



**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-38/2019

Reserved on : 29.11.2019.

Pronounced on : 03.01.2020.

Hon'ble Mr. Mohd. Jamshed, Member (A)

Sh. Narendra Kumar Jain,
S/o Late Sh. P.C. Jain
Aged about 83 years
Retired Superintending Engineer,
Central Public Works Department (Group-A),
R/o A-2/73, Janakpuri,
New Delhi-110058. Applicant

(through Sh. Vijay Kumar Jain, Advocate)

Versus

1. Union of India through
The Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi-110011.
2. Chief Controller (Pension),
Central Pension Accounting Office,
Trikoort-2, Bhikaji Cama Place,
New Delhi-110066.
3. Government of NCT of Delhi
Through the Secretary Services
Department, Delhi Secretariat,
I.P. Estate, New Delhi-110002.



4. Chief Manager,
Bank of India, CPPC Branch,
Bank of India Building,
87A, 1st Floor, Gandhibaug,
Nagpur-440002, Maharashtra. Respondents

(through Sh. H.A. Khan, Sh. U. Srivastava and Sh. Aditya Kumar, Advocates)

ORDER

The applicant retired on 31.12.1993 from the post of Superintending Engineer with the Public Works Department (PWD), Government of National Capital Territory of Delhi (GNCTD).

2. The facts of the case, as stated in the OA, indicate that the applicant started receiving his pension, which was fixed vide order dated 30.03.1994 at Rs.2314/- p.m. payable w.e.f. 01.01.1994. Applicant's basic pension was revised vide order dated 18.06.1999 w.e.f. 01.01.1996 and fixed at Rs.7150/- p.m. This revision of pension was pursuant to the recommendations of the 5th Central Pay Commission (CPC). Further, it is stated that his monthly pension was revised to Rs.23050/- w.e.f. 01.01.2006 by his Bank in terms of the



recommendations of the 6th CPC. Thereafter, he started receiving revised pension of Rs. 71087/- pursuant to the recommendations of the 7th Central CPC w.e.f. 01.01.2016 till December, 2017. This revision was according to him, based on the multiplication of the existing pension with 2.57 times. Respondent No. 4 i.e. Bank of India (BOI) after many years informed him on 18.01.2018 that he has been paid excess amount towards his pension, which is being modified. It was also indicated that he has been paid excess amount of Rs.17,26,293/- and the same shall also be recovered from his pension through monthly installments. Respondent No.4 vide their letter dated 29.05.2018 addressed to CPAO & copied to the applicant further advised the excess payment made and revision of pension. The applicant thereafter made representations to respondents for issuing directions to the Bank not to recover the said amount from his pension and also not to revise the pension downwards. Another application was made by the applicant on



09.04.2018. He was informed that he should approach respondent No.3. Representation was made accordingly to respondent No.3 by the applicant along with reminder. Respondent No.3 vide their letter dated 21.05.2018 (Annex.A-11) addressed to Pay & Accounts Officer, PWD, GNCTD & copied to applicant indicated the pension as revised w.e.f. 01.01.2006 and 01.01.2016. In the annexures sent along with this letter, it is indicated that the revised pension of the applicant as per 6th CPC w.e.f. 01.01.2006 should be Rs. 23050/- and the same is re-fixed as per 7th CPC 01.01.2016 at Rs. 61550/-. However, Centralized Pension Processing Centre, BOI, Nagpur i.e. respondent No. 4 advised Asst. Account Officer, Government of India, Ministry of Finance, Department of Expenditure vide letter dated 29.05.2018 that during audit inspection of 2018 conducted by CPAO, discrepancy has been found showing excess payment made to the applicant. It was also indicated that last PPO was issued in 1999 with basic pay of Rs. 7150/- and accordingly



Centralized Pension Processing Centre (CPPC), BOI had calculated his revised pension post 6th & 7th CPCs at Rs.16159/- and Rs. 41529/- respectively. As the Bank had not received any revised PPO post 6th & 7th CPCs, the respondent No. 3 was also requested to send the revised PPO to respondent No.2. In response to the letter dated 29.05.2018, respondent No.2 sent communications dated 31.05.2018, 12.06.2018 and 14.08.2018. These communications were on the revision of pension of the applicant. The Pay & Accounts Officer, Central Pension Accounting Office was advised to make necessary corrections. Vide these letters it was indicated that the revised basic pension of the applicant is to be Rs.16159/- w.e.f. 01.01.2006 and Rs.41800/- w.e.f. 01.01.2016. The applicant contends that these are wrong calculations and the pension being paid to him till 2017 was based on the correct calculation. Aggrieved by this action, the present O.A. has been filed by the applicant. The Tribunal vide order dated 04.01.2019 directed that “**considering the facts of the**



case for 24 long years the pension had been paid at certain level and suddenly it has been reduced with associated consequences, in the peculiar facts and circumstances of the case, the operation of impugned orders dated 18.01.2018, 11.06.2018, 12.06.2018 and 14.08.2018 shall remain stayed till further orders.”

