

A.F.R.

RESERVED

**State Consumer Disputes Redressal Commission
U.P., Lucknow.**

Appeal No.169 of 2014

- 1- Senior Post Master, Head Post Office,
Faizabad.
- 2- Senior Superintendent of Post Offices,
Faizabad Division, Faizabad.Appellants.

Versus

- 1- Vinay Kumar Mishra s/o R.S. Mishra,
8/4/20 B, New Colony Jharkhandi, Faizabad,
Father and Natural Guardian Prajjwal Mishra
And Puneet Mishra.
- 2- Puneet Mishra s/o Sri Vinay Kumar Mishra,
8/4/20 B, New Colony Jharkhandi, Faizabad.
...Respondents.

Present:-


- 1- Hon'ble Sri A.K. Bose, Presiding Member.
2- Hon'ble Sri Sanjai Kumar, Member.

Dr. U.V. Singh for the appellants.
Sri R.S. Mishra for the respondents.

Date 01.4.2016

JUDGMENT

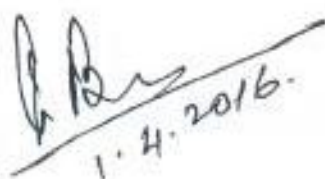
Sri A.K. Bose, Member- Aggrieved by the judgment and order dated 20.12.2013, passed by the Ld. DCDRF, Faizabad in complaint case No.203 of 2013, the appellants Senior Post Master, Head Post Office, Faizabad and another have preferred the instant appeal under Section 15 of the Consumer Protection Act, 1986 (Act 68 of 1986) on the ground that the impugned order is arbitrary, perverse and is bad in the eye of law. It was delivered without proper appreciation of law and/or application of mind, on the basis of surmises and conjectures only and therefore, it has been prayed that the same be set aside in the interest of


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justice otherwise, the appellants will suffer irreparable financial loss.

From perusal of the records, it transpires that the respondent no.1/complainant **Sri Vinay Kumar Mishra**, in his capacity as father and natural guardian of his two minor sons viz., Master Puneet Mishra and Master Prajjwal Mishra opened PPF Account nos.**10000762** and **10000763** in their names at Head Post Office, Faizabad (U.P.) on **30.7.2005** with initial deposit of Rs.**20,000.00** in each account. All the formalities were duly completed and Pass-Books were issued as per rules. No irregularity or illegality was committed at the time of opening the accounts. The respondent kept on depositing money in the aforesaid two Accounts upto **10.12.2011**, timely entries of which were made in the Ledger and the Pass-Books. There is no dispute in this regard. The interest accrued from financial year 2005-06 to financial year 2011-12 were also posted in the records which was Rs.**6,37,324.00** at the end of financial year 2011-12. It has been alleged that the Senior Post Master, Faizabad, vide his letter dated **5.3.2013** informed the respondent/complainant that the account no.10000763 standing in the name of Master Puneet Mishra was irregular in nature as the subsequent deposits in the account crossed the maximum permissible limit of Rs.70,000.00 as provided under Rule 3 of Public Provident Fund Scheme, 1968. It was, therefore, requested that the same be closed failing which the same would be closed by the Department. Copy of the letter dated 5.3.2013 has not been filed by the parties but this factum


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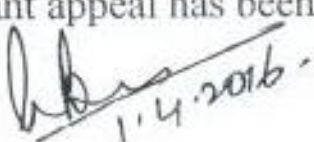


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has not been disputed or rebutted. The representations of the respondent/complainant for regularizing the aforesaid account was turned-down. The Senior Superintendent of Post Offices, Faizabad vide his office letter no.**SB/Draft-Audit-Para/12/13** dated **23.7.2013** requested the Post Master General, U.P. for regularization of the aforesaid Account but the request was turned down on the ground of Audit Objections. Consequently, the respondent/complainant suffered a net financial loss of **Rs.2,48,554.00**. Aggrieved by this gross deficiency in service, complaint case no.**203 of 2013** was filed with a prayer that the account no.10000763, standing in the name of Puneet Mishra be ordered to be regularized and he be permitted to operate the account without any hindrance.

The appellant Post Office filed its written statement in which it explained the reasons for stopping the operation of the account no.10000763. Admittedly, there was no irregularity or illegality at the time of opening of the account no.10000763. However, subsequent deposit in the account crossed the maximum permissible limit of **Rs.70,000.00** per annum. However, details of the same were not explained in the Written Statement.

The Forum below, after hearing the parties and on the basis of facts, circumstances and documentary evidence on record, allowed the complaint and directed the appellant Post Office to regularize the aforesaid account no.10000763 by posting upto date interest therein. It also directed the appellant to continue the account till its maturity period. Aggrieved by this judgment and order, the instant appeal has been preferred.



