(2001) 03 AP CK 0066

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3580 of 2000

R.N. Anand — APPELLANT

Vs

Government of India and others — RESPONDENT

Date of Decision : 08-03-2001

Acts Referred:
General Provident Fund (Central Services) Rules, 1960 — Rule 11, 32, 35, 5

Citation : (2001) 3 ALD 63 : (2001) 3 ALT 425

Hon'ble Judges : S.B. Sinha, C.J;S.R. Nayak, J

Bench : Division Bench

Advocate : Mr. G. Vidya Sagar, for the Appellant; Ms. Rekha Prasad, Additional SC for Central Govt., for the Respondent

Judgement

S.B. Sinha, CJ

1. The petitioner herein joined as supervisor in ammunition factory at Pune on 2-12-1961. He was promoted to the post of Chargeman - Grade I subsequently. He was selected as Assistant Director- Grade I in Small Industries Service Institute and was posted at Gauhati and Bombay during the period from 5-11-1973 to November, 1979. He was removed from service. But he obtained re-employment in the same department. He worked as Deputy Director at Bombay, Srinagar and Hyderabad till the date of his retirement on 31-7-1997. His pensionary benefits were settled and paid on the date of his retirement itself.

2. It is not in dispute that upon retirement an employee and his family members arc entitled to travelling allowance to settle down in his home town. However, the same are subject to the conditions:

"(i) The concession will be admissible by the shortest route from the last place of duty to the place where he and his family are to settle down.

"(ii) The concession can be availed of at any time during LPR or within one year of the date of retirement. The time-limit of one year can be extended in special cases by the Administrative Ministries/ Departments concerned under SR 147

GOI."

3. However, there exists power to extend the time limit if any special circumstances exist therefore. The petitioner contends that his provident fund amount had not been paid to him at the time of his retirement having not been properly accounted for and settled. He made a representation on 27-7-1998, for extending the time beyond the period of one year. He gave reminders thereto on 31-7-1998, 31-8-1998. 13-10-1998, 3-11-1998, 6-2-1999, 21-2-1999 and 3-3-1999. He made a representation before the President of India on 20-5-1999. By a letter dated 7-9-1999 the respondents informed the petitioner that non-settlement of general provident fund is not a sufficient reason for extension of time limit for seeking travelling allowance after retirement. He being aggrieved by and dissatisfied with the said order filed an application before the Central Administrative Tribunal which was dismissed by an order dated 18-2-2000. This petitioner submitted before us that a banker''s cheque dated 11-7-2000 for a sum of Rs.12,750/- was given towards final settlement of GPF final payment. Our attention has further been drawn to the fact that only on 21-6-2000 the details of the provident fund amount due to the petitioner had been furnished. The contention of the petitioner is that the respondents herein have failed to consider sub-rule (4) of Rule 11 in its proper perspective and thus acted illegally in passing the order dated 7-9-1999 impugned before the Tribunal. Our attention has also been drawn to Rule 35 of the General Provident Fund (Central Services) Rules. The petitioner contends that the amount of interest had not been calculated as would appear from the fact that only after filing of the writ application a further amount of Rs.12,759/- by way of interest had been paid to the petitioner. It has also not been shown that as to how from 1973 to June, 2000 the interest has been calculated. Rule 34 of the Rules reads thus:

"Manner of payment of amount in the Fund :-- (1) When the amount standing to the credit of a subscriber in the Fund becomes payable, it shall be the duty of the Accounts Officer to make payment as provided in sub-rule (3).

(2) If the person to whom, under these rules, any amount or policy, is to be paid assigned or reassigned or delivered, is a lunatic for whose estate a Manager has been appointed in this behalf under the Indian Lunacy Act, 1912, the payment or reassignment or delivery shall be made to such Manager and not to the lunatic:

Provided that where no Manager has been appointed and the person to whom the sum is payable is certified by a Magistrate to be a lunatic, the payment shall under the orders of the Collector be made in terms of sub-section (1) of Section 95 of the Indian Lunacy Act, 1912, to the person having charge of such lunatic and the Accounts Officer shall pay only the amount which he thinks fit to the person having charge of the lunatic and the surplus, if any, or such part thereof, as he thinks fit, shall be paid for the maintenance of such members of the lunatic''s family as are dependent on him for maintenance.

(3) Payments of the amount withdrawn shall be made in India only. The persons

to whom the amounts arc payable shall make their own arrangements to receive payment in India. The following procedure shall be adopted for claiming payment by a subscriber, namely: -

(i) Deleted.

(ii) The Head of Office/Department shall forward the details of the subscriber retiring or quitting service to the Accounts Officer indicating the recoveries effected against the advances which are still current and the number of instalments yet to be recovered and also indicate the withdrawals, if any, taken by the subscriber after the period covered by the last statement of the subscriber''s account sent by the Accounts Officer.

