

THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

ORDER SHEET

APPLICATION NO. : _____

Applicant (S)
Advocate for Applicant (S)

Respondent (S)
Advocate for Respondent (S)

NOTES OF THE REGISTRY	ORDERS OF THE TRIBUNAL
	<p>OA 363/2012</p> <p>21/05/2013.</p> <p>None present for applicant Sh. Anupam Agarwal, Counsel for respondent. Bench not formed today. List it on 11/07/2013.</p> <p style="text-align: center;">COURT OFFICER <i>Arish (M)</i> COURT OFFICER</p> <hr/> <p>11/07/2013</p> <p>OA No. 363/2012</p> <p>Mr. Ashish Saxsena, Proxy Counsel for Mr. S. K. Saxsena, Counsel for applicant Mr. Anupam Agarwal, Counsel for respondents</p> <p style="text-align: center;">Heard.</p> <p>○.A. is disposed of by a separate order on the separate-sheets for the reasons recorded therein.</p> <p style="text-align: right;">Anil Kumar [Anil Kumar] Member (A)</p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 363/2012

Jaipur, the 11th day of July, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Shree Narayan Saxena son of Shri Bishan Narayan Saxena, aged 79 years, Caste- Kayastha, Retired Head Clerk, Dy.CMM, General Stores (Railways) Ajmer & resident of 234/42, Pooja Marg, Dhola Bhata, Ajmer.

... Applicant

(By Advocate: Mr. Ashish Saxena Proxy to Mr. S.K. Saxena)

Versus

1. Union of India through the General Manager, Northern Western Railway (NWR), Jaipur.
2. Chief Accounts Officer, Northern Western Railways, Ajmer.

... Respondents

(By Advocate: Mr. Anupam Agarwal)

ORDER (ORAL)

The applicant has filed this OA seeking for the following reliefs:-

- "(i) An appropriate order or direction to the respondents quashing the Revised Pension Payment Order – 6TH CPC (PRE-2006) New PPO No. NWR 1990-90-581769 dt. 29.10.2010 (Link UNION BANK OF INDIA, Shrinagar Road, Ajmer) depicting Old Grade 1400-2300, Date of retirement 31.08.1990 New Grade 5200-20200+2800, Revised Pension 5650 passed by FA & CAO, N.W. Railways, Jaipur.
- (ii) An appropriate order or direction to the respondents to issued revised PPO depicting the pay scale of 1400-2600 and pension payable at Rs.6750/- w.e.f. 1.1.2006 alongwith payment of arrears alongwith interest @ 12% per annum.
- (iii) An appropriate order or direction to quash any order passed during the pendency of this

Anil Kumar

application adversely affecting the purpose of this application.

- (iv) An appropriate order or direction to the respondents, which his Hon'ble Court deems just, and proper in the circumstances of the case.
- (v) Cost of the application."

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was superannuated from the post of Head Clerk Stores, Western Railway, Ajmer in August, 1990. On 01.09.1990, the applicant was granted PPO wherein the scale of pay of the post last held and last pay drawn was in the scale of Rs.1400-2600/-. That the applicant was drawing Rs.1640/- as salary at the time of his retirement.

3. That on 11.02.2009, the applicant submitted an application to the respondents that after implementation of 6th Pay Commission, he is being paid less pension (Annexure A/4). It was contended that the applicant's revised pension on 01.01.2006 should be Rs.6750/- inclusive of DA @ 16% and thus, Rs.7830/- payable w.e.f. September, 2008. Thus, it was requested to recalculate the pension amount w.e.f. 01.01.2006 and rectify the amount of pension and to pay arrears.

4. That the Union Bank of India vide communication dated 13.03.2010 (Annexure A/6), addressed to the Deputy Chief Accounts Officer, North Western Railway, Ajmer contended, in pursuance to the representation of the applicant as to the

Anil Kumar

payment of pension of Rs.6750/-, while he is being paid the pension at basic of Rs.5650/- thus sought for directions.

5. The respondents vide their communication dated 15.06.2010 (Annexure A/8) informed that as per 5th Central Pay Commission, the applicant's pension was fixed at Rs.2500/-. As per 6th Pay Commission he was being paid the pension @ Rs.5650/- + DA. While as per the pay scale of Rs.9300-34800 + Rs.4200 Grade Pay, he was entitled for pension of Rs.6750 + DA. As such, the Bank was directed to make payment of monthly pension of Rs.6750/- + DA.

6. That the applicant was issued Revised Pension order- 6th CPC (PRE-2006) dated 29.10.2010 (Annexure A/1) wherein old grade has been shown as Rs.1400-2300/- while the pay had been in the pay scale of Rs.1400-2600/-, thus, the old grade of Rs.1400-2300/- has been shown wrongly.

7. In pursuance thereof, the Union Bank vide communication dated 04.02.2011 (Annexure A/9) conveyed to the applicant that he has been paid arrears of pension w.e.f. May, 2010 to June, 2010 and thereafter upto January, 2011. The applicant was further informed that as per Revised PPO, his basic pay has been determined at Rs.5650/- instead of Rs.6750/- w.e.f. 01.01.2006. Therefore, a recovery of excess payment of pension of Rs.79,189/- is to be deposited with the Bank. Being aggrieved by the action of the respondents, the

Anil Kumar

applicant has filed this OA. The learned counsel for the applicant further submitted that this amount of Rs.79,189/- has already been recovered by the respondents.

8. On the other hand, the learned counsel for the respondents submitted that as per Revised PPO, the applicant has been treated to be retired in the grade of Rs.1400-2300 on 31.08.1990. He further submitted that the applicant has not been able to substantiate that he was working in the scale of Rs.1400-2600/- as on the date of retirement by placing any document to this effect. He denied that the applicant was working in the pay scale of Rs.1400-2600 at the time of his retirement.

9. The learned counsel for the respondents further submitted that those who retired prior to 01.01.1996 in the scale of Rs.1400-2300, they have been granted the scale of Rs.4500-7000/- by the 5th Pay Commission and Rs.5200-20,200 + Rs.2800 Grade Pay by the 6th Pay Commission.

10. The learned counsel for the respondents further submitted that in ignorance of the rules position, the respondents erroneously issued a letter dated 15.06.2010 (Annexure A/8) to the Union Bank of India. However, soon thereafter lapse came into the knowledge of the respondents and the Revised PPO was issued, correcting the mistake. The applicant is entitled to receive Revised pension of Rs.5650/-

Anil Kumar

with other admissible allowances w.e.f. 01.01.2006. The pension of the applicant cannot be revised to Rs.6750/- as the applicant at the time of retirement was working in the pay scale of Rs.1400-2300/- (Annexure R/1).

11. He further submitted that it is a settled law that if there has been any mistake in the calculation of the amount to be paid to an employee then this mistake can be corrected and the recovery can be made from the employee of the excess amount paid to him. The State Exchequer cannot be allowed to suffer for the lapse on the part of the official respondents. The alleged impugned action is an outcome of correction of mistake. Therefore, this OA has no merit and it should be dismissed with costs.

12. Heard the learned counsel for the parties and perused the documents on record. The learned counsel for the applicant stated at Bar that he is confining his prayer to the extent that the recovery of Rs.79,189/- may not be effected from the applicant. He further submitted that this amount has already been recovered and, therefore, it may be returned to the applicant. To support his averments, he drew my attention to the order of the Hon'ble High Court of Rajasthan, Jaipur Bench in SB Civil Writ Petition No. 5274/2001 decided on 27.04.2013 in the case of **Smt. Nirmala Sharma vs. State of Rajasthan & Others**. He submitted that Hon'ble High Court of Rajasthan in this case directed the respondents to make payment of the

Anil Kumar

amount so deducted from the petitioner within thirty days from the date of the order. He also drew my attention to the judgment of the Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal & Others vs. State of Uttarakhand & Others, JT 2012 (7) 460**. He drew my attention to Para Nos. 14 & 15 of the judgment, which are quoted below:-

"14. We may pointed out that in **Syed Abdul Qadir case** such a direction was given keeping in view of the peculiar facts and circumstances of that case since the beneficiaries had either retired or were on the verge of retirement and so as to avoid any hardship to them.

15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirements or were occupying lower posts in the administrative hierarchy."

The learned counsel for the applicant submitted that since the applicant has also retired and was low paid employee, therefore, no recovery should be made from the applicant and since recovery has already been made, it should be refunded to the applicant.

13. The learned counsel for the respondents submitted that submission of the learned counsel for the applicant cannot be accepted in this case because recovery has already been made from the applicant. He submitted that Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal & Others vs. State of**

Anil Kumar

Uttarakhand & Others (supra) in Para nos. 16 & 17 has held that-

"16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/recovered without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

17. We are, therefore, of the considered view that except few instances pointed out in **Syed Abdul Quadir case** (supra) and in **Col. B.J. Akkara (retd.) case** (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered."

Thus the learned counsel for the respondents submitted that Hon'ble Supreme Court has clearly held that any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardship but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment. Under the circumstances of the present case, he pointed out that there is no exceptional reason to refund the money to the applicant which has been recovered from him due to over-payment of pension.

Anil Kumar

14. Since the applicant has not disputed that the revised pension of the applicant has been wrongly revised and he has only limited his request that the amount recovered may be refunded to the applicant, I am of the opinion that under the facts & circumstances of the present case, the applicant is not entitled for any relief from this Tribunal. The Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal & Others vs. State of Uttarakhand & Others** (supra) in Para No. 16 of the judgment has categorically stated that any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

15. In the present OA, the applicant is under an obligation to repay the excess amount received by him due to wrong fixation of his pension. His pension was wrongly fixed by the respondents and when the mistake came to the knowledge of the respondents, they corrected the mistake. It is settled law that the mistake can be corrected at any stage. Excess amount has already been recovered from the applicant. Therefore, if this excess amount is ordered to be repaid to the applicant then it would amount to unjust enrichment. Therefore, in my considered view, the respondents cannot be directed to repay the recovered amount from the applicant. The ratio decided by

Anil Kumar

the Hon'ble High Court of Rajasthan in the case of **Smt. Nirmala Sharma vs. State of Rajasthan & Others** (supra), as referred to by the learned counsel for the applicant, will not be applicable under the facts & circumstances of the present case. Moreover, subsequently the law with regard to the recovery of excess payment has already been laid down by the Hon'ble Supreme Court in the year 2012 in the case of **Chandi Prasad Uniyal & Others vs. State of Uttarakhand & Others** (supra).

16. Thus in view of the above discussion, I find that this OA has no merit.

17. Consequently, the OA being devoid of merit is dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

AHQ