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SPEED POST

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कर्मचारी भविष्य निधि संगठन  
(श्रम एवं रोजगार मंत्रालय, भारत सरकार)  
Employees' Provident Fund Organisation  
(Ministry of Labour & Employment, Govt. Of India)

मुख्य कार्यालय/ Head Office  
भविष्य निधि भवन, 14-भीकाजी कामा प्लेस, नई दिल्ली-110066  
Bhavishva Nidhi Bhawan. 14-Bhikaii Cama Place. New Delhi-110066  
Website: www.epfindia.gov.in

No. Pen./3/2/2006/Para 9 & 10

Dated: 13 DEC 2011

To,

All Addl. Central P.F. Commissioners,  
All Regional Provident Fund Commissioners,  
All Officers-in-Charge, ROs/SROs.

Sub: Implementation of Para 10(2) of EPS, 1995 - Criteria for deciding eligibility.

Sir,

Please find enclosed herewith a copy of the order of Hon'ble Supreme Court in Civil Appeal No. 30844/2010 alongwith copy of NCDRC order. It is observed that while disposing of the petition, the Hon'ble Court has held that **"the special leave petition is dismissed leaving the question of law open to be decided in an appropriate case"**.

The matter has been examined in consultation with Panel Advocate as well as Legal Advisor of our organization who have opined that it is not a fit case for filing review petition, their opinion is as follows:

1. Panel Advocate- Ms. Aparna Bhat - "There is no point in pursuing the review petition, as the amended section 10(2) of the EPS, 1995 has no retrospective affect. In any event in the present case, **the Hon'ble Supreme Court while dismissing the petition was pleased to leave the question of law open.** The review petitions are decided by the same judges in their chamber without granting any oral hearing. Therefore, there is no point in filing the review petition against the order dated 15.11.2010."
2. Legal Advisor- Dr. K.N. Chaturvedi- "In view of the amendment in the actual service weigtage of 2 years is given when a member superannuates on attaining the age of 58 years, and who has rendered 20 years service or more. Thus, after the amendment the age of the member at the time of superannuation must be 58 years and the number of yeas of his actual service must be 20 years or more. Before the amendment, that is, prior of 24-07-2009 the decision of the National Consumer Disputes Redressal Commission in the case of RPFV vs Sri Mallikarjan D. Verapur will operate depending on the facts in each case."

You are accordingly, requested to deal with legal disputes /representations where the above judgment of NCDRC/Supreme Court is cited, on above lines.

Encl: As above.

Yours faithfully,

(APRAJITA JAGGI)

REGIONAL P.F. COMMISSIONER-II (PENSION)



ITEM NO.31

COURT NO.11

SECTION XVII

SUPREME COURT OF INDIA  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).30844/2010

(From the judgement and order dated 29/06/2010 in RP No. 3970/2009  
of The NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI)

REGIONAL P.F.COMMR.

Petitioner(s)

VERSUS

MALIKARJUN DEVENDRAPPA VERAPUR

Respondent(s)

(With prayer for interim relief)

Date: 15/11/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE ASOK KUMAR GANGULYFor Petitioner(s) Ms. Aparna Bhat, Adv.  
Mr.P.Ramesh Kumar, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following  
O R D E RThe special leave petition is dismissed leaving the question of  
law open to be decided in an appropriate case.(Satish K.Yadav)  
Court Master(Phoolan Wati Arora)  
Court Master

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION  
NEW DELHI

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REVISION PETITION NO. 3970 OF 2009  
(From the order dated 21.8.09 in Appeal No. 1256/2009  
of the State Commission, Karnataka)

Regional Provident Fund Commissioner  
Sub-Regional Office  
"Bhavishyanidhi Bhawan",  
Aland Road, Hubli  
Karnataka  
Through Regional Provident Fund Commissioner  
(Legal), Delhi

Petitioner

Sri Mallikarjun Devendrappa Verapur  
S/o Devendrappa,  
R/o Hunagund, District Bagalkot  
Near Telephone Exchange,  
Ward No.5, Navanagar,  
Hunagund,  
Karnataka

Confirmed to be true copy  
26/8/2010  
Section Officer  
National Consumer Disputes  
Redressal Commission  
New Delhi-110021

Respondent

BEFORE:

