

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTING : BILASPUR

Original Application No.203/00152/2018

Bilaspur, this Thursday, the 21st day of November, 2019

HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER
HON'BLE MR. B V SUDHAKAR, ADMINISTRATIVE MEMBER

Smt. G. Kusumamba w/o Late G.S.N. Rao, aged about 63 years,
 R/o Sairam Nilayam, Devri Khurd, Near JBC Sunrise School,
 District Bilaspur Chhattisgarh 498004 Mobile No.7999510313

-Applicant

(By Advocate – Shri A.V. Shridhar)

V e r s u s

1. Union of India through General Manager, South East Central Railway, New GM Building, Bilaspur, Chhattisgarh 495004.
2. Chief Personnel Officer, South East Central Railway, Divisional Office, Personnel Branch Bilaspur Chhattisgarh 495004.
3. Senior AFA/Pension, South East Central Railway, Bilaspur Chhattisgarh 495004.
4. State Bank of India Through its Branch Manager, Railway Colony, Bilaspur (C.G) 495001.
5. Chief Manager, Centralized Pension Payment Cell, Govindpura, Near ITI, Bhopal (M.P) 462023 **-Respondents**

(By Advocate – Shri Vivek Verma for respondents Nos.1 to 3 and Shri Sachin Singh Rajput for respondents Nos.4 & 5)

O R D E R (O R A L)

By Ramesh Singh Thakur, JM.

This Original Application has been filed by the applicant against Annexure A-1 communication dated 30.08.2016,

whereby the applicant has been intimated that a sum of Rs.118652/- has to be recovered from the family pension of the applicant.

2. The applicant has, therefore, sought for the following reliefs:

“8.1 That, the learned Tribunal may kindly be pleased to direct the respondents not to make any recovery from the family pension of the applicant towards alleged excess payment in any and further be pleased to quash the impugned notice dated 30.08.2016 (Annexure A/1).

8.2 That, the Hon’ble Tribunal may kindly be pleased to direct the respondents to refund the amounts deducted from the applicant in pursuance to the order Annexure A/1 with an interest of at the rate of 18% p.a.

8.3 Cost of the Original Application.

8.4 Any other relief which the learned Tribunal deems fit and proper may be awarded.”

3. Brief facts of the case are that the husband of the applicant was working as TLM in the respondent department and superannuated on 30.06.1987. Thereafter, he was getting the pension credited to his Bank account maintained with respondent No.4. Husband of the applicant died on 05.01.1991 and after the death of her husband, the applicant was receiving the family pension and a revised PPO on implementation of 6th CPC was prepared on 16.12.2011 (Annexure A-2) and issued to

the applicant in the month of December 2015. However, vide impugned notice date 30.08.2016 (Annexure A-1), it has been informed to the applicant that an amount of Rs.118652/- is sought to be recovered from her family pension and thereafter w.e.f. September, 2016 the deductions from the family pension of the applicant has been started.

4. It is the case of the applicant that the recovery on account of alleged excess payment is not in consonance with the judicial pronouncement in the case of **State of Punjab & Ors. vs. Rafiq Masih (White Washer) etc.**, (2015) 4 SCC 334. Further, as per RBE No.72/2016, the respondents have adopted the circular issued by DoPT dated 02.03.2016, wherein it has been decided that the issue of wrongful/excess payments has to be dealt with in accordance with the decision of the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra).

5. The respondents Nos.1 to 3 have filed their reply. It has been submitted that the procedure has been laid down in RBI Master Circular dated 31.05.2001 for recovery of excess/wrong payments made to the pensioners. Further, the dispute involved in this Original Application is between Bank and the pensioner, which is governed by Banking Law and practice. It has also

been submitted that the State Bank of India CPPC/Bhopal had inadvertently extended the benefit of additional quantum of family pension of 20% of the basic pension in favour of the applicant w.e.f. 01.06.2009 instead of 01.01.2009. Therefore, there is no illegality in deduction of the excess amount paid which is in accordance with undertaking submitted by the applicant.

