(2014) 05 NCDRC CK 0045

In the National Consumer Disputes Redressal Commission

RAMESH CHAND APPELLANT

Vs

The Secretary RESPONDENT

Date of Decision : 30-05-2014

Acts Referred:

Citation : 2014 0 NCDRC 473 : 2014 3 CPJ 535

Hon'ble Judges : K.S.CHAUDHARI J.

Final Decision : Petition dismissed

Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 06.02.2013 passed by the Delhi State Consumer Disputes Redressal Commission, (in short, ''the State Commission'') in Appeal No. 714/09 - M/s. BHEL Employees P.F. Trust& Anrs. Vs. Ramesh Chand & Anr. by which, while allowing appeal, order of District Forum allowing complaint was set aside.

2. BRIEF facts of the case are that complainant/Petitioner is an employee and his provident fund amount is being credited in his provident fund account since day of joining. Complainant submitted application for permanent withdrawal of loan for house purpose on 29.9.2004 to OP No. 1/Respondent No. 1 and prayed for loan of Rs.2,70,000/ -. OP No. 1 returned the application on the ground that as per Rule 48 of Provident Fund Trust Rules, Provident Fund Loan is granted where clear title deed exists in the name of the seller. Complainant requested again on 12.10.2004 for grant of loan, but loan was not granted on the ground that complainant had already availed non -refundable withdrawal from his account for purchasing one DDA flat. Alleging deficiency on the part of OP, complainant filed complaint before District Forum. OP Nos. 1 & 2 resisted complaint and submitted that in case of dispute between the member and the employer or trustees regarding Provident Fund, the same was to be referred to Regional Provident Fund Commissioner/Income Tax Commissioner and complainant has already availed aforesaid remedy; hence, complaint was not maintainable. It was further submitted that non -refundable advance was already made to the complainant earlier so he was not entitled to second non -refundable advance and prayed for

dismissal of complaint. OP No. 3 submitted written statement and alleged that non -refundable withdrawal of Rs.5541/ - and Rs.11153/ - had already been made to the complainant and advance may be granted for purchasing of one house only and as non -refundable advance had already been availed by the complainant, no second advance was to be given and prayed for dismissal of complaint. Learned District forum after hearing both the parties, allowed complaint and directed OP to release Provident Fund loan as sought by application dated 29.9.2004 and further allowed Rs.1,00,000/ - compensation for mental agony and Rs.10,000/ - cost of litigation. Appeal filed by OP was allowed by learned State Commission vide impugned order against which, this revision petition has been filed. Heard learned Counsel for the parties finally at admission stage and perused record.

3. LEARNED Counsel for the petitioner submitted that inspite of non -availing of any loan earlier, OPs committed deficiency in not granting non -refundable advance from Provident Fund Account and learned State Commission has committed error in allowing appeal; hence, revision petition be allowed and impugned order be set aside. On the other hand, learned Counsel for the respondent submitted that as complainant had already availed first advance and no second advance could have been made as per rules, order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed.

4. IN this matter first it is to be seen whether complainant availed first advance of Rs.5541/ - for purchase of DDA flat and secondly whether application for second non -refundable withdrawal was maintainable. Perusal of record reveals that complainant moved application for non -refundable withdrawal from Provident Fund Account for registration of flat in DDA and Rs.5541/ - were sanctioned to the complainant on 11.6.1985 and this amount was paid by DD NO. 4728698 and complainant received this draft on 12.6.1985 and has put his signatures on receipt. Learned Counsel for the petitioner submitted that this loan was sanctioned, but he has not availed this loan as statement of OP revealing disbursement of loan of Rs.5541/ - does not bear signatures of Accountant/Sr. Accounts Officer. This contention is devoid of force. Merely because statement has not been initialled by Accountant/Sr. Accounts Officer, it cannot be presumed that complainant has not availed loan of Rs.5541/ - for booking of DDA flat. In second application for non -refundable advance of Rs.14,000/ -, complainant himself has admitted in Column V that he has availed earlier non -refundable advance for registration of flat and in such circumstances, it amounts to estopple against the complainant and it can conclusively be held that complainant availed loan of Rs.5541/ - for booking of DDA flat.

