

(1994) 08 NCDRC CK 0016

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

SUKHVIR SINGH

APPELLANT

Vs

SUPERINTENDING ENGINEER

RESPONDENT

Date of Decision: Aug. 19, 1994

Citation: 1995 1 CLT 627 : 1995 1 CPC 537 : 1995 1 CPJ 250

Hon'ble Judges: V.K.Mehrotra , Banarsi Das J.

Final Decision: Appeal dismissed

Judgement

1. APPELLANT Sri Shukhvir Singh retired from service as Executive Engineer in the Irrigation Department of the State of Uttar Pradesh in February, 1990. His Provident Fund Account was being maintained by the Accountant General II (Fund-54), U.P. The G.P.F. Account Number allotted to him was W.U. 19733 and regular monthly deductions made from his salary should have been properly posted therein. Regular statement of accounts should also have been furnished. The Accountant General did not do so nor did he ensure correction of entries in the account even when pointed out to him. The functioning in the office of the Accountant General was most unsatisfactory resulting in great harassment of the appellant after his retirement from service. With these, and many other detailed allegations, the appellant filed a complaint before District Forum, Meerut seeking several reliefs in the matter of payment of his General Provident Fund. The complaint was dismissed by the Forum on its view that the appellant did not fall within the category of a "Consumer" and the matter could not be gone into under the provisions of the Consumer Protection Act, 1986. Hence, the present appeal.

2. WE have heard Sri Sukhvir Singh who appeared before us in person. WE have also heard Sri B.B. Sharma, Assistant Engineer and Sri Ramesh Chandra, Accounts Officer who appeared before us on behalf of the State of U.P. and the Accountant General, U.P. respectively.

Under the General Provident Fund (U.P.) Rules, 1985 the responsibility of maintaining the account relating to the amount of Provident Fund of a Government employee, to whom these Rules are applicable, has been assigned to the Accountant General, U.P. A look at some of the relevant Rules would show that a statutory duty has been cast upon the Accountant General in this respect. For example, there has to be an account in the name of each subscriber who, under Rule 8, may subscribe an amount which shall not be less than 10% and not more than the amount of his emoluments. Under Rule 20, when the subscriber quits the service, the amount standing to his credit becomes payable to him. The Government pays to the credit of the account of a subscriber interest at such rates as may be determined for each year by the Government of India. Rule 11 provides for it, Advance can be granted to a subscriber from the amount at his credit in the Fund under Rule 13. Annual statement of account is to be supplied to the subscriber under Rule 27. There are various other rules, which need not be mentioned, dealing with rights and liabilities of a subscriber in regard to the amount of his provident fund in these Rules. All this shows that the element of service as contemplated by the provisions of the Consumer Protection Act, 1986 or of any consideration therefore, so as to bring a subscriber within the definition of a "consumer" is lacking.

That being the position it is not possible to accept the plea made by applicant Sri Sukhvir Singh that he is a "consumer" within the meaning of that term in respect of the grievance relating to the maintenance of his fund account by the Accountant General, U.P. or its payment to him.

3. IN Central Bank of India v. Dil Bahadur Singh (deceased), I (1994) CPC page 15), a case relating to the payment of provident fund of a Bank employee, the National Commission observed (in paragraph 5):

"The claim of the respondent-complainant was about the non-payment of Provident Fund to him. Of course, the provident fund cannot be retained by the employer, but for that matter the proper remedy for the complainant was to approach a Civil Court. Payment of provident fund can by no stretch of imagination be said to be rendering of service under the Act..."

In a detailed judgment in Accountant General, Madhya Pradesh v. District Consumer Forum and Others (Appeal No. 64 of 1993 decided on 12.5.1993) the Madhya Pradesh State Consumer Disputes Redressal Commission, after noticing the provisions of the Comptroller and Auditor General (Duties, Powers and Conditions of Service) Act, 1971 and the Broucher on duties and powers of the Comptroller and Auditor General of India, concluded that-

"Thus, it appears that the responsibility being discharged by the Accountant General of Madhya Pradesh in compiling and maintaining the G.P.F. accounts is in discharge of a statutory responsibility, the source of his authority being the proviso to Section 10 of the C.A.G. Act."

4. THE State Consumer Disputes Redressal Commission, Bihar observed in A.G., Bihar v. Syed Alt Naqvi (Revision No. 12 of 1993 decided on 5th May, 1994) (in paragraph)-5:-

"THE complainant deposited his Provident Fund with the Accountant General Opposite Party No. 2 who maintains the account with respect thereto and the payment of the insurance premiums were made from that Provident Fund Account. But the complainant has not hired the services of the Accountant General -Opposite Party No. 2 for this. THE functions are discharged by the Accountant General-O.P. No. 2 under the statutory provisions. No consideration is paid to the A.G. Bihar by the person concerned for discharging these functions. Payment of Provident Fund can by no stretch of imagination be said to be rendering of service under the Act..."

The same view has been taken by the State Consumer Disputes Redressal Commission, Madras in G. Thirumalai v. The Secretary to Government and Others (A..P. No. 122 of 1992, decided on 3rd April, 1992), though no detailed reasonings are contained in this judgment.

The only view to the contrary taken by the State Consumer Disputes Redressal Commission, Delhi was in the case of M.K. Sangal v. A.G. I (1992) CPJ page 441) which fails to notice that maintenance of the Provident Fund Account by the Accountant General is in exercise of statutory powers. We find it difficult to share the view taken in this decision.

5. IN conclusion, we uphold the view taken by the District Forum and hold that the dispute in the present case cannot be entertained under the provisions of the Consumer Protection Act, 1986. The appeal is dismissed but the parties are left to bear their costs before the Commission.

6. BEFORE parting with the case we would like to observe that a Government servant who subscribes a sizeable amount towards his provident fund has to face great harassment in being able to recover an amount equal to 10% of his salary on account of unimaginative delay on the part of those authorities which are entrusted with the task of the maintenance of the account and its payment. The plight of a Government servant, who puts in the best years of his life in serving the Government, can only be imagined when he has to wait for an unconscionably long period in getting what is his own contribution to the provident fund. Those who are concerned with the maintenance of the account and its payment will do well to remember that they too will quit service one day and may have to face similar hardship. They should act with due despatch in these matters.

A copy of this decision be sent to parties as per Rules.

Copies shall also be sent to the Comptroller and Auditor General of India and the Chief Secretary to the Government of U.P. for impressing upon the authorities under their control to act in such matters with due despatch. Appeal dismissed.