

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

Original Application No.456/2014

Jodhpur, this the 08<sup>th</sup> day of April, 2015

**CORAM**

**Hon'ble Ms. Meenakshi Hooja, Administrative Member**

Legal Representatives of Late Asu Lal Sharma-

1. Kishan Lal Sharma S/o late Shri Asu Lal Sharma, R/o Out Side Chand Pole, Kriya Ka Jhalra, Near Mahakaleshwar Temple Ramdeo Colony, Fort Road, Jodhpur.
2. Gopal Lal Sharma S/o Late Shri Asu Lal Sharma, R/o Out Side Chand Pole, Kriya Ka Jhalra, Near Mahakaleshwar Temple Ramdeo Colony, Fort Road, Jodhpur.
3. Ashok Kumar Sharma S/o Late Shri Asu Lal Sharma, R/o Out Side Chand Pole, Kriya Ka Jhalra, Near Mahakaleshwar Temple Ramdeo Colony, Fort Road, Jodhpur.

.....Applicants

By Advocate: Mr.Arjun Purohit.

Versus

1. Union of India through General Manager (Personnel), Northern Western Railway, Jaipur.
2. Divisional Railway Manager (Personnel), Northern Western Railway Workshop, Jodhpur.
3. Senior Personnel Officer, Workshop, Northern Western Railway, Jodhpur.
4. FA & CAO, Northern Western Railway, Jaipur.
5. Deputy Chief Manager, Store Northern Western Railway, Jodhpur.

ORDER (Oral)

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 challenging the letter No.728E/E-7/Pension-Pre 2006/Store/2014 dated 11.10.2014 issued by the Deputy chief Manager, Store Northern Western Railway, Jodhpur (Annexure-A/1) by which action of the recovery has been said to be justified as per RBE 11/2013 dated 20.02.2013 seeking the following relief(s):-

"It is, therefore, most respectfully prayed that the Original Application filed by the applicant may kindly be allowed with cost, the letter dated 11.10.2014 (Annexure-A/1) may kindly be quashed and set aside, and the respondents may kindly be restrained to effect further recovery from pension of the applicant and further the respondents may kindly be directed to refund the amount so recovered from the pension of the applicant."

2. During the pendency of the OA, the applicant Asu Lal Sharma expired on 04.01.2015 and his three legal representatives Kishan Lal Sharma, Gopal Lal Sharma and Ashok Kumar Sharma were taken on record while allowing the MA No.58/2015.

3. The brief facts of the case as averred in the OA are that the applicant Asu Lal Sharma was initially appointed as Khalasi in the year 1955 and he served the department upto 30.11.1993, thereafter while working on the post of DSK III at Senior Personnel Officer, Workshop, Northern Western Railway, Jodhpur, the applicant was retired upon attaining the age of superannuation, the applicant was getting the pension, as revised from time to time and the copy of the

further averred that the applicant has been allowed the benefit of revised pay scale and pension benefits from time to time and benefit of V<sup>th</sup> and VI<sup>th</sup> Pay Commission has been allowed by the respondents to the applicant. In this regard, there is a letter dated 18.03.2010 (Annexure-A/3) according to which the revised pension in the pay scale of Rs.1400-2300 is now as 4500-7000 in V<sup>th</sup> Central Pay Commission and not as 5000-8000 as mentioned in the item No.9 of the DOP & PW's OM dated 14.10.2008. It has been further averred that the grievance of the applicant relates to deduction/ recovery from his pension, which has been made effective as per the letter received by the applicant on 25.08.2014 from the SBBJ Khanda Falsa Branch, Jodhpur total amount of Rs.1,34,210/- has been decided to be deducted and recovered from pension of the applicant, monthly deduction of rupees 3800/- has been started by the department from the pension of the applicant. Copy of letter dated 10.06.2014 along with monthly statement has been submitted as Annexure-A/4. The applicant thereafter submitted representation on 22.09.2014 (Annexure-A/5) saying that prior to making deduction/ recovery, no notice or order has been given to him and that representation has been rejected by the department vide letter dated 11.10.2014 (Annexure-A/1) saying that the pension has rightly been revised and no amendment in the same is required. The applicant has averred that he submitted an application

RBE letter No.11/2013 dated 20.02.2013, but no response has been given by the respondents and recovery is being made every month. It has been further averred that it is a settled law that no recovery can be made from the pension benefits of an employee without any notice or opportunity of hearing, and applicant was getting the pension regularly and there was no fraud or mis-representation on the part of the applicant, but all of sudden amount of Rs.1,34,210/- has been shown to be paid in excess and the action of the department in making recovery from pension cannot be said to be justified and the applicant cannot be put to a disadvantageous position by the Department, because the pay fixation was made by the Department in the year 2006, the applicant is getting the same, and now after about 9 years, the same cannot be undone and that too without any notice or hearing. Hence, the action of the respondents is unjust and illegal and therefore the applicant has filed this OA for the reliefs as mentioned in para 1.

