

NON-SETTLEMENT OF PENSION CASES OF EMPLOYEES-PRESENT STATUS

FOR GENERAL INFORMATION (UPDATED ON 06-06-2012)

In the case relating to payment of pension filed by Sh. Shibu Kr. ChandaVs. AAI &Ors. in the District Consumer Disputes Redressal Forum, North 24 Pgs, Barasat, Kolkata, the Hon'ble Forum on 31/05/2012 has ruled in favour of the Petitioner and AAI. The RPFC, Delhi & RPFC, Kolkata have been directed to disburse the pension to the Petitioner on the actual salary. A copy of the said judgement is attached.

**DIST. CONSUMER DISPUTES REDRESAL FORUM
NORTH 24 Pgs., BARASAT.**

C. C. CASE NO.- 49(S)/2012

Date of Filing: 17.02.2012

Date of Disposal: 31.05.2012

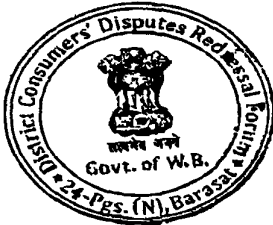
PETITIONER :

Shibu Kumar Chanda
AF/2, Jyangra, 1B, Satyam
Apartment, P.O.- Jyanga,
Kolkata - 700 059.

=Vs.=

O.Ps.

1. Chairman, Airports Authority of India, Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi-110 003.
2. Regional Provident Fund Commissioner- I, Employees Provident Fund Organization 8th-9th Floor, Bhavishya Nidhi Bhawan, 28, Wazirpur Industrial Area, Delhi - 110052.
3. Regional Provident Fund Commissioner - II, Employees' Provident Fund Organization, D.K. Block, Sect.-II, Salt Lake City, Kolkata - 700 091.
4. The Regional Executive Director (E.R.) Airports Authority of India N.S.C.B.I. Airport, Kolkata - 52.



PRESENT :- Shri M. K. Pal ----- President
:- Smt. C. Chakraborty ----- Member
:- Sri T.K. Biswas ----- Member

JUDGEMENT

The case of the complainant, in short, is that he retired on superannuation on 30.09.09 from Airports Authority of India, N.S.C.B.I., Airport, Kol-52 at the age of 60 years. Since retirement he has not given the pension benefit which is due since 2007 under the provisions of E.P.S-95 & E.P.F.S-1952. It is the specific case of the complainant that he laid claim in form 10D-E.P.S which has been duly received by the employer. It is also stated by the complainant that he opted for higher wages and accordingly a new CPM account number being DL/CPM 0036478 0000005220 has been allotted in his favour in supersession of the old CPM A/C. No. 7342. Since no action has been taken the complainant sent an application to the Chairman, Airports Authority of India, New Delhi with a copy of sanction letter to the effect that a sum of Rs. 5,30,156/- has been deducted from his C.P.F. account wanted to know the fate of the pensionary benefit. He also put his grievance before the Assistant Director, Consumer Affairs & Fair Business Practices, Barrackpore. A tri-partite meeting was held. The resolution was sent to the Regional Provident Fund Commissioner, Employee Provident Fund Office at Salt Lake. But no fruitful result has been yielded. Hence this case.

This application is very much opposed by the O.P. Nos. 1 & 4 by filing written version stating inter alia that the pension claim form 10 D in respect of the Sri Shibu Kumar Chanda complainant maintained with the office of Eastern Region Kolkata. AAI was forwarded to AAI Corporate Head Quarters Rajiv Gandhi Bhawan, New Delhi after due verification. CHQ, AAI, New Delhi submitted the same to RPFC, Delhi on 24.01.2011 after scrutinizing the same. But the said Authority rejected the same on 30.03.2011 on the ground that the Claimant nominated 2 family members as beneficiaries for return of Capital. But after re-verification of the same, it was resubmitted to the RPFC, Delhi on 13.04.11 but the RPFC, Delhi again rejected the same on 06.05.11 on the ground that the consolidated Return of Form 7 & 8 PS were not furnished by AAI. After submitting the Form 7 Return, the claim was again submitted to RPFC on 18.08.2011 (A copy of said receipt is annexed herewith and marked as annexure "R-A").

