

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.69/2000

CORAM Thursday this the 7th day of June, 2001.

HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Thankamma Scaria
W/o Late T.V.Scaria (Retd.
Station Master, Peelamedu, Southern Railway,
Palghat Division)
Residing at Thycodath House
Puthuppally, Kottayam. Applicant

[By advocate Mr.V.R.Ramachandran Nair]

Versus

1. Union of India represented by
Secretary, Ministry of Railways
Rail Bhavan, New Delhi.
2. General Manager
Southern Railway, Chennai.
3. The Senior Divisional Personnel Officer
Southern Railway, Palghat.
4. Divisional Accounts Officer
Southern Railway, Palghat.
5. Senior Post Master
Kottayam.
6. Post Master
Puthuppally. Respondents.

[By advocate Mr.James Kurian for R1 to 4]
Mr.R.Prasanth Kumar for R5&6.

The application having been heard on 7th June, 2001,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

This OA has been filed by the applicant aggrieved by
A-1 order dated 9.12.99 issued by the 3rd respondent and A-2
order dated 16.6.99 issued by the 4th respondent seeking the
following reliefs:



- i. To call for the records leading upto A-1 & A-2 and quash the same.
- ii. To issue a direction to the respondents to immediately disburse the family pension with arrears to the applicant.
- iii. To issue a direction to the respondents to disburse the arrears of pension of the late husband of the applicant on account of the revision of pension with effect from 1.1.96 to the applicant.
- iv. To issue a direction to the respondents to revise the family pension of the applicant pursuant to the 5th Pay Commission recommendations to the extent of its implementation to the Railway Pensioners & Family Pensioners and pay the arrears of such revised family pension to the applicant.
- v. To issue a direction to the respondents to grant and pay the Fixed Medical Allowance as Rs. 100/- per month to the applicant with arrears.
- vi. To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- vii. To award cost to the applicant.

2. According to the applicant - widow of late T.V.Scaria retired Station Master, Peelamedu Railway Station - her husband was granted pension immediately after retirement and his Pension Payment Order No. was 1064/Rly's/OJA and he died on 7.5.98. He was drawing his monthly pension till 7.5.98. From 8.5.98 she was paid family pension upto July 1999. According to her, her husband was drawing monthly pension pursuant to the revision as per the 4th Pay. Commission. The revision on account of the implementation of the 5th Pay Commission from 1.1.96 though applicable to the pensioner had not been timely done and therefore no payment was made during his lifetime. However, the applicant received A-1 order dated 9.12.99 in which it had been stated that some errors had crept in while revising the pension from 1.1.86 and as such the applicant was



due to refund an amount of Rs. 32,949/- towards over payment. Applicant was also issued A-2 order dated 16.6.99 addressed by the 4th respondent to the Postmaster, Kottayam, Head Post Office in which it had been stated that the applicant would have to pay back the over payment of pension made to her husband from 1.1.86 onwards. The applicant was denied her family pension from August 1999 against which she made A3 representation to the 5th respondent on 2.10.99. She received A4 reply dated 6.10.99. Her family pension including the arrears of August, September and October was paid to her on 1.11.99. When she approached the 6th respondent for payment of family pension during December, 1999 she was replied that no family pension would be paid unless and until she gave an undertaking as required by A-1 issued by the 3rd respondent. According to her, family pension would be paid initially only on submission of the required form which was part of the pension payment order itself, in support of which she produced A5 true copies of the original pension book issued to late T.V.Scaria. She submitted that necessary form had been got filled up by the postal authorities and then only the family pension had been paid through the Savings Bank Account in the name of the applicant in 1998 and hence there was no requirement to submit 'Annexure A Form' which was applicable in the case of pensioners and not the family pensioners. She further submitted that the 5th respondent informed her as per A-6 letter dated 3.11.99 to furnish 'Annexure I'. In reply to A-4 she filed A-7 representation in the last week of October 1999. According to her, the respondents had attempted to get an illegal undertaking from the family pensioner to deduct from