4. The respondents in their reply have stated that the applicant retired on superannuation as DSKP-III in Grade of Rs.1400-2300 on 23.11.1993 and was allowed all pensionary benefits as per instructions in vogue and his pension was revised in accordance with instructions received under V<sup>th</sup> Pay Commission and VI<sup>th</sup> Pay Commission. It has been further averred that the respondent department has received a detailed instruction from Railway Board under RBE No.11/2013

As per this Circular it was found that the pension of applicant was wrongly fixed in Grade Pay 4200 whereas due to merger of various Grades of IVth Pay Commissioner- Vth Pay Commissioner the equivalent Grade Pay was given as 2800/- for Grade Rs.1400-2300 as per serial No.9 of Annexure-2 RBE 11/2013 dated 28.02.2013. As applicant retired in IVth Pay Commission in Grade Rs.1400-2300 accordingly as per this Grade Pay his pension is to be revised under Vth Commission and VIth Pay Commission. Accordingly on receipt of this Board Circular dated 28.02.2013 (Annexure-R/1) the applicant's pension was correctly revised in accordance with correspondence Grade Pay of Rs.2800/-. On the basis of the Circular dated 28.02.2013 letter dated 10.06.2014 was rightly issued. It has been further averred that as the pension of the applicant has been revised by the department in accordance with Railway Board's Circular dated 28.02.2013 there is no necessity to give the Show Cause Notice, however the representation submitted by the applicant has been decided by the department by order dated 11.10.2014 (Annexure-A/1). It has also been averred that all the circular which are issued by Railway Board are readily available on internet and every employee knows this fact. The applicant knew very well that the pension which has been revised was in pursuance of Railway Board's Circular dated 28.02.2013 but despite this, applicant has not

the applicant has not challenged this

circular therefore applicant is having no case in his favour and have accordingly prayed for the dismissal of the OA.

5. The LR's of applicant filed rejoinder reiterating the points raised in the OA and further averred that prior to the interim order passed by the Hon'ble Tribunal on 16.12.2014 in favour of the applicant for not making any recovery from the pension benefits of the applicant, the respondents department already deducted 4-5 installments w.e.f. 01.08.2014 from the pension of the applicant by the SBBJ, Khanda Falsa and only after the interim order dated 16.12.2014 they stopped the deduction but now since the applicant himself is no more therefore there is no question of making any recovery as no one is there to receive the family pension but the Bank Officials have withheld the remaining amount of the applicant while saying that they are required to recover the amount as per the directions of the Department and have not released the amount lying in the account of the applicant which they have no jurisdiction to do so. It has been further averred that as per decision given by the Hon'ble Supreme Court in *State of Punjab v. Rafiq Masih*, reported in 2015 AIF SCW 501 no recovery can be made from the retired employee and the order of recovery is liable to be set aside and the amount so recovered is also required to be refunded to the applicants and the Bank Officials are required to be directed to release the remaining amount lying in the account of the applicant.

6. Heard. Counsel for applicant submits that as the applicant has expired on 04.01.2015, now the question of any recovery being made in pursuance of Annex. A/1 does not arise. Out of a total recovery of Rs 1,34,210/- recovery of Rs.3800/- p.m. was being recovered from the pension of the applicant from 01.08.2014 to 16.12.2014 i.e. till the date of the interim order. Thus, recovery has been made for about a period of 4-5 months. He further contends that the recovery being effected by the respondent-department is per se against the rules and illegal, therefore, even the recovered amount is required to be refunded to the LRs of the applicant.

7. Per contra, counsel for respondents submits that in view of the death of the applicant no further recovery can be made as pension of the applicant has ceased from the date of his death i.e. 04.01.2015. Counsel for respondents further submits that as far as claim of the applicant to refund wrongful recovery made for 4-5 months is concerned, the LRs of the applicant may be directed to file representation to the respondent-department for due consideration.

8. Considered the rival contentions and perused the record.

9. In view of the submissions made by both counsels and specially the fact that the applicant, a pensioner has expired on 04.01.2015, without going into the merit of the case, it is proposed to dispose of the OA with certain directions. Accordingly it is directed

- (i) LRs of the applicant may file a representation to the competent authority in the respondent-department regarding any recovery made from the pension of the applicant from 01.08.2014 upto 16.12.2014 especially bringing out the basis on which the recovery is deemed to be wrongful with each and every detail, within 2 weeks from the date of receipt of this order.
- (ii) Thereafter, the respondents are directed to decide the same within one month from the date of receipt of the representation.
- (iii) So far as payment of the amount which has not been recovered is concerned, as admittedly no further recovery can be effected in view of the death of the applicant, the respondents are also directed to give suitable instructions to the concerned Bank in this regard.

The OA is thus disposed of with no order as to costs.



(MEENAKSHI HOOJA)  
Administrative Member

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