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C. C. Case No.- 49(S)/2012

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According to these O.Ps that the responsibility lies with the RPFC, Delhi and RPFC, Kolkata to issue /disburse the pension.

The Sub Regional Office of P. F. Commissioner, Barrackpore contested the case and filed written version. It is the specific case of the O.P. No.3 is that the pension claim of the complainant can only be settled by the Regional Office, Delhi North. The said pension claim would not be settled owing to wrong submission of Return and also it involves disbursement of pension on the basis of the pensionable salary higher than Rs. 6,500/-per month. It is further stated by the O.P that Under EPS there is no contribution payable separately. Under para 3 of the EPS, from and out of the contribution payable by the employer in each month under section 6 of the Act, the employer shall remit a part of contribution representing 8.33% of the Employees' pay to the EPS. Therefore, it is only the employer's share of contribution payable under Employees' Provident Fund Scheme, 1952 that is being diverted to EPS to the extent as aforesaid. Accordingly, the option to contribute on a pay exceeding statutory limit is available to a member only under Para 26(6) of the Employees' Provident Fund Scheme, 1952 and not under para 11(3) of the EPS. In fact para 11 (3) clarified the methodology of determination of pensionable salary only.

According to this O.P, option to contribute on higher pay to EPS means a contribution on higher pay to Provident Fund as well as para 11(3) provisions will apply to only such of those employees who have been contributing on higher pay under para 26(6) of the Employees Provident Fund Scheme 1952. Accordingly, the present complainant comes within the category of para 4(III) which is as follows:-

In the cases, where no option was given or no commitment was made by the concerned office, but the contribution on higher on higher pay was deposited by the establishment/employee, on their own such excess contributions and the pensionable salary will be restricted to the statutory ceiling existing from time to time. It is also stated by this O.P that the pension claims of Shri Shibu Kr. Chanda, EPS A/c. No. DL/CPM/36478/5220 could not be settled by the Regional Provident Fund Commissioner, Regional Office, Delhi(North) not due to any kind of negligence on the part of the Employees' Provident Fund Organization but due to legal issue arising out of the demand of the claimant in favour pension calculated on the basis of more than Rs. 6,500/- pensionable salary per moth and for that reason above. Hence they prayed for dismissal of this case.

The points that arise for consideration are as follows:-

1. Is the complainant a consumer under the O.P?
2. Is the claim of the complainant justified?
3. Is there any negligence and deficiency on the part of O.P. Nos. 2 & 3 in releasing the pensionable salary?
4. Is the complainant entitled to get the relief as prayed for?

Decision with Reasons

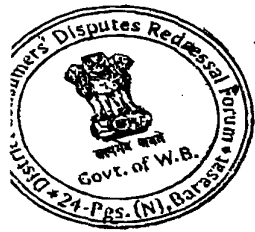
Admittedly, the complainant was an employee of Airports Authority of India and has retired on superannuation on 15.09.09. It is also not in dispute that he was a member of EPS 95. The membership has been ceased on 14.09.07 on attaining the age of 58 years. It appears from the record that while he was in service his contribution on salary for pensionary benefit has been sent to the Employees Pension Fund maintained by the O.P Nos. 2 & 3.

The main allegation of the complainant is that in spite of submitting the claim application O.P. Nos. 2 & 3 are not releasing the pensionable salary amounting to Rs. 4,31,032/- on the basis of higher fixation of the salary.

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C. C. Case No.- 49(S)/2011

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The O.P. Nos. 1 & 4 have submitted that they have already sent the statement on the basis of the contribution of the complainant to the O.P. No.2 requesting them to release the pension + relief due to the complainant. It has been categorically stated by the Airports Authority that after completing the formalities of submitting the statutory returns, AAI started forwarding pension claim forms to RPFC from July, 2010 onwards. During the process the pension payment orders for 191 officials have been issued by RPFC, Delhi and out of which 136 claims were on actual salary basis. It is also contended by the complainant that his employer deducted excess amount from the CPF which he asked for refund of the same.

