

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/380/2020

HYDERABAD, this the 5th day of April, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member



N. Seshi Devi, W/o. N. Subbarayudu,
Aged about 64 years,
Retd., Chos, (Group. C) Hyderabad Division,
South Central Railway, F.No.608,
Saisatya Residency,
Alwal, Near Petrole Pump, Hyderabad.

...Applicant

(By Advocate : Sri G. Trinadha Rao)

Vs.

1. The Union of India rep. by
The General Manager,
South Central Railway,
Rail Nilayam, 3rd floor,
Secunderabad ó 500 025.
2. The Principal Financial Advisor,
South Central Railway,
Rail Nilayam, Secunderabad.
3. Sr. Divisional Personnel Officer,
Hyderabad Division, Hyderabad Bhavan,
South Central Railway, Hyderabad.
4. The Chief Manager, Central Bank of India,
Central Pension Processing Centre,
Mumbai Main Office, M.G. Road Fort,
Mumbai ó 400023.
5. The Manager,
Central Bank of India, Bolarum Branch,
1-5-154/1, Suryanagar Colony, Near I.G. Statute,
Old Alwal, Secunderabad ó 500 010.

... Respondents

(By Advocate: Smt Vijayasagi, SC for Rlys.)

ORAL ORDER
(As per Hon'ble Mr. Ashish Kalia, Judl. Member)



The present O.A. is filed challenging the proceedings dated 17.6.2020 addressed by the 2nd respondent to the 4th respondent in regard to the alleged excess payment of Commuted Pension made to the applicant.

2. The brief facts of the case are that the applicant voluntarily retired from service as Chief Office Superintendent from the office of the respondent No.3 w.e.f.01.02.2018 in PB-2 Rs.9300-34800+ GP Rs.4600/- drawing a pay of Rs.68,000/-. Respondent No.1 to 3 reduced the last pay from Rs.64,000/- to Rs.55,200/- and fixed the pension and arranged the terminal benefits based on the average emoluments of Rs.55,200/- instead of Rs.64,000/-. Applicant filed OA No.931 of 2018 and the same was allowed by the Hon'ble Tribunal. Respondents implemented the order and revised pension and pensionary benefits based on the last pay drawn Rs.64,000/-. Respondent No.2 addressed a letter to the 4th respondent copied to the 5th respondent stating that the commuted portion of the pension has not been deducted resulting in overpayment of Rs.3,15,200/- and advised to recover overpaid commuted portion of Pension of Rs.3,15,200/- from the applicant and remit to the office of the 2nd respondent through DD/Cheque. Challenging the proceedings issued by the 2nd respondent, advising the bank authorities to deduct the alleged over payment of commuted pension, the present OA is filed.



3. Notices were issued and the respondents filed a detailed reply statement, wherein it is stated that the applicant, while working as Office Superintendent during the years 1998-2000, was issued a major penalty charge sheet for indulging in frequent taking of loans from several staff/ parties and not paying them back and also for issuing cheques with insufficient balance in the bank account. She actively participated in the chit fund business along with her husband to attract customers from railway staff/ outsiders, etc. After due process of disciplinary proceedings, the Disciplinary Authority imposed punishment of Compulsory Retirement by order dated 22.7.2005, which was confirmed by the Appellate Authority.

4. The applicant preferred a Revision Petition before the Revising Authority, who modified the penalty of compulsory retirement to that of reduction to lower post from Head Clerk in the scale of Rs.5000-8000/- to Senior Clerk in the scale of Rs.4500-7000/- on pay of Rs.4500/- p.m. for a period of 5 years with a loss of seniority and pay. The intervening period between the dates of compulsory retirement to the date of reinstatement is treated as DIES-NON. Subsequently, on her reinstatement, her pay was fixed at Rs.19,800/- as on 16.2.2011 vide Memo dated 3.5.2013. However, it is noticed that the pay was erroneously fixed since the penalty imposed on her speaks of loss of pay and seniority. Accordingly, the pay of the applicant was re-fixed at Rs.16850/- in the scale of Rs.9300-34800/- with GP Rs.4200/- instead of Rs.19,880/- which was corrected at the time of settlement of retirement benefits. At the time of settling her case on her voluntary retirement, the discrepancy was noticed and rectified. Aggrieved by



the revision of pay, the applicant had filed O.A. No.931/2018 and as per the Honøble CAT/ HYB directions, the basic pension of the applicant was fixed at Rs.34,000/- instead of Rs.27,600/-, treating the last pay drawn Rs.68,000/- instead of Rs.55,200/- and arranged the terminal benefits. Further, as per the directions of Honøble Tribunal, no recovery of overpayment of Rs.8,82,978/- was effected on the applicant. An amount of Rs.13,52,439/- was also paid to the applicant towards lump sum commuted value, since she had opted to commute 40% of her pension. The commuted pension is due for restoration on completion of 15 years of date of commutation.

5. It is submitted by the respondents that the applicant is receiving pension through the Agent bank and the liability of the Railways ceases with issuance of PPO and that correct payments to the pensioners have to be ensured by the respective bank only. The bank acting as an agent of the Railways is expected to disburse pension as per the terms and conditions laid down in the PPO. In view of the commutation of 40% of her pension, the applicant is due to receive only Rs.20,400/- as basic pension till the commuted portion is restored. However, erroneously, the Agent Bank has paid basic pension of Rs.34,000/- p.m. i.e. without deducting the commuted portion, which is proposed to be recovered from the applicant now. However, during the internal check by Pension department i.e. FA&CAO/SCR/SC, it was observed that the applicant was paid the pension without deducting the commuted portion of pension i.e. Rs.13,600/- from the pension. The same was communicated vide FA & CAO Office letter dated 17.6.2020 to the Agent Bank, Central Bank

of India, Central Pension Processing Centre (CPPC) and advised to the bank authorities for rectification of the same and remit to this office.



6. In short, it is the contention of the respondents that the Bank authorities erroneously have paid the proportionate portion of commuted pension also to the retired employee from 31.3.2018 to 31.5.2020 for an amount of Rs.3,15,200/- which was communicated to the retired employee by Bank authorities by furnishing a copy of the letter dated 17.6.2020. The liability of the Railways ceases with issuance of PPO and that correct payments to the pensioners have to be ensured by the respective Bank only. The applicant retired on 01.02.2018. She was paid all the pensioner benefits including lump sum payment of Rs.13,52,439/- towards commuted portion of pension i.e. Rs.13,600/- and as per the Pension Payment Order, the employee is due for Rs.20,400/- + Dearness relief on original pension w.e.f. 2.2.2018. Whereas, it is observed that the pensioner has been paid full original pension without conducting commuted portion of pension, which has to be restored after completion of 15 years as per Pension Payment Order of 29.1.2020.

7. Heard the learned counsel for the parties at length.

8. Learned counsel for the applicant submitted that the case of the applicant is covered by the judgement of the Honøble Supreme Court in the case of State of Punjab & Others vs Rafiq Masih & Others (2015) 2 SCC (L&S) 33 wherein the Honøble Apex Court prohibited the recovery from pension on the ground of the erroneous payment made by the respondents and if it is more than five years. The

Honble Apex Court summarised the following few situations, wherein recoveries by the employers, would be impermissible in law:



- öi) Recovery from the employees belonging to Class III and Class IV service (or Group. C and Group.D service).
- ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
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9. On the contrary, learned counsel for the respondent submitted that this is an error committed by the Bank while making payment to the applicant. The commutation value of the pension has not been deducted and full pension was paid to the applicant i.e. Rs.34,000/- p.m. whereas after commutation, the applicant is actually entitled for Rs.20,400/- p.m. This was in the knowledge of the applicant that she is receiving full pension. At the same time, she has received Rs.39,52,439/- towards the commuted value of pension. This cannot be said to be an error which has occurred five years before the order of recovery. It has occurred after the pensionary benefits were calculated by the department correctly and communicated to the Bank. But during the internal check by Pension department, it was observed that the Bank has not reduced the commuted value of pension from the pension payable to the applicant. At the same time, the applicant has also not disclosed to the authorities that though she has received the commuted value of pension, the same has not been deducted.

10. This is an error on the part of the Bank and the applicant, which is not appreciated by this Tribunal. No one is allowed take benefit of his own mistake. The present case is not at all covered by the judgement of the Honøble Apex Court in *Rafiq Masih's* case (supra) as cited by the learned counsel for the applicant. Both the clauses viz., when there is a bonafide mistake and if it occurs more than five years before the order of recovery, are not attracted to the present case. Hence, this Tribunal is of the view that the proposed recovery by the Bank/ authorities is in accordance with law. Thus, the present Original Application fails and the same is dismissed. However, in the interest of justice, this Tribunal hereby directs that the deduction should not be more than 25% of the total pension payable to the applicant per month. No order as to costs.



(ASHISH KALIA)
JUDICIAL MEMBER

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