

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.170/2003

Wednesday, this the 3rd day of December, 2003.

CORAM;

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

T.V.Ramani,
Retired Staff Artist,
AIR, Thrissur,
Plot No.129, "Thushara",
Hari Nagar,
Thrissur. - Applicant

By Advocate Mr P Nandakumar

Vs

1. Union of India represented by
the Secretary to Ministry of Finance,
New Delhi.
2. Pay and Accounts Officer,
Central Pension Accounting Office,
Bhikaji Cama Place,
New Delhi.
3. Senior Deputy Accountant General(Central),
Kaloor, Kochi.
4. Canara Bank,
Thrissur West Round,
Sri Krishna Building,
West Palace Road,
Thrissur represented by
its Senior Manager. - Respondents

By Advocate Mr PMM Najeeb Khan, ACGSC(for R.1 to 3)

By Advocate Mr M.R.Gopalakrishnan Nair (for R-4)

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant retired as a Staff Artist from All India Radio, Thrissur on 31.10.1997. By A-1 order dated 4.12.1997, the applicant's basic pension was determined at Rs.1137/-.

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This was revised to Rs.3273/- as per A-2 order dated 27.7.1998 in the light of the Vth Central Pay Commission's recommendations. As per the said order, the applicant's commuted value of pension was revised to Rs.1309/- and the Residual pension was Rs.1964/- per month. The payments made as per earlier order A-1 were also adjusted. Thereafter, in the light of this Tribunal's finding in O.A.903/1998, the applicant's past service under the State Government as Assistant Professor of Music in Swathi Thirunal College of Music, Thiruvananthapuram was reckoned for purposes of pension and pensionary benefits. Consequently a revised pension order was issued vide A-3 order dated 1.2.2001. As per the said order, the applicant's basic pension was fixed at Rs.4500/- out of which Rs.1800/- stood commuted leaving the residual pension due to the applicant at Rs.2700/-. Necessary adjustments in relation to the earlier payments were also made. Thus, the applicant was drawing a revised pension of Rs.2700/-, Dearness Allowances of Rs.2205/- and Medical Allowance of Rs.100/thereafter. While so, without any notice or specific order, an amount of Rs.1650/- was reduced from the applicant's pension for the month of June, 2002 by the 4th respondent, viz, Canara Bank, Thrissur. When such recovery continued for the month of July also, the applicant approached the Munsiff's Court, Thrissur by filing a Suit. The 4th respondent submitted before the Court that on detection of a mistake by the audit parties, recovery of excess payment made to the tune of Rs.44,604/- in the case of the applicant as pension arrears was ordered. Since the recovery was made without notice, the court allowed a temporary injunction permitting the Bank to Q.

get the injunction vacated after giving due notice and opportunity to the applicant. The Bank gave a notice to the applicant along with a copy of the audit report, A-4 and A-5 respectively. As per A-5 audit report, as against arrears of pension amounting to Rs.60,384/- which was due to the applicant, arrears amounting to Rs.1,04,988/- was shown to have been paid to him on 16.3.2001 resulting in an excess payment of Rs.44,604/-. The court thereafter vacated the injunction. The applicant made a representation A-6 to the 3rd respondent stating that no excess payment had been made to him and that in fact an amount of Rs.7,931/- was payable to him towards the differential commutation and gratuity. The 3rd respondent vide A-7 letter dated 13.11.2002 advised the bank to withhold further recovery. However, a second audit party was deputed to the Bank to reconcile the amount payable and the amount due. (see A-8 communication dated 21.11.2002). The applicant's A-9 representation to the 3rd respondent explaining that no excess amounts were paid to him and requesting to drop the recovery action was, in effect rejected as is clear from A-10 letter dated 8.1.2003 of the 3rd respondent addressed to the 4th respondent. As per the said letter, the overpayment allegedly made to the applicant is redetermined at Rs.33,840/-. A work sheet has also been attached to A-10 communication. The applicant is aggrieved against the A-5 audit report which indicated excess payment of Rs.44,604/- and A-10 communication whereby the over payment is recalculated at Rs.38,840/-. It is stated by the applicant that the computation given in A-5 and A-10 are without any basis, that from a scrutiny of A-3 it could be seen that the