Here O.P. No.3 has only contested the case and shifted his burden to the O.P. No.2, who in fact, is maintaining the pension account of the employees of Airports Authority of India. This O.P. No.3 has further submitted that they have nothing to do in this matter moreover the complainant cannot claim exceeding Rs. 6,500/- per month towards contribution paid on salary. According to them, the claim of the complainant exceeding the limit and he put his claim on fixation on higher salary basis which cannot be tenable in view of the provisions of the Employees Pension Scheme.

In support of the claim of the complainant, the complainant has submitted the calculation chart of one of the employee namely Jitendra Nath Nag wherefrom it would be seen that the pension salary has been fixed on higher salary basis. According to the complainant, he is on the same footing. The O.P. No.3 has made a prayer before us allowing them to settle the pension claim on statutory ceiling basis of Rs. 6,500/- as pensionable salary per month.

We have heard the parties at length and material on record.

It is true that there is a specific direction of the government vide modification No.38/64/98-P & PW(F) dated 01.05.2012 that with regard to the payment of pension the Commissioner shall release the pension amount within 30 days on receipt of the claim when his employer has already remitted the contribution on salary lying in the credit of the pensioner. But the Regional Provident Fund Commissioner has unnecessarily sitting tight over the file and repudiated the claim on flimsy ground which is too hard to swallow by a person with simple prudent.

The ground of repudiating the claim that the claim form was not filled up in a proper method is just a lame excuse to deprive the complainant from his right to survive. This is a gross deficiency within a meaning of Section 2 (1)(g) of the C.P. Act.

It is contended by the O.P. no. 2 & 3 that the maximum pensionable salary shall be limited to Rs. 6,500/- p.m. as per the provisions of 11 (3) of Employees Pension Scheme. It has been averred in the objection of O.P. No. 1 and 4 that the pension cases of the Employees present status has been clarified vide Members (HR)'s DO letter dated 24.03.2012 quoting para 11(3) of EPS, 1995 and the RPFC, Delhi have already cleared pension claim of 136 beneficiaries of AAI who had opted for pension on actual salary basis.

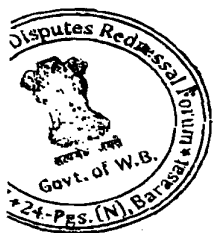
In view of the fact, we are of the view that the pension claim of the complainant shall be cleared on actual salary basis. The provisions 11 (3) cannot be tenable in view of the above clarification made in Members (HR)'s D.O letter dated 24.03.2012 quoting para 11(3) of EPS, 1995.

Thus, we find deficiency on the part of O.P. Nos. 2 & 3 for not clearing pensionery benefit in favour of the complainant who as a matter of right deserves the same because his salary has been deducted and sent to RPFC for disbursement.

Dictated and corrected

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W. S. S.
27-5-12



C. C. Case No.- 49(S)/2012

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The points are answered accordingly.

In this result, the case succeeds.

Hence,

Ordered

That the case be and the same is allowed on contest with cost against the O.P. Nos. 2 & 3. The O.P. Nos. 1 & 4 is to refund excess CPF amount, if any deducted from his retirement benefit. O.P. Nos.2 &3 are jointly and severally liable to pay the pension benefit to the tune of Rs. 4,31,032/- as stood on 15.05.12 and also accrued till this day within one month from the date of this order.

O.P. Nos .2 & 3 are also liable to pay a sum of Rs. 5,000/- to the complainant towards cost of litigation at the same time.

In the event of non compliance of this order the complainant shall be at liberty to execute this order in accordance with the provisions of law.

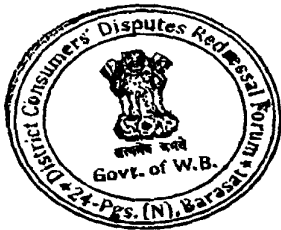
Let a copy of this order be supplied to the parties free of cost, when applied for.

Dictated and corrected By me.

[Signature]
Member 21.5.12

[Signature]
Member
31.05.12

[Signature]
President
21.5.12



Date of Judgement / Order
31/05/12

Date of completion
1/06/12

Date of Delivery
1/06/12

C.C. is ready for delivery
1/06/12

Certified to be true Copy

[Signature]
01.6.2012
Sonal Ghosh
District Consumers Disputes
Redressal Forum
Barasat 24 Dps. (N)