5. LEARNED Counsel for the petitioner has also drawn our attention to Saving Bank A/c. of complainant, which does not depict entry of deposit of this amount. Admittedly, this passbook does not contain credit entry of aforesaid amount, but perusal of passbook reveals that passbook is from March, 1988, whereas loan

was availed in the year 1985 and in such circumstances, there could not have been any such entry in the passbook. Not only this, learned Counsel for the respondent submitted that this amount''s draft was directly sent to DDA on behalf of complainant and in such circumstances, there could not have been any entry of deposit in complainant''s passbook. Complainant should have produced statement of depositing amount with DDA against the flat by which it could have been proved that complainant has not availed earlier loan of Rs.5541/ -. Learned State Commission has not committed any error in holding that complainant availed first non -refundable amount of Rs.5541/ - for purchase of DDA flats.

6. LEARNED Counsel for the petitioner submitted that petitioner was entitled for non -refundable withdrawal of Rs.2,70,000/ -, whereas leaned Counsel for the respondent submitted that application for second non -refundable withdrawal was not maintainable in the light of Rule 48 of BHEL EPF Rules. Learned Counsel for the petitioner submitted that if petitioner was not entitled to second non -refundable withdrawal then why amount of Rs.11153 as second non -refundable withdrawal was sanctioned by OP. Admittedly, first non -refundable of withdrawal was for registration of DDA flats and sanctioned second non -refundable withdrawal was also pertaining to the same DDA Flat meaning thereby both the withdrawals were permitted for the same flat in the DDA. Rule 48 provides that non -refundable withdrawal is permissible only for purchase / construction / allotment of one flat and as 3rd application for non -refundable withdrawal for Rs.2,70,000/ - was made for another house, certainly it was liable to be rejected. Learned State Commission while allowing appeal has rightly observed in paragraph 11 & 12 of the impugned order as under: 11. The conjoint effect of the Rule (6) & (7) of the aforesaid Rule 48 is that in respect of the purchase of house/home, only one advance shall be granted. In the case in hand, Home loan worth Rs.5,541/ - was granted to the respondent/complainant on 7.6.85 and the DD was received by the respondent/complainant on 7.6.85 and the DD was received by the respondent/complainant on 12.6.85. Further another Home loan for the purchase of a dwelling house/home was also granted to the respondent/ complainant on 24.11.1987 worth Rs.11,153/ - but it is an admit fact that the DD/Cheque was not collected by the respondent/complainant.

12. It is apparent from the material on record and also admitted by both the parties that the respondent/complainant has applied for non -refundable loan for the purchase of house/home on 18.10.04 and the figure of the amount is Rs.2,70,000/ -. This loan was rejected by the appellant/OP on the ground that in the said application, it was not disclosed by the respondent/complainant whether he has applied for non -refundable loan for house to be purchased and there were defective title deed in respect of the house/home for its purchase for Rs.2,70,000/ -. Further, the application dated 18.10.04 was rejected on the g round that the respondent/complainant was earlier granted non -refundable House Building Advance on earlier two occasions as herein above mentioned, therefore, under Rule 48(6) of the aforesaid Rules, the said application was rejected. It may be mentioned here that the respondent/complainant has

preferred the appeal against the order of the concerning Authority of the appellant to the Higher Authorities and the Higher authorities confirmed the order of the Authority of the Appellant refusing the grant of non -refundable advance on third occasion

and we do not find any illegality, irregularity or jurisdictional error in the impugned order.

7. LEARNED Counsel for the respondent also submitted that petitioner has already availed remedy of reference to the Regional Provident Fund Commissioner/Income Tax Commissioner as provided in the rules pertaining to refusal to grant advance and in such circumstances, complaint before District Forum was not maintainable. We agree with this submission as District Forum cannot sit on the decision of Regional Provident Fund Commissioner/Income Tax Commissioner and complaint was not maintainable before District Forum. As per Arbitration Clause 68, the decision of Regional Provident Fund Commissioner/ Commissioner of Income Tax was final.

8. IN the light of above discussion, we find that order passed by learned State Commission is in accordance with law and revision petition is liable to be dismissed. Consequently, revision petition filed by the petitioner is dismissed with no order as to costs.