the family pension the alleged excess payment if any paid to the pensioner, that there was no provision whatsoever to attach the family pension or portion due to the applicant which was intended only for the livelihood of the family pensioners, that the alleged over payment related back to 1986 onwards and that at this belated point of time after a lapse of 14 years there was no provision even to make recovery from the pension itself. The pension arrears on account of the revision of pension from 1.1.96 till the death of the pensioner in 1998 had also not been paid which was due to be paid to the applicant. The payment of family pension could not under any circumstances be treated as part of the pension and the family pension could not be reduced or withheld against any alleged recovery or over payment due to the pensioner. The Railway Board had granted to the pensioners and the family pensioners an amount of Rs. 100/- per month by way of fixed medical allowance. The applicant was eligible to get fixed medical allowance as she was residing at Puthupally Panchayat which was not covered by the Central Government Health Scheme. The denial of the above allowance to the applicant was also discriminatory. The applicant was paid family pension only at the minimum of Rs. 1275/-. Her family pension had also not been enhanced on account of the revised rules. Relying on Rule 90 of Railway Services (Pension) Rules, she submitted that for a period of more than 20 years the respondents did not have a case that the pensioner had been paid in excess than what he was to be paid and that the applicant was not in a position to know whether the pensioner had received excess pension or not. The pensioner having died on 7.5.98 and the issue having been taken



up by the respondents only in June 1999, the family pension of the applicant could not be attached under the pretext of excess payment of pension made to the pensioner. Pension and family pension were different entities. Even if for argument's sake the pensioner had been paid pension in excess the same could not be recovered or adjusted in terms of Rule 90 of the Railway Service Pension Rules and as such A1 & A2 are unsustainable. The applicant's valuable right of getting the family pension could not be taken away even if a wrong fixation had been done in the case of the pensioner. The credit of family pension and the pension are different and different individuals were drawing the same. The Savings Banks Accounts were also different. The applicant could not be forced to give any further undertaking to her detriment as she had already given the undertaking and drew the family pension from June 1998 onwards. The denial of family pension was arbitrary, discriminatory and violative of the fundamental rights guaranteed to the applicant under articles 14 and 21 of the Constitution of India.

3. Respondents 1-4 filed reply statement resisting the claim of the applicant. According to them, there was no infirmity in A-1 & A-2 impugned orders. Consequent on the implementation of the recommendations of the Vth Central Pay Commission, the pension of the deceased had to be refixed as Rs. 843/- with effect from 1.1.86 by the Pension Disbursing Authority. While refixing the pension the Postmaster, Kottayam had refixed the same as Rs.966/- with effect from 1.1.86. The same was to be revised as Rs.2613/- but was erroneously fixed

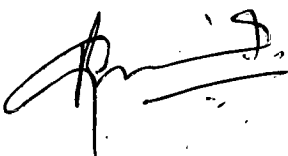


as Rs. 2930/- with effect from 1.1.96. Since the applicant was the legally wedded wife of the ex-employee she was sanctioned family pension payable on the death of her husband. On detecting the error, the Senior Postmaster, Kottayam/Postmaster, Kottayam HO were advised regarding the matter of wrong refixation of pension and to recover the overpayment from the monthly family pension payable to the applicant. According to them, there was no illegality in the recovery of over payment of pension from the family pension of the applicant. The contention of the applicant that she had no liability to refund the excess amount paid was not tenable since the pensioner had already given an undertaking that any excess/wrong payment made to him might be recovered from the Savings Bank Account. Since the applicant refused to remit the amount, the pension disbursing authority was advised by the 4th respondent to recover the overpayment from the family pension. By A4 the applicant was advised to submit Form in Annexure-I but she did not submit the Form which was a pre-condition for drawing the family pension. According to them, the contention that the 4th respondent was attempting to get an illegal undertaking from the family pension was without any basis. The family pension received by the applicant was in continuation of the pension drawn by the ex-employee. She was therefore liable to refund the excess amount paid. In terms of Railway Board's letter dated 21.4.99, Railway pensioners/family pensioners were eligible for fixed medical allowance at the rate of Rs. 100 per month subject to the condition that they should be residing beyond the jurisdiction of the Railway Hospital. If the applicant was not residing within the jurisdiction of the