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Heard both the parties and have gone through the evidence on record carefully in the light of arguments of the parties. There is no dispute that the respondent/complainant no.1 Vinay Kumar Mishra, in his capacity as father and natural guardian of his two minor sons viz.; Prajwal Mishra and Puneet Mishra opened PPF account nos.10000762 and 10000763 on 30.7.2005 at Head Post Office, Faizabad and deposited Rs.20,000.00 in each account after completion of all formalities. There is no dispute also that both the accounts were in operation till 5.3.2013. It is also an admitted fact that the Senior Superintendent of Post Offices, Faizabad informed the respondent/complainant on 5.3.2013 and thereafter on 23.8.2013 about the Audit Objection that the PPF account no.10000763 was opened in contravention of the rules laid down in Public Provident Fund Scheme, 1968. He was also informed that since the account was irregular in nature, therefore, no interest was permissible on the amount deposited. Accordingly, the respondent was requested to close the account and withdraw the principal amount. The photo-copy of the notice dated 23.8.2013 is available on record. The aforesaid notice was given after rejection of the application for regularization of the account in view of **Rule 3(1) of the Public Provident Fund Scheme, 1968**. This Rule provides limit of subscription which is as under:

"Any individual may, on his own behalf or on behalf of a minor of whom he is the guardian, subscribe to the Public Provident Fund (thereafter referred to as the Fund) any amount not less than Rs.500 and not more than Rs.70,000 in a year."


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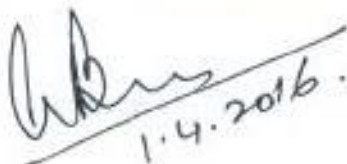


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The Ministry of Finance (DEA) Notification no. GSR 585 (E) dated 25.7.2003 clarified that:

"The limit of deposit of Rs.70,000 in a year by an individual in his self account and accounts opened by him on behalf of the minor(s) of whom he is the guardian is combined under rule 3(1) of the Scheme. This limit is separate for account opened by the HUF or an association of persons or body of individuals vide rule 3(2) of the Scheme."

In the instant matter, admittedly, there was no irregularity at the time of opening of the PPF Account nos.10000762 and 10000763. The Senior Post Master, Faizabad in his report at para 3 running page 15 brief history of the case, has submitted that "During inspection of the Audit Party, it came into light that the above mentioned accounts have been opened in **regular manner** but the deposits made against the said accounts were irregular because as per rules maximum amount that can be deposited in minor's PPF Account under the guardianship of the same parents is only Rs.70,000.00." Thus, from perusal of the report of the Senior Post Master, it is clear that the accounts were opened in **regular manner** but subsequently, it crossed the maximum limit of Rs.70,000.00, therefore, the respondent/complainant was not entitled for interest on the amount deposited in excess. The Senior Superintendent of Post Offices, Faizabad Division, Faizabad informed the Assistant Director (CBS/RB) Office of CPMG, UP Circle Lucknow vide his letter **CO No.SB/Draft-Audit-para-12-13** dated 23.7.2013 that "there is no fault on the part of the


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depositor." Thus, it is an admitted fact that there was no irregularity or illegality at the time of opening the above accounts and therefore, directing the respondent to close the account subsequently on the ground that the deposits were made in excess than the maximum permissible limits was most unfortunate.

The Ld. Counsel for the appellant drew our attention towards Rule 16 and 17 of the Post Office Savings Bank General Rules, 1981 and submitted that the Account no.10000763 was opened in contravention of the above two rules. We have given due consideration on both rules.

Rule 16 provides that:

"Where an account is opened incorrectly under a category other than the one applied for by the depositor, it shall be deemed to be an account of the category applied for if a person is eligible to open such account and if he is not so eligible, the account may be converted into an account of another category ab-initio, if the person so desires and if he is found to be eligible. For any reason where the account cannot be so converted, the account is to be closed and the deposits made in the accounts be refunded to the depositor with interest at the rate applicable from time to time to a savings account of the type for which the depositor is eligible."

Rule 17 further provides that:

"If any Account is found to have been opened in contravention of any Rule, the relevant Head Savings Bank may, at any time, cause the account to be closed and the deposits made be refunded to the depositor without interest."


