

**Central Administrative Tribunal
Hyderabad Bench**

OA No.1249/2018

Hyderabad, this the 6th day of January, 2020

Hon'ble Mr. B. V. Sudhakar, Member (A)

Smt. CH. Jayasree
Wd/o. Late CH. Ramakrishnayya, Aged 65 years
7/142, Lalitha Nivas, Chinamushidivada
Chankuya Nagar Colony
Visakhapatnam – 530 051, AP. Applicant

(By Advocate: Mr. Bhavani Shankar proxy of Mr. G. Pavana Murthy)

Vs.

1. Union of India rep by its
Secretary, Ministry of Defence
New Delhi.
2. The Principal Controller of
Defence Accounts (Pensions)
DruapadiGhat
Allahabad – 211 014.
3. The Chief Manager (Proforma Party)
State Bank of India,
Centralized Pension Processing Centre
Amaravathi LHO,
Methodist Complex, Abids
Hyderabad – 500 001. .. Respondents

(By Advocate: Mr. Laxman proxy of Mrs. K. Rajitha, Sr. CGSC)

O R D E R (Oral)

2. The OA is filed challenging the decision of the respondents in reducing the pension of the applicant and also recovering an amount of Rs.1,82,281/- from pension.

3. Brief facts of the case are that the applicant's husband, who worked with the respondents organization as Administrative Officer II, expired on 16.03.2007 after his superannuation on 30.9.2001. The applicant was granted family pension as per rules. However, the pension of the applicant was reduced from Rs.14,273/- in November, 2014 to Rs.8,108/- in December, 2014. Applicant represented to the Chief Controller of Defence Accounts (Pensions), Allahabad, who responded, vide letter dated 23.11.2017, by stating that the applicant is getting her pension as per her entitlement. Further, it was also informed by the respondents vide letter dated 11.01.2018 that the reduction in pension occurred in implementing the recommendations of the 6th and 7th CPCs. Therefore, the excess paid amount of Rs.1,82,281/- was ordered to be recovered at the rate of Rs.3,000/- per month. The reduction was effected without notice. Aggrieved in regard to recovery, the OA is filed.

4. The contentions of the applicant are that the recovery, effected from the pension of the applicant, is against the judgement delivered by

the Hon'ble Supreme Court in State of Punjab v. Rafiq Masih case. Besides, it also violated the directions issued by this Tribunal in Bhogaraju Peeeraju v. Union of India [OA No.1497/2015, dated 05.07.2017]. Besides, no notice was given before affecting the recovery and also reducing the pension. Hence, the action of the respondents is arbitrary and illegal.

5. Respondents in their reply statement have informed that the over payment of pension was erroneously made by the branch of the State Bank of India. The Banker followed the instructions/circular of the Reserve Bank of India dated 01.07.2015, in regard to recovery. They also submitted that the pensioner is expected to submit an undertaking to the Bank in Annexure-K that any excess amount paid or credited to his/her account shall be recovered by the Bank. Respondents cited the Hon'ble Apex Court Judgement in High Court of Punjab & Haryana & Others v. Jagdev Singh [Civil Appeal No.3500/2006, dated 29.07.2016] and the judgements of the Hon'ble Jodhpur and Chandigarh Benches of this Tribunal in OA 305/2015 and 561/2015 respectively, in support of their contention.

The applicant submitted a rejoinder wherein it was pointed out that the respondents have furnished contradictory information in their reply statement, which go to prove that the recovery and reduction in pension

was due to a direction from the respondents to the Bank. The submission of the respondents that the applicant has not exhausted the available remedies is incorrect, since the applicant made numerous representations to the concerned authorities and there being no response, she had to knock the door of the Tribunal. The applicant is aged around 70 years and is suffering from age related ailments. Therefore, any recovery made, at this juncture of time, would adversely affect the quality of life she has to live commensurate to the status she has in the society.

6. Heard both the counsel and perused the pleadings on record.

7. (I) The issue is in regard to reduction of pension and recovery from the pension of the applicant.

(II) It is well settled in law that whenever any action is taken which is having adverse civil consequences, the principles of natural justice would have to be followed. In the present case, the respondents have not issued any notice before effecting the reduction in pension or causing recovery from the pension. Therefore, there is grave violation of principles of natural justice. In regard to any recovery from the pension, the directions of the Hon'ble Supreme Court in **Rafiq Masih** case (supra) are very clear. Relevant observations of which are produced here under:

“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.”