Railway hospital and if her husband was an optee of the Railway employees liberalized Health Scheme she would be eligible for the facility entitled. There was no discrimination. The family pension of the applicant stood revised to Rs. 1462/and this would be further enhanced to Rs. 1500 and an order to this effect was being issued by the 4th respondent. Overpayment was involved on account of an error committed by the 5th respondent in refixing the pension of the deceased. It was advised by the 4th respondent to adjust the overpayment against the arrears payable to the applicant due to the implementation of the recommendations of the Pay Commission. The error was detected in 1999. The provision regarding concurrence of Railway Board was not applicable in the facts and circumstances of the case. Respondents 1-4 had never attempted to reduce or withhold the family pension sanctioned to her. On the other hand the family pension was revised to a higher rate than what was drawn by her. The applicant was free to submit required application for payment of medical allowance if she was entitled for the same as per the conditions governing the sanction of medical facility.

4. A separate reply statement was filed by fifth and sixth respondents. They produced copies of correspondence exchanged between them and respondent 4 to justify the action taken by them. According to them, Sri T.V.Scaria was being paid pension at the rate of Rs. 2930/- from 1.1.96 onwards as consolidated according to the Vth Central Pay Commission by Kottayam Head Office. A revised letter of authority of the 4th respondent dated 6.4.99 had been received through Dy.Director



of Postal Accounts, Trivandrum under his letter dated 28.5.99 according to which the pension of the pensioner was revised as Rs. 2613/-. As the revised pension was less than the pension consolidated by the office of the 5th respondent, the 4th respondent was addressed by Kottayam Head Office by R-5 letter dated 12.6.99 to reconcile the discrepancy. On confirmation by the 4th respondent and on his direction to work out the overpayment from 1.1.86 to 7.5.98, they took action. Arrears of family pension due to revision was also asked to be adjusted against the over payment and accordingly the overpayment was worked out by the Kottayam Head Office. As the pensioner was no more, the wife of the pensioner - the applicant herein - was addressed by the Kottayam Head Office on 12.8.99 requesting to credit the overpayment. She was again addressed on 21.9.99. She was advised to submit Form Annexure-I to the 6th respondent as the same had not been furnished by her. The first instalment of arrears of pension for the period from 1.1.86 to 31.10.97 was credited to the pension account of late T.V.Scaria on 29.11.97. The family pension was being paid to the applicant from 8.5.98 onwards. While crediting the family pension, the prescribed Form No. Annexure-I - letter of authority - was omitted to be obtained from the family pensioner by the 6th respondent. When the omission was noticed, the applicant was addressed by Kottayam Head Office to submit the prescribed form. The 4th respondent had also directed Kottayam Head Office not to credit the family pension unless she submitted the form. A-5 attached with the OA would indicate that the submission of the letter of undertaking was a must for the drawal of family pension also. They averred that the

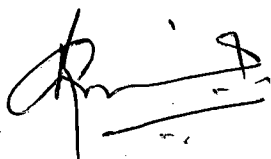


conclusion of the family pensioner that the submission of Form A-I was to recover the overpayment of pension made to her late husband could not be agreed to. According to them, the form to be given was meant for the recovery of any amount paid in excess to her in future and the same was not meant to get an illegal undertaking from her as alleged by her but only a must as per rules. An amount of Rs.6245/- being the first instalment of pension arrears had already been credited to the pensioner's account on 29.11.97 and the second instalment was paid to the applicant on 27.10.98 since the pensioner was no more. The withholding of family pension took place owing to the reason of the non-submission of the required form by the applicant herein. For drawal of medical allowance Form Annexure I and IV had to be submitted. The same had not been received even though she was addressed on 22.11.99 and the same would be paid on receipt of the above as the medical allowance was being paid together with monthly pension. They averred that if the applicant submitted all the declaration forms, steps would be taken to release her medical allowance. They contend that as there was overpayment of pension which was due to the department, the arrears of family pension had not been paid to her.

