Delhi account had been embezzled as the last contribution in the said account was in January, 1990 and since then there was no transaction in the said account. The petitioner has further submitted that repeated reminders were made by him to the authorities of the Delhi North Office of EPFO to trace the account but they fell on deaf ears. The petitioner further submitted that he filed a representation dated 09.04.2012 to the then CPFC about the disappearance of his account no. DL/4108/126 from the records of respondent no. 2 but no action thereon was taken initially. Thereafter, vide letter dated 06.06.2012 addressed to the respondent no. 3 i.e. RPFC, Bangalore, the respondent no. 2 i.e. RPFC, Delhi North returned the cheque no. 812489 dated 22.09.2011 for a sum of Rs.2,03,548/- stating that the said amount was required to be transferred directly to the Employees Provident Fund Trust. The petitioner thus suspected that there was something amiss regarding his EPF account maintained with the respondent no.2. The petitioner submits that this letter dated 06.06.2012 of the respondent no. 2 necessarily implied that the petitioner''s account no. DL/4108/126 was not maintained with the respondent no. 2, whereas it was so maintained with respondent no. 2 who had allotted the account no. DL/4108/126. The petitioner has thus submitted that his account had disappeared from the records of the respondent no. 2 and subsequently the missing account reappeared mysteriously and that the disappearance and reappearance of the petitioner''s account remain unexplained.

5. The petitioner submits that he had thus moved an application dated 20.09.2012 under the RTI to the respondent no. 1 i.e. Central Provident Fund Commissioner seeking information, interalia, of the fate of his missing account and the transfer of his Bangalore account

to Delhi but the respondent no. 1 forwarded the RTI application to respondent no. 3 vide letter dated 11.10.2012 stating that the questions therein related to the Bangalore office and respondent no. 3 replied to the RTI application vide letter dated 02.11.2012 stating that a sum of Rs.2.03,548/- was transferred to respondent no.2 for crediting into the account no. DL/4108/126 and was returned by the respondent no. 2 as it was to be transferred directly to the Employer''s Trust. The petitioner thus submitted that this was an implicit admission by respondent no. 3 that the petitioner''s account and accumulation thereunder had disappeared from the records of the respondent no. 2.

6. The petitioner further submits that he thereafter made another representation dated 30.01.2013 to the CPFC, Delhi but it was to no avail whereafter, he filed another representation vide letter dated 07.11.2013 and then received a letter dated 01.04.2014 from the respondent no.2 that a sum of Rs.2,03,548/- had been transferred from account no. KN/120/10857F and had been credited to the petitioner''s account no. DL/4108/126. The petitioner has thus submitted that this letter by necessary implication conveyed that the missing account no. DL/4108/126 had reappeared and that the sum of Rs.2,03,548/- had been returned.

7. The petitioner then sent a brief summary dated 17.02.2014 of the sequence of events to the CPFC, Delhi regarding missing of his account no. DL/4108/126 and the disappearance, reappearance thereof and of the return of a sum of Rs.2,03,548/- by respondent nos. 2 & 3. The petitioner has submitted that on 28.03.2014, he attended a meeting with the CPFC and he was persuaded to withdraw his PF accumulations and was assured that they would pay the interest w.e.f. 01.04.2011 and gave the petitioner the necessary withdrawal form and the petitioner thus applied for the withdrawal of the entire corpus of his EPF and submitted the necessary forms to the Additional CPFC

who in turn forwarded the forms to respondent no. 2 and the petitioner received a mobile alert on 07.04.2014 from his banker "Bank of India" that a sum of Rs.3,41,881/- and Rs.3,225/- were credited to his savings bank account and thus a total sum of Rs.3,45,106/- was paid to the petitioner by the respondents but the petitioner has thus submitted that this sum does not include interest from 01.04.2011.

8. The petitioner submits that he suffered lot of mental agony and had incurred heavy expenditure on running from pillar to post to have his grievances redressed. The petitioner has prayed for the grant of directions to the respondents to pay the interest on Rs.3,45,106/- from 01.04.2011 up-to date and directions to the respondents to pay to the petitioner Rs.5 lacs for his unnecessary harassment, mental agony and undue expenditure incurred in his efforts to seek redressal of his grievances including the costs of this petition.

9. The petitioner through his petition has submitted that the petition involved the following important questions of facts and law : -

"1. Whether respondent no. 1 and 2 are justified in denying interest the petitioner from 01.04.2011 on his Bangalore a/c no. KN/120/10857F and Delhi a/c no. DL/4108/126 when the delay beyond 31.03.2011 in transferring his EPF accumulations from Bangalore to Delhi and theft of his Delhi account are not attributable to any fault on the part of the petitioner.

2. Whether respondent no. 2 with whom the petitioner''s EPF account no. DL/4108/126 was

maintained and to whom application in prescribed format was made on 14.02.2008 for transfer of petitioner''s accumulations in EPF account no. KN/120/10857F and respondent no. 3 who was custodian of the petitioner''s Bangalore account were not responsible for effecting the transfer within a reasonable time of 30 to 60 days.

