

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.O.A.193 of 1997

Present : Hon'ble Mr.D.Purkayastha, Judicial Member.

J.Raphael S/o Late M.Raphael
retired from Controller of
Defence Accounts (Factory)
Calcutta as Selection Grade
Auditor, 9 C.R.Avenue,
Calcutta, residing at 181-D,
Plepie Garden Road, Calcutta-39.

... Applicant

Vs.

1. Union of India through the Secretary,
Ministry of Defence, New Delhi-1.
2. Deputy Secretary, Ministry of Personnel
and Grievance, Lok Nayak Bhawan,
Khan Market, New Delhi-110 003.
3. The Chief Controller of Defence Accounts
(Pension), Darupadighat, Allahabad,
Uttar Pradesh.
4. The Manager, State Bank of India,
Wellesley Park Branch, Calcutta-700 016.

... Respondents

For the applicant : Mr.K.Sarkar, counsel.

For the respondents: Mr.B.Mukherjee, counsel.

Heard on : 4.6.1998

Order on : 4.6.1998

ORDER

The applicant who is a pensioner has challenged the validity of the recovery order dated 6.3.1995 (annexure 'A/3' to the application) by which the A.O.(P) of the Office of the C.C.D.A. (Pension), Allahabad, proposed to recover 1/3rd of the pensionary emoluments from the pension of the applicant on the ground of overpayment being made to him. *without giving him any opportunity or being heard.*

2. According to the applicant, he retired from service on 1.7.1979 from the Office of C.D.A. (Factory), Calcutta.

Thereafter, his pension has been fixed and authority has been

issued for drawing final pension through State Bank of India (respondent no.4) at Wellesley Park Branch, Calcutta. Accordingly, the applicant has been drawing pension from the said Bank, but suddenly he came to know that a huge amount to the tune of Rs.18,091/- has been recovered and deducted from his pension without giving him any opportunity of being heard. The applicant raised objection against the deduction made from his pension by the respondents through his representation. It is found from the letter dated 6.3.1995 (annexure 'A/3' to the application), that the pension of the applicant was determined and recalculated and re-fixed at Rs.1017/- p.m. w.e.f. 1.1.1986 and statement of drawing pension as per decision contained in the letter dated 6.3.1995 has been drawn up which shows that Rs.18,091/- was paid in excess to the applicant. But the concerned Bank, respondent no.4, through their letter dated 9.8.1995 (annexure 'A/4' to the application) at paragraph 2 have informed the applicant that "while calculating for the excess amount of payment, you have considered only the difference in basic pay i.e. Rs.148/-p.m. But you have omitted to take into account the D.A. component paid on Rs. 148/- + D.A. paid on it from 1.1.1986 to 30.4.1993 amounts to Rs.18,091/- as calculated by CCDA (Pension), Allahabad". It is found from the said letter that the applicant has been receiving pension @ Rs.742/- p.m. and not Rs.1017/- p.m. as has been contended by Office of CCDA Allahabad in their letter under reference. The applicant made a representation to the respondent no.4 through his advocate on 23.9.1996 (annexure 'A/5' to the application), stating inter alia all facts therein. Ultimately, by the letter dated 3.4.1996 the Sr.Accounts Officer (P) of the Office of the C.C.D.A. (Pension) has informed the concerned Bank that after examining the records of the petitioner, it is found that the applicant is entitled to get Rs.1017/- p.m. as pension w.e.f. 1.1.1986 and in addition to the same, relief is also admissible to him. It is the contention of the applicant that there might be another person having a similar name like him who is drawing pension from the said Bank as he states his name is J.Raphael whereas the order at page 24 of the petition mentions

the name as J. Ramphael. Feeling aggrieved by the said action of the respondents, the applicant has approached this Tribunal for a direction upon the respondents to refund the entire amount which has been recovered from his pension as per the order dated 6.3.1995 by the Bank without affording him any opportunity of being heard. The applicant also claims interest on that account @ 18% p.a.

3. The respondents have resisted the claim of the applicant by filing a reply wherein they have denied the claim of the applicant stating inter alia that the applicant was originally granted pension at Rs.264/- p.m. and the same was subsequently revised to Rs.445/- w.e.f. 1.7.1979. Consequent upon the implementation of the recommendations of the Fourth Pay Commission, the pension of the applicant should have been Rs.1017/- p.m. w.e.f. 1.1.1986 vide para 4.5(III) read with Annex-III to Department of Pension and Pensioner's Welfare O.M.No.2/1/87-PIC-1 dated 16.4.1987 instead of Rs.1165/- p.m. as revised by the PDA i.e. Manager, SBI, Wellesley Branch, Calcutta. It is stated that the applicant has already given an undertaking vide Annex-K to the scheme for payment of pension by PSBS, while opening pension account to refund or make good any amount to which he is not entitled. Hence there is no question of recovery intimation regarding overdrawn amount. Thereby the application is liable to be dismissed.

