

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00859/2016

Tuesday, this the 14th day of March, 2017

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member

A.C. Joseph, S/o. Late Cheeku, aged 71 years, Master Craftsman (Retd.),
 Naval Air Craft Yard, Anthikadu House, Manjummel, Udyogamandal PO,
 Ernakulam Dist. - 683 501. **Applicant**

(By Advocate : Mr. C.S.G. Nair)

V e r s u s

1. Principal Controller of Defence Accounts (Pension),
 Draupadi Ghat, Allahabad – 211 014.
2. Flag Officer Commanding-in-Chief, Southern Naval Command,
 Cochin – 682 004.
3. Chief Manager, Union Bank of India,
 Centralized Pension Processing Centre, Mumbai – 400 021.
4. Branch Manager, Union Bank of India, Manjummel,
 Udyogamandal PO, Ernakulam Dist. - 683 501.
5. Union of India, represented by its Secretary,
 Department of Pension & Pensioner's Welfare,
 South Block, New Delhi – 110 001. **Respondents**

**[By Advocates : Mr. N. Anilkumar, Sr. PCGC ® (R1,2&5) &
 Mr. K.S. Ajayagosh (R3&4)]**

This application having been heard on 14.03.2017, the Tribunal on the
 same day delivered the following:

O R D E R (Oral)

Hon'ble Mr. U. Sarathchandran, Judicial Member -

Applicant has approached this Tribunal being aggrieved by reduction
 of Rs. 5,775/- in his monthly pension disbursed through the respondents

Nos. 3 & 4 bank from September, 2016. According to him after implementation of the VIth Pay Commission recommendations his pension was revised and he was being paid Rs. 5,909/- per month and he was receiving it till September, 2016. When his pension was found to be reduced by Rs. 5,775/- he approached the respondent No. 4 Bank and he was told that some excess amount was paid to him and recovery is in respect of such excess payment which will be done in monthly installments. The applicant has approached this Tribunal seeking the following relief as under:

- “(i) To declare that no amount is to be recovered from the applicant towards the alleged excess payment.
- (ii) To direct the respondents to continue to pay the pension @ Rs. 15,187/- including Rs. 500/- FMA as revised w.e.f. 1.1.2016.
- (iii) To direct the respondents to refund the amount of Rs. 5,775/- recovered from the pension of the applicant for the month of September, 2016.
- (iv) Grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.
- (v) Grant cost of this OA.”

2. When the OA came up for admission hearing this Tribunal had granted an interim order directing the respondents not to recover any amount from the pension of the applicant.

3. No reply statement was filed by respondents Nos. 1, 2 & 5. In the reply statement filed on behalf of respondents Nos. 3 & 4 Bank, it is stated that in the case of the applicant the revision of VIth CPC was erroneously done by the bank. Instead of revising his basic pension to Rs. 5,909/- it was wrongly revised to Rs. 8,864/- from 1.1.2006 and which has resulted in excess payment of pension to the applicant. According to the Bank the

applicant is fully aware of it and that he is pretending to be ignorant of this fact. The Bank further states that on detection of the error of excess payment the same was rectified and steps were taken for recovering excess payment from his monthly pension as per RBI guidelines. The due drawn statement marked as Annexure R3(a) has also been produced by the respondent Bank. Relying on Annexure R3(b) letter of undertaking furnished by the applicant the respondent bank contends that as there is already an undertaking by the applicant in favour of the bank that if any amount is credited to his account in excess of the amount to which he is entitled, the bank is authorised to recover the same by deducting from his account or from any other amount or deposit belonging to him in the possession of the bank. Respondents Nos. 3 & 4 pray for dismissing the OA.

4. When the matter came up for final hearing today, heard Mr. C.S.G. Nair learned counsel appearing for the applicant and Mr. K.S. Ajayagosh learned counsel appearing for respondents 3 & 4. Perused the record.

5. Shri C.S.G. Nair was placing heavy reliance on the apex court decision in *State of Punjab and Others v. Rafiq Masih* AIR 2015 SC 696 wherein it was held that recovery from retired employees is impermissible in law. He further submitted that Rule 70 of CCS (Pension) Rules, 1972 prohibits the authorities from reducing the pension after the pension was once authorised.

6. Shri Ajaygosh submitted that what the bank has done in this case is to recover the erroneous payment made by the bank to the applicant by invoking the power of 'bankers lien' over the money belonging to the account holder available in the bank and also based on Annexure R3(b) undertaking executed by the applicant.

7. This Tribunal perused Annexure R3(b) letter of undertaking. It clearly mentions that it is in relation to 'payment of pension under PPO'. Shri Ajaygosh vehemently argued that the bank in this case is not operating the account of the applicant not as a pension account but as a savings bank account and hence the bank is entitled to recover the amount by exercising the banker's lien and by invoking the undertaking in Annexure R3(b) letter. Shri Ajaygosh submitted that the bank in this case is functioning independently of the official respondents herein in relation to the account maintained by the applicant and the bank is lawfully entitled to recover any excess amount paid to him.