3. Whether the denial of interest of petitioner on his EPF corpus w.e.f. 01.04.2011 to the date of payment i.e., 07.04.2014 is not violative of the principle of nature justice and the fundamental/legal rights of the petitioner especially when the petitioner had applied for his EPF accumulations in Bangalore account to his Delhi account on 14.02.2008 while the notification by the central government that no interest would be credited in inoperative accounts came into force on 01.04.2011.

4. Whether the denial of interest to the petitioner on his consolidated corpus of EPF is justified when the respondent no. 3 (EPFO Bangalore Office) did not exercise due diligence in getting the necessary forms/information required as per their procedure from the former employer of the petitioner M/S BOSCH Ltd. (respondent no. 6).

5. Whether the loss of interest and mental agony caused to the petitioner due to the inordinate delay in transferring his account from Bangalore to Delhi and disappearance of petitioner''s Delhi account no. DL/4108/126 and consequent return of cheque for Rs.2,03,548/- meant to be credited into petitioner''s Delhi account has not caused grave injustice to the petitioner.

6. Whether the respondents no. 1, 2, 3 and 4 are not answerable as to how and where the petitioner''s account no. DL.4108/126 had gone missing for over 2 years.

7. Who were the persons responsible for the disappearance or to be precise the theft of the petitioner''s account and subsequent restoration of his account following the representation made by the petitioner to CPFC and what action was taken by CPFC against the persons responsible for disappearance for his account."

10. The respondents no. 1 to 3 through their counter affidavit filed by Sh. Raju, APFC (Legal) dated 18.03.2015 submitted that the petitioner''s application of 01.05.2008 for transfer of PF accumulation in claim Form-13 was forwarded to the RO, Bangalore vide letter no. DL/4108/126/ACTTS/CPM-02/9628 dated 23.05.2008 for the transfer of PF accumulation from KN/120/10857 and thereafter a letter no. KN/PF/ACCTS.CEC.3/1284/2008-09 dated 10.12.2008 was received from the RPFC, Bangalore and confirmation of non settlement of petitioner''s PF account. It has been stated by the respondents no. 1 to 3 that letter dated 20.05.2009 was received by RPFC, Delhi from RPFC, Bangalore for verification of petitioner''s PF account number and specimen signatures of the employer. It was replied to by the respondent on 14.07.2009 but no transfer was received from the RPFC, Bangalore.

11. It was further submitted by the respondents no. 1 to 3 that the transfer of the amount of Rs.2,03,548/- of account no. KN/120/10857F

was received by their office on 12.10.2011 which amount was sent back to the RPFC, Bangalore on 14.05.2012 vide cheque no. 979568 as the R.O. Bangalore had selected the code as DS/NHP/4108/126 wrongly instead of CPM/4108/126. The said amount was then received from RPFC, Bangalore on 11.03.2013 and was credited in the petitioner''s present account no. DL/4108/126 on 25.05.2013.

12. It was further submitted by respondents no. 1 to 3 that both the accounts have become inoperative w.e.f. 01.04.2011 and thus no interest was payable as per 06.05.2014 Gazette notification w.e.f. 01.04.2011 and that the interest was credited up to 01.04.2011 by RO, Delhi (North) on the opening balance of PF Account no. DL/4108/126 as on 01.04.2011 and transferred amount as received from RO, Bangalore. It was submitted further on behalf of respondents no. 1 to 3 that under the said circumstances no interest is payable w.e.f 01.04.2011 on both accounts neither separately nor jointly, as per the gazette notification dated 06.05.2014, irrespective of the date of request for transfer. The respondents no. 1 to 3 further submitted that the date of leaving in respect of PF Account no. DL/4108/126 is 23.12.1989 and even if the transfer would have been credited in DL/4108/126 in the year 2008 itself, as per existing guidelines, the crediting of the interest in their accounts would have been stopped w.e.f. 01.04.2011. The respondents nos. 1 to 3 further submitted that on 18.02.2015 an amount of Rs.36,955/- had been transferred into the account no.604310100018881 of the petitioner in the Bank of India, Mayur Vihar through the NEFT by the department and that the interest amount was paid for the period from 01.04.2011 to 25.03.2013. The respondents no. 1 to 3 further submitted that as per Para 72(6) of the EPF Scheme 1952 since the petitioner had failed to prefer the transfer application within a period of 36 months of leaving service as both the accounts had become inoperative, the interest could not be credited in

both the accounts on and after 01.04.2011 as per the provisions of Para 60(6) of the EPF Scheme, 1952. The respondents no. 1 to 3 further submitted that the former Employer of the petitioner i.e. R-6 is also stated to have issued the Form 5 and 10 in the month of June 2011, only, for the needful to be done by the RPFC. The respondents no. 1 to 3 further submitted that the petitioner had left service on 23.12.1989 and had moved the application on 14.02.2008 i.e. after a lapse of approximately 19 years and that both the accounts of the petitioner have become inoperative and the interest cannot be credited into the two accounts on and after 01.04.2011 in terms of Para 60(6) of the EPF Scheme, 1952.

