

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00352/2019

Wednesday, this the 1st day of January, 2020

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

Baby Valsala T., W/o. Late P. Gopinathan I.F.S. (Retd.),
 aged 71 years, Yamini, East Hill Road, Kacheri, Kozhikode,
 Pin – 673 005, Mob. - 9446253177. **Applicant**

(By Advocate : Mr. Babu Joseph Kuruvathazha – Not present)

V e r s u s

1. Union of India, represented by its Secretary,
 Ministry of Environment, Forest & Climate Change,
 Pariyavaran Bhavan, CGO Complex, Lodhi Road,
 New Delhi – 110 003.
2. Government of Kerala, represented by its Secretary,
 Department of Forest, Government Secretariat,
 Thiruvananthapuram, Pin – 695 001.
3. Accountant General (A&E), Kerala, Thiruvananthapuram,
 Pin – 695 036.
4. Senior Accounts Officer, Office of the Accountant General
 (A&E), Kerala, Thiruvananthapuram, Pin – 695 036.
5. Assistant General Manager, Centralized Pension Processing Centre,
 SBI, Chempikalom Buildings, 3rd Floor, Vazhuthacaud,
 Thiruvananthapuram, Pin – 695 014.
6. Manager, State Bank of India, Main Branch, Mananchira,
 Kozhikode – 673 001.
7. Ram Gopal N., Manager, State Bank of India, Main Branch,
 Mananchira, Kozhikode – 673 001. **Respondents**

**[By Advocates : Mr. Thomas Mathew Nellimoottil, Sr. PCGC (R1),
 Mr. M. Rajeev, GP (R2-4) and
 Mr. B.S. Syamanthak (R5-7)]**

This application having been heard on 19.12.2019, the Tribunal on 01.01.2020 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

- “i) Issue appropriate order or direction commanding the respondents not to effect any recovery/deduction of the family pension legally due to the applicant.
- ii) Issue appropriate order or direction commanding the respondents to return/disburse the entire amount of pension recovered/deducted from the pension account of the late husband of the applicant maintained with the 6th respondent, with interest minimum at the rate of 9% per annum, forthwith.
- iii) Issue appropriate order or direction commanding the respondents to return/disburse the entire amount of family pension recovered/deducted from the family pension of the applicant maintained with the 6th respondent, with interest minimum at the rate of 9% per annum, forthwith.
- iv) Issue such other appropriate direction or order as this Hon'ble Tribunal may deem fit and proper in the interest of justice.”

2. The brief facts of the case are that the applicant is the wife of late Gopinathan. Late Gopinathan retired from service working as Conservator of Forest on 31.8.1997 and he was a pensioner under the respondents Nos. 1-3. He died on 19.8.2018. Late Gopinathan was drawing pension through the State Bank of India under the control of 6th respondent with effect from 1.9.1997. On the allegation of having sanctioned excess pension with effect from 1.1.2016 in the scale of pay of Rs. 78,800-2,09,200/- instead of Rs. 43,050/-, to the late husband of the applicant, the 4th respondent issued letter Annexure A2 directing the District Treasury Officer, Kozhikode to recover the excess pension disbursed to the late husband of the applicant. However, without any just and sustainable reason, in utter violation and disregard to

the principles of natural justice, the monthly pension of late Gopinathan was reduced to Rs. 30,964/- from the month of June, 2018 and an amount of Rs. 4,72,847/- was recovered from the monthly pension by the 6th respondent without the knowledge and information on the part of late P. Gopinathan. After the death of the husband of the applicant the family pension of the applicant was also reduced from Rs. 28,445/- to Rs. 18,971/- without any reason. The applicant submits that there was no fraud or mistake committed by the late husband of the applicant or the applicant in order to gain any benefit. The pension was sanctioned by the respondents. The applicant has relied upon the judgment of the apex court in *State of Punjab & Ors. v. Rafiq Masih (White Washer) & connected cases* - AIR 2015 SC 696 in support of her contentions. Therefore, the action of the respondents to effect recovery is highly erroneous, arbitrary and illegal.

3. Notices were issued to the respondents. Shri Thomas Mathew Nellimoottil, Sr. PCGC entered appearance for respondent No. 1, Shri M. Rajeev, GP entered appearance for respondents Nos. 2-4 and Shri B.S. Syamanthak entered appearance for respondents Nos. 5-7.

4. Respondents Nos. 2-4 filed a reply statement contending that the deceased husband of the applicant retired from the cadre of IFS on 31.8.1997 and the last pay drawn by him was in the scale of pay of Rs. 12,000-16,500/-. After the retirement of the applicant two general pay/pension revision orders i.e. 6th and 7th CPC w.e.f. 1.1.2006 and 1.1.2016 respectively were issued by the Central Government. The revised

pension admissible to the deceased husband of the applicant w.e.f. 1.1.2006 was in the scale of pay of Rs. 15,600-39,100/- plus Grade Pay of Rs. 7,600/-. Instead of revising the pension of the husband of the applicant in the pay band of Rs. 15,600-39,100/- plus GP of Rs. 7,600/- the same was erroneously fixed in the pay band of Rs. 37,400-67,000/- plus Grade Pay of Rs. 8,700/- by oversight which resulted in authorizing the pension @ of Rs. 23,050/- and family pension Rs. 13,830/- instead of the admissible amount of pension at Rs. 16,355/- and family pension at Rs. 9,813/- respectively. The erroneous fixation was noticed and the office of the 3rd respondent vide Annexure A2 letter informed the District Treasury Officer, Kozhikode about the rates of pension admissible to the deceased husband of the applicant on the revision of pension by the 6th and 7th Central Pay Revision. The respondents Nos. 2-4 relied upon Annexure R4(A) a circular issued by the Reserve Bank of India wherein it is provided that excess payments made on account of pension to the pensioners can be recovered from pension. Respondents 2-4 pray for dismissing the OA.