5. The applicant filed rejoinder reiterating the points made in the OA. Along with the rejoinder, copy of the pass book (A-10) of the Account maintained by the post office from where the applicant's family pension was disbursed was produced which showed that the applicant had been paid the family pension from the next month of the death of her husband.



According to her, the contention of the respondents 5 & 6 that the second instalment of arrears of pension due to late T.V.Scaria was paid to her on 27.10.98 was utterly false and misconceived, in support of which she relied on A10 copy of pass book. She averred that she had not received any payment other than what was found as per the pass book issued by the post office. Further she averred that she was being paid medical allowance and such, the objection that the applicant had not submitted the form was immaterial. she was not aware as to whether the pensioner had been paid in excess of what had been due and that in any case the applicant being a family pensioner was not a party to it. There was no rule insisting the family pensioner before staking a claim for family pension to the effect that the family pensioner should undertake to refund any amount of pension or excess of pension already drawn by the pensioner by way of pension. Respondents' submission that the required forms had not been submitted by the applicant before drawing the family pension was nothing but a concocted story to escape from the fault on the part of the respondents in withholding the family pension at a later stage. The proposed recovery under the pretext of excess payment was not from the savings bank accounts of the pensioner but from the savings bank account of the family pension which was not warranted by rules. The applicant submitted that even though it was stated that the family pension had been revised to Rs. 1500 the arrears had not been paid to the applicant. The applicant undertook that any excess amount if paid to her by way of family pension could be recovered from the future family pension payable to her.

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6. Heard the learned counsel for the parties Mr.V.R.Ramachandran Nair for the applicant , Mr. James Kurien for respondents 1 to 4 and Mr.R.Prasanth Kumar for respondents 5 & 6.

7. I have given careful consideration to the submissions made by the parties as well as the pleadings and perused the documents brought on record.

8. Learned counsel for the applicant at the outset submitted that he was not pressing the relief under para 8.iii. He also submitted that the relief under para 8.(v) relating to medical allowance was being received by her since filing of the OA. Even though lengthy pleadings were made by the respondents 5 & 6 and elaborate arguments were made, learned counsel for the respondents could not show any legal authority for the action taken for withholding the family pension except referring to the fourth respondent's R-5(f) letter dated 18.11.99. It would appear that when respondents 5 & 6 were disbursing pension to the deceased pensioner they had obtained a declaration from him as per Annexure I a copy of which was produced as Annexure R5(i). While para 1 of the said Annexure I gives the details of the authorization to be filled in by the retiring government servant/pensioner, para 3 refers to the undertaking to be filled in by the pensioner at the time of first personal appearance of the pensioner before the postmaster/Sub postmaster. The same reads as follows:

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"3. I agree to undertake that any amount of excess/wrong payment of pension, if credited to above savings account may be recovered or withdrawn from the said Savings Account by the said postmaster/Sub postmaster."

Para 1 authorizes the Postmaster/Sub Postmaster to receive monthly pension on behalf of the pensioner and credit the same to his savings Pension Account on the first working day of every month. So the position that emerges is that the pensioner having authorized the postmaster or sub postmaster to receive the pensioner's monthly pension and crediting the same to his savings pension account also authorizes him to recover or withdraw from the said savings account any excess amount credited to his savings account by mistake. In my view this by itself does not give any authority for the respondents to recover or withdraw such excess payment made to the pensioner from the family pension paid to the family pensioner.

9. In the present OA, the applicant is a family pensioner. The respondents have no case that alleged over payment had been made to the family pensioner. According to them, allegedly over payment had been made to the pensioner when he was alive. Further from A-5 Pension Payment Order issued to the applicant's husband, I find note 1 which is as follows:

"No pension shall be liable to seizure, attachment or sequestration by process of any court in India at the instance of a creditor for any demand against the pensioner (Section II, Act XXIII of 1871)."