13. The respondents no. 5 & 6 i.e. Bosch Limited at New Delhi and Bosch Limited at Bangalore, respectively, through their common counter affidavit dated 17.04.2015 of Mr. H.S. Ramesh, Deputy General Manager (Human Resources) of the Bosch Limited at Bangalore / respondent no. 6 stated that the Petitioner joined the employment of the respondent no.6 with effect from 02.04.1984 and was allotted PF account no. KN/120/10857 and the PF accounts were then maintained at the office of the Regional Provident Fund Commissioner, Bangalore, which establishment was an unexempted establishment under the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952. Mr. H.S. Ramesh, Deputy General Manager (Human Resources) of the Bosch Limited at Bangalore / respondent no. 6 further stated vide para 2 of his affidavit that the petitioner was transferred to the Sales Office situated at New Delhi with effect from 11.04.1988 and was allotted new P.F. account number DL/4108/126 and at the relevant time the PF accounts were maintained at the RPFC, New Delhi as the establishment was an unexempted establishment. It is further submitted on behalf of the respondent nos. 5 & 6 that the petitioner left the services of the Bosch

Limited in the year 1989 and that all the relevant returns monthly / annual are submitted to the appropriate authorities prescribed under various labour legislations and since the petitioner approached in person for issuance of a duplicate copy of Form 5 and 10, the same was issued by the respondent 6 to enable the petitioner to submit the same to facilitate the RPFC authorities of Bangalore for further needful in the matter of settlement of PF account of the petitioner. The respondents no. 5 & 6 further submitted that on their application for exemption under Para 27A of Employees Provident Funds and Miscellaneous Provisions Act, 1952, the respondent''s establishment was exempted vide order of relaxation bearing No KN120/PF/Exempt/ Relaxation Order/555/5-96 dated 02.05.1996 effective from 01.04.1996 and that thus the transfer of accumulations from New Delhi account to the Trust does not arise.

14. Through the rejoinder affidavit filed on behalf of the petitioner to the counter affidavit filed by the respondents, the petitioner submitted that he had applied for transfer of his Bangalore / accumulations in the EPF Account No. KN/120/10857F to his Delhi account DL/4108/126 on 14.02.2008 and not on 01.05.2008 as claimed by the respondents and that the application filed on 14.02.2008 had been submitted in the prescribed form 13 in RPFC, Delhi North, who had issued an acknowledgement card bearing the date and stamp of 14.02.2008, copy of which was submitted along with the writ petition. The petitioner further submitted that he had no knowledge as to when his application for transfer was forwarded by respondent no. 2 to respondent no. 3 i.e. RPFC, Bangalore but that as per their averments, the transfer application was forwarded to respondent no. 3 on 23.05.2008 with an intentional delay of three months and ten days after submitting the application for transfer and that the normal practice is that the application for transfer is forwarded

to the Regional Office from where the account was transferred immediately after receiving the application.

15. The petitioner further submitted that the letter no. KN/PF/ACCTS.CEC.3/1284/2008-09 dated 10.12.2008 was received from RPFC, Bangalore and the reply thereto vide letter CPM-2/DL 4108/126/18650 dated 27.02.2009 was not marked to the petitioner and the letters dated 20.05.2009 and 14.07.2009 referred to by the respondents no. 2 & 3 were inter-office correspondences between the respondents no. 2 & 3, the contents of which were not disclosed to the petitioner and the same was an attempt of the respondents to divert the attention of the Court from the real controversy i.e. theft of the petitioner''s PF Account and subsequent recovery of the amount when an enquiry was ordered by the CPFC into the disappearance of his account and that the person responsible for the disappearance of his PF account had put the stolen property back in its place. The petitioner further submits that the respondent no. 2 did not receive the transfer of the EPF accumulation from respondent no. 3 despite the correspondences between them and that the respondents no. 2 & 3 are the subordinate authorities under respondent no. 1 and they all are respondents in the present petition and are jointly and severally responsible for the negligence. Interalia, the petitioner submitted that the respondents in their counter affidavit had stated that the transfer of amount of Rs.2,03,548/- from account no. BG/BNG/120/10857 was received on 12.10.2011 and the transfer amount was sent back to RPFC, Bangalore on 14.05.2012 vide cheque no. 979568 as the Regional Office, Bangalore had selected the code as DL/NHP/4108/126 wrongly instead of DL/CPM/4108/126 and the same amount was then received from RPFC, Bangalore on 11.03.2013 and was credited into the petitioner''s present account no. DL/4108/126 on 25.03.2013 and the petitioner thus submitted that if

the respondent no. 3 had wrongly selected the code DL/NHP/4108/126 instead of DL/CPM/4108/126, it was not the fault of the petitioner but solely that of the respondents no. 1, 2 & 3 and the petitioner should not suffer due to the fault of the respondents.

16. The petitioner further submitted that he had filed an RTI application dated 20.09.2012 with respondent no. 1 i.e. CPFC seeking information on the fate of his missing EPF Account qua which respondent no. 1 passed on his RTI application to the respondent no. 3 vide letter dated 11.10.2012 stating that the subject matter on which the information is closely related to respondent no. 3 qua which the petitioner submitted that the information relates to respondents no. 1 & 2 as his account had gone missing from the office of respondent no. 2 and respondent no. 2 is responsible for disappearance of his account but respondent no. 1 had tried to pass on the burden which clearly indicated that the respondent no. 1 had shielded the persons responsible for the theft of his account.