HON'BLE MR. JUSTICE R.K. BATTIA,  
PRESIDING MEMBER

For the Petitioner: Shri Rajesh Manchanda, Advocate

For the Respondent: Shri B.K. Saini, Advocate

Pronounced on: 29th JUNE  
July 2010

ORDER

PER JUSTICE R.K. BATTIA, PRESIDING MEMBER

The petitioner has come in revision against concurrent finding of two Fora below. The Consumer Forum had given directions to the present petitioner to refix the pension of the complainant as per Rule 12(4) read with Rule 10(2) of the Employees' Pension Scheme, 1995



from the date of retirement and balance pension amount be paid to him within two months of the receipt of the order. Besides this, Rs. 1,000/- was awarded as cost of proceedings. This order was challenged by the present petitioner before the State Commission and the State Commission confirmed the order of the District Forum. The matter was finally heard at the admission stage.

Counsel for the parties were heard. Counsel for the Petitioner/OP submitted before me that the pension of the complainant is required to be fixed in terms of Rule 12(3)(b) of Employees' Pension Scheme, 1995 and that the complainant is not entitled to weightage of two years since he had not completed 20 years of pensionable service after 16.11.1995. It was submitted that the complainant did not make any contribution prior to 1995; that there is difference in pensionable service and eligible service and actual eligible service is relevant for fixation of pension. According to him, 20 years will have to be calculated from 1995 in order to give two years weightage, but the complainant did not complete the said period and in this connection, reference is placed in paragraphs 6.2.13 of the Manual of Accounting Procedure. He also referred to paragraphs 6.2.14, which deals with eligible service. However, it was not disputed that if the complainant is entitled to 2 years weightage then the pension would be Rs. 1529/-. According to the Counsel for the OP, the pension comes to Rs. 1125/- per month and not Rs. 1529/-, as claimed by the complainant.



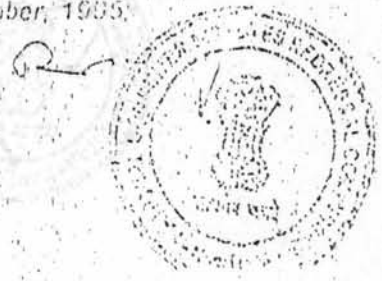
On the other hand, Counsel for the complainant has submitted that the pension of the complainant is required to be fixed as per Rule 2(4)(a) read with Rule 10(2) of the Employees' Pension Scheme, 1995 and the complainant is entitled to weightage of two years. According to him, the pension of the complainant is required to be fixed at Rs.1529/- per month. Ld. Counsel for the complainant further submitted that the complainant was paying contribution even earlier under Family Pension Scheme, 1971 and that the findings of the Forā below do not call for interference.

The facts are as follows: The complainant was member of the Employees' Provident Fund Scheme, 1952 and he opted for employees pension scheme, 1995. He rendered past service of 24 years prior to 15.11.1995 and rendered further service of 8 years after Employees' Pension Scheme, 1995 was introduced. He retired from service on 14.1.2004 on attaining superannuation of 58 years. The relevant provisions of the Employees' Pension Scheme, 1995 have been taken into consideration below. The relevant provisions which have to be taken into account for deciding the controversy are:

"Rule 2(i) 'past service' means the aggregate of periods of service rendered from the 15th November, 1995 or from the date of joining up to the date which ever is later to the date of exit from service by an employee of the establishment covered under the Act;

(vi) "Existing Member" means an existing employee who is a member of the Employees' Family Pension Scheme, 1971";

(xii) "past service" means the period of service rendered by an existing member from the date of joining Employees' Family Pension Fund till the 15th November, 1995.



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(xv) "pensionable service" means the service rendered by the member for which contributions have been (received or are receivable).

6. Membership of the Employees' Pension Scheme -  
Subject to sub-paragraph (3) of paragraph 1, the Scheme shall apply to every employee, -

(a) who has been a member of the ceased Employees' Family Pension Scheme, 1971 before the commencement of this Scheme from 16<sup>th</sup> November, 1995;

10. Determination of Pensionable Service-

(1) The pensionable service of the member shall be determined on the basis of the contributions (received or received) or debit in the Employees' Pension Fund.

(2) In the case of the member who superannuates on attaining the age of 60 years (and) who has rendered 20 years pensionable service or more, his pensionable service shall be increased by adding a weightage of 2 years.

