

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/338/2020

Jabalpur, this Wednesday, the 24th day of February, 2021

HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER
HON'BLE MS. NAINI JAYASEELAN, ADMINISTRATIVE MEMBER

Ajai Kumar, S/o Lt Shri Suresh Chandra, aged about 72 years, retired Physical Education Teacher, Kendriya Vidyalaya Sangathan; R/o Lat No.302, Mangalam Pride Apartment, 111 Anoop Nagar, Indore (M.P.)-Pin 452001. Email ID:- ajkumar19@gmail.com

-Applicant
(By Advocate – Shri Amardeep Gupta through Video Conferencing)

V e r s u s

1. The Union of India through its Secretary, Ministry of Human Resource Department, School Education Department, North Block, New Delhi – 110001.
2. The Kendriya Vidyalaya Sangathan through its Commissioner, 18, Institutional Area, Saheed Jeet Singh Marg, New Delhi – 110001.
3. The Dy. Commissioner, Kendriya Vidyalaya Sangathan, Bhopal Region, Opposite Maida Mill, Hoshangabad Road, Bhopal – 462001.
4. The Assistant General Manager, Centralized Pension Processing Cell, Behind Working Women Hostel, Govindpura, Bhopal (M.P.) 462003.
5. Branch Manager, State Bank of India, Old Palasia, Indore (M.P.) – 452001.

-Respondents

(By Advocate – Shri Manish Verma for respondents Nos.1 to 3 and Shri Vijay Tripathi for respondents Nos.4 & 5 through Video Conferencing)

(Date of reserving order : 16.02.2021)

O R D E R

By Ramesh Singh Thakur, JM.

The applicant is aggrieved by communication dated 11.05.2020 (Annexure A-1) by the respondents-Bank, directing recovery of Rs.624731/- from the pension of the applicant, which is to be recovered at the rate of Rs.11460/- per month in 55 monthly installments.

2. Brief facts of the case, as stated in the Original Application, are that the applicant was an employee with the respondents-Kendriya Vidyalaya Sangathan (KVS), who retired on 31.08.2009 after attaining the age of superannuation. The applicant was sanctioned pension of Rs.14900/-, which was subsequently revised vide order dated 12.08.2013 to Rs.11175/- per month w.e.f. 30.07.2013 to 29.07.2018. During last five years, applicant has commuted some amount of his monthly pension, which has not been reduced in the monthly pension of the applicant by the respondents-KVS. Thus, there is no fault on the part of the applicant for not reducing the pension of applicant after commutation of the pension.

3. The grounds for challenging the impugned order of recovery are that the applicant was never served with any notice and no opportunity of hearing was provided to the applicant before making recovery from the





pension of the applicant. The applicant has also filed copies of the medical bills (Annexure A-3) to say that he is expending a lot of amount per month for treatment of himself and his son, who is a kidney patient and dependent on the applicant. The applicant submits that he was a Class-III employee before his superannuation and, therefore, the recovery in cases of employees belonging to Class-III and Class-IV category is impermissible in view of the law laid down by the Hon'ble Apex Court in the case of **State of Punjab and others vs. Rafiq Masih (White Washer) & Ors.** (2015) 4 SCC 334.

4. Respondents Nos.1, 2 & 3-KVS have filed their reply. It has been submitted that since a disciplinary case was pending against the applicant on the date of retirement, therefore the provisional pension of Rs.14900/- was sanctioned vide order dated 27.08.2009 (Annexure R-1). Consequent upon conclusion of departmental enquiry, the applicant's pension was revised vide letter dated 12/19.08.2013 (Annexure R-2) as Rs.14900/- w.e.f. 01.09.2009 to 29.07.2013, Rs.11175/- w.e.f. 30.07.2013 to 29.07.2018 and thereafter Rs.14900 + Dearness Relief. The applicant has applied for the commutation of pension vide letter dated 26.09.2013 (Annexure R-3), which was allowed vide office letter dated 29.11.2013. Accordingly, an



amount of Rs.414691/- was sanctioned towards commutation money in lump sum and the payment was released to the applicant vide letter dated 02.12.2013 (Annexure R-5). However, the Bank had not deducted the commutation amount per month w.e.f. 01.12.2013 and the applicant was receiving pension on a higher rate. The respondents have also stated that the applicant has given an undertaking dated 02.05.2009 (Annexure R-7) regarding refund of payment of excess amount if afterwards found in excess of the entitlement.

5. Respondents Nos.4 & 5-Bank, in their reply, have stated that after retirement of the applicant, the applicant was sanctioned provisional pension by the KVS and his basic provisional pension was fixed as Rs.14900/-. The applicant had submitted a letter of undertaking on 25.09.2009 (Annexure R-2) to the Bank to refund or make good any amount to which he is not entitled or any amount which may be credited to his account in excess of the amount to which he is or will be entitled. The KVS, vide letter dated 28/29.11.2013 (Annexure R-5) to the Bank communicated that Rs.4470/- is to be deducted from the pension of the applicant on account of commutation of pension. The letter dated 28/29.11.2013 was also marked to the applicant and the applicant has never raised any



