

CENTRAL ADMINISTRATIVE TRIBUNAL
 ERNAKULAM BENCH
O.A. NO.407/2012

Dated this the 17th day of January, 2013

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HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

K.Saraswathi, aged 56 years, W/o (late) P.Ramachandran,
 Saras House, Chokkanathapuram, Palakkad - 678005.

(Ms Nila C.V, Advocate)

Applicant

Vs.

- 1 The General Manager, Southern Railway,
 Headquarters Office, Park Town, Chennai - 600 003 ,
- 2 Senior Divisional Finance Manager, O/o Sr.DFM
 Southern Railway, Palakkad-678002.
- 3 Senior Manager, Canara Bank, Kalpathy Branch
 Palakkad-678003..

Respondents

(By Advocate Mr V.V.Joshi for R.1&2)
 Mr Gopalakrishnan for R3)

The application having been heard on 8.1.2013, the Tribunal delivered
 the following:

ORDER

HON'BLE Mrs.K.NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant filed M.A No.913/12 to delete respondent No.1, Secretary to the Govt of India, Ministry of Railway, New Delhi, from the array of respondents. Later on he filed MA No.1030/2012 to implead the General Manager, Southern Railway, Chennai as respondent No.4. Both the MAs are allowed. Accordingly the Secretary to the Govt of India, Ministry of Railway, New Delhi is replaced by General Manager, Southern Railway, Chennai as respondent No.1.

The applicant is aggrieved by the illegal action of the respondents in denying her family pension already granted to her w.e.f 20.10.2000.

2 Brief facts of the case as stated by the applicant are that the applicant is a widow of late P.Ramachandran who took voluntary retirement on 15.10.2000 and died on 20.10.2000. The applicant was granted family pension w.e.f 21.10.2000 by PPO No.0605217023 dated 20.1.2001. She was receiving the family pension through Canara Bank, Kalpathi Branch, Palakkad till 31.12.2011. According to the applicant she was paid family pension upto 31.1.2012. Thereafter no family pension was remitted to her account by the respondents. On enquiry, it is learnt from the office of the 3rd respondent that by an oversight she was paid excess amount of pension for the last four years and an amount of Rs.1,39,378/- paid in excess has to be refunded to the Bank. Accordingly the applicant sent a registered letter to the 2nd respondent requesting to disburse her stopped pension. In response to her request she received Anxx.A3 letter from the 2nd respondent stating that the on the spot checking of pension payments conducted at Canara Bank, Kalpathi in September 2011, revealed that the applicant has been paid the Enhanced Family Pension @ R.5552/- plus relief beyond the permissible date of 20.10.2007. Therefore R-2 instructed R-3 to work out the excess drawn pension and recover the same from the applicant. The applicant was advised to cooperate with the Bank and remit back the excess amount. The applicant avers that she is a poor widow suffering from diseases like Arthalgia, Diabetes and Hyper Tension. Therefore, she needs around Rs.8000/- per month to meet the basic needs of food and medicine. She placed reliance on the judgment of the Apex Court in the case of (2009) 3 SCC 475, Syed Abdul Qadir & Ors Vs. State of Bihar & Ors, to show that she has not taken the excess payment by misrepresentation or fraud.

3 The respondents have contested the OA and filed separate replies. In the reply statement filed by the respondents Railways, it is submitted that the applicant was entitled to draw Enhanced Family Pension from 21.10.2000 to 20.10.2007. She was continuously drawing the said enhanced family pension inadvertently till 31.1.2012. The error committed by the Bank cannot be a ground

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to claim any amount which is not legally due to her. They further submitted that as per the instructions from Railway Board spot check of pension payments at various pension Banks was introduced and being carried out by deputing Railway officers concerned. During the course of spot check at Canara Bank, Kalpathy, it was detected that the applicant was paid Enhanced Family Pension @ Rs.5552/- plus relief beyond the permissible limit i.e. 2010.2007. As per the rule from 21.10.2007 the applicant was entitled for the ordinary family pension @ Rs.3647/- plus relief. Accordingly an amount of Rs.1,39,378/- has been worked out as overpayment. The demand notice issued by the 3rd respondent was disputed by the applicant and she was reluctant to return the excess amount drawn by the applicant. According to the respondent the applicant is entitled for only for the actual and correct family pension due to her and the excess amount drawn by her has to be returned to the Bank. The PPO itself shows clearly that the applicant is entitled for enhanced family pension upto 20.10.2007. They further averred that the applicant has executed a declaration with the Bank on 21.3.2001 to the effect that 'I, the undersigned agree and undertake to refund or make good any amount to which I am entitled or any amount which may be credited to my account, in excess of the amount which I am or would be entitled.' Therefore, the applicant cannot refuse to refund of the overpayment received by her.

