

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA



No. O.A. 350/00524/2017

Date of order: 22.2.2021

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

KUSHAL CHANDRA CHALAK,  
Aged about 73 years,  
Son of Late Ram Chalak,  
of Village - Junshol,  
Post Office - Amlagora,  
Police Station - Garbeta,  
District - Paschim Medinipur,  
Pin - 721121;  
A retired employee of South Eastern Railway  
Having PPO No. PEN/SE/ADA/2004/  
B 408/PS/E/04-004506.

..... Applicant.

-Versus-

1. Union of India  
Though The General Manager,  
South Eastern Railway,  
Garden Reach,  
Kolkata - 700043;
2. The FA & CAO (Pension)  
South Eastern Railway,  
Garden Reach,  
Kolkata - 700043;
3. The Finance Manager (Pension),  
South Eastern Railway,  
Garden Reach,  
Kolkata - 700043;
4. The Senior Divisional Finance Manager,  
South Eastern Railway,  
Adra Division,  
District - Purulia,  
Pin - 723121;
5. The Assistant Divisional Finance Manager-I,  
South Eastern Railway,  
Adra Division,  
District - Purulia,

Pin - 723121;

6. The Chief Manager,  
Centralized Pension Processing Centre,  
UCO Bank, Somlwar Bhavan (1<sup>st</sup> floor),  
Mount Road Extn. Sadar,  
Nagpur - 44001;
7. The Chief Manager,  
Centralized Pension Processing Centre,  
UCO Bank, 3-4 BD Block,  
Sector-I, Salt Lake,  
Kolkata - 700064;
8. The Branch Manager,  
UCO Bank, Amlagora Branch,  
P.O. Amlagora,  
District - Paschim Medinipur,  
Pin - 721121;

.....Respondents.

For the Applicant : Mr. B. Lahiri, Counsel  
For the Respondents : Mr. S. Chowdhury, Counsel  
Mr. A. Ali, Counsel  
Md. B. Mollah, Counsel

**ORDER (Oral)**

**Dr. Nandita Chatterjee, Administrative Member:**

Aggrieved with refixation as well as recovery from his pension, the applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

"A) A Direction upon the respondents and/or their agents, assigns, subordinates and superiors and each of them to review the alleged fixation of pension of the applicant after setting aside the impugned order vide letter No. Pen/SE/ADA/2004/B-408/SPL dated 13/01/2017 issued by ADFM-I/ADA for Sr. DFM/ ADA as annexure 'A-6' to this application immediately, within a specific period.

B) A Direction upon the respondents and/ or their agents, assigns subordinates and superiors and each of them to stop deducting any amount from the pension of the applicant and refund the entire amount so deducted in the meantime forthwith with interest.

C) Any other appropriate order or orders as may seem fit and proper by this Hon'ble Tribunal."

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2. Heard both Ld. Counsel, examined pleadings and documents on record. Ld. Counsel for the applicants has furnished his written notes of arguments.

3. The submissions of the Ld. Counsel for the applicant is that, the applicant was working as Mate, South Eastern Railway and superannuated on 31.5.2004. A PPO bearing No. PEN/SE/ADA/2004/B-408/PS/E/04-004506 has been issued to him. At the time of retirement, the applicant's pension was fixed at Rs. 2699/- and upon commutation, the amount of pension was fixed at Rs. 1079/-. The applicant is drawing his pension from UCO Bank, Amlagora Branch.

That, in the year 2006, the applicant's pension was revised to Rs. 12,783/- per month as per recommendations of the Sixth Central Pay Commission. The applicant continued to receive the same till April, 2016. From May, 2016, however, and without any intimation, the applicant's pension was reduced to an amount of Rs. 7537/- in May, 2016 and, thereafter, from June, 2016, the applicant is in receipt of an amount of Rs. 6072/- per month.

Being aggrieved, the applicant approached this Tribunal in first stage litigation in O.A. No. 350/01709/2016 . In compliance to the orders passed by this Tribunal, the respondents issued a speaking order (Annexure A-6 to the O.A.) wherefrom it transpires that the bank authorities had suo motu, revised the pension of the applicant and initiated recovery of alleged excess payment from his pension account. The applicant also received an order dated 13.1.2017 (Annexure A-6 to the O.A.) wherefrom it transpires that, consequent to the recommendations of the 6<sup>th</sup> CPC, his pension was erroneously revised to

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be on the higher side by the Bank authorities, giving him a benefit of 33 years (maximum limit) instead of the actual period of his 28 years of service. Accordingly, a revised PPO was issued advising the disbursing bank, and, the bank authorities, thereafter, initiated recovery from his pension. Challenging the said orders dated 13.1.2017, the applicant has approached this Tribunal claiming recovery of such excess payment from his pension to be impermissible under law. The applicant would aver that, as he was not responsible for the erroneous fixation, subsequent refixation and recovery thereof has subjected him into acute financial hardships, and, particularly so, when he had not received any prior intimation to the same.

The applicant would rely on the following judicial pronouncements in support of his claim:-

- (i) ***State of Punjab & ors. etc. - vs. - Rafiq Masih (White Washer) etc.*** published in ***AIR 2015 (SC) 696.***
- (ii) Judgement of Hon'ble Allahabad High Court in ***Gopi Chand and Another - vs. - State of U.P. and others.*** 2017 11 ***ADJ (NOC) 73.***
- (iii) Judgment of Hon'ble Allahabad High Court in ***Smt. Chandra Kala Saxena -vs.- Nagar Palika Parishad Shahjahanpur & ors., WRIT-A. No. 13964 of 2002***
- (iv) Judgment of Central Administrative Tribunal, Ernakulam Bench in ***Parukutty Ammal - vs.- Financial Advisor & Chief Accounts Officer (Pension) Southern Railways, Chennai & ors. , O.A. No. 180/00334/2016.***

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- (v) Judgment of Hon'ble High Court at Calcutta in **Ashis Kumar Bhowmik - vs.- The State of West Bengal & ors.** reported in **2019 (2) CLJ (Cal) 511.**

4. Per contra, the official respondents would argue that:

(a) The revision of pension was necessitated due to an erroneous fixation by the bank, and, accordingly, on detection of the mistake, his pension has been refixed and that, the bank has initiated the recovery process, there being no irregularity or illegality in such an act of recovery.

(b) That, the applicant is not entitled to a higher rate of pension than that to which he is entitled, given his actual tenure of service.

(c) That, the applicant had submitted a written declaration that the bank would be at liberty to recover any excess payment of pension, and, hence, cannot challenge any such recovery at this stage.

5. Respondent No. 6, 7 and 8, namely, the bank authorities have also submitted their counter affidavit to contend that the applicant's pension had been enhanced on and from 1.1.2006 and such amount was paid to him till April, 2016. Such refixation was on the basis of the recommendations of the Sixth Pay Commission and due to an erroneous note in the 3<sup>rd</sup> column (namely, against the consolidated pension column in terms of Sixth Pay Commission, the 3<sup>rd</sup> column entry should have been Rs. 4067/- as the pre-2006 pension was already fixed after taking the DP element into account.) The inflated pension, however, was fixed erroneously to Rs. 6101/- which led to the applicant's receiving an aggravated amount of Rs. 12,783/- from the bank branch. The bank authorities would also argue that the applicant was possibly aware of overpayment of pension, but, he received such excess payment without

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further demur or objection. The allegations of denial of natural justice and malafide intentions are particularly not sustainable, when the applicant had undertaken to agree to such recovery in the case of excess payment. (Form No. 32 of the Pension Booklet A) as well as an undertaking thereto.

6. Upon analysing the judicial ratio furnished in support of the applicant's claim we proceed to note as follows:-

(a) Accepting the judicial ratio contained in ***State of Punjab & ors. v. Rafiq Masih (White Washer) etc. in CA No. 11527 of 2014 (Arising out of SLP (C) No. 11684 of 2012)***, the DOPT had issued an order dated 2.3.2016 wherein it was directed as follows:-

"4. The Hon'ble Supreme Court while observing that 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 has summarized the following few situations, wherein recoveries by the employees 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 recovery.

5. The matter has, consequently, been examined in consultation with the Department of Expenditure and the Department of Legal Affairs. The Ministries/Departments are advised to deal with the issue of wrongful/excess payments made to Government servants in accordance with above decision of the Hon'ble Supreme Court in CA No. 11527 of 2014 (arising out of SLP (C) No. 11684 of 2012) in *State of Punjab and others etc. v. Rafiq Masih (White Washer) etc.* However, wherever the waiver of recovery in the above-mentioned situations is considered, the same may be allowed with the express approval of Department of Expenditure in terms of this Department's O.M. No. 18/26/2011-Estt.(Pay-I) dated 6<sup>th</sup> February, 2014."

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Ld. Counsel would aver that as the applicant is admittedly in Gr. 'D' service, the ratio of **Rafiq Masih (supra)** is squarely applicable to him.

Ld. Counsel would further rely on the pronouncement of the Hon'ble High Court at Allahabad in **Gopi Chand & another v. State of UP & ors. 2017 11 ADJ (NOC) 73** wherein it was ruled as follows:-

"6. In the present case, we find that alleged excess payment made to petitioner is not on account of any fault on his part. In our view, this case would fall in Clauses (iii) and (iv) and it would not be equitable to recover such amount from petitioner."

Ld. Counsel would also staunchly refer to the Coordinate Bench judgment of the Ernakulam Bench of this Tribunal wherein, in **O.A. No. 180/00334/2016 (Parukutty Ammal vs. UOI & ors.)**, this Tribunal had held as follows:-

"30. In the light of the foregoing discussion of the legal issues, the O.A. is allowed in part. Respondents are directed not to recover any excess payments made to the applicant in view of the Apex Court ruling in Rafiq Masih's case and also in the light of Annexure A3 O.M Respondent Nos. 1 to 3 are directing to issue a revised family pension payment order in respect of the applicant in terms of Annexure R2 and Annexure R5 IREM. Respondent Nos. 1 to 3 are further directed to issue necessary directions to the pension disbursing banks to seek instructions from the pension sanctioning authority for every action that would create adverse impact on the quantum of pension of the pensioners. Ordered accordingly. The aforesaid exercise shall be completed by respondents Nos. 1 to 3 within one month from the date of receipt/production of a copy of this order. Parties shall suffer their own costs."

Finally, reliance is placed by the applicant on **Ashts Kumar Bhowmik v. The State of West Bengal & ors.**, reported in **2019 (2) CLJ (Cal)** wherein the Hon'ble Calcutta High Court had held that:-

"Hence, it is well-established now that any over payment made to an employee due to erroneous pay fixation or misinterpretation of any rule by the employer or on its behalf, for which the employee is in no way responsible cannot be recovered from the employee's retiral benefits."

7. Upon a close perusal of the mandate contained in each of these judgments, however, we do not decipher any directive issued on the

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pension disbursing bank to desist from recovery upon detection of erroneous fixation:

- (a) DOPT's O.M. dated 2.3.2016, issued in compliance to **Rafiq Masih (supra)** was addressed to all Ministries/departments of Govt. of India and no record has been furnished before us to substantiate that such instructions (supra) percolated to the public sector banks for ensuring waiver upon consultation with the Department of Expenditure.
- (b) In **Gopi Chand & another (supra)**, the orders of the Milk Commissioner was under challenge. The Hon'ble Court allowed the re-fixation but quashed the recovery.
- (c) In **Chandrakala Saxena (supra)**, the Nagar Palika Parishad's recovery orders were quashed.
- (d) This Tribunal, in its coordinate Bench at Ernakulam, while, deciding on **Parukutty Ammal (supra)** dealt with the role of the pension sanctioning authority. This Tribunal had expressed displeasure at the "hands off" attitude of the pension sanctioning authorities and had held as follows:-

"23. In view of the above legal position, the pension disbursing banks have to reminded of their legal status that they are acting only as agents of the pension disbursing authority and that the introduction of the aforesaid Scheme is not taking away the legal character of the pension/family pension as declared by the apex court. Sanctioning of pension/family pension is the power to be exercised by the executive i.e. the pension sanctioning authority alone and a decision as to what should be the pension and family pension cannot be left to the pension disbursing banks."

- (e) Finally in **Ashish Bhowmick (supra)**, the State School Education Department's actions on recovery were disallowed and the Hon'ble Court directed for refund with interest.

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8. In our considered view, and, in respectful concurrence with the views of the coordinate Bench of this Tribunal at Ernakulam, it is the pension sanctioning authority who should be responsible for deciding on refixation as well as recovery, if any, from the applicant's pension and advise the pension disbursing bank appropriately in this regard. Hence, we would remand this matter back to respondent No. 2 or the competent pension sanctioning authority to decide on the following:-

(i) Whether excess payment made can legally be recovered from the applicant in view of the Hon'ble Apex Court's rulings in **Rafiq Masih (supra)**.

(ii) Given the admitted erroneous pay fixation, whether a revised PPO should be issued in accordance with law, to the applicant, if not so issued earlier.

In case the ratio of **Rafiq Masih (supra)** is applicable in the case of the applicant, the amount that stands as recovered may be refunded to the applicant forthwith thereafter.

The entire exercise should be completed within a period of 12 weeks from the date of receipt of a copy of this order.

Further recovery from the pension of the applicant will remain in abeyance until appropriate directions are issued by the pension sanctioning authority.

9. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)  
Administrative Member

(Bidisha Banerjee)  
Judicial Member

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