17. The petitioner also refuted the submission of the respondent no. 3 in reply to his RTI query regarding disappearance of his EPF account from the office of the respondent no. 2 stating that a sum of Rs.2,03,548/- had been transferred from BG/BNG/120/10857 to DL/4108/126 vide cheque no. 812849 dated 22.09.2011 sent to the Regional Office, Delhi South based on the details furnished in Form-13 received by the office on 22.06.2011 and that subsequently the transferred amount of Rs.2,03,548/- was returned by the Regional Office, Delhi North vide letter dated 06.06.2012 stating that the amount had to be transferred directly to ''MICO Workmen''s (Bangalore Works & Sales Houses), PF Trust'' since the PF Account of Bosch Limited bearing PF code no. DL/4108 was maintained by its own trust. The petitioner further submitted that his account was maintained with respondent no. 2 who had allotted the account no

DL/4108/126 and was not maintained with the employers trust and that itself indicates that respondents no. 1, 2 & 3 were hand in glove in perpetrating the embezzlement.

18. The petitioner further submitted that the petitioner had applied for transfer of the Bangalore account to the Delhi North account on 14.02.2008 i.e. more than three years before the account became inoperative and that the inordinate delay in transferring the account from Bangalore to the Delhi North account was not attributable to any fault of the petitioner and thus the petitioner is entitled to full interest on both accounts from 01.04.2011 to the date of payment i.e. 07.04.2014 and interest on interest thereafter.

19. The petitioner has further submitted that the circumstances unmistakably lead to the presumption of embezzlement of his Delhi account by respondent no. 2 since there was no contribution in the account for about 23 years and the persons responsible for the embezzlement thought that nobody was going to claim the accumulations of the Delhi North account and that they had deliberately avoided reference to their own letter dated 06.06.2012 and their reply to the RTI application of the petitioner in the counter affidavit nor had they sent any communication to him to explain the mysterious disappearance and reappearance of his Delhi North account and that they had referred to the 06.05.2014 Gazette Notification and various provisions of EPF Schemes only to divert the attention of the court from the main issue of disappearance and reappearance of his account from Delhi North resulting in an inordinate delay of 6 (six) years in transferring of his account.

20. The petitioner has further submitted that a sum of Rs.36,995/- had been credited to his bank account no. 604310100018881 of Bank of India, Mayur Vihar after the institution of the present writ petition but he had not received any communication from the respondents

regarding the nature of payment whether interests or otherwise and the payments are (generally) followed by a letter giving details of the payments.

21. The petitioner has further submitted that in their counter affidavit, the respondents had stated that a sum of Rs.36955/- is interest for the period 01.04.2011 to 25.03.2013 but the respondents did not say on what sum of money and at what rate this interest was paid and that the respondents were trying to conceal the vital facts of the case and were trying to take advantage of their own wrong and that the submissions made by the respondents themselves were contrary in as much as they had contended that no interest was payable w.e.f. 01.04.2011 and if that was the case, the question arose as to why the respondents had paid Rs.36955/- by way of interest on which sum and at what rate.

22. On 18.09.2015, an office note was submitted by the respondents showing the amount which had been paid to the petitioner along with the interest, which was disputed by the petitioner and thus the petitioner was directed to file an affidavit regarding non receipt of the interest or the calculation made in the office note, which was filed by the petitioner, thereafter.

23. Through the office note, it had been submitted by the Regional P.F. Commissioner-II to the effect : -

"The claim form-19 for full and final settlement of PF account No. DL/4108/126 was preferred by the subscriber on 04.04.2014. Accordingly, an amount of Rs.3,41,88/- including the transfer-in amount of Rs.2,03,548/- received from BG/BNG/120/10857 along with interest upto 31.03.2011 was paid to member vide NEFT cheque No. 288564 on 04-04-14.

As the PF account No. DL/4108/126 was inoperative on the date of settlement i.e. 04-.4.2014, the interest was paid upto 31-03-2011 only.

The transfer-in amount of Rs.2,03,548/- was received on 11-03-2013 from BG/BNG/120/10857 to DL/4108/126. The same was credited in PF account No. DL/4108/126 on 25-03-2013.

On examination of the fact, para 60(6) of the EPF Scheme, 1952 has been invoked and an amount of Rs.36955/- towards interest for the period of 01.04.11 to 25.03.2013 on the transfer-in amount of Rs.2,03,548/- has been paid to subscriber on 18-02-2015 vide NEFT cheque no. 303451."