12. Post-Service Pension -

(a) In the case of an existing member in respect of whom the date of commencement of pension is after the 16<sup>th</sup> November, 2005-

(i) Post service pension shall be as given below: -

The post service pension payable on completion of 58 years of age on the 16<sup>th</sup> November, 1995.

(ii) In the case of an existing member, and in respect of whom the date of commencement of pension, is between 16<sup>th</sup> November, 2000 and 16<sup>th</sup> November, 2005 -

(a) Superannuation or early pension shall be equal to the percentage of -

(i) pension as determined under sub-paragraph (2) for the period of service rendered from the 16<sup>th</sup> November, 1995 or Rs. 400/- per month whichever is more;

(ii) post service pension as provided in sub-paragraph (3)



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(ii) The amount of (a) and (b) calculated as above shall be subject to a maximum of Rs. 600/- per month provided the eligible service is 24 years.

Rule 12 deals with the Monthly Pension Rule 12 (3) is applicable in the case of an existing member in respect of whom the date of commencement of pension is after 16.11.2005. This clause is not applicable to the case of the complainant since the complainant had attained superannuation on attaining 58 years on 14.1.2004. In the case of the complainant, Clause 12(4) would be applicable which deals with the case of an existing member and in respect of whom the date of commencement of pension is between 16.11.2000 and 16.11.2005. Rule 10(2) provides that in case of a member who superannuates at the age of 58 years and who has rendered 20 years pensionable service or more, his pensionable service shall be increased by adding the weightage of 2 years. As per Clause 6.2.1.4 of the Manual of Accounting Procedure, eligible service explained is as under:

#### "Eligible Service

6.2.1.4 The eligibility for pension is determined with reference to 'eligible service'. This comprises of the services namely, 'past service' and 'actual service'. The period of past service relates to service rendered by the employees under the Employees' Family Pension Scheme from 1.3.1971 to 15.11.1995. The actual service is the period of service rendered by the employees commencing from a date on or after 16.11.1995 till the date of exit from the employment or attainment of 56 years of age, whichever is earlier. The period either under past service or under actual service or both, as



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case may be, will constitute eligible service. The eligibility for monthly pension to the member is determined with reference to 'eligible service' only. The period of 'past service' and 'actual service' should be rounded off separately to the nearest year to determine the eligibility for pension. If on account of rounding off alone the eligibility is denied such cases may be referred to Central Office.

Thus, the eligible service comprises of 'past service' and 'actual service'. The 'past service' relates to service rendered by the employee under the employees' Pension Scheme from 1.3.1971 to 15.11.1995. Thus, the 'past service' of the complainant, which is to be considered for eligible of pension, is 24 years as on 15.11.1995. The said paragraph 6.2.14 further provides with 'actual service' is the period of service rendered by the employee commencing from the date of order dated 15.11.1995 till the date of attaining of 58 years, whichever is earlier. The complainant had served for 8 years after 15.11.1995. The said paragraph 6.2.14 further provides that period under 'past service' or under 'actual service' or both as the case may be, will constitute eligible service. Thus, the complainant had 24 years past service and 8 years of actual service after coming into force of the employees' Pension Scheme, 1995 and since the said service is more than 20 years, he would be entitled to weightage of two years in terms of Rule 10(2) of the said Rules. Paragraph 6.2.13 of the Manual of Accounting Procedure which provides that the weightage is due to be given only in the year November, 2015 does not get any support from any provision in the employees' Pension Scheme, 1995 and the said paragraphs of 6:2.13 in the Manual Accounting Procedure is not in accordance with the provisions

the Employees' Pension Scheme, 1995.



In view of the above, I am of the opinion that the complainant is entitled to 2 years weightage under Rule 10(2) of the Employees' Pension Scheme, 1995 and his pension has been rightly ordered to be fixed by the For a below in terms of Rule 12(4) read with Rule 10(2) of the Employees' Pension Scheme, 1995. The orders of the For a below, therefore, do not call for any interference. The revision is without any merit and is dismissed with cost of Rs.10,000/- to be paid by the petitioner to the respondent. The complainant shall pay the arrears of pension within 3 months with 9% interest thereon from the date the same are due.



Sd/-  
 (R.K. BATTA)  
 PRESIDING MEMBER