From perusal of the above rules, it is clear that they



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are beneficiary Rules and deal with a situation where the account is opened **incorrectly** under a category other than the one applied for the depositor. In the instant matter, the account was opened **correctly** and in accordance with the rules, as is clear from the letter of the Senior Superintendent of Post Offices dated 23.7.2013 and report of the Senior Post Master, Faizabad, discussed hereinabove. Thus, the arguments of the Ld. Counsel for the appellant hold no ground. The Ld. Counsel relied upon the ruling laid down by the Hon'ble Apex Court in **Arulmighu Dhandayudha Paniswamy vs. Director General of Post Offices & Ors., III(2011) CPJ 25 (SC)**, in which the Hon'ble Apex Court was pleased to lay down certain guidelines for the Post Offices while dealing with various accounts of deposits. It was argued that directing the respondent/ complainant to close the PPF Account no.10000763 and to withdraw the principal amount without interest was in accordance with Rules 16 & 17 of the Post Office Savings Bank General Rules, 1981 and ruling laid down by the Hon'ble Apex Court in Arulmighu's case (supra). We have already held that Rule 16 & 17 of the Post Office Savings Bank General Rules, 1981 are not applicable in the instant matter as the account in hand was opened in accordance with the Rules and there was no irregularity or incorrectness in it at that time as admitted by the Senior Superintended of Post Offices. From perusal of para 7 of the judgment in Arulmighu's case (supra), it is clear that the account so opened in that case was not permissible even prior to the initial deposits

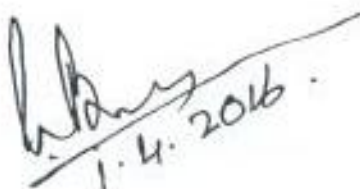

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made therein. The relevant portion of the judgment is as under:

"It is clear from the above communication that with effect from 1.4.1995 i.e. even prior to the deposits made by the appellant-Temple, investment by institutions under the Scheme was not permissible"

In the instant matter, there was no irregularity or illegality was committed at the time of opening of the account, therefore, taking recourse to Rule 3(1) of the Public Provident Fund Scheme, 1968 or Rule 16 & 17 of the Post Office Savings Bank General Rules, 1981 or ruling laid down in Arulmighu's case (supra) was not appropriate. Admittedly, an account may be ordered to be closed down under Rule 17 of the Rules, 1981 if the same was opened incorrectly. In the instant matter, from perusal of the report of the Senior Superintendent of Post Offices dated 23.7.2013 and case history submitted by the Senior Post Master, it is clear that both the account nos. 10000762 and 10000763 were opened in a regular manner. From perusal of the records, it is further clear that both the accounts continued uninterruptly for more than 7 years. There is nothing on record to explain as to how the account no. 10000763 became irregular and when. The Forum below discussed all facts, circumstances and evidence on record and held that the Pass-Book and the Statement of Account submitted by the Post Office do not show any irregularity at the time of opening the account. The appellant could have refused to pay interest on excess


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amount deposited by the respondent/complainant subsequent to opening of the account but treating the entire account as illegal ab-initio after a period of 7 years was not correct. It is true that an illegality can not be cured but irregularities are always open for correction. The only bone of contention in the appeal is that subsequent deposit made in account no.10000763 was not permissible. This remiss or excess deposit does not attract the provisions of Rule 3(1) of the Public Provident Fund Scheme, 1968 nor the provisions of Rule 16 & 17 of the Post Office Savings Bank General Rules, 1981. It may be noted here that the W.S. filed by the Appellant before the Forum below is silent as to when the respondent/complainant crossed the maximum permissible limit of Rs.70,000.00 p.a. and what was the excess amount. The appellant has neither submitted the Audit Report dated 23.8.2013 nor the letter of PMG dated 14.3.2013, therefore, it is not possible for us to draw any definite conclusion on the veracity of those documents. The appellant has not even filed the copy of the letter of the Senior Superintendent of Post Offices dated 5.3.2013. No reason has been assigned for withholding these important documents. Closure of a validly opened account is a serious matter and required due deliberation on all aspects of the matter. Closure without sufficient cause or cogent reasons certainly amounts to misfeasance in public office and in the instant matter there is sufficient evidence to establish the factum of misfeasance. The Forum below considered all facts, circumstances and evidence on record before passing the


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impugned order. There is no irregularity or illegality in the same. Therefore, we are not inclined to interfere in the findings.

However, the operative portion of the judgment requires a little modification. The Forum below has awarded interest on the entire amount deposited by the respondent/complainant. It is not in accordance with the Rules. He is entitled to receive interest on the maximum permissible amount of Rs.70,000.00 per annum and not beyond. Accordingly, operative portion of the order is modified.

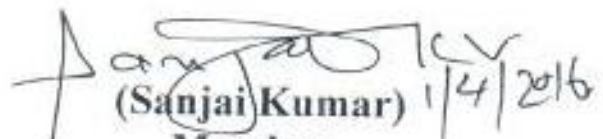
ORDER

The appeal is partly allowed. The respondent/complainant is entitled to receive interest on the maximum permissible amount of Rs.70,000.00 per annum pertaining to Account no.10000763 and not beyond. The remaining part of the judgment and order passed by the Ld. DCDRF, Faizabad dated 20.12.2013 is confirmed.

No order as to costs. Certified copy of the judgment be provided to the parties in accordance with rules.


(A.K. Bose) 1.4.2016

Presiding Member


(Sanjai Kumar) 1/4/2016
Member