objection to it. Subsequently, the KVS has issued revised PPO dated 23.09.2019 (Annexure R-6), whereby pension of the applicant has been revised w.e.f. 01.01.2016 and the gross basic pension was fixed Rs.29138/- for the period of 01.01.2016 to 29.07.2018 and Rs.38850/- has been fixed w.e.f. 30.07.2018. The commutation of Rs.4470/- is to be deducted till 30.11.2028. The respondents have further submitted that as per letter dated 28/29.11.2013 (Annexure R-5), the amount of commuted value of pension of Rs.4470/- was required to be deducted from the gross basic pension of the applicant. However, due to oversight the aforesaid amount could not be deducted and the applicant was paid excess amount of Rs.344190/- for the period of 01.12.2013 to 30.04.2020. Further, as per revised PPO dated 23.09.2019 (Annexure R-6), the applicant has been paid excess basic pension as he was entitled to get Rs.29138/- per month for the period of 01.01.2016 to 29.07.2018, whereas he was paid Rs.38293/- per month for the aforesaid period. The Reserve Bank of India has issued an instruction dated 17.03.2016 (Annexure R-8) to recover the excess amount paid to the pensioner. The Government of India, Ministry of Finance has also issued an Office Memorandum dated 16.05.2018 (Annexure R-9) regarding recovery for excess payments made to the pensioners. Since the applicant has



wrongly received excess pension for which he was not entitled therefore, the respondents-Bank have made recovery from the pension of the applicant. It has also been submitted by the respondents-Bank that the judgment of Hon'ble Apex Court in **Rafiq Masih** (supra) has been distinguished subsequently by the Hon'ble Apex Court in the case of **High Court of Punjab & Haryana vs. Jagdev Singh**, (2016) 14 SCC 267, therefore, the judgment in the case of **Rafiq Masih** (supra) is not applicable in the present case.

6. In the rejoinder, the applicant has submitted that the objection raised by the respondents-Bank regarding maintainability of the Original Application on the ground that the impugned recovery order has been passed by the Bank and not by the KVS, is not maintainable as the Bank has communicated that the recovery of amount is to be returned to the Government. The Bank is only the disbursing authority of pension and has deposited the amount of pension which is payable to the applicant and the Bank has credited that amount in the Bank account of the applicant.

7. We have heard the learned counsel for the parties and perused the pleadings of the respective parties and the documents annexed therewith.

8. It is undisputed that after his retirement, the applicant was sanctioned provisional pension at the rate of Rs.14900/- per month and as per the revised Pension Payment Order issued by the respondents-KVS dated 12.08.2013 (Annexure R-3 with the reply filed by respondents-Bank), monthly pension of Rs.14900/- w.e.f. 01.09.2009 to 29.07.2013, Rs.11175/- w.e.f. 30.07.2013 to 29.07.2018 and Rs.14900/- thereafter plus Dearness Relief is payable to the applicant till his death. It is also not in dispute that the applicant has submitted an application dated 26.09.2013 (Annexure R-3 with the reply filed by respondents-KVS) for commutation of pension, which was allowed and an amount of Rs.414691/- was sanctioned towards commutation money vide letter dated 02.12.2013 (Annexure R-5 with the reply filed by respondents-KVS) and Rs.4470/- per month was to be deducted from the pension of the applicant on account of commutation of pension. It is also admitted fact that an undertaking both before the respondents-KVS and Bank was given by the applicant (Annexure R-7/Annexure R-2), wherein it has been agreed to by the applicant to refund or make good any amount to which he is not entitled or any amount credited to his account in excess of the amount to which he is not entitled.



 9. From the record it is clear that the amount of commutation of pension came to the notice of the respondents-Bank in the year 2020 and till such time the applicant was paid excess amount of Rs.624731/- from 01.12.2013 to 30.04.2020. The applicant did not raise any objection regarding excess amount paid to him and kept receiving the same being fully aware that commuted value of pension of Rs.4470/- per month shall be deducted from the basic pension of the applicant. Thus, the applicant has been paid the excess amount for which he was not entitled and as per the undertaking furnished by him, any amount credited in his account in excess of the amount for which he is not entitled, is to be refunded by the applicant.

10. In the matters of **Jagdev Singh** (supra), the Hon'ble Apex Court has held as under:

"10. In State of Punjab v. Rafiq Masih, 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.

11. The principal 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."

(emphasis supplied)

10. Learned counsel for the applicant has cited the judgment of Hon'ble High Court of Madhya Pradesh in **Om Prakash Verma vs. State of M.P. and others**, 2016 SCC OnLine MP 7470; **Vijay Shankar Trivedi vs. State of M.P. and others**, 2018(3) MPLJ 453, judgment of Hon'ble High Court of Rajasthan in Civil Special Appeal (W) No.329/2004, decided on 24.11.2016 (**Mohammed Yusuf vs. Maharana Pratap Agriculture & Technology University, Udaipur**); order of Ernakulam Bench of this Tribunal in the case of **Parukutty Ammal vs. Financial Advisor & Chief Accounts Officer (Pension), Southern Railways, Chennai & Ors**, 2016 SCC OnLine CAT 3969 to argue that even though an undertaking has been




 furnished by the applicant, the recovery is impermissible as per the law noticed above. We find that the issue in the cases relied upon by learned counsel for the applicant was regarding wrong pay fixation of the employee and recovery made thereof where undertaking was given by the employee for refund of overpayments on account of incorrect fixation, whereas in the instant case, it has not been disputed by the applicant that he was paid Rs.414691/- towards commutation money, which was to be adjusted from the basic pension of the applicant and as per the undertaking (Annexure R-2 with the reply filed by respondents-Bank), any amount credited in his account for which the applicant is not entitled, shall be refunded by him. Thus, we are of the view that the present case is squarely covered by the judgment of Hon'ble Apex Court in **Jagdev Singh** (supra) and the applicant is not entitled for any relief.

11. Accordingly, the Original Application is dismissed being devoid of merits. No costs.

(Naini Jayaseelan)
Administrative Member

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(Ramesh Singh Thakur)
Judicial Member