(iii) The Accounts Officer shall, after verification with the ledger account, issue an authority for the amount payable to the subscriber at least a month before the date of superannuation but payable on the date of superannuation.

(iv) The authority mentioned in Clause (iii) will constitute the first instalment of payment. A second authority for payment will be issued as soon as possible after superannuation. This will relate to the contribution made by the subscriber subsequent to the amount mentioned in the details forwarded by the Head of Office/ Department under Clause (ii) plus the refund of instalments against advances which were current at the time of the submission of details by the Head of Office.

(v) After forwarding the details referred to in Clause (ii) for final payment to the Accounts Officer, advance/ withdrawal may be sanctioned but the amount of advance/withdrawal shall be drawn on an authorisation from the Accounts Officer concerned who shall arrange this as soon as the formal sanction of sanctioning authority is received by him."

4. It is also relevant to note that the Government of India has from time to time issued various Rules which are as follows:

"7. Conditions of subscriptions :-- (1) A subscriber shall subscribe monthly to the Fund except during the period when he is under suspension:

Provided that a subscriber may, at his option, not subscribe during leave which either does not carry any leave salary or carries leave salary equal to or less than half pay or half average pay;

Provided further that a subscriber on reinstatement after a period passed under suspension shall be allowed the option of paying in one lump sum, or in instalments, any sum not exceeding the maximum amount of arrear subscriptions payable for that period.

(2) The subscriber shall intimate his election not to subscribe during the leave referred to in the first proviso to sub-rule (1) in the following manner :--

(a) if he is an officer who draws his own bills, by making no deduction on account of subscription in his first pay bill drawn after proceeding on leave;

(b) if he is not an officer who draws his own pay bills, by written communication to the Head of his Office before he proceeds on leave.

Failure to make due and timely intimation shall be deemed to constitute an election to subscribe.

The option of a subscriber intimated under this sub-rule shall be final.

(3) A subscriber who has under Rule 32 withdrawn the amount standing to his credit in the Fund shall not subscribe to the Fund after such withdrawal unless he returns to duty.

39. Annual statement of accounts to be supplied to subscriber :-- (1) As soon as possible after the 31st March of each year, the Accounts Officer shall send to each subscriber a statement of his account in the Fund showing the opening balance as on the 1st April of the year, the total amount credited or debited during the year, the total amount of interest credited as on the 31st March of the year, the total amount of interest credited as on the 31st March of the year and the closing balance on that date. The Accounts Officer shall attach to the statement of accounts an enquiry whether the subscriber-

(a) desires to make any alteration in any nomination made under Rule 5;

(b) has acquired a family in cases where the subscriber has made no nomination in favour of a member of his family under the proviso to sub-rule (1) of Rule 5.

(2) Subscribers should satisfy themselves as to the correctness of the annual statement and errors should be brought to the notice of the Accounts Officer within three months from the date of the receipt of the statement.

(3) The Accounts Officer shall, if required by a subscriber once, but not more than once, in a year inform the subscriber of the total amount standing to his credit in the Fund at the end of the last month for which his account has been written up."

5. Nobody has appeared on behalf of the respondents.

6. It is true that the matter of extension of a period so as to enable an employee to avail travelling allowance is discretionary. It is, however, well known that discretion has to be exercised reasonably and not capriciously and taking into consideration the relevant factors. It must be guided by law and must not be arbitrary, vague and fanciful. Discretion necessarily implies good faith in discharging public duty. There is always a perspective within which a statute is intended to operate and any clear departure from its lines or objects is just as objectionable as fraud or corruption.

7. Having regard to the fact that the petitioner''s retiral benefits have not been settled and further keeping in view the fact that only recently all the provident fund amounts have been paid, we are of the opinion that it is a fit case wherein

the concerned respondents ought to have given serious thought as to whether the travelling allowance should be granted to the petitioner. The learned Tribunal appears to have rejected the contention of the petitioner on the assumption that as the petitioner''s wife is employed, he did not want to leave Hyderabad although no material in that regard was placed before the Tribunal. Further, no explanation has been given by the respondents as to why the petitioner''s representations were not disposed of expeditiously.

8. We are, therefore, of the opinion that having regard to the facts and circumstances of this case it is desirable that the matter should be considered afresh in accordance with law upon proper application of mind on the materials on record. Such an order be passed within two weeks from the date of communication of this order. Although the Court is not powerless to exercise the same power which a statutory authority can exercise, keeping in view the doctrine of self-restraint we are of the opinion that the respondents herein should pass an appropriate order at the first instance. The petition is, thus, disposed of. No costs.

