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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.154/2011

Jodhpur this the 23rd day of August, 2013

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J),

Banshi Lal Mathur S/o Shri Dan Raj Mathur, aged 81 years, R/o Ward No.23, Naya Baas, Churu, (Raj.), last posted as Head Clerk, Loco Shed, North Western Railway, Churu.

.....Applicant

(By Advocate Shri Himanshu Shrimali)

Versus

1. Union of India, through the General Manager, North Western Railway, Head Quarter, Jaipur.
2. Divisional Railway Manager, North Western Railway, Bikaner.
3. Divisional Finance Manager, North Western Railway, Bikaner.

.....Respondents

(By Advocate Mr. Vinay Jain)

ORDER (Oral)

Applicant, Banshi Lal Mathur, has filed this application under Section 21 of the Administrative Tribunals Act, 1985 stating that he was employee of the respondent department and while he was discharging his duties as Head Clerk, Loco Shed, North Western Railway Churu, the respondents retired him on medical grounds from his services on 30.11.1988. The Pension Payment Advise (PPA) was issued in his favour on 02.07.1989 by the

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Finance Advisor and Chief Accountant (Pension), N.W. Railway, New Delhi, by which the applicant was allowed the pension to the tune of Rs.1019/- per month. Later on, with effect from 01.01.1996, the pension of the applicant was revised to Rs.2519/-. It is averred that applicant's son was also employed in the respondent department and he died while in service. He was unmarried and therefore, his family pension was allowed to the applicant as a father w.e.f. 27.01.1998. In the month of March, 2011 when the applicant went to withdraw the pension from his Bank account, then the same was not released and it was informed that his pension account has been seized. Thereafter, the applicant submitted an application under Right to Information Act before the Manager, S.B.B.J., Main Branch, Churu demanding the information that how much pension has been deposited in his account. In reply to that, the Bank informed the applicant vide letter dated 15.04.2011 that the pension has been deposited upto February, 2011 and the same has been stopped from March, 2011 in pursuance to the order dated 18.01.2011 issued by the Divisional Finance Manager, North Western Railway, Bikaner.

2. On being enquiry made, the Divisional Finance Manager, North Western Railway, Bikaner, informed the applicant that he is receiving monthly pension more than of Rs.2550/- per month,

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therefore, he is not entitled to get parent family pension as he was not dependent of his son. It is further averred that the respondent department on the one hand stopped the family pension, which was being paid to the applicant on account of death of his son and on the other hand, entire amount of pension of the applicant has been started to be recovered from the pension account of the applicant.

Hence, the applicant by way of this application has sought the following reliefs:-

"It is, therefore, most respectfully prayed that looking to the above mentioned facts and circumstances of the matter, the impugned letter/order dated 18.01.2011 (Annexure-A/1) may kindly be quashed and set-aside upto the extent of the applicant and recovered pension amount may kindly be directed to be reimbursed to the applicant or pass any appropriate order, which this Hon'ble Tribunal thinks fit in the interest of justice."

3. The respondent department has filed a detailed reply and denied the right of the applicant to receive the parent family pension on account of death of his son. Further averred that while claiming the parent family pension, the applicant concealed the fact of being a Railway Pensioner and family pension is admissible to dependents and not to the legal heirs. It has been averred that as per PS 11597/98, the family pension to the parents is admissible provided they are wholly dependent on the Railway servant and their monthly income is less than Rs.2550/- per month. But so far as the case of the applicant is concerned, he is getting his own pension, which is more than Rs.2550/- per month. It has been averred that the applicant was wrongly granted the family pension

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as he is not entitled to get pension of his son, and as soon as, it was revealed that family pension has been wrongly sanctioned, the Accounts Department directed the Bank to stop the pension and to make necessary recovery. Therefore, the action of the respondent department is legal and by way of reply they have prayed to dismiss the application.

4. Applicant filed a detailed rejoinder and while reiterating the same facts also annexed two letters as Annexure-A/9 and A/10, which were addressed to the Divisional Personnel Officer, North Western Railway, Bikaner for sanctioning the parent family pension and other dues in his favour.

5. Heard both the parties. Counsel for the applicant contended that parent family pension was granted to the applicant and for granting this pension, he was not responsible for any fraud or any misrepresentation and subsequently the Railway Department stopped the parent family pension on the ground that the applicant misrepresented and concealed the fact that he is receiving his pension i.e. more than Rs.2550/- per month and therefore, he is not entitled to get parent family pension as per the circular since the parent pension is permissible only to those persons who are solely dependent upon Railway servant. Further, on the ground that the

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applicant himself is receiving pension on account of his retirement, therefore, he is not entitled the benefit of the parent pension and payment of parent pension was stopped by the Railway Authorities, which is not legal. Counsel for the applicant contended that the applicant has not made any misrepresentation or fraud, therefore, the recovery cannot be allowed to be made from the pension payment, which was duly paid to the applicant.