10. The above would clearly indicate that pension could not be attached. When pension could not be attached, it naturally follows that family pension could also not be attached. R-5(i) undertaking to be given by the pensioner would also indicate that the same only authorizes the Postmaster or Sub Postmaster

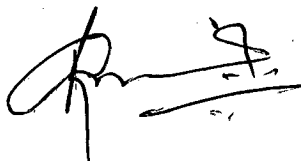
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to adjust after crediting the pension in the savings bank account, any excess payment from the Saving Bank. When such is the case I hold that the stoppage of family pension unilaterally is without any authority of law.

11. When the OA came up for admission on 20.1.2000, this Tribunal, as an interim measure, directed the respondents to disburse to the applicant family pension forthwith. On the basis of the same the applicant is continuing to get the family pension.

12. From A-2 - one of the impugned orders I find that the some mistake appears to have occurred in fixing the pension of the husband of the applicant with effect from 1.1.86 by which he had received certain excess payment during his lifetime. The 5th respondent had been directed by the 4th respondent by this letter to work out the amount of overpayment involved from 1.1.86 to 7.5.98 and to recover the same from the family pensioner. It was also directed that the arrears of family pension due to the revision authorized vide authority at ref.(ii) referred to therein may be adjusted against the over payment involved. For these directions, no legal authority had been indicated by the respondents 1 to 4 in the reply statement. In the absence of any legal authority, I am unable to sustain this part of A-2.

13. In the impugned order A-1 issued by the 3rd respondent to the applicant in response to her representation dated 10.8.99 it had been stated that while revising the pension the

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applicant's husband had given an undertaking that any excess/wrong payment made to him may be recovered or withdrawn from the SB account by the postmaster and it was mandatory on the applicant's part to execute a letter of authority in annexure 1 before staking her claim for family pension and hence she was liable to pay Rs. 32,949 towards the overpayment made.

14. The learned counsel for the applicant on being asked, submitted that copy of the representation dated 10..8.99 to which the impugned order A-1 was the reply, was at A-8. I find A-8 is dated 10.9.99. In the absence of any rebuttal on the part of the respondents I take it that 10.9.99 mentioned is a typographical error. A-8 reads as under:

"BEFORE THE PENSION ADALAT 15.12.99, SOUTHERN RAILWAY, PALGHAT (By Registered post, Acknowledgement Due)

- | | | |
|----|---|--|
| 1. | Name of Pensioner
(In Block Letters) | THANKAMMA SCARIA
W/o T.V.Scaria, Retd SM/PLMD |
| 2. | Father's Name | K.C.Chériyan (My father)
T.V.Varkey(Scaria's father) |
| 3. | Station last worked | Peelamedu (PLMD) |
| 4. | Grade & Designation
of the last post held. | Station Master, Grade not known |
| 5. | Date of retirement/
Demitting service | 31.3.79 |
| 6. | Pension Payment
Order No. | 0603101064 |
| 7. | Grievance in full | I had applied for revision of family pension as per 5th Pay Commission's recommendations. There is no reply from the Divisional Accounts Officer, Palghat to my application till date. |



In the middle of August 1999, I received a letter from the Postmaster, Kottayam to remit a sum of Rs. 33,000 being the over payment of pension said to have been made to my late husband Sri T.V.Scaria, SM/PLMD. I do not know whether there is any fact behind the demand of postmaster Kottayam. As far as I know there is no provision in the rules to recover any dues of a deceased pensioner from the family pension of his widow.

I am getting only a meagre amount as my family pension which is quite insufficient for even my livelihood and treatment. My husband has not left behind any wealth.

On 1.9.99 when I went to the post office, Puthuppally to draw my pension for the month of August 99, the Postmaster refused to pay me my pension and wanted me to repay the overpayment amount of Rs.. 33000 said to have been overpaid to my late husband. He also wanted me to give a consent letter to enable the Postmaster to recover the amount in installments. Even if the entire amount of my family pension is withheld, it will take more than twenty months to recover the amount during which period I may not withstand starvation and deterioration of my health for want of money.

Sir, I am aware that lakhs of rupees paid to pensioners are not recovered from family pension if the pensioner dies before the period of commutation. My husband T.V.Scaria retired in the year 1979 and died on 7.5.98. He was drawing his pension from 1979 to 1998 i.e. more than 20 years. If there was any over payment such payment could have been detected long ago and recoveries made from his pension. I only know that while he was alive we were not able to make both ends meet with the pension he was receiving monthly.

If the Postmaster, Puthuppally refuses to pay me my family pension, I will be subjected to severe mental and physical tension which will, ultimately result my sinking health and anything may happen before the amount is recovered from my family pension.

It is therefore requested that the Postmaster, Puthuppally, Kottayam may kindly be advised not to withhold my family pension and pay me my family pension with any arrears that may be payable on account of the implementation of 5th Pay Commission's recommendation. This is an earnest and most urgent prayer of a humble family pensioner.

Sd/-

Thankamma Scaria
W/o Late T.V.Scaria, Thycodath
Puthuppally P.O. Kottayam

Puthuppally
10.9..99"



15. On a perusal of A1 reply to the above representation I find that the 3rd respondent refers to some undertaking said to have been given by the applicant's husband during his lifetime. But the said undertaking had not been produced before me. A-1 also asks the applicant about the mandatory requirement on her part to execute a letter of authority as 'Annexure I'. At the same time, the respondents had not produced any authority to show that an undertaking was to be given by the family pensioner. The fact also remains that the applicant had been receiving the family pension from June 1998 onwards. I also find that the applicant has categorically averred in the rejoinder that she was prepared to repay/refund any excess family pension if received by her and also authorized adjustment of the same from her savings bank account. She had also categorically denied having received the second instalment of arrears of pension due to her late husband. While the learned counsel for the fifth & sixth respondents halfway through the argument wanted an adjournment to check and produce the records to show that the applicant had received the second instalment, he conceded that 5th and 6th respondents had no case that it was because the applicant had received the second instalment of arrears of pension of her late husband, that the family pension had been withheld. Under such circumstances, the adjournment sought for to produce the said records was declined by me, as I considered the same has no relevance in adjudicating this matter.

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16. In the light of the detailed analysis as given above, I direct as follows:

(i). The interim order given by this Tribunal on 20.1.2000 is made absolute. Applicant shall continue to be paid her family pension with periodical increases as due and announced by the Government from time to time by the respondents.

(ii). Respondents will have liberty, if they so decide, to recover the excess payment if any on account of pension paid to the applicant's husband from the estate of the applicant's husband or the beneficiaries of such estate in accordance with the provisions of law.

17. OA stands disposed of as above with no order as to costs.

Dated 7th June, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

Annexures referred to in this order:

- A-1 : True copy of order No.J/P 500/PA/9988 dated 9.12.99 issued by the 3rd respondent to the applicant showing to pay Rs. 32,949 back to the Railways towards overpayment.
- A-2 : True copy of letter No.P.500/PGT/p/4466 dated 16.6.99 issued by the 4th respondent to the Postmaster, Kottayam directing to recover the excess payment of pension from the applicant's family pension.
- A-6:: True copy of letter No.AN/5 dated 3.11.99 issued by the 5th respondent to the applicant regarding submission of A-1 to credit family pension etc.
- A-4 : True copy of order No.AN/5 dated 6.10.99 issued by the 5th respondent to the applicant replying the representation.
- A-7 : True copy of the representation dated nil from the applicant to the 6th respondent in reply to A4 order issued by 5th respondent.
- A-5 : True copy of relevant pages of the original pension book of the husband of the applicant.
- A-10: True copy of the relevant pages (1 to 4) of the Post Office Pass Book in the name of the applicant.
- R5 : True copy of the letter dated 12.6.99 by the 5th respondent addressed to the 4th respondent.
- R5(f) True copy of the letter No.P.500/PGT/4466 dated 18.11.99 of the 4th respondent.
- R5(i) True copy of the Annexure A Form.
- A-8 : True copy of the memorandum dated 10.9.99 submitted by the applicant before the Pension Adalat fixed on 15.12.99.