24. In terms of the order dated 18.09.2015, the petitioner Sh. L.D. Joshi submitted an affidavit dated 06.11.2015 submitting that a sum of Rs.3,45,106/- was received by him in his bank account as is shown in two different entries of Rs.3,41,881/- and Rs.3,225/- of the same date i.e. on 7.04.2014. The petitioner further submitted through his affidavit that the office note of the respondent did not give any clarification regarding the disappearance rather theft of his Delhi account for about two years as is evident from letter dated 06.06.2012. The petitioner further submitted that the office note did not refer to the areappearance of his account after an internal enquiry was ordered by former CPFC Sh. Anil Swarup. Interalia, the petitioner further submitted that interests have been calculated on Rs.2,03,548/- and not on Rs.3,45,106/- as suggested by the respondent. The petitioner further submitted that a sum of Rs.2,03,548/- was sent from Bangalore to Delhi which account disappeared and a sum of Rs.2,03,548/- was returned to Bangalore vide letter dated 06.06.2012. The petitioner thus sought interest upto February, 2017 and submitted the calculation of interest of Rs.3,45,106/- which is as under : -

"4. CALCULATION OF INTEREST on Rs.3,45,106/-

Interest @8.25% from 1.4.2011 to 31.3.2012

3,45,106 x8.25/100 = 28,471/- ....(1)

Interest @8.5% on (3,45,106 + 28,471 = 3,73,577) From 1.4.12 to 31.3.13

3,73,577 X8.25/100 = 31,754 ....(2)

Interest @8.75% on (3,73,577+31,754 = 4,05,331) 1.4.2013 to 31.3.2014

4,05,331X 8.75/100 = 35,466 ....(3)

Interest (@) 8.75% on (4,05,331+35,466=4,40,797) 1.4.14 o 7.4.14 (7 days)

4,40,797x8.75 x7 / 100x365= 740 ....(4)

Total interest (1) +(2) +(3) +(4)

28,471+31,754+35,466 +740 = 96,431/- ....(5)

Interest on interest from 8.4.14 to Dec.2015 (1 year 9 months) (g) 8.75%

96,431x8.75 x7/100 = 14,766/- ....(6)

Total (5) + (6)

96,431 + 14,766= 1,11,197

Already paid = Rs.36,955/-

To be paid Rs.1,11,197-36,955 = Rs.7,42,242"

25. The petitioner further submitted that invoking para 60(6) of the EPF Scheme, 1952 has no relevance to the present case and the tactics have been utilized by the respondent to divert the attention of the court from the theft of the Delhi EPF accumulation and that the respondents had subsequently put the stolen property back in its place.

26. Arguments were addressed by the petitioner himself and on behalf of the respondents no. 1, 2 & 3, submissions were made by the learned counsel Mr. R.R. Rajesh and by the learned counsel Mr. Ripu Daman Bhardwaj on behalf of the respondent no. 4 and by the learned counsel Ms. T. Archana on behalf of respondents no. 5 & 6 whereby the submissions made in the pleadings on the record were reiterated on behalf of either side.

27. Vide order dated 19.02.2016 in the present proceedings the respondents were directed to file their response with an additional affidavit in relation to the treatment given to the money outstanding to the petitioner, along with copies of all relevant records.

28. The affidavit of Mr. Manish Kumar Thakur, APFC (Legal) in the office of the respondent no. 2 dated 16.11.2016 was submitted, which reads as under : -

"3. That the petitioner was working with the M/s Bosch Ltd. from 1984 to 1989 and posted at Bangalore. He was assigned PF code no. BG/BNG/120/10857 for the period from 02.04.1984 to 08.04.1988 and his contribution was deposited with the RO, Bangalore.

4. That on 11.04.1988 he was transferred from Bangalore to Delhi and hence he was allotted the PF code no. DL/4108/126 for the period from 11.04.1988 to 23.12.1989.

5. That on 01.05.2008 the petitioner moved an application for the transfer of PF accumulation in claim form -13 which was duly forwarded to the RO, Bangalore vide letter no. DL/4108/126/ACCTS/CPM-02/9628 dated 23.05.2008 for the transfer of PF accumulation from KN/120/10857.

6. That a letter no. KN/PF/ACCTS.CEC.3/ 1284/2008-09 dated 10.12.2008 was received from RPFC, Bangalore for confirmation of non- settlement of petitioner''s PF account. Reply of the same was sent by the RPFC Delhi to the RPFC Bangalore offices vide letter no.CPM- 2/DL4108/126/18650 dated 27.02.2009.

7. That again a letter dated 20.05.2009 was received by RPFC Delhi from RPFC Bangalore office for verification of petitioner''s pf account no. and specimen signatures of the employer. The same was replied by this office on 14.07.2009, no transfer was received from the RPFC Bangalore.

8. That transfer in amount of Rs.2,03,548/- from account no. BG/ BNG/120/10857 was received by this office on 12.10.2011. The transferred amount of Rs.2,03,548/- was sent back to RPFC Bangalore vide cheque no.979568 dated 14.05.2012 as RO, Bangalore had selected the code as DS/ NHP/4108/126 wrongly instead of DL/CPM/4108/126. The said amount was then received from RPFC, Bangalore on 11.03.2013 and the same has been credited in petitioner''s present account no. DL/4108/126 on 25.03.2013.

