

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated Wednesday the 3rd day of June Two Thousand And Twenty

PRESENT:

THE HON'BLE MR. P. MADHAVAN, MEMBER(J)
THE HON'BLE MR. T. JACOB, MEMBER(A)

O.A.310/514/2019

D. Thiruvateeswaran,
L 13 A, Sarvamangala Colony,
Ashoknagar,
Chennai-600 083.Applicant

(By Advocate:Party in Person)

Vs.

Union of India Rep. by
The Secretary
Dept of Telecommunications,
Ministry of Communications & IT, New Delhi.

.....Respondents.

(By Advocate: Mr. M. Kishore Kumar)

O R D E R

(Pronounced by Hon'ble Mr. P. Madhavan, Member(J))

This is an OA filed seeking the following relief:-

"To set aside the revised PPA No. Pr.CCA/TN/PEN/CDA/Pre-2016/2017 dated 27.12.2017 issued by the Pr CCA, Tamilnadu & also the impugned order dated 27.2.2019 issued by the respondent. It may also direct the respondent to refund immediately the sum of Rs.36542/- recovered as alleged excess payment from the applicant, with interest at 18% p.a. from the date of recovery to the date of actual repayment."

2. The facts leading to the filing of this case is as follows. The applicant had retired from the Department of Telecommunications (DOT) on 30.11.1987. The last pay drawn by him was Rs.11,950/-. Accordingly, his pension was fixed as Rs. 5878/- with effect from 01.12.1997. When the 6th Central Pay Commission (CPC) came, his pension was revised to Rs. 13,286/- per month with effect from 01.01.2006. Thereafter, 7th CPC came to be implemented and his pension was fixed taking his Last Pay Drawn as Rs. 11,950/- and pension was revised to Rs. 38,100/- with effect from 01.01.2016. The arrears for the period 01.01.2016 to 31.12.2017 was also paid through bank on 18.02.2018 with applicable Dearness Relief (DR).

Suddenly, without notice, the bank reduced his pension from Rs.38,100/- to Rs.37,000/- w.e.f. September, 2018 and bank recovered an amount of Rs. 36,542/- in three monthly instalments from pension. He filed OA 1389/2018 challenging the II PPA before this Bench. The Bench disposed of this OA by directing the respondent to consider his representation dated 13.3.2018 within two months. Since OA was disposed of without issuing notice to the respondents, the applicant filed RA 3/2019. But the Tribunal dismissed the same. The respondents passed a speaking order on 27.02.2019 and the applicant challenged both these orders.

3. The respondents filed a reply stating the following facts. The applicant had retired from the respondents as D.E. (Group A) officer. According to the respondents, when the applicant was working as Senior Asst. Engineer, he was superseded in promotion to the post of D.E. But the applicant challenged the same by filing OA 155/2001 and the Tribunal allowed the OA and directed to promote him with effect from the date of his junior was promoted. The applicant was given notional promotion w.e.f. 14.08.1995. The applicant retired on 30.11.1997. The applicant then filed OA 647/2002 seeking back wages for the period of notional promotion. But the Tribunal dismissed the OA.

The applicant again approached the Tribunal with an OA 646/2004 seeking a direction to re-fix his pay Rs. 11950/- w.e.f. 01.01.1997, the date when his junior, Sundaraghavan was promoted as he is drawing more pay. The CAT directed the respondents on 11.4.2005 to consider re-fixation of pay and consequent revision of pension and pass speaking order within two months. Accordingly, the fixation of pension was considered in DOT with the approval of Secretary DOPT and a speaking order was issued to the applicant stating following facts:-

"(a) Under FR 22 stepping up of pay on par with junior is permissible only if such an anomaly exists for a senior employee drawing equal or more pay than his junior in the lower post and promoted earlier, starts drawing less pay than such junior promoted later on regular basis. In this case, the applicant as well as his junior, P. Sundraraghavan were promoted as DE on adhoc basic only;

(b) As per the service record of P. Sundraraghavan, he was promoted as DE on 31.01.1996 and his pay was fixed under FR 22(1) (a)(i). P. Sundraraghavan is in receipt of more pay than the applicant prior to his date of promotion itself, as he was in receipt of three advance increment w.e.f. 17.01.1970 for passing ITE exam. Thus the junior is in receipt of more pay than the applicant in JE cadre itself and this difference continued even after promotion to SDE cadre.

(c) The request of the applicant for stepping up of pay w.e.f. 01.03.1997 at par with Shri M. Shankarasubbu, DE was also examined and it was observed that Shri M. Shankarasubbu

was not drawing more pay than the applicant. However, pay of Shri M. Shankarasubbu was wrongly fixed with DNI on 01.03.1996 instead of 01.07.1996 which was later corrected by the circle office.

4. In view of the aforesaid reasons, there was no ground for stepping up of pay of the applicant, with reference to his juniors, Shri P. Sundararaghavan and Shri M. Shankarasubbu. It was also noticed that the pay of applicant was wrongly fixed at Rs.11300/- w.e.f. 01.01.1996 instead of R. 10,975/- as per CCS (RP) Rules, 1997. This had resulted the applicant getting a fixation one step above and consequently fixation of basic pension at Rs.5878/- instead of R.5,715/-. Accordingly, the pension of the applicant has to be revised and excess payment made to be recovered."