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respondents did not pay any excess amount to the applicant and that therefore the impugned A-5 and A-10 orders were illegal and were liable to be set aside. He would further state that if commutation of his pension and the arrears payable to him are determined with reference to A-3 and A-6, he would be entitled for a further amount from the department. With regard to the proposed recovery, the applicant would rely on the decisions of the Supreme Court in Shyam Babu Verma and others Vs Union of India and others, (1994) 2 SCC 521, Sahib Ram Vs State of Haryana and others, 1995 Supp (1) SCC 18, Aleyamma Vs Dy. Director, Education, 1982 KLT SN 45, Satyapalan Vs Deputy Director of Education, 1998(1) KLT, 399 and Sreedharan Vs Union of India, 2002(1) KLT 444. The applicant seeks the following reliefs:

i) To call for the records leading to A-5 and A-10 and quash the same.

ii) To declare that the applicant is not liable to refund amount to the respondents as per A-10.

iii) To direct the respondents to repay the amounts recovered from the pension of the applicant along with the amounts claimed in A-6 with 18% interest.

2. In their reply statement, it is stated by the respondents that for the period 1.11.97 to 31.1.2001 the applicant was given the arrears of pension amounting to Rs.2,29,264/- while the correct amount due to the applicant

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was only Rs.1,90,424/- which resulted in excess payment of Rs.38,840/-. Variation of Rs.44,604/- being by way of over payment of arrears of pension, as per A-5 audit report was on account of a mistake in reckoning the actual date of commutation of pension. Though, initially the audit party worked out the amount of over payment at Rs.44,604/-, an audit inspection was got done from the office of the 3rd respondent, the Pay & Accounts Officer, AIR, Chennai and it was found that there was an over payment of Rs.38,840/- which was due to non-adjustment of dearness relief already paid while paying arrears of dearness relief. A second audit party which was deputed to Canara Bank, West Palace Road, Thrissur to re-examine the excess arrears paid also confirmed that the amount of over payment determined at Rs.38,840/- by the Chennai office was correct. It was on the basis of such confirmation that the respondent Bank started recovery from January 2003 onwards. It is specifically stated that the fact of excess payment was pointed out to the disbursing Bank and that it was the duty of the bank to intimate excess payment. Since the whole error was on account of non-adjustment of dearness relief while determining the commuted value of pension already paid to the applicant, excess payment made to the applicant could be legitimately recovered rectifying the mistake in order to avoid loss to the Government. The respondent Bank(4th respondent) has stated that as regards financial matters, the Accountant General is the final authority and any variation in amount noticed in audit inspection had to be taken note of and rectificatory action be ensured by the bank. It was under such circumstance that

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action for recovery of the excess payment made was resorted to. It is also pointed out by the 4th respondent that the applicant had clearly undertaken to reimburse the excess amount, if any, on account of arrears paid to him by way of revision of pension as is clear from R-4(a) letter dated 16.3.2001 obtained from him.

3. I have heard Shri P.Nandakumar, learned counsel for the applicant, Shri PMM Najeeb Khan, learned ACGSC for respondents 1 to 3 and Shri M.R.Gopalakrishnan Nair for respondent-4.

