

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

OA/310/00993/2019

Dated Monday, the 16th day of March, 2020

PRESENT

Hon'ble Mr. T. Jacob, Administrative Member

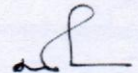
P.K.Ruckmani,
W/o. Late.B.Prabhakaran,
No.12/1958, D 3 Rohini Sadhanam,
Near Eye Hospital, Chevidipet, Gudalur,
Nilgiris District – 643 212.
(By Advocate M/s K. Sanjay)

....Applicant

Vs

1. Union of India, Ministry of Communication &
Information Technology.
Department of Telecommunications,
Rep by its General Manager,
O/o. Principal Controller of Communication
Accounts, Tamil Nadu Circle,
No.60, Ethiraj Salai, Chennai – 600 008.
2. Union of India, Superintendent of Post Offices,
Department of Posts, Nilgiris Division,
Udhagamandalam–643 001.
3. Union of India, Department of Posts,
O/o The Post Master Grade III,
Udhagamandalam, Head Office 643 001.
4. Union of India, Dept. of Telecommunications
Rep by its Deputy Controller of
Communication Accounts,
O/o The Principal Controller of
Communication Accounts,
Tamil Nadu Circle, Chennai.
(By Advocate Mr. Su.Srinivasan)

....Respondents



ORDER

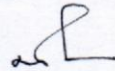
(Pronounced by Hon'ble Mr. T. Jacob, Administrative Member)

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

“1. To call for the records on the file of the 2nd respondent in Proceedings No. C/PKR/DLGS, dated 10.04.2019 and quash the same and consequently direct the respondents to repay the recovered amount to the applicant and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper.”

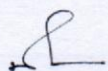
2. The brief facts of the case as submitted by the applicant are as follows:

The applicant's husband, Late B. Prabhakaran initially joined service under the 1st respondent as Lineman in 1969. After promotion as Telephone Operator, Telephone Supervisor and Senior Telephone Supervisor, he died on 16.10.2008 before attaining the age of superannuation. While so, after death of her husband, by proceedings dated 21.07.2009 the Principal General Manager, Coimbatore fixed his pay at Rs.8,700/- in the promotional post on Biennial Cadre Review (BCR). Subsequently, by order dated 22.11.2017, the 3rd respondent without any notice effected recovery from the family pension for a sum of Rs.7,90,878/- being the excess payment due to calculation of Dearness Relief at reduced rate and further directed to credit the same in lump-sum within a period of one month. It is the case of the applicant that the 2nd respondent without getting explanation from her has effected recovery every month and has deducted Rs.10,000/- in the month of November 2017 and Rs. 20,000/- from December 2017 onwards and now, she is receiving a very



meager amount of Rs.4000/- only per month. Aggrieved by the above, she filed OA.1555/2018 wherein this Tribunal by order dated 12.02.2019 disposed of the said OA directing the respondents to consider the matter in the light of the DoP&T OM dated 02.03.2016 and pass a reasoned and speaking order. In pursuance of the above order, the respondents have passed an order dated 10.04.2019 ordering recovery of the excess paid pension dearness relief of Rs.5,80,278/- out of the excess payment of dearness relief of the pension of Rs.7,90,878/- at the rate of 1/3rd family pension+dearness relief per month (dearness relief increases every three months) from the family pension+dearness relief of April 2019 onwards, incorporating therein the details about income of the applicant. In that order, the 2nd respondent has also mentioned that the applicant has a own house and other source of income and is capable of repaying the recovery amount. Hence, the applicant has filed this OA seeking the above reliefs, inter alia, on the following grounds:-

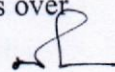
1. The 2nd respondent has passed an order of recovery without application of mind.
2. The applicant's husband is the employee of the 1st respondent and he has not passed an order of recovery against the applicant.
3. The 2nd respondent has passed an order of recovery confirming the order passed by the 3rd respondent dated 22.11.2017.
4. The applicant has not misrepresented to the authorities for fixing her family pension and more over there is no role on the part of the applicant in fixation of family pension.



5. In the present impugned order, the 2nd respondent has mentioned about the income of the applicant and her capacity to repay the amount. This clearly shows that the present impugned order has been passed by the 2nd respondent in total non application of mind and hence it is liable to be quashed.


3. The applicant is aggrieved that in terms of the judgment by Apex Court in State of Punjab and others vs. Rafiq Masih (White Washer) and others, (2015) 4 SCC 334, recoveries are not permissible as the applixcant has not misrepresented at any stage and the excess payments, if at all, occurred over a long duration. As such the applicant was entitled to the benefit of the law laid down by the Hon'ble Apex Court in State of Punjab & Ors Rafiq Masih (White Washer) dated 18 December, 2014 in CIVIL APPEAL No. 11527 of 2014 & Batch, as accepted by the DOPT in OM F.No. 18/03/20 1 5-Esst. (Pay-I) dated 02.03.2016, it is contended.