6. In support of his arguments, the learned counsel for the applicant has relied upon the following judgments:-

- (i) **Nand Lal & Ors. vs. R.S.E.B. & Ors., and Mangal Kumar & Ors vs. R.S.E.B. & Ors.,** reported in RLR 1999 (2) page 707.
- (ii) **Smt. Lalita Kumari vs. the State of Bihar and Ors.** reported in 1981 LAB I.C. 1192.
- (iii) **Shyam Babu Verma vs. Union of India,** reported in 1994 SCC (2) 521.
- (iv) **Sahib Ram vs. State of Harayana,** reported in 1995 SCC Supl.(1) 18.
- (v) **State of Andhra Pradesh & Ors. Vs. G. Sreenivasa Rao & Ors.,** reported in (1989) 2 SCC 290.

7. Per contra, counsel for the respondents contended that any illegal or excess payment made to the applicant amounts to public money and the excess payment or any public money can be recovered from the applicant.

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8. I have considered the rival contentions of both the parties and perused the judgment passed in the case of **Nand Lal & Ors. vs. R.S.E.B. & Ors.**, and **Mangal Kumar & Ors vs. R.S.E.B. & Ors.**, reported in RLR 1999 (2) page 707, in which the recovery of the amount was held to be erroneous on the ground that employee has been given the higher pay scale long back. But in the present case, the pension amount has not been paid since long back. Therefore, the facts of above cases are different from the present case.

In the case of **Smt. Lalita Kumari vs. the State of Bihar and Ors.** reported in 1981 LAB I.C. 1192, the services of employee were terminated from retrospective date and it was the case of cancellation of appointment and recovery of salary drawn. The Hon'ble Court quashed the orders of cancellation of the appointment and consequently the orders for recovery of the salary drawn were also quashed. But the present case is not of cancellation of the appointment order. Therefore, the facts of this case are also different from the facts of the present case.

In **Shyam Babu Verma vs. Union of India**, reported in 1994 SCC (2) 521, the Hon'ble Apex Court in the case of wrong fixation of pay and the excess payment made for more than 10 years, has held that in the interest of justice it is just and proper not

to recover any excess amount which has already been paid to them.

In the above referred case, excess payment was made to petitioners for more than 10 years, but in the instant case, the excess payment of parent pension was made only for a very short period.

In **Sahib Ram vs. State of Harayana**, reported in 1995 SCC Supl.(1) 18, the Hon'ble Apex Court in the facts and circumstances of the case ordered not to recover the excess payment made to the petitioner. But in the present case, the excess payment was made to the applicant on account of the concealment of the fact that he himself was a pensioner. Thus, the facts of this case are also different from the facts of the case in hand.

In **State of Andhra Pradesh & Ors. Vs. G. Sreenivasa Rao & Ors.**, reported in (1989) 2 SCC 290, the excess amount was paid on account of judgment of the Tribunal and High Court and it was held by the Hon'ble Supreme Court not to recover additional salary already paid to respondents pursuant to orders of High Court/Tribunal. But in the present case, on account of concealment of the fact that the applicant himself is a pensioner, the parent family pension was wrongly sanctioned in favour of the applicant by the Railway Board. Therefore, the facts of this case are different from the facts of the present case.

9. The Hon'ble Supreme Court in a recent pronouncement in the case of **Chandi Prasad Uniyal & Ors. vs. State of Uttarakhand & Ors**, reported in 2013 (1) RLW 278 (SC), has held as under:-

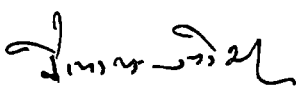
"We are concerned with the excess payment of public money which is often described as "tax payers money" which belong neither to the officers who have effect over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favoritism etc. because money is such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardship 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."

If the matter is seen in the light of the ratio decided by the Hon'ble Supreme Court in the case of Chandi Prasad Uniyal (supra), the instant case cannot be treated as a case of exception of extreme hardship and the judgments cited by the counsel for the applicant have no similarity with the facts of the present case.

10. Therefore, in my considered view, as per the letter No.PS 11597/98 of the Railway Department, the applicant is not entitled to get parent family pension on account of death of his son, which was

paid to him due to concealment of facts. The parent family pension was inadvertently sanctioned, which was subsequently came to the notice of the Railway Department. Therefore, the order passed by the Railway Department at Annexure-A/1 to stop the payment of the parent family pension cannot be said to be illegal or against the prevailing law.

11. So far as the recovery amount is concerned, it is the settled law that any excess payment made to any employee inadvertently or by illegal concealment of facts amounts to public money and that can be recovered at any time by the Department. Accordingly, in my considered view the stopping of the amount of the parent pension and the order of recovery of the excess amount paid to the applicant cannot be said to be illegal. Accordingly, no interference is required in the impugned orders and as the OA lacks merit, therefore, the same is dismissed with no order as to costs.


(Justice K.C. Joshi)
Judicial Member