3. Applicant in support of the arguments has relied upon Hon'ble Supreme Court judgments in **Bhagwan Shukla Vs. Union of India and Others**, (1994)6 SCC 154 and **State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others**, (2015)4 SCC 334 with a request for stopping of recovery on account of erroneous payments made to him.

4. Counter-affidavits have been filed on behalf of respondents No. 3 & 4. In the counter filed by respondent No.3, it is submitted that the applicant retired from service on 31.12.1993 as Superintending Engineer and was being paid pension. His pension was revised as per 5th CPC to Rs. 7150/-. He was



being paid pension through BOI. During internal audit by the team of CPAO of CPPC, BOI, Nagpur, it was noticed that excess amount has been paid by the Bank to the applicant erroneously, which is required to be recovered under the rules.

5. In the counter-affidavit filed by respondent No.4, it is submitted that the audit team of CPAO had, during inspection, indicated that excess pension has been paid to the applicant. Respondents have issued the letter for recovery to the applicant strictly in terms of instructions laid down by Reserve Bank of India. It was also submitted that vide email dated 18.01.2018, the applicant was duly informed that in the light of audit inspection, it is discovered that excess payment has been made to the applicant and the same is to be recovered in terms of the laid down procedure. It is also submitted by respondent No.4 that no PPO revising pension of the applicant w.e.f. 01.01.2006 and 01.01.2016 had been received from 2nd & 3rd respondents. However, pension at higher rate was erroneously paid to the



applicant, which was observed during audit objection. It is also stated that such recoveries of excess payment made erroneously are within the rules and laid down guidelines by Reserve Bank of India. It is also stated that the applicant was issued PPO dated 30.03.1994 and he signed an undertaking dated 22.04.1994 duly attested by witnesses, unequivocally and unconditionally to refund any amount credited to him. Thus, any recovery of the excess amount is very much within the law.

6. Respondent No.4 also submitted copy of letter No. CPAO/IA/IAR/BOI/Nagpur/2017-18/1518-19 dated 20.03.2018, which is communication from Sr. Accounts Officer (HQ), Central Pension Accounting Office (CPAO) to Assistant General Manager, BOI to CPPC, Nagpur. The same has been taken on record. Respondent No.4 also submitted copy of letter dated 23.10.2008 written by the applicant to the Manager, BOI, Janak Puri, New Delhi seeking revision of his pension. The same is also taken on record. Vide this letter, the applicant advised BOI



that in terms of the 6th CPC w.e.f. 01.01.2006 his pension should be Rs.23050/- and that in view of the DoP&T O.M. No. 38/3/08-P&PW(A) dated 01.09.2008, which stipulates in para 4.2 that "The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired." No other representation or document from the applicant to respondent No.4 towards fixing his pension w.e.f. 01.01.2016 could be produced. Respondent No.4 have categorically accepted in their counter-affidavit that the excess payment was inadvertently paid to the applicant. It is also submitted in para-4.10 of their counter-affidavit that no PPOs had been issued for revision of pension w.e.f. 01.01.2006 and 01.01.2016 and, therefore, they are not responsible for such an erroneous excess payment. Respondent No.4 submitted that the BOI is not a notified authority in terms of Section-14 of the



Administrative Tribunals Act, 1985 and thus no relief can be sought or granted by the answering respondent. This plea of respondent No.4 is not acceptable as in the instant case the Bank is working on the behest of the principal employer of the pensioner i.e. GNCTD and therefore, the matters related to the pension are service matters linked with present department and are thus within the purview of the Central Administrative Tribunal.

7. The applicant has in support of his claim, relied upon the Hon'ble Apex Court judgment in **Rafiq Masih** (supra) case. Respondents have relied upon this Tribunal judgment in **Ranjeet Kumar Sinha and Ors. Vs. The Secretary, Department of Economic Affairs (DEA), Government of India, Ministry of Finance and Ors.**, OA No. 4590/2017 decided on 11.01.2019 with connected OAs, which has referred to Hon'ble Supreme Court judgment in **Chandi Prasad Uniyal & Ors. Vs. State of Uttarakhand & Ors.**, (2012) 4 SCC 450 regarding irregular payments, which can be recovered. Respondents have also



relied upon Hon'ble Supreme Court judgment in **High Court of Punjab and Haryana Vs. Jagdev Singh** (2016) 14 SCC 267 wherein it is ruled that as the officer concerned was placed on notice by giving an undertaking that any payment found to have been made in excess would be required to be refunded, is bound by such undertaking.