4. The respondents have filed a reply statement stating that the pension and pension arrears of Rs.7,90,878/- was erroneously paid to the family pensioner w.e.f. 17.10.2008. The said error was noticed only during November 2017 while paying the next IDA dearness relief arrears for the quarter July 2017 to September 2017 to the BSNL pensioners. The Postmaster, Udhagamandalam HPO as per the directions vide SPOs letter No.C/Pension/Misc/Dlgs dated 21.11.2017 intimated the applicant about the over-payment of pension thereby enclosing a copy of the due drawn statement showing the excess payment made while calculating the dearness relief at a reduced rate. But the applicant did not respond to the letter nor made any credit towards over



payment even after one month. Hence, an amount of Rs.20,000/- was recovered from the family pension of the applicant w.e.f. December 2017 until the excess payment was fully made good. As per POSB Manual Volume-I Rule 20 Sl.No.4, a pension account can be opened by a Railway Postal Telecom Pensioner with whom an agreement is signed by the Department for the credit of monthly pension automatically in their pension account by the Postmaster. In this account, the amount of pension will be credited by the Postmaster every month and the pensioner can withdraw the amount at his/her convenience. In a pension account, the Head Savings Bank or Sub Savings Bank is authorized to recover any amount credited in excess. An application for withdrawal will be used for the purpose with suitable remarks showing the reasons for withdrawal by the pensioner. An intimation to the pensioner should be sent in that case explaining why the balance in the account is reduced. Further, the family pensioner while opening the pension account at Gudalur Bazar Sub Post office had agreed to the declaration furnished in the account opening form that any excess credit of pension made in the pension account may be withdrawn by the Postmaster. Hence, the recovery made by the Postmaster, Udhagamandalam HPO is in accordance with the Post Office Saving Bank Volume-I Rule No.20 Sl.No.IV and with reference to the agreement signed by the family pensioner in the pension account opening form declaration that excess paid amount shall be recovered. In line with the above rule position and agreement signed by the applicant, the recovery has been effected. Hence, the respondents pray for dismissal of the OA.

5. Heard the learned counsel for the respective parties and perused the pleadings



and documents on record.

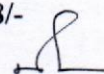
6. Facts being not in dispute, the same obviates debate. The liability to pay has also been admitted by the applicant. Having regard to the above facts and circumstances of the case, the DoP&T OM dated 02.03.2016 and the Undertaking given by the applicant, the short point for consideration in this OA is whether the recovery of excess payment being effected from the family pension of the pensioner is sustainable in the eye of law.

7. The applicant after death of her husband on 16.10.2008 was authorized to draw family pension at enhanced rate of Rs.7200/- plus dearness relief at the reduced rate (ie., less than 50%) w.e.f. 17.10.2008 which was subsequently revised from Rs.7200/- to Rs.10,655/- p.m. with effect from 17.10.2008 vide authority No.PR-CCS/DOT/TN/PEN/IDA/FP/7565 dated 02.05.2016 w.e.f. 02.05.2016 with the IDA rates.

The details of excess payment to the applicant are as here under:-

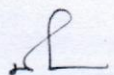
No	Details	Due	Disbursed	Excess
1.	Arrears of pension + dearness relief based on the revision from 17.10.2008 to June 2016	1,05,220/-	7,24,702/-	6,19,482/-
2.	Erroneous payment enhancing the pension to Rs 11,250/- w.e.f. 10-06-2013 on receipt of the revised pension authority dated 28.05.2017 towards arrears of pension and dearness relief.	Nil	1,26,676/-	1,26,676/-
3.	Dearness relief @ 219.7% was continued from July 2017 up to October 2017 instead of 124.3% resulting in over payment of Rs.44,720			44,720/-

Total amount in excess: 7,90,878/-



8. The error was noticed only during the month of November 2017 while paying the next IDA dearness relief arrears for the quarter ending July 2017 to September 2017 to the BSNL Pensioners. The intimation regarding the excess payment of pension was made by the Postmaster, Udhagamandalam HPO to the office of SPOs, Nilgiris Division, vide her letter. No.AC/PEN/Misc dated 15.11.2017 along with the due drawn statement showing the excess payment of pension dearness relief. Being Government money, the office had directed the Postmaster, Udhagamandalam vide SPOs letter No. C/PENSION/Misc/Dlgs dated 21.11.2017 to intimate the family pensioner about the over payment of pension dearness relief arrears and to request her to credit the excess paid amount to the Government in lump sum immediately within one month's time.
9. In a Pension account, the Head Savings Bank or Sub Savings Bank is authorized to recover any amount credited in excess. The applicant has also while opening the pension account had given an Undertaking to the effect that any excess credit of pension made in the pension account shall be recovered by the Postmaster. POSB Manual, Vol-1, Rule 20, Sl. No.4 provides as under:-