4. The applicant challenged the Annexure-A4 order by filing OA 643/2005. The said OA 643/2005 was dismissed on 19.04.2006. Applicant filed RA 25/2006 and it was also dismissed on 16.02.2007. Thereafter, the 6th CPC recommendation was implemented. Since the original pension file could not be traced, the pension was fixed taking pension as on 31.12.2005 and Dearness Relief (24%) + 40% fitment on basic pension. Accordingly, pension was revised to Rs.13,286/- w.e.f. 01.01.2006. When the 7th CPC implementation came, it required the scale of pay drawn for revising pension. Since the original file of the applicant could not be traced, revision could

not be processed in time. Then applicant filed OA 1490/2017 to settle his revision of pension. The DOT vide letter No. 7-1/2017/TA-1/Pre-2016/5142-5169 dated 20.09.2017 has directed the respondents that revision of pension in respect of pre-2016 pensioners cases are to be processed with available records to avoid delay and hardship to the pensioners. The applicants case was considered and pension was revised to Rs.38100/- from 01.01.2016. ***Thereafter, the original pension file was traced*** and it was found that the last pay drawn has to be revised as per A4 order dated 15.07.2005 and his pension was revised as Rs.37000/- as per order dated 27.12.2017 cancelling earlier order. The bank had recovered Rs.36,542/- and credited to the Government.

5. We have heard both sides and perused the various annexures and impugned order passed in this case. According to the applicant, the recovery of an amount due to incorrect fixation of LPD cannot be undertaken in year 2018 from a pensioner as it is highly inequitable. The applicant was not issued with a notice before the reduction was done. So according to the applicant, the impugned orders dated 27.12.2017 issued by the Prl. CCA and order dated 27.2.2019 is liable to be set aside and the amount of Rs. 36,542/- has to be refunded.

6. The counsel for the respondents would contend that the order to refix the LPD and pension dated 15.07.2005 was communicated to the applicant in 2005 itself and he had challenged the said order by filing OA 634/2005 and the same was dismissed by the Tribunal on 19.04.2006 finding no merits. Even though an RA 25/2006 was filed, it was also dismissed and no further challenge was made by applicant on the order of reduction of LPD and revision of pension (A4) dated 15.07.2007. So the applicant was very well aware that the revision of pension in 6th CPC and 7th CPC was not properly done as the file was missing. In the case of implementing 7th CPC revision, the applicant has compelled the respondents to take a decision even though his pension file was missing by filing OA 1490/2017 and the respondents had to revise the pension with the available records. So, it is clear that the applicant was aware of his overdrawing of pension from 17.05.2005 onwards.

7. We have heard the rival contentions in this case. The facts submitted by the respondents would go to show that the applicant was informed of his overdrawal of pension as per A4 order dated 15.07.2015. It is interesting to note that the applicant had in fact filed an OA 646/2004 to enhance his LPD on par with one Sunderaraghavan and one Sankarasubbu and it

was during the consideration of the representation of the applicant, that respondent found that the fixation of Sankarasubbu and applicant was not correct. The respondent thereafter revised the case of Sankarasubbu w.e.f 1.3.1997. It was accordingly A4 order was issued by the respondents. The applicant who is a Group A officer continued to receive the excess amount even though his OA challenging A4 was dismissed. The respondent failed to implement the A4 order for more than 10 years as the applicants' pension file could not be traced. Later when the file was traced they issued the revised impugned orders in this case. This is a case where the payer as well as payee were at fault. The Hon'ble Supreme Court happened to consider these type of excess payments and how recovery to be effected in the case of **State of Punjab & Ors v. Rafiq Masih (With Washer) etc reported in (2015) 4 SCC**

334. The DOP&T had issued OM No. F.No.18/03/2015-Estt (Pay-1) dated 2.3.2016 on the basis of the decision, the Dept. has extracted the following situation where payments made mistakenly by the employer in excess of their entitlement. It has summarized the following situations, wherein recoveries by the employees would be impermissible in law:-

"(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service);

(ii) Recovery from retired employees or employees who are due to retire within one year, of the order of recovery;

(iii) Recovery from 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 for outweigh the equitable balance of the employer's right to recover."

8. In view of the OM dated 2.3.2016 (A6) recovery from a retired employees is prohibited as per clause (ii) Para 4 of the

OM. In this case even-though the applicant as well as respondents were aware of the over payments, the employer did not take steps to implement its own order for more than 13 years on the pretext that file was found missing. The applicant actually retired on 30.11.1997. Even though the defect in fixation was noted in the year 2005 itself, the respondents failed to take steps for recovering the excess amount paid.

9. In view of the DOP&T O.M. dated 2.3.2016, no recovery can be effected from retired employees and the applicant is entitled to get the benefit. So, accordingly we find that the recovery of Rs.36,542/- from pension of the applicant is illegal and hence he is entitled to get it refunded.

ii) As regards the refixation of pension on the basis of A4 dated 15.07.2005, we find no reason to interfere in the revision of pension as per order dated PPA No. PR CCA/TN/PEN/CA/Pre-2016/2017 dated 27.12.2007 and order dated 27.02.2019.

iii) As regards the claim for interest @18% per annum, we find no merit in the claim. The applicant was also aware of the over payment. So, there is no justification for claiming interest. So we disallow the claim of 18% interest as the amount sought to be recovered is Rs. 36542/-.

10. In the result, the respondents are directed to refund Rs.36,542/- recovered from pension within a period of three months. OA is disposed of accordingly. No costs.

(T. JACOB)
MEMBER(A)

(P. MADHAVAN)
MEMBER(J)

03.06.2020

Asvs