9. That both accounts of the petitioner become in operative w.e.f. 01.04.2011. Hence no interest was payable as per May 06, 2014 gazette notification w.e.f. 01.04.2011. Interest credited up to 01.04.2011 by RO, Delhi (north) on opening balance of PF Account no. DL/4108/125 as on 01.04.2011 and transferred amount received from RO, Bangalore. 10. That the petitioner''s both accounts were inoperative on May 01, 2008. The funds were transferred from an inoperative account to

another in operative account under the said circumstances, no interest is payable w.e.f. 1.04.2011 as per May 06.2014 gazette notification on both accounts either separately or jointly, irrespective of the date of request for transfer.

11. That the date of leaving in respect of PF Account no. DL/4108/126 is 23.12.1989. even if the transfer in would have been credited in DL/4108/126 in year 2008 itself, as per existing guidelines, the crediting of interest in accounts would have been stopped w.e.f. April 01, 2011."

29. For an appropriate consideration of the matter, it is essential to

advert to para 60(6) and para 72(6) of the EPF Scheme 1952.

30. Para 60(1) of the EPF Scheme, 1952 provides that : -

"The Commissioner shall credit to the account of each member interest as such rate as may be determined by the Central Government in consultation with the Central Board"

and the manner in which the interest is to be credited to the

member''s account on monthly running balance basis is provided

under para 60(2) of the said scheme, which reads as under : -

["(2) (a) Interest shall be credited to the member''s account on monthly running balances basis with effect

(i) on the amount at the credit of a member on the last day of the preceding year, less any sums withdrawn during the current year-- interest for twelve months;

(ii) on sums withdrawn during the current year-- interest from the beginning of the current year upto the last day of the month preceding the month of withdrawal;

(iii) on all the sums credited to the member''s account after the last day of the preceding year--interest from the 1st day of the month succeeding the month of credit to the end of the current year;

(iv) the total amount of interest shall be rounded to the nearest whole rupee (fifty paise counting as the next higher rupee).]

(b) In the case of a claim for the refund under paragraph 69 or 70, interest shall be payable up to the end of the month preceding the date on which the final payment is authorised irrespective of the date of receipt of the claim from the claimant concerned:

[Provided that interest up to and for the current month shall be payable on the claims which are authorised on or after the 25th day of a particular month along with actual payment after the end of the current month:

Provided further that the rate of interest to be allowed on claims for refund for the broken currency period shall be the rate fixed for the financial year in which the refund is authorised.

[Provided also that the rate of interest to be allowed on claims for refund for the broken currency period shall be the last declared rate on Employees'' Provident Fund and if the rate declared for any current year happens to be less than the previous

year''s declared rate, then it would accrue as bonus to the outgoing members and it shall be incorporated into calculation for deriving the current year''s rate of interest at the end of the year and the claims settled under this proviso shall be final.]

[Explanation.-- If an establishment is covered for the first time under the Act/ Scheme during the course of the currency period the interest shall be allowed on the sums credited to the member''s account on and from the first day of the month succeeding the month of credit to the end of the current year.]

(3) The aggregate amount of interest credited to the accounts of the members shall be debited to "Interest Account".

(4) In determining the rate of interest, the Central Government shall satisfy itself that there is no overdrawal on the [Interest Account] as a result of the debit thereto of the interest credited to the accounts of members.

(5) Interest shall not be credited to the account of a member if he informs the Commissioner in writing that he does not wish to receive it. If, however, the member subsequently asks for interest, it shall be credited to his account with effect from the first day of the period of currency in which he makes a request therefor.]

(6) Interest shall not be credited to the account of a member from the date on which it has become Inoperative Account, under the provisions of sub-paragraph (6) of paragraph 72;]

[Provided that if the settlement of claim in respect of inoperative account is delayed for more

than thirty days from the date of receipt of the application for settlement of claim, interest shall be credited to the account in accordance with sub-paragraph (2) for delay period excluding the period of thirty days.]"

It is essential to observe that Section 60(6) of the EPF Scheme

1952 was inserted by GSR 25 E dated 15.01.2011 and was enforced

w.e.f. 01.04.2011 and the provision to Section 60(6) of the EPF

Scheme 1952 was inserted vide GSR 891 (E) dated 12.12.2014 with

retrospective effect from 01.04.2011.

31. Para 72 of the EPF Scheme 1952 relates to the payment of

provident fund and para 72 (6) reads to the effect : -

"(6) Any amount becoming due to a member as a result of: (i) supplementary contribution from the employer in respect of leave wages/arrears of pay, instalment of arrear contribution received in respect of a member whose claim has been settled on account but which could not be remitted for want of latest address, or (ii) accumulation in respect of any member who has either ceased to be employed or died, but no claim has been preferred within a period of three years from the date it becomes payable, or if any amount remitted to a person, is received back undelivered, and it is not claimed again within a period of three years from the date it becomes payable, shall be transferred to an account to be called the [Inoperative Account]:

Provided that in the case of a claim for the payment of the said balance, the amount shall be paid by debiting the [Inoperative Account]."