5. A reply statement was also filed by respondents Nos. 5-7 the Bank wherein they contend that respondents 5-7 are only the pension disbursing agency and cannot go beyond the pension payment orders issued by the competent authority. They are duty bound to follow the instructions issued by the pension sanctioning authority. Respondents Nos. 5-7 further submitted that they are authorized to make recovery of the excess payment made to the deceased pensioner in view of the letter of undertaking executed by him. Moreover, the Hon'ble apex court in *High Court of*

Punjab & Haryana & Ors. v. Jagdev Singh – AIR 2016 SC 3523 held that the authorities can recover the excess payment made to an employee on the basis of the undertaking executed by him. Therefore, the applicant is bound by the terms of Annexure R5(a) undertaking and she cannot challenge the recovery proceedings initiated by the respondent bank for recovering the excess payment made to the deceased pensioner. Respondents 5-7 also pray for dismissing the OA.

6. Heard Shri Thomas Mathew Nellimoottil, Sr. PCGC, learned counsel appearing for respondent No. 1, Shri M. Rajeev, GP, learned counsel appearing for respondents Nos. 2-4 and Shri B.S. Syamanthak, learned counsel appearing for respondents Nos. 5-7. Perused the record.

7. With regard to the revised pension admissible to the deceased husband of the applicant w.e.f. 1.1.2006 is concerned, the respondents Nos. 2-4 submitted that the pension of the deceased husband of the applicant should have been fixed in the scale of pay of Rs. 15,600-39,100/- plus Grade Pay of Rs. 7,600/- instead of Rs. 37,400-67,000/- plus Grade Pay of Rs. 8,700/-. This was done erroneously by oversight which resulted in authorizing the pension @ of Rs. 23,050/- and family pension Rs. 13,830/- instead of the admissible amount of pension at Rs. 16,355/- and family pension at Rs. 9,813/- respectively. The said erroneous fixation was noticed and the office of the 3rd respondent vide Annexure A2 letter informed the District Treasury Officer, Kozhikode about the correct rates of pension admissible to the deceased husband of the applicant on account of the revision of pension

ordered in the 6th and 7th Central Pay Revision. Therefore, we hold that the respondent authorities are justified in issuing Annexure A2 by which they have only corrected the erroneous fixation made by the pension sanctioning authority.

8. Further as regards the recovery part, we find that the Hon'ble apex court in ***Rafiq Masih***'s case (supra) had set down the law and declared recovery as impermissible from employees under certain circumstances. The Apex Court ruled :

“12. 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, 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 far outweigh the equitable balance of the employer's right to recover.”

In view of the apex court's decision in ***Rafiq Masih***'s case (supra) we find that the applicant's case falls within item No. (ii) wherein the apex court held that recovery from retired employees is impermissible. Moreover, it is duty of the respondents to pay the correct pension to the pensioner. We

further find that there was no misrepresentation or any fault on the side of the late husband of the applicant or the applicant while fixing the pension of the late husband of the applicant on implementation of the 6th and 7th CPC. Therefore, in view of the decision of the apex court in ***Rafiq Masih***'s case (supra) recovery from the pension of the late husband of the applicant and the family pension of the applicant is impermissible. Hence, the amount so recovered from the pension of the late husband of the applicant and from the family pension of the applicant may be refunded to the applicant within three months from the date of receipt of a copy of this order.

9. The Original Application is disposed of as above. There shall be no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

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APPLICANT'S ANNEXURES

- Annexure A1** - True copy of the Death Certificate dated 31.8.2018 of applicant's husband, issued by the Registrar of Births and Deaths, Kozhikode Corporation.
- Annexure A2** - True copy of the letter No. PM/P01/PenA/504/ZZ/96-97/1577 dated 26.2.2018 of the 4th respondent forwarded to the District Treasury Officer, Kozhikode.
- Annexure A3** - True copy of the relevant pages of the Statement of Account of late P. Gopinathan maintained with the 6th respondent.
- Annexure A4** - True copy of the proceeding dated 17.12.2018 of the 5th respondent.
- Annexure A5** - True typed copy of the representation dated 4.3.2019 submitted by the applicant before the respondents 3 to 6.

RESPONDENTS' ANNEXURES

- Annexure R4(A)-** Circular No. DGBA GAD No. 2960/45.01.001/2015-16 dated 17.3.2016 of Reserve Bank of India.
- Annexure R4(B)-** Order dated 27.3.2019 of Hon'ble CAT, Ernakulam in OA No. 394/2018 filed by Shri T.V. Balaraman IFS (Rtd.).
- Annexure R5(a) -** True copy of the undertaking executed by the applicant.
- Annexure R5(b) -** True copy of the circular No. RBI/2015-16/340 dated 17.3.2016.

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