4. According to the learned counsel for the applicant, the respondents' action in determining the alleged excess amounts as per A-5 was without any basis. Similarly the finding of the second audit party deputed by the respondent-Bank as per which the alleged excess payment was determined to Rs.38,840/- also did not reflect the correct position. Each time the respondents relied on some audit opinion in order to support the revision of the pensionary benefits correctly worked out as per A-1 to A-3. Far from being liable to refund any alleged excess amount, the applicant was actually entitled to certain amounts from the department. Besides the recovery already effected at Rs.1650/- for the months June and July, 2002 and October 2002 to January 2003 amounting to Rs.9,900/- was refundable to the applicant. Regarding the recoverability of the amounts already paid, the learned counsel would take me through the pleadings in the O.A., and further state that in the light of
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the Hon'ble Supreme Court's decisions in Shyam Babu Verma & others Vs Union of India & others, (1994) 2 SCC 521 and Sahib Ram Vs State of Haryana & others, 1995 Supp(1) SCC 18 and various decisions of the Hon'ble Kerala High Court, the action towards recovery of the alleged over payments of pensionary benefits was illegal, arbitrary and liable to be annulled. Shri Najeeb Khan, learned ACGSC would state that in view of the clear error in determining the amount of pensionary benefits paid to the applicant as brought out by the second audit party, deputed to the respondent Bank, the excess payment of Rs.38,840/was to be necessarily recovered since the applicant had no right to make illegal gains. It has not been shown that the audit party's observation was factually incorrect. The error was in fact on account of non-adjustment of dearness relief already paid while making payment of dearness relief arrears on 16.3.2001. This was the circumstance under which the disbursing Bank had been advised to rectify the mistake and make good the loss of government money. Shri M.R. Gopalakrishnan Nair, learned counsel for the Bank has submitted that the Bank was obliged to carry out the instructions of the Pension Payment Authority. Since on audit inspection an error of excess payment was pointed out by them, the same was ordered to be recovered after eventually giving sufficient opportunity to the applicant. It is also pointed out by the learned counsel that the applicant had himself vide R4(a) undertaken that he would reimburse the excess payment, if any, on account of arrears paid to him as a result of revision of pension.

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5. On a consideration of the facts of the case, I find that soon after the applicant retired from service, his pension and pensionary benefits as per A-1. order dated 4.12.97 was duly revised as per A-2. Subsequently, the applicant's pension was again revised as per A-3 order wherein the revised basic pension was fixed at Rs.4500/- with effect from 1.11.97 and the residual pension at Rs.2,700/-. The commuted value of pension and retirement gratuity were computed in the light of the data contained in A-3. In my considered opinion, the payments have already been made to the applicant and it was quite some time after the payments were effected that the respondents found out that there was some error. Initially, the applicant was not given any opportunity to explain his case. There is no material to show that the applicant's explanation has been considered even at the stage when the second audit was undertaken. Therefore, the correctness of their calculation is itself not free from doubt. There is no clear reply to the points raised by the applicant in A-6 and A-9. Be that as it may, it is well settled that if some excess payments have been made to a pensioner not on account of any misrepresentation or incorrect furnishing of facts and figures by such pensioner, it would be unjustified to proceed to recover the amounts already disbursed. This is supported by the Hon'ble Supreme Court's decision in Shyam Babu Verma's case (1994 (2) SCC 521). The principle laid down in the above is that although the employee was entitled only to lower scale of pay, but was allowed a higher pay scale from a particular date due to no fault of his and such scale was reduced subsequently with retrospective

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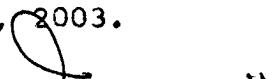
effect, it would only be just and proper not to recover any excess amount which had already been paid to him. Hon'ble Supreme Court has in the case of Sahib Ram Vs State of Haryana and others, 1995 Supp (1) SCC 18, also reiterated the same principle in the following words:

".. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant."

6. In view of the above position, I do not consider that the respondents are justified in reducing the applicant's duly authorised monthly pension as per order dated 1.2.2001 by any amount on account of over payment of commuted value of pension already drawn and disbursed to the applicant. The amounts already deducted by way of recovery are liable to be refunded to the applicant. In the circumstances the impugned A-5 audit report dated 15.3.2002 which is admittedly incorrect is set aside and the impugned A-10 order dated 8.1.2003 is set aside and quashed. The respondents are directed to refund the amounts already recovered in pursuance of A-5 and A-10 within a period of two months from the date of receipt of copy of this order. No other relief is considered necessary in this case.

7. The O.A. is disposed of accordingly. There is no order as to costs.

Dated, the 3rd December, 2003.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER