

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the 17th day of November Two Thousand And Seventeen

PRESENT:
THE HON'BLE MR. R. RAMANUJAM, MEMBER (A)

O.A./310/01508/2016

T. Pandiammal
W/o. S. Thambiraju
Aged about 58 years,
No.354/C, Railway Colony,
Madurai- 625 016.Applicant

(Advocate: M/s. S.S. Jothivani)

1. Union of India Rep. by
The Sr. Divisional Personnel Officer,
DRM Office,
Southern Railway,
Madurai- 625 016;
2. The Finance Manager,
FA& CAOs Office,
Southern Railway,
Chennai- 600 003;
3. The Sr. Divisional Finance Manager,
Madurai Division
Southern Railway,
Madurai- 625 016;
4. The Chief Manager,
Bank of India, CPCC
(Central Pension Processing Centre),
87/A, 1st Floor,
BOI Building,
Gandhi Baig, Nagpur,
Maharashtra-440 002;
5. The Chief Manager,
Bank of India,
Anna Nagar Branch,
Madurai.Respondents.

(Advocate: M/s. A. Abdul Ajees(R1-R3)
Mr. S. Rangasamy(R4-R5)

Reserved on:15.11.2017

O R D E R

(Pronounced by Hon'ble Mr. R. Ramanujam, Member (A))

The applicant has filed this O.A. seeking the following reliefs:-

"to call for the records pertaining to the impugned order issued vide P500/HQRS/Pen/BOI dated 03.05.2016 by the Finance Manager, Southern Railway, Chennai-600003 the 2nd respondent herein and to quash the same and consequently direct the respondents 1 to 5 to repay the recovered amount from the pension PPO 0608210204/SB account No.826312100009791 of the applicant with interest @24% p.a. and to pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case with costs and thus render justice."

2. According to the applicant, her husband one Sri S. Tambiraju, employed as Shunting Master at Southern Railway Madurai died on 29.10.1999 while in service. She was granted family pension as a wife and the legal heir of the deceased. Initially the applicant was granted revised enhanced family pension of Rs. 6750/-+DR upto 29.10.1999 and revised ordinary family pension of Rs. 4050+DR with effect from 30.10.2009. However during the month of May, 2016 when the applicant had sought withdrawal of her pension from her bank account, the transaction was declined. The applicant was intimated orally that she would not be allowed to withdraw pension since recovery had been ordered from the pension payable to her.
3. Aggrieved by the unilateral decision, the applicant approached the 5th respondent and submitted her representation dated



19.06.2016 for release of her pension. However, she was informed that she had been paid an excess of Rs. 3,36,456/- which had to be recovered from her. The applicant would submit that she had been paid pension in accordance with rules and there could be no recovery. Further, no recovery could be made of even an erroneous payment from the pensioners in terms of the law laid down by the Hon'ble Apex Court in the case of State of Punjab & Others v. Rafiq Masih (White Washer). The applicant accordingly seeks the aforesaid relief in this O.A.

4. Respondents 1 to 3 have filed a reply contesting the claim of the applicant. It is pointed out that the applicant had been granted enhanced family pension @ 50% of the pay last drawn by the applicant's husband for a period of seven years from the date of his death on 29.10.1999 in terms of Sub rule 4(1) (a) of the Pension Rule 75 of Railway Servants Pension Rules, 1993. Accordingly, the Pension Payment Order (PPO) issued in favour of the applicant authorized the enhanced family pension upto 29.10.2006 after which family pension had been authorized at normal rates only. However, following the recommendations of the 6th CPC, orders were issued enhancing the period of 7 years to 10 years and accordingly the applicant was entitled to enhanced family pension @ 50% of the last pay drawn of the deceased employee till 29.10.2009. It is submitted that the authorities in Bank of India from where the applicant was drawing pension continued to pay enhanced family pension beyond the said date inadvertently. When the irregularity was noticed, The

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Chief Manager of the Lead Bank concerned was advised regarding recovery of the excess amount paid to the applicant which amounted to Rs. 3,36,456/- for the period up to April 2016.

5. Respondents 1-3 would submit that the erroneous payment was entirely attributable to the Bank and no order had been passed by them to revise the pension downwards. As no erroneous payment could be attributable to Respondents 1-3, the law laid down in the White Washers' case cited supra, will not be applicable. As per the relevant instructions of the Reserve Bank of India applicable to all Banks as also the agreement entered into between the pensioner and the bank, the bank was fully entitled to recover any excess payment made to the pensioner. Since it was a matter between the bank and the pensioner in their relationship as a 'service provider' and 'customer', this O.A. is not maintainable before the Tribunal.

6. No reply has been filed by the Respondents 4 and 5.

7. Heard both sides. Learned counsel argued on the lines of their respective submissions in the OA and reply.

8. I have carefully considered the facts of the case. It is not in dispute that the applicant was entitled to payment of family pension at enhanced rates only for a period of 10 years from the date of death of her husband. Annexure A1 PPO dated 28.1.2000 is sufficient evidence that applicant was authorised to draw a pension of Rs. 2875 plus relief at the enhanced rate of 50% of the last pay drawn by the deceased employee upto 29.10.2006 only. Thereafter an amount of Rs.1725 plus relief was authorized to be paid. There is,



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therefore, no reason to believe that the 'erroneous' payment was caused by an error in the issue of PPO by the respondents 1 to 3.

9. The correspondence at Annexures A-4 and A5 between the 2nd and the 4th respondents does not throw light on the responsibility cast on the parties to detect 'discrepancies' in payment of pension. It is merely stated that some discrepancies were noticed while making internal check in the office of the second respondent. Consequent on the same, some of the pensioners' pension amount had been updated, but in most of the cases correct pension pointed by the office was not carried out in the subsequent scrolls which resulted in accumulation of excess payment of pension. The 5th respondent had, by letter dated 28.06.2016 merely conveyed to the applicant the alleged excess payment and the decision to recover the amount of Rs. 3,36,456/- . Interestingly, the letter does not admit to any error committed by the Bank itself but refers to letter dated 3.5.2016 from Southern Railway as the reason for recovery of excess pension. In any case, the overpayment cannot be attributed to any omission or commission on the part of the applicant.

10. The applicant has enclosed a copy of the 6th pay commission revised pension payment advice dated 5.3.2014 under which she was to be granted enhanced pension till 2009. This revised authority is stated to supersede all other earlier authorities. This means that even the authority to pay enhanced pension for a period of 10 years instead of seven years indicated in the original PPO was issued only five years after the expiry of the ten year period in 2009 and as such,



the lapse on the part of the respondents had remained unnoticed right from the year 2006. As respondents 4 and 5 have not filed a reply and it has not been explained how and why the respondents 1 to 3 failed to notice the excess payment for 10 long years from 2006 to 2016, it would be too simplistic to lay the blame on the Bank alone.

11. If the respondents 1 to 3 are required to carry out periodic internal checks under the relevant rules, standing orders and/or their arrangement with the Bank, failure to do so would tantamount to negligence and dereliction of duty on their part. In such a situation, the applicant cannot be deprived of the benefit of the judgment of the Hon'ble Apex Court in the White Washer case cited supra on the plea that the Bank had a right to effect recovery of an erroneous payment in terms of the agreement between the Bank and the Pensioner or under the RBI guidelines. A distinction has to be made between an error arising out of an oversight or any reason beyond the control of the authority and a lapse in the discharge of a responsibility or failure to perform a duty and exercise due diligence in financial transactions. Failure to act on overpayment for a period of ten years when there was no discrepancy in the original PPO cannot be dismissed as a mere error. Clearly, the respondents had been collectively irresponsible in the matter. More so, when it is seen that several names have been listed in the communication dated 3.5.2016 of the second respondent and the applicant was not alone.

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12. In view of the above, I deem it appropriate to dispose of this O.A with the following direction:-

"The competent authority in Southern Railway shall examine the relevant rules, executive instructions issued by way of standing orders or otherwise and the agreement between the Pension Payment Authority and the Bank to see whether the respondents 1 -3 ought to have noticed the excess payments made by the bank earlier through internal checking on a periodic basis so as to stop it well in time soon after the originally authorized period of enhanced pension expired in 2006. If it was their responsibility to detect excess payments in time, the consequences of any lapse on their part in this regard should not be allowed to visit the applicant. In the event of any lapse on the part of the Respondents 1-3, the procedure prescribed in OM dated 2.3.2016 of DOP&T, applying the ratio of the State of Punjab & Others v. Rafiq Masish (White Washer) shall be followed to settle the claim of the applicant. This exercise shall be completed and a reasoned and speaking order passed within a period of two months from the date of receipt of copy of this order."

13. The O.A. is disposed of in these terms. There shall be no order as to costs.

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