32. The petitioner in the instant case had left the services of Bosch Limited i.e. respondents. No. 5 & 6 located at New Delhi and Bangalore on 23.12.1989. The petitioner had thus in terms of para 72 of the EPF Scheme, 1952 not sought the withdrawal of the provident fund from his account within the period of 36 months from the date payable, being 23.12.1989 in the instant case. It is thus apparent that the petitioner''s accounts were inoperative accounts both at New Delhi and Bangalore and thus ceased to be operative. The petitioner filed his application for withdrawal on 14.02.2008 after a lapse of 19 years and in terms of para 72(6) of the EPF Scheme, 1952 apparently his account at Bangalore and at New Delhi had become non operative / non functional accounts. In terms of the important message for EPF members published in Hindustan Times 13.03.2001, it was stated to the effect that :

"In case no contribution has been made in the Provident Fund account continuously for 36 months, it will be identified as inoperative and interest would not be credited on such accounts after 36 months. This will come into effect from 1st April, 2011"

Thus, clearly, the petitioner''s accounts at Delhi and at Bangalore had become inoperative in terms of the gazette notification dated 06.05.2014 w.e.f. 01.04.2011. The respondents no. 1 to 3 have rightly stated through their affidavit dated 18.03.2015 vide para 7 there of that even if the transfer had been credited in DL/4108/126 itself in terms of existing guidelines, the crediting of interest in the accounts of the petitioner would have stopped w.e.f. 01.04.2011. The application of the petitioner for settlement of his claim had according to the petitioner been filed on 14.02.2008 and due to the delay on behalf of the respondents no. 1, 2 & 3, the EPF amount was not credited into the petitioner''s account till the date i.e. 25.03.2013. The affidavit of Mr. Raju, APFC (Legal) dated 18.03.2015 states categorically that a letter was received from RPFC Bangalore vide letter KN/PF/ACCTS.CEC.3/1284/2008-09 for confirmation of any settlement of the petitioner''s PF account to which a reply was sent by RPFC Delhi to RPFC Bangalore vide letter dated CPM-2/DL4108/126/18650 dated 27.02.2009 whereafter vide letter dated 20.05.2009, a letter was received from RPFC Bangalore at RPFC Delhi for verification of the petitioner''s PF account and specimen signatures of the employer to which a reply was sent on 14.07.2009 to RPFC Delhi that no transfer was received from the RPFC Bangalore and the transfer in the amount of Rs. 2,03,548/- from account no. BG/BNG/120/10857 was received in the office of RPFC Delhi on 12.10.2011 which was sent back to the RPFC Bangalore on 14.05.2012 as RO Bangalore had wrongly selected the code DL/NHP/4108/126 instead of DL/CPM/4108/126 and then the amount was received from RPFC Banglaore on 11.03.2013 and the same was credited into the petitioner''s account no. DL/4108/126 on 25.03.2013.

33. It is thus apparent that in terms of the provisions of para 60(6) of the EPF Scheme 1952 that as the settlement of the scheme in respect of the inoperative account no. DL/4108/126 of the petitioner had not been settled for more than 30 days from the date of the receipt of the application for settlement of the scheme and thus interest had to be credited into the accounts in terms of para 60(6) of the EPF Scheme 1952 for the delayed period excluding the period of 30 days.

34. Vide affidavit dated 18.03.2015 of Mr. Raju, APFC (Legal), the respondents no. 1 to 3 have submitted that an amount of Rs.36,955/- was transferred to the account no.604310100018881 of the petitioner''s bank i.e. Bank of India, Mayur Vihar through the NEFT by the

department and that the interest amount is paid for the period from 01.04.2011 to 25.03.2013. The office note of the Regional Provident Fund Commissioner submitted during the course of the petition has clarified that the claim form 19 for full and final settlement of the account no. DL/4108/126 was preferred by the subscriber on 04.4.2014 and that an amount of Rs.3,41,881/- including the transfer amount of Rs.2,03,548/- received from BG/BNG/120/10857 along with interest upto 31.03.2011 was paid to member vide NEFT cheque no. 228464 on 04.04.2014.

35. The petitioner has submitted that a sum of Rs.3,45,106/- had been received into his account as shown in different entries of Rs.3,41,881/- and Rs.3,225/- i.e. total of Rs.3,45,106/-.

36. On a consideration of the EPF Scheme, 1952 as modified with paragraph 6 and para 72 having been amended on 15.01.2011 w.e.f. 01.04.2011, it is apparent that the petitioner''s Bangalore and Delhi accounts had become inoperative on 31.03.2011. In terms of the proviso to para 60(6) of the EPF Scheme, 1952, the EPFO has made the necessary payments of EPF dues to the petitioner.

37. Thus, the prayer of the petitioner seeking a writ in the nature of mandamus directing the respondents to pay interest on Rs.3,45,106/- upto date however cannot be granted, in as much as the interest due in terms of the para 60(6) of the EPF Scheme, 1952 and para 72 EPF Scheme, 1952 as on force on 01.04.2011 (on which date the EPF account of the petitioner at Bangalore and at Delhi had become inoperative), has already been paid to the petitioner and the delay in making the payment from 01.04.2011 to 25.03.2013 in relation to the amount of Rs.2,03,548/- received from Bangalore in relation to BG/BNG/120/10857 and credited thereafter into DL/4108/126 on 25.03.2013 has already been taken into account.