It is seen from the above that the applicant's case is fully covered by the Hon'ble Supreme Court observations cited supra.

(III) The respondents objection is that the applicant has given an undertaking to the Bank that any excess payment made is liable to be recovered on detection at a later date. The respondents have not filed any such undertaking, though they have filed the specimen of the undertaking. Further, the respondents have cited the Judgements of the Hon'ble Jodhpur and Chandigarh Benches of this Tribunal, wherein it

was observed that the recovery was made by the Banker and, therefore, it is valid. However, in the reply statement, the respondents while rebutting the claim made by the applicant in para 4.2 of the OA, have submitted as under:

“17). It is submitted that the PCDA (Pension), Allahabad never issued any instruction to the PDA to revised (sic revise) the pension of Applicant @ Rs.6750/- per month from 01.01.2016.”

and also stated in Para 8 of the reply that the overpayment of pension was erroneously made by the PDA, i.e., State Bank of India. In complete contrast, the respondents vide their email, addressed to the learned counsel for the applicant, has stated as under:

“ Accordingly we have revised her pension and reduced the basic from 6750 to 5221 which resulted in excess payment of Rs.182281/-.

An amount of 3000 is being deducted every month from the pension.”

Therefore, it is evident from the above reply of the respondents that they have directed the Banker to reduce the pension and statement made by the respondents that the Banker has deducted is incorrect in view of the email of the Banker. Hence, the judgements of the Tribunal, referred to hereinbefore, do not apply to the case of the applicant.

(IV) Respondents have also cited the judgement of the Hon'ble Apex Court in **Jagdev Singh** (supra) wherein it was observed that once an employee is put on notice about the liability to repay any excess

payments made, then the excess payment made can be recovered. In the instant case, the undertaking given by the applicant, if any, has not been enclosed. Besides in **Jagdev Singh case** (supra), it was in regard to recovery made from a Judge. In the present case, the pensioner is in the age of 70s and she is not conversant with the pension rules of the respondents. Further, the applicant has already used the excess amount paid and, therefore, directing her to repay the amount of nearly Rs.1,82,000/- would be difficult since she is depending on the family pension, as is the case in regard to most of the pensioners, since they may not have any other source of income. Applicant has no bargaining power and, therefore, taking an undertaking from her is neither fair nor just. Applicant is in her seventies and yet with the little resources and energy she has, respondents were approached on many occasions with no fruitful results. This itself specifies volumes about the vulnerability of an aged hapless pensioner and the bargaining power she has. The Tribunal relies on the decision of the Hon'ble Bombay High Court in Smt. Nilam Shripad Naik v. The Registrar General, High Court, (WRIT PETITION NO. 3128 OF 2018). The relevant portion of which is extracted hereunder:

“An undertaking obtained by an employer from an employee at the verge of her retirement when the employee has no bargaining power, in our view, would be of no consequence. We are, therefore, inclined to direct that the said amount of Rs.1,44,834/- be refunded to the Petitioner.”

In the instant case, the cause of the applicant is much more worthy, since the recovery was effected after 7 years of pension fixation. Obviously such recovery at an advanced age from a widow pensioner would be put her to untold hardship and is therefore squarely covered by **Rafiq Masih** case (supra) and by the above Judgement.

(V) Indeed it is a mistake of the respondents in paying the pension and later on realizing the mistake, ordering recovery goes against the verdict of the **Rafiq Masih** case (supra). Hence, the recovery obviously has to be termed as unlawful. Consequently, the impugned order of recovery dated 31.10.2017 is set aside. The respondents have the right to re-fix the pension as per the recommendations of the 6th and 7th CPCs, however, the excess payment of Rs.1,82,281/- paid cannot be recovered as per the judgment in **Rafiq Masih** case. Therefore, the respondent are directed not to recover any amount from the pension and refund the amount recovered, if any, from the pension of the applicant till date within a period of 8 weeks from the date of receipt of a copy of this order.

With the above directions, the OA is allowed with no order as to costs.

(B. V. Sudhakar)
Member (A)

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