Pension Accounts:- (i) A pension account can be opened by the Railway, Postal, Telecom Pensioners or any other Organization (with whom agreement will be signed by the Department) for the credit of monthly pension automatically in their pension account by the Postmaster. Only one pension account can be opened by the Pensioner. He can also open an ordinary single and joint account in addition to the pension account in the same post office. The total balance in the ordinary and pension account of the pensioner should not, at any time, exceed the



maximum limit prescribed for a single account. In this account the amount of pension will be credited by the Postmaster every month and the pensioner can withdraw the amount from the account at his convenience. The pensioner cannot deposit any other money in this account. (ii) in a pension account, the Head Savings Bank or Sub Savings Bank is authorized to recover any amount credited in excess. An application for withdrawal will be used for the purpose with suitable remarks showing the reasons for the withdrawal. An intimation to the pensioner should be sent in that case explaining why the balance in his account is reduced.

Following the above Rule position in the POSB Manual and the Declaration made by the applicant in the pension opening account, the respondents have effected recovery.

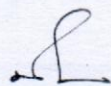
10. Undisputedly, there had been some error in calculation of pension and pension arrears and based on the wrong calculation, an amount of Rs.7,90,878/- had been paid to the family pensioner w.e.f. 17.10.2008. The over payment was ordered to be recovered in equated monthly installments. The applicant had also been intimated about the over payment of arrears of pension + dearness relief occurred due to erroneous calculation. However, aggrieved by the order of recovery, the applicant filed OA.1555/2018 before this Tribunal and this Tribunal by order dated 12.02.2019 directed the respondents to consider the matter and pass a reasoned and speaking order. In pursuance of the above order, the Superintendent of Post Offices, Nilgiris Division, Udthagamandalam has passed an order dated 14.06.2019 in the light of the DoP&T OM dated 02.03.2016 following the Judgment of the Hon'ble Supreme Court in the case of State of Punjab vs. Rafiq Masih (White Washer) etc. in CA No.11527/2014 arising out of SLP(C) No.11684/2012.



11. In respect of the excess payment and recoveries thereof, it is the Rafiq Masih judgment (supra) which has been relied upon in many other cases. This judgment has also made very important observation in paras 6 and 7 of the same. These are reproduced below:-

“6. In view of the conclusions extracted hereinabove, it will be our endeavour, to lay down the parameters of fact situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employer, may not be compelled to refund the same. In our considered view, the instant benefit cannot extend to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee.

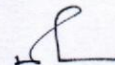
7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court.”



The Hon'ble Supreme Court also expressed its concern for the employers, in case the monetary benefit has been wrongfully extended to an employee. In other parts of this judgment, it is also mentioned that directions issued in the interest of equity in exercise of jurisdiction under Article 142 of the Constitution of India cannot be treated as the basis in all such cases. As many as five instances where recovery is impermissible, were mentioned by Hon'ble Apex Court, and they were said to be not exhaustive.

12. According to the respondent, the applicant is a family pensioner receiving monthly pension regularly and her other source of income and her assets and family situations are as follows:-

- i. The monthly family pension of Rs. 6750 + 9369 (138.8 % + Present Dearness relief rate) = Rs.16119/- (Dearness relief increases every three months).
- ii. The family pensioner is a Mahila Pradhaan Kshetriya Bachat Yojana agency under the Licence No.NLG 276/97 and MPKBY ID No.M1643212010100001 who earns approximately Rs.14000 per month as Mahila Pradhaan Kshetriya.
- iii. It is learnt that the pensioner is owning four houses and she is in receipt of more than Rs.20000/- per month as House rent from the houses owned by her which are adjacent to her own house.
- iv. The pensioner's own house itself is a very big bungalow situated in the heart of Gudalur Nilgiris and owning a swift Car for her own use.
- v. On enquiry about the applicant at Gudalur it is revealed that the pensioner is in good health and wealth condition owning vast agricultural lands in her own and earning money from the agricultural land also.



vi. Ledger copy of the POSB pension account No.8306080733 of the pensioner from 31.03.2015 to till date and ledger copy of the POSB savings bank account No.S306031405 for MPKBY agent commission credit shows that the pensioner is not struggling for livelihood.

vii. She is not a dependent and no members depending upon the applicant. The pensioner's daughter died long back and the only son of the applicant is serving as SERGENT (senior non commissioned officer) in Air Force.