8. It is well settled position that pension is a property as envisaged in Article 300A of the Constitution of India. It is also settled law through different rulings of the apex court including the Constitution Bench of the apex court in *D.S. Nakara & Ors. v. Union of India* – (1983) 1 SCC 305 that the pension of the pensioner cannot be lightly treated and that any rules relating to the pension has to undergo the interpretative process of the provisions of para IV of the Constitution. It is also settled position that pension is not a bounty but a right of a Government servant [see *State of*

Kerala & Ors. v. M. Padmanabhan Nair – (1985) 1 SCC 429; *Dr. Uma Agrawal v. State of U.P. & Anr.* - (1999) 3 SCC 438]. Pension has been given a constitutional recognition by including the term “pension” in the definition clause under Article 366 (17) of the Constitution of India. In *State of Jharkhand & Ors. v. Jitendra Kumar Srivastava & Anr.* – (2013) 12 SCC 210 the apex court held that pension is a constitutional right as it comes within the meaning of 'property' the right to which earlier was a fundamental right protected under Article 19(1)(f) and 31(1) of the Constitution of India. The apex court in *State of West Bengal v. Haresh C. Banerjee & Ors.* – (2006) 7 SCC 651 held that even after the repeal of Articles 19(1)(f) and 31(1) of the Constitution pension remains a constitutional right under Article 300A of the Constitution. In *D.S. Nakara & Ors. v. Union of India* – (1983) 1 SCC 305 - which is a *locus classicus* - the apex court held that the discernible purpose underlying the pension scheme or a statute introducing the pension scheme must inform interpretative process on the touch stone of directive principles of State policy contained in Articles 38(1), 39(d)(e), 41 and 42 in the light of the preamble of the constitution which guarantees the dignity of the individuals. It was also observed by the Constitution bench that Article 41 obligates the State within the limits of its economic capacity and development to make effective provision for securing the right to work, education and to provide assistance in cases of unemployment, **old age**, sickness and disablement and in other cases of undeserved want. As held by the apex court pension is a Constitutional right of the pensioner and it cannot be lightly interfered with. In certain other cases like family pension the apex court has held that it is a

fundamental right of the family pensioner under Article 21 of the Constitution and hence the pensionary matters cannot be dealt with in a casual manner or in a manner not in accordance with the provisions of the Constitution of India.

9. In this case obviously excess payment was happened to be paid on account of the error on the part of the respondent bank. The respondent bank is working as an agent of the pension sanctioning authority for disbursement of pension which is the statutory duty of the pension granting authority, entrusted to the respondent bank under a government of India scheme regulated by the Reserve Bank of India (RBI). The RBI guidelines for recovery of excess payments in the matter of pension also will not stand the test of law in the light of the aforementioned Supreme Court rulings especially in the light of the decision in *Rafiq Masih's case (supra)* that recovery of excess payment from the pensioner is impermissible in law. That being a decision of the Supreme Court of India it has the force of law under Article 141 of the Constitution and no authority including the RBI has any power to ignore the law laid down by the apex court. Obviously Annexure R3 letter of undertaking also cannot come to the help of the bank because it is clearly mentioned that the letter of undertaking is pertaining to the payment of pension under PPO.

10. In the light of the above discussion it appears to this Tribunal that the error committed by the officials of the respondents bank cannot be fastened on the applicant, the pensioner. Being an agent who has undertaken to

disburse the pension as sanctioned by the pension sanctioning authority it is the duty of the agent bank to disburse it strictly in accordance with the directions of the pension sanctioning authority by way of PPO. In this case as no error or fault is discernible on the part of the pension sanctioning authority, the entire fault of paying of excess amount to the applicant is obviously on the part of respondent Nos. 3 & 4 bank. The bank, if so advised, is free to initiate appropriate proceedings against the erring officials for recovery of the same. As stated earlier, in view of the law laid down by the apex court in *Rafiq Masih's* case (*supra*) and the bank being the agent of the pension sanctioning authority, cannot effect any recovery from the pensioner.

11. In the result the OA is allowed. Respondents Nos. 3 & 4, the bank shall refund the excess amount recovered from the applicant. Respondent Nos. 1, 2 & 5 shall ensure that respondent Nos. 3 & 4 bank do not effect any recovery from the pension of the applicant and that the amount recovered is refunded to the applicant immediately. It is made clear that the pension payable to the applicant shall be in terms of the Pension Payment order issued by the pension granting authority as revised from time to time. No order as to costs.

(U. SARATHCHANDRAN)
JUDICIAL MEMBER

“SA”