4. Id.counsel, Mr.K.Sarkar, appearing on behalf of the applicant, has drawn my attention to the relevant letter dated 6.3.1995 and the letter dated 9.8.1995 (annexures 'A/3' and 'A/4' respectively) and submits that there is a discrepancy in respect of the amount to be recovered from the pension of the applicant. According to CCDA(Pension) Allahabad, the amount to be recovered is Rs.18,433/- but according to the Bank the amount is Rs.18,091/-. He submits that in the face of discrepancy, the principle of natural justice ought to have been followed by the respondents before making any recovery from the pension of the applicant. Mr.Sarkar

also submits that the applicant is not at fault as the department fixed the pension of the applicant and subsequently re-calculated the same and again fixed at Rs.1017/- p.m. w.e.f. 1.1.1986 instead of Rs.1165/- p.m. as had been fixed earlier. Mr.Sarkar submits that the applicant never received Rs.1165/- from the Bank as his pension. He submits that such recovery should not have been made by the respondents without settling the dispute raised by the respondents as the applicant had filed representations. So recovery as made by the respondents from the pension amount of the applicant is highly arbitrary, illegal and liable to be quashed.

5. Mr.B.Mukherjee, Id.counsel, appearing on behalf of the respondents, submits that this Tribunal has no jurisdiction upon the State Bank of India, Wellesley Park Branch, and they cannot be directed to comply with the order of this Tribunal. Mr.Mukherjee also submits that the calculation of pension of the applicant was rightly done as per the letters dated 2.1.1987 and 16th April, 1987, as mentioned in the letter dated 6.3.1995 (annexure A/3). The calculation was made as per the decision contained in the letters under reference on the recommendation of the Fourth Pay Commission and the pension of the applicant was duly fixed as per rules. Thereby, the applicant should not have any grievance for deduction of any amount made in excess to him. Mr.Mukherjee has also drawn my attention to the letter dated 3.4.1996 at page 22 of the application wherein it is stated that some excess payment has been made and the same was informed to the applicant.

6. I have considered the submissions of the Id.counsel for both the parties and perused the records. It is found that the applicant retired from service on 1.7.1979. Originally, his pension was fixed at Rs.264/- p.m. but subsequently revised to Rs.445/- p.m. The respondents on the recommendation of the Fourth Pay Commission recalculated and ^{re-}fixed the pension of the applicant at Rs.1017/-p.m. w.e.f. 1.1.1986 instead of Rs.1165/- p.m., which according to the applicant, was never received by him. Admittedly, it is found from the record that no opportunity of being heard was given

to the applicant before passing the order of recovery from his pension. Through a number of pronouncements by the Hon'ble Apex Court, it is well settled that pension is not a bounty payable at the sweet will and pleasure of the Govt. and the right of the Govt. servant to receive the pension as property under Article 31(1) of the Constitution is guaranteed and the same cannot be taken away by mere executive order. So recovery as done by the respondents in this case, cannot be done without affording a reasonable opportunity to the applicant before taking any action of recovery. The letter dated 3.4.1996 states that the amount was overdrawn by the applicant and as such it was recovered from him. The applicant cannot be held responsible for the same because if ^{there is} any wrong ~~has been committed~~, it has been committed by the respondents. I have gone through the letter dated 6.3.1995 at annexure 'A/3'. On a careful perusal of the same it is found that the pension of the applicant has been recalculated w.e.f. 1.1.1986 in the year 1995 i.e. after a lapse of 9 years on the basis of the decision contained in the letters of the Ministry of Personnel Public Grievances & Pension, Department of P & P Welfare letter nos. 2/1/1987 and 16th April, 1987, but these two letters have not been produced by the respondents before this Tribunal for proper adjudication of this case. There is no answer from the respondents as to why they failed to produce the said two letters which are vital for the purpose of adjudication of this case when the applicant has raised the plea that his pension was not rightly calculated by the respondents.


7. In view of the aforesaid circumstances, I am of the view that the action taken by the respondents contained in the letters dated 6.3.1995, 3.4.1996 and 22.5.1996 ^{are} is highly arbitrary and violative of the principles of natural justice since recovery was sought to be made by the respondents after a lapse of 9 years on a wrong calculation made by themselves. Thereby, the applicant is not liable ^{for over payment etc} to refund the said amount

~~after a lapse of 9 years~~ in view of the judgment of the Supreme Court reported in 1994 SCC (6) 154 (Bhagwan Shukla vs. UOI & Ors.). In the said case, fixation of pay of one employee was done in 1970 and it was sought to be corrected in 1991 after a lapse of 21 years. The Hon'ble Apex Court set aside the order of recovery and fixation on the ground that the principles of natural justice have not been followed. The said decision of the Hon'ble Apex Court is fully applicable to this case.

8. In view of the aforesaid circumstances, the respondents are not at all justified to recover the amount of Rs.18,091/- from the applicant without affording any opportunity of him being heard. Thereby, the entire amount recovered from the pension of the applicant should be refunded to him by the respondents. It is also found from the reply filed by the respondents and ^{from} the records produced before me that the respondents could not explain how the excess amount was paid to the applicant. In the absence of any clarification, it cannot be held that the ^{excess} fixation of pension as done by the respondents on the basis of the letter dated 6.3.1995 is not sustainable.

9. In view of the aforesaid circumstances, I allow the application with a direction upon the respondents to refund the entire amount of Rs.18,091/- which has been recovered from the pension of the applicant to him within three months from the date of communication of this order. If the said amount is not refunded to the applicant within the prescribed time, interest @ 12% p.a. shall be paid to the applicant by the respondents from the date of passing of the judgment till the payment is actually made.

10. No order is made as to costs.


(D. Purkayastha)
Judicial Member