13. The following are the decisions of the Apex Court relating to the recovery of excess payment made:-

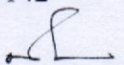
(a) Shyam Babu Verma vs State of Union of India (1994) 2 SCC 521

(b) Sahib Ram vs State of Haryana 1995 Supp(1) SCC 18

(c) Chandi Prasad Uniyal vs State of Jharkhand (2012) 4 SCC (Crl) 450

(d) High Court of Punjab & Haryana vs Jagdev Singh (2016) 14 SCC 267

14. Chandi Prasad Uniyal on the one hand and "Shaym Babu Verma" and "Sahib Ram" on the other, former holding "Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right. In such situations, law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment". Similar view has been taken by the Hon'ble Supreme Court in the case of U.T. Chandigarh & Ors. vs. Gurucharan Singh & Anr., in Civil Appeal No.9873 of 2013, dated 01.11.2013. had conflicting view and thereby, the matter was referred to a three Judges Bench for pronouncement of an authoritative law in the case of Rafiq Masih. The Three judges Bench examined and held that one is under Art. 136, while the other under Art. 142



and thus there is no conflicting judgments. Accordingly, Rafiq Masih was referred to Division Bench and the same had itemized certain circumstances under which the recovery could be waived. "Jagdev" emphasized that where there has been an undertaking to refund the excess payment, even if the case falls under the exemptions from recovery as per Rafiq Masih, recovery has to be effected. The Apex Court has held in the case of High Court of Punjab & Haryana vs Jagdev Singh (2016) 14 SCC 267 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."

15. The Principal Bench of this Tribunal in the case of Shamim Ahmad vs. UOI & Anr in OA No.3390/2017 dated 27.02.2019 after referring to various judgments, namely, i) the Hon'ble High Court of Madhya Pradesh titled Ratan Bai Gehlot vs. State of Madhya Pradesh, WP No.3730/2009 decided on 22.03.2010; ii) In the case of Lt. Col. R.C.Setia vs. State Bank of India, CWP No.4179/2016 decided on 08.11.2017, High Court of Rajasthan Bench at Jaipur and iii) Chandigarh Bench of this Tribunal titled Jaswinder Kaur vs. Union of India, OA No.060/00636/2015 decided on 23.05.2016 of Chandigarh Bench of this Tribunal and on Umed Raj Singhvi vs. Union of India, OA No.290/00305/2015 decided on 05.04.2016 of Jodhpur Bench of this Tribunal' has upheld the recovery of excess payment even



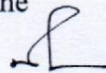
though the recipient was not at fault.

16. In this context, it is the view of this Tribunal that even though there was no misrepresentation on her part, the applicant is likely to have been aware, she being well educated and being Mahila Pradhaan Kshetriya Bachat Yojana agency under the Licence No.NLG 276/97 and MPKBY ID No.M1643212010100001 who earns approximately Rs.14000 per month as Mahila Pradhaan Kshetriya, when the pension revision instructions were issued on 05.08.2016. It would not have been very difficult for her to understand that an excess amount of pension is being paid to her and thereafter, bring it to the notice of Post Office for correction. It has been held in the case of Union of India vs Bhanwar Lal Mundan (2013) 12 SCC 433 as under:-

8.3. In Syed Abdul Qadir the Court was dealing with fixation of pay under FR 22-C and as there was a wrong fixation, the question of recovery arose. The Court, relying on earlier decisions, opined thus: (SCC p. 491, para 58)

“58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess.

17. In the instant case, three parties are presently before us, namely, the recipient pensioner as applicant, the paying department as respondent No.1 and the paying Post Office as respondent No.2 & 3. However, this Tribunal is aware that pressure on the



public resources, from which such pensions are actually being paid, is also to be kept in view.

18. On consideration of the issues involved in this OA, it is felt that it does not fall into any of the five categories mentioned in the said judgment [Rafiq Masih (supra)]. Though, the continued payment of higher pension to the applicant w.e.f. 17.10.2008, was not on the basis of any misinformation by the applicant, she cannot be permitted to enrich herself from the limited public resources. It is also noted that the difficulty, in the context of recovery from the applicant, is also substantially mitigated now on account of the fact that the family pension payable to the applicant has been substantially increased in the recent past under the 7th CPC, which has come into effect from 01.01.2016.

19. In view of the foregoing, this OA is disposed of with the following directions:-

(i) After verification of the documents, detailed monthwise statement shall be issued by the Post Office to the applicant indicating therein the "dues", "drawn" and "excess" and also seeking his consent for recovery. The amount already recovered in monthly instalments, till it was stayed, shall also be accounted for and net recovery worked out.

(ii) In case consent is not received within four weeks of having supplied the statement as at (i) above, the balance amount to be recovered shall be recovered thereafter in interest free easy instalments not exceeding 20% of her current family pension till it is fully recovered. There shall be no order as to costs.