

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00228/2015

Jodhpur, this the 28th day of November, 2016

CORAM

Hon'ble Ms. Praveen Mahajan, Administrative Member

Smt. Pushpa Sharma w/o Late Sh. Shivram Ji Sharma, aged 76 years r/o Bhagi Pol, Bhramपुरi, Jodhpur. Her Husband was serving in respondent Dept. as Head Commercial Clerk in Comm. Branch, N. Railway, Jodhpur

.....Applicant

By Advocate: Mr. Vineet R. Dave

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur
2. The Financial Advisor & Chief Accounts Officer (FA&CAO), North Western Railway, Jaipur.
3. The Senior Divisional Finance Manager, North Western Railway, Jodhpur.
4. Branch Manager, Bank of Baroda, Jalechi Jhalra, Kila Road, Chandpol, Jodhpur.

.....Respondents

By Advocate : Mr. Vinay Chhipa for resp. 1 to 3

ORDER

The present OA has been filed against reduction of pension as well as recovery. In relief, the applicant has prayed that the ordered revision of pension and revised PPO dated 29.07.2013 may kindly be quashed and set aside and the applicant may be declared to be entitled for revision of pension keeping in view the pay scale of Rs. 1400-2300, 5000-8000 & 9300-34800 + GP 4200/- in view of the post of Head Commercial Clerk held by the

husband of the applicant. The applicant also seeks interest on the illegally recovered amount of Rs. 28,000/- and prayed that the responsible officer of the Department as well as the bank, who were part of the process of ordering recovery, may be punished.

2. Brief facts of the case are that husband of the applicant superannuated on 31.08.1992 from the post of Head Commercial Clerk. At the time of superannuation, PPO was issued on the basis of last pay drawn in the pay scale of Rs. 1400-2300. The said pay scale was revised to Rs. 5000-8000, which was taken into account while issuing PPO in the month of June, 1999. The applicant was allowed family pension after the death of her husband and revision of pension after recommendations of the 6th Central Pay Commission from the scale of Rs. 5000-8000 to the scale of Rs. 9300-34800 + GP 4200/-. The controversy relates to the post of Head Commercial Clerk falling under Commercial Department of Zonal Railways for whom the pay scale was Rs. 1400-2300 and the same was revised to Rs. 5000-8000, which falls in pay scale No. S-9. The respondents without adhering to the requirement of principles of natural justice unilaterally ordered reduction of pension as well as recovery from the future pension of the applicant. That the fact of withdrawal of Rs. 28,000/- by the bank without any authority in this regard came to the notice of the applicant only when she visited the bank for withdrawal of

pension. Thereafter a revised PPO dated 29.07.2013 (Ann.A/6) was also made available to the applicant. The applicant served a notice dated 31.04.2014 to the bank (Ann.A/7). A representation was also made to the respondents by the applicant referring the provisions of the Para 2014 of the Pension Manual. The applicant avers that revision of PPO was wholly erroneous in ignorance to the recommendations of the CPC and the entire action of recovery initiated by the respondents is a glaring case of administrative malice with intent to harass the family of the late employee without following the requirement of notice or opportunity to the family of the employee before effecting any recovery. Hence, aggrieved of the action of the respondents, the applicant has filed the present OA.

3. In the reply, the respondents have submitted that the applicant has challenged the revised PPO dated 29.07.2013, which is of the year 2013 and the OA is filed in the year 2015, therefore, the OA is barred by limitation. The husband of the applicant was initially appointed on 12.09.1955 and he retired from the post of Head Clerk w.e.f. 31.08.1992. At the time of retirement, he was getting pay scale of Rs. 1400-2300 and accordingly PPO was issued. Subsequently, on implementation of recommendation of 5th CPC, his pension was revised in the pay scale of Rs. 5000-8000 w.e.f. 1.1.1996 and PPO was issued. After

recommendations of 6th CPC w.e.f. 1.1.2006, another PPO was issued in the scale of Rs. 9300-34800 + 4200 GP. Keeping in view the instruction issued by the Department of Pension and Pensioners' Welfare, the Railway Board issued a circular RBE No.181/2008 and in view of the judgment rendered by the Hon'ble Supreme Court on 23.11.2006 in the case of K.S.Krishnaswamy vs. UOI, the Railway Board issued another circular RBE No.24/2010 wherein it was advised that all cases in which either pension/family pension has been revised or the revised PPOs have been issued indicating 5th CPC scale of pay and 6th CPC pay Band/Grade Pay, otherwise than in accordance with DOP&PW's instructions, may be reviewed and revised PPOs issued at the earliest. Accordingly, the employees who were initially in the pay scale of Rs. 1400-2300 in the 4th CPC were entitled to the corresponding scale of Rs. 4500-7000 in the 5th CPC and Rs. 5200-20200 + GP Rs. 2800 in the 6th CPC as has been indicated at S.No.9 of Annexure-I of DOP&PW's OM dated 14.10.2008 circulated vide Railway Board RBE No.181/2008 dated 18.11.2008. This was further clarified by Railway Board RBE No.42/2010 dated 18.3.2010 (Ann.R/1, R/2 and R/3). Accordingly, while implementing 5th CPC recommendations w.e.f. 1.1.1996, the pension of the husband of the applicant ought to have been fixed corresponding to his revised pay scale Rs. 4500-7000 and likewise under 6th CPC, his pension was to be fixed in the pay band Rs.

5200-20200 + 2800 GP w.e.f. 1.1.2006 at Rs. 3500/-. While implementing the aforesaid instructions, the excess payment made was required to be recovered and the same has been done by the respondents vide Ann.A/6 which is perfectly legal, justified and in consonance with the instructions issued by the Railway Board in this regard and as per the law laid down by the Hon'ble Supreme Court, which does not require any interference.

4. Heard the learned counsels of both parties and perused the record. This being a matter of family pension and there being a continuous cause of action – the delay, if any, is condoned.

5. It would be pertinent to mention here that this Tribunal has decided a similar controversy in OA No.290/00187/2015 vide order dated 19th October, 2016. In the aforesaid matter, the Tribunal elaborately discussed the issue involved and found no reason to interfere with the PPO regarding fixation of pension. Here, I would like to apply the ratio of the judgment of the Hon'ble Apex Court in the case of 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) dated 18.12.2014, which lays down parameters where recovery is held to be illegal in case of certain category of employees (retired or on the verge of retirement). The same directives/principles would hold good in cases of

family pension as well. Hence, the recovery so made is held to be illegal.

6. Accordingly, I am of the view that there is no need to discuss the matter in detail, since the controversy involved in the present OA is squarely covered by the order dated 19th October, 2016 passed in OA No. 290/00187/2015. Hence, the recovery on account of excess pension is held to be illegal. The recovery, if any made, shall be refunded to the applicant within 03 months. However, I find no reason to interfere in PPO dated 29.07.2013 (Ann.A/6) regarding fixation of revised pension of the applicant.

7. The OA stands disposed of in above terms. No costs.


(PRAVEEN MAHAJAN)
Administrative Member

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