8. Heard Sh. Vijay Kumar Jain, learned counsel for the applicant and Sh. H.A. Khan, Sh. U. Srivastava and Sh. Aditya Kumar, learned counsel for the respondents.

9. The applicant worked as Superintending Engineer with the PWD and retired on 31.12.1993. His pension was fixed vide order dated 30.03.1994 at Rs.2314/- payable w.e.f. 01.01.1994. He was continued to be paid pension to his satisfaction. After, about 25 years, the applicant also started receiving additional pension (as applicable to pensioners who are 80 years and above). However, vide notice dated 18.01.2018, the applicant was



advised by CPPC Branch, BOI (Respondent No.4) that he is being paid excess pension. The payable pension was also enclosed indicating that he should have been paid a total of Rs.4125778/- instead he has been erroneously paid Rs.5851981/- between January, 2006 to December, 2017. Therefore, excess amount of Rs.1726203/- paid to him is recoverable and accordingly his pension is also being re-fixed. Various representations were made by the applicant indicating that his pension has been correctly fixed post recommendations of the 6th & 7th CPCs and that no excess amount is to be recovered. The present O.A. was filed seeking relief by quashing the impugned orders. Vide order dated 04.01.2019, this Tribunal, as an interim relief, stayed the operation of impugned orders dated 18.01.2018, 11.06.2018, 12.06.2018 and 14.08.2018, till further orders.

10. This is a case where the applicant continued to receive his pension for the last more than 12 years without any objection from the respondents. However, in 2018 based on an audit objection in the



CPPC of BOI, it was observed that the applicant's pension has been erroneously fixed w.e.f. 01.01.2006 post 6th CPC recommendations and also erroneously fixed after the 7th CPC recommendations by the Bank. It has been accepted by respondent No.4 that the payment of revised pension to the applicant post 6th CPC and after 7th CPC was fixed erroneously by the Bank and was paid to the applicant. On having been detected by the Internal Audit, the recovery order has been issued, which was stayed by this Tribunal. It was also confirmed by respondent No.4 that no revised PPOs were received from respondent No.3 till 2017 and, therefore, the bank made revised pension of the applicant on its own. After a prolonged correspondence, respondent No.3 have issued an internal letter dated 21.05.2018 enclosed by applicant addressed to Pay & Accounts Officer, CPWD indicating that the pension of the applicant as revised from 01.01.2006 to 01.01.2016 is fixed at Rs.23050/- and at Rs. 61550/- respectively. Subsequently, through the communications by the



respondent No.3 to respondent No.2 dated 31.05.2018, 12.06.2018 and 14.08.2018 the revised PPOs have been sent and the pension of the applicant has been corrected to Rs.16159/- w.e.f. 01.01.2006 and Rs. 41529/- w.e.f. 01.01.2016. This was in contrast to the letter dated 31.05.2018 sent earlier by the department indicating a higher pension @Rs. 23050/- and Rs. 61550/-.

11. It is evident that the applicant retired from service was being paid pension correctly upto 31.12.2005. The revision of the pension on implementation of the 6th CPC recommendations was made by the bank and his pension was revised w.e.f. 01.01.2006 at Rs. 23050/-. The applicant was continued to be paid at this rate and post 7th CPC, his pension was revised further to Rs. 71087/- by the bank (respondent No.4) w.e.f. 01.01.2016. No revised PPO was either sought or sent by respondent No.3 to respondent No.4. During the internal audit check, the anomaly in pension due and pension being paid was discovered and respondent No.4



vide communication dated 18.01.2018 advised the pensioner that erroneous excess payment has been made towards his pension and that his pension is being revised downwardly. Recovery of arrear on monthly basis was also indicated. The respondents have also produced a letter written by the applicant dated 23.10.2008 addressed to Respondent No. 04 indicating that his pension should be revised in terms of 06th CPC recommendations and at Rs. 23050/-. The applicant contends that this was merely a letter advising the BOI to revise his pension post 06th CPC recommendations. It is obvious that the Respondent No. 04 revised his pension w.e.f. 01.01.2006 without having obtained the required PPO from Respondent No. 03. This fact has also been accepted by the Respondent No. 04 that no PPO was received and they have erroneously revised the pension which is an inadvertent mistake on their part.

12. This could be termed as classical case of serious lapses on the part of the respondents causing harassment to a retired pensioner. After decades,



respondent No.4 i.e. BOI discovers that they are erroneously making payment of pension to the applicant in excess during the period 01.01.2006 to December, 2017. The respondents on their part issued contradictory and unclear PPOs to the applicant at such a late stage. The responsibility lies on respondent No.4 for erroneously fixing the pension without receiving PPO from the department and also on respondent No.3 for failing to advise the bank or issue revise PPOs in time. Reliance has been placed by the applicant on the judgment of Hon'ble Supreme Court in **Rafiq Masih** (supra) case which clearly lays down as under:-

"In State of Punjab and Ors. etc. v. Rafiq Masih (White Washer) etc. MANU/SC/1195/2014 : (2015) 4 SCC 334 this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer 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."