4 The 3rd respondent, Canara Bank, in their reply submitted that they have never stopped the eligible family pension to the applicant as alleged. The applicant availed a loan of Rs.77000/- against her pension on 5.8.2010 which has to be repaid in 36 monthly installments. Thereafter the loan account was closed on 16.2.2012 by remitting a sum of Rs.45,005/-. On 22.6.2012 the applicant withdrew an amount of Rs.30,000/- from her account. It is further submitted that the applicant is eligible for enhanced family pension upto 31.5.2009 or 7 years from the date of death or the date on which the original pensioner attains the age of 65 years whichever is earlier. Accordingly the applicant is eligible only for ordinary family pension of Rs.3647/- w.e.f from 1.6.2007. By an oversight the applicant was paid enhanced family pension till it was detected by the Railway

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authorities. The total excess payment of family pension worked out to Rs.1,39,379/- . She was apprised of the overpayment but she did not give any reply. Therefore, she was served by Annx.A2 requesting her to remit the excess amount. They further stated that as per the letter of undertaking executed by the applicant on 21.3.2001, she was expected to refund any excess paid amount. They cited the judgment of the Apex Court in the case of Registrar, Cooperative Societies Haryana & Ors. Vs. Israil Khan & Ors, (2010) 1 SCC 440 and Hon'ble High Court of Kerala in Chandi Prasad Uniyal Vs State of Uttarakhand, 2012 (3) KLT SN 121 (C.No.126) SC to support their case.

5 The applicant filed rejoinder to the reply filed by the respondents. In the rejoinder the applicant has more or less reiterated the facts as stated in the OA. She further averred that the carelessness on the part of the respondents led to excess payment. The applicant had no knowledge that the amount being paid to her was more than what she is entitled to. Further, she averred that it is well settled position of law that 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.

6 I have heard the learned counsel for the parties and perused the documents and the above cited judgments.

7 The short question that comes up for consideration is whether the the applicant is entitled to draw the enhanced family pension beyond 7 years from the date of death or the date on which the original pensioner attains the age of 65 years.

8 In this case the rule clearly provided that the enhanced family pension is eligible only for 7 years from the date of death or the date on which the original pensioner attains the age of 65 years whichever is earlier. In this case the original pensioner would have attained the age of 65 years on 01.06.2007. Therefore the applicant is eligible to get the ordinary family pension @ Rs.3647/- plus relief w.e.f from 1.6.2007. The same fact is entered in the Pension Payment Order produced by the applicant at Annexure A-5(2). There it is noted that she

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is entitled for enhanced family pension for 7 years from the date of death. As the date of cessation of pension is 15.10.2000, the applicant is entitled for enhanced pension for 7 years from the date of death. The date of cessation of pension is 15.10.2000, the applicant is entitled to enhanced pension only till 20.10.2007, as admitted by the respondents. In this view of the matter, it cannot be conceded that the applicant has no knowledge that the amount being drawn by her was more than what she was entitled to. In this case the respondent No.3, Canara Bank Kalpathi Branch, Palakkad, has made the excess payment to the applicant by a bonafide mistake in contravention of the extant rules/instructions of the official respondents. The Bank is only the agent of the respondent Railways for disbursement of pension. Therefore the error committed by the Bank cannot be a ground to claim any amount which is not legally due to the applicant from the respondent Railway Department. The spot checking done by the Railway authorities at the Canara Bank Branch revealed that excess payment was being paid to the applicant in contravention of the rules. The applicant was aware that the enhanced family pension is only for 7 years and thereafter she will be entitled for ordinary family pension. The respondents further submitted that as per the letter of undertaking executed by the applicant with respondent No.3 on 21.3.2001 she has given her consent to refund the excess amount if any in the event of such an incident. The Hon'ble Supreme Court in the case of Registrar, Cooperative Societies Haryana & Ors. (supra) held that "Such relief restraining recovery of such excess payment is granted by courts not because of any right of the employees, but in equity, in exercise of judicial discretion to avoid hardship." The Hon'ble High Court of Kerala in Chandi Prasad Uniyal (supra) held that "Any amount paid/received without authority of law can always be recovered."

9 Therefore, on the basis of settled legal position and facts before me, I am of the considered opinion that the applicant failed to establish any case for interference by this Tribunal and this O.A devoid of any merit is liable to be dismissed. However having regard to the hardship put forth by the applicant, respondent No.3, Canara Bank Kalpathi Branch, Palakkad, is directed to recover the excess payment in



sixty equal monthly instalments.

10 The OA is dismissed. No costs..

(Dated 17th January 2013)


(K.NOORJEHAN)
ADMINISTRATIVE MEMBER

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