6. Respondents Nos.4 & 5 have also filed their reply, wherein it has been submitted that the applicant is in receipt of old age pension w.e.f. 01.06.2009 as per the date of birth 02.06.1929, which is the date of birth of regular pensioner late Shri G.S.N. Rao. It has been submitted that the date of birth of the applicant is not mentioned in the PPO. It has also been submitted that in terms of RBI circular dated 17.03.2016 (Annexure-R-4/1), the respondents-Bank can recover over payment made to the pensioner from his/her future pension.

6.1 The respondents have placed reliance upon the judgment of Hon'ble Apex Court in the case of **Chandi Prasad Uniyal vs. State of Uttarakhand**, AIR 2012 SC 2951, wherein it has been held that excess money paid to government officers due to some mistake, cannot be retained by him/her, which will

amount to undue enrichment. They have further relied upon the judgment passed by the Hon'ble Supreme Court in the case of **High Court of Punjab and Haryana vs. Jagdev Singh** in Civil Appeal No.3500 of 2006, decided on 29.07.2016 to say that the applicant has given an undertaking that if any excess amount is paid to her, it will be recoverable.

7. We have heard the learned counsel for the parties and perused the pleadings and the documents available on record.

8. It is an admitted fact that vide Annexure A-1, the respondents-Bank have issued the impugned order on 30.08.2016 for recovery of amount of Rs.118652/- on account of excess payment for the period w.e.f. 01.06.2009 to 31.08.2016. As per reply filed by respondents Nos.4 & 5, they have quoted the circular of the RBI and have stated that the Bank has the power to recover the excess amount paid on the pension. So far as respondents Nos.1 to 3 are concerned, it has been stated that the respondents-Railways had sent the copy of the PPO dated 16.12.2011, wherein all the terms and conditions were stipulated in the PPO. But, it was failure on the part of the Bank to disburse the actual amount to the applicant and

thereafter vide notice dated 30.08.2016, the impugned notice of recovery was issued by the Bank to the applicant.

9. Learned counsel for the applicant, while placing reliance upon the judgment of Hon'ble Apex Court in the case of **Rafiq Masih** (supra), has submitted that on the basis of the judgment, the DoPT has issued the instructions (Annexure A-5) with regard to recovery from excess payment made to a Government servant and the respondents-Railways have adopted the same by issuing RBE No.72/2016. Hence, the case of the applicant is covered by the ratio laid down in the case of Rafiq Masih (supra).

10. It is true that certain guidelines have been issued by the Hon'ble Apex Court in **Rafiq Masih** (supra) employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. The relevant Para 18 of the judgment reads as under:

"18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
- (v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."*

11. In the instant case, recovery has been made from the family pension of the applicant. It is relevant to mention that husband of the applicant was a Group D employee. Moreover, the impugned order of recovery has been issued on 30.08.2016 for the excess payment made in the year 2009, i.e. after 07 years from the date of alleged excess payment made to the applicant. Thus, we find that the instant case is totally covered by the law settled by the Hon'ble Apex Court in **Rafiq Masih** (supra).

12. So far as contention of the respondents that the excess payment is being recovered as per the judgment of the Hon'ble Apex Court in **Chandi Prasad Uniyal** (supra), we find that the said judgment is not applicable to the facts and circumstances of the present case because as per Office Memorandum dated 02.03.2016, the judgment of **Chandi Prasad Uniyal** (supra) has

also been taken note of while issuing the Office Memorandum and the same has also been adopted by the respondents-Railways. Rather, it is responsibility of the respondents to fix the wrong done by the wrong employee and for that the applicant cannot be penalized.

13. Regarding the judgment relied upon by the respondents in **Jagdev Singh** (supra), it is relevant to mention that it was the case of recovery from a Civil Judge, who is admittedly on much higher pedestal than the applicant and hence, the said judgment is not applicable in the instant case.

14. In view of the above, we feel that Annexure A-1 is contrary to the law settled by the Hon'ble Apex Court in the case of **Rafiq Masih** (supra). Accordingly, Annexure A-1 is quashed and set aside and any recovery made in pursuance to Annexure A-1 shall be refunded to the applicant within a period of 60 days from the date of receipt of certified copy of this order.

15. The O.A is allowed. No order as to costs.

(B V Sudhakar)
Administrative Member
am/-

(Ramesh Singh Thakur)
Judicial Member