However, the Hon'ble Supreme Court in **High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh (Supra)** have clarified the proposition in **Rafiq masih's** case as under:-

"11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12. For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years."



13. The issue is that whether the erroneous payment made by the respondents to the applicant after such a long time can be recovered or not. The other aspect is about correct fixation of the pension which was not done by the respondents in 2006 and also in 2016 and whether for the same, the applicant can be put to inconvenience or hardships. Whereas the rulings laid down in **Rafiq Masih** (supra) case are clear, in the subsequent judgment the Hon'ble Apex Court in **Jagdev Singh** (supra) case have clearly laid down that the respondents can make recoveries in case of erroneous payments where the officer has furnished an undertaking.

14. In the present case, the applicant had given an undertaking on 22.04.1994 to the Respondent No. 04, which reads as under:-

"In consideration of your having at my request agreed to make payment of pension due to me every month by credit to my account with you, I, the undersigned, agree and undertake to refund or make good any amount to which I am not entitled or any amount which may be credited to my account in excess of the amount to which I am or would be entitled. I further hereby undertake to agree to bind myself and my heirs, successors, executors, and administrators-to



indemnify the bank from and against any loss, suffered or incurred by the Bank in so crediting my pension to my account under the scheme and to forthwith pay the same to the Bank and also irrevocably authorise the Bank to recover the amount due by debit to my said account or any other account/deposits belonging to me in the possession of the Bank".

15. It is a clear undertaking that is given by the applicant that he will make good any amount to which he is not entitled to or any amount which may be credited to his account in excess of the amount to which he is entitled to. This Tribunal in OA No. 4590/2017 and batch decided on 11.01.2019 observed as under:-

"23. A Bench of 3 Judges of the Hon'ble Supreme Court in Rafiq Masih's case(supra) examined the purport of various judgments referred to above. However, we do not find anything in the judgment in that case to suggest that the judgment in Chandi Prasad Uniyal's case (supra) was either overruled or was held to be not laying the correct proposition of law. It is a different matter that certain directions were issued in the context of recovery. They were mostly keeping in view, the employees belonging to Class-3 & 4.

24. In the instant case, the applicants are from Central Secretariat Service and many of them are occupying very high positions. They should not be interested in possessing anything which they are not legitimately entitled to. The only direction that can be issued in this behalf is that in case the recovery becomes necessary from the applicants, it shall be in easy instalments and without any interest."



16. The ratio of these judgments specially **Rafiq Masih** (supra) clearly stipulates that recovery from retired employees, who are due to retire within one year, of the order of recovery, would be impermissible in law. This has been clarified in the decision of the Hon'ble Apex Court in **Jagdev Singh** (supra) case in relation to any undertaking having been given by the employee. However, in **Rafiq Masih** (supra) case, it is also laid down that recovery would be impermissible from employees when the excess payment has been made for a period in excess of five years before the order of recovery is issued. Thus, the applicability of the ratio of these judgments to the present case has to be seen carefully with the facts. The applicant in this case had given an undertaking at the time of his retirement but it is also a fact that his pension is sought to be revised after over 20 years with retrospective effect from 01.01.2006. The respondent Bank has accepted this error on their part in payment of the said amount for such a long period



of time. It is also a fact that the cases of those in service and those who have retired have to be differently viewed. An additional amount paid erroneously for such a long period to a pensioner and its recovery with downward revision to the pension would put extreme hardship and financial burden, than in case of serving employee as the amount of pension is already a restricted amount compared with the salary payment. In the present case, the excess payment has been paid since 01.01.2006 and the order for recovery and revision of pension has been issued only in 2018 i.e. after 12 years for which the applicant herein is in no way responsible.

17. In view of the ratio of the judgments quoted above and the facts of the case, it is evident that erroneous payment has been made to the applicant for a number of years, which is now sought to be recovered. At the same time, his pension is also being revised downward. Thus, the pensioner



for no fault of him is being adversely affected on two accounts: (i) downward revision of pension and (ii) recovery of the amount erroneously paid to him by the respondents.

18. In view of the above, I am of the opinion that the re-fixation of pension w.e.f. 01.01.2006 shall only be notional. The pension shall be revised in terms of the PPO w.e.f. 01.01.2016 only. No recovery shall be made of the excess amount paid to the applicant for the period from 01.01.2006 to 01.01.2016. However, the recovery amount for the excess payment made to him post 01.01.2016 may be recovered from the applicant in easy installments and without any interest. He may be paid revised pension w.e.f. 01.01.2016.

19. The O.A. is thus partly allowed with the above directions. No costs.

(Mohd. Jamshed)
Member (A)

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