38. In these circumstances, it is not considered appropriate to direct

any investigation into the aspect of the missing EPF account of the petitioner as the same may be a technical lapse. Even as per the petitioner, the respondent no. 3 i.e. The Regional Provident Fund Commission, Bangalore in reply to the RTI application of the petitioner dated 02.11.2012 had submitted that the respondent no. 3 had stated that the sum of Rs. 2,03,548/- was transferred to the RPFC Delhi for crediting into account no. DL/4108/126 and had been returned on respondent no. 2 i.e. RPFC Delhi as it was to be transferred directly to the Employer''s Trust, qua which the petitioner vide his rejoinder to the counter affidavit has claimed that there was no employer''s trust. It has been submitted on behalf of the respondents that the amount could not be credited into the petitioner''s RPFC, Delhi account in as much as the R.O. Bangalore has selected the code as DS/NHP/4108/126 wrongly instead of CPM/4108/126, which amount was then received by RPFC, Bangalore on 11.03.2013 and was credited into the petitioner''s account no. DL/4108/126 on 25.03.2013. Significantly, the counter affidavit of Mr. H.S. Ramesh, Deputy General Manager (Human Resources) of the Bosch Limited at Bangalore filed on behalf of the respondents no. 5 & 6 categorically states that in terms of para 27A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952, the respondent establishment was exempted vide order of relaxation bearing no. KN120/PF/Exempt/Relaxation Order/555/5-96 dated 02.05.1996 effective from 01.04.1996 and, therefore, transfer of accumulations to the New Delhi account to the Trust did not arise. Taking all these aspects into account as observed hereinabove there appears to be a technical lapse in the non-transfer of the EPF account accumulations of the petitioner from the Bangalore accounts to the Delhi accounts and it is not considered appropriate to order any probe or investigation in the matter.

39. The petitioner in the instant case has been paid Rs.2,03,548/- as credited in the account no. DL/4108/126 on 25.03.2013, towards the PF accumulations of his Bangalore account. Though, the amount had been transferred by the Bangalore office and had been received in the office of RPFC Delhi on 12.10.2011 from the account no. BG/BNG/120/10857 of the petitioner but was sent back to the RPFC Bangalore on 14.05.2012 as the RO Bangalore had selected wrongly the code DS/NHP/4108/126 instead of DL/CPM/4108/126 and it was only after the petitioner''s own efforts of even having to go to Bangalore and by repeated visits to the office of CPFC that on 01.04.2014, the petitioner received the letter from respondent no. 2 that a sum of Rs.2,03,548/- had been transferred from the account KN/120/10857F to his account no. DL/4108/126 and it was only on 07.04.2014 that the petitioner received a mobile alert from his banker, i.e. Bank of India, Mayur Vihar that a sum of Rs.3,41,881/- and Rs.3,225/- had been credited to his saving account i.e. a total sum of Rs.3,45,106/-. It is apparent thus that the petitioner had to undergo undue stress, trauma and suffered mental agony in relation to the non transfer of the accumulations in his EPF account no. KN/120/10857F to the Delhi account no. DL/4108/126 for which no fault can be attributed to him.

40. It is essential to observe that in terms of a press release of the EPFO New Delhi dated 29.03.2016, major decisions were taken of likely re structuring of the EPFO and the crediting of interest of inoperative accounts observing to the effect that the account of the member who had not received contributions for a continuous period of three years, which was being treated as inoperative account and on which accounts interests had stopped in 2011, would start receiving / crediting interest w.e.f. 01.04.2016 as the Board had decided to resume crediting interest on such account w.e.f. 01.04.2016.

41. Undoubtedly, the decision taken on 29.03.2016 is yet to be incorporated into the EPF Scheme and would not apply to the facts and circumstances of the instant case in which the petitioner would be governed by the EPFC Scheme, 1952 as it stood amended w.e.f. 01.04.2011.

42. Be that as it may, this is a Court of equity and in terms of the Article 226 of the Constitution of India and as laid down by the Apex Court in Ramesh Chandra Sankla Etc vs Vikram Cement Etc AIR 2009 SC 71 to ensure that justice is meted out fairly and properly, taking the factum into account that the petitioner was paid his EPF dues only on 07.04.2014 despite having been received by way of transfer to his EPF account from Bangalore on 25.03.2013, it is considered appropriate to direct the respondent no.1 to pay a sum of Rs.1 Lakh (Rs.1,00,000/-) for the trauma and mental agony caused to the petitioner and undue expenditure incurred by the petitioner in seeking redressal of his genuine grievances, which it is considered would suffice to meet the ends of justice.

43. Thus, the writ petition is disposed of accordingly with directions to the respondent No.1 to pay a sum of Rs.1 Lakh for the trauma and mental agony caused to the petitioner and undue expenditure incurred by the petitioner in seeking redressal of his genuine grievances of EPF amounts validly due to him, which amount is directed to be paid by the respondent no. 1 under whom the respondents no. 2 & 3 are subordinate within a period of 30 days from the date of pronouncement of this judgment.

44. There is no order as to costs.

45. Intimation of the pronouncement of this judgment be sent to the petitioner and the respondents no.1-6, by the Registry.