

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

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**ORIGINAL APPLICATION NO.060/00561/2014**

Order Reserved on **08.04.2015**  
Pronounced on **17.04.2015**

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**CORAM: HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**  
**HON'BLE DR. BRAHM A. AGRAWAL, MEMBER (J)**

...

MES NO.358767 Surinder Pal Singh, aged 70 years, S/o Late Sh. Gurdit Singh, Master Craftsman (Retired), O/o Garrison Engineer, Air Force, Ambala, resident of House No.1328/11, Badsahi Bhaga Colony, Ambala City, Ambala.

... Applicant

**Versus**

1. Union of India through Secretary to Government of India, Ministry of Defence, South Block, New Delhi.
2. Principal Controller of Defence Accounts, Allahabad.
3. Garrison Engineer, Military Engineering Services, Air Force, Ambala Cantt, District Ambala (Haryana).
4. General Manager, Central Pension Cell, State Bank of India, Sector 5, Panchkula.
5. Chief Manager, State Bank of India, Main Branch, Court Road, Ambala City.

... Respondents

**Present:** Sh. R.K. Sharma, counsel for the applicant.  
Sh. Ashwani Kumar Sharma, counsel for respondents no.1&3.  
Sh. Vikas Chatrath, counsel for respondents no.4 and 5.

**ORDER**

**BY HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)**

1. This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:



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- "8 (i) Illegal deduction in the monthly pension of the applicant @Rs.4000/- per month for the month of July, 2013 to March, 2014 and at the rate of Rs.12710/- per month from April, 2014 onwards till date, as is evident from the entries in the Pass Book of Saving Bank Account No.1048790110 of the applicant, as made by the State Bank of India, Main Branch, Ambala City, (Annexure A-2) may be quashed.
- (ii) Issue directions to refund the amount illegally recovered from the pension of the applicant alongwith interest @ 18% per annum on the amount which was illegally deducted from the pension of the applicant, from the date the amount was illegally deducted till the date of its actual payment.
- (iii) Issue direction to the respondents to pay full pension to the applicant w.e.f. July, 2013 as increased from time to time without deduction."

2. Averment has been made in the O.A. that the applicant retired as Master Craftsman in the office of GE, Air Force, Ambala on 30.6.2004. He was issued PPO No.16403/2014 and was paid pension w.e.f. 01.07.2004 which was revised in the year 2006 and lastly in the year 2008. After the Government of India revised the pay and pension of Central Government employees w.e.f. 01.01.2006, the applicant was paid pension along with increased DA from time to time up to June, 2013 when he was paid pension of Rs.19,125/- as per the entry dated 28.06.2013 in his Pass Book (Annexure A-2). However, entry dated 29.07.2013 in pass-book showed that his pension had been reduced and amount of Rs.15,125/- was credited to his account. This deduction was made without any show cause notice or opportunity of hearing to the applicant. The applicant then submitted representation dated

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31.07.2013 to respondents no.2 and 3 requesting them to pay full pension from 01.01.2006 at the enhanced rate pursuant to the revision of pay scales (Annexure A-3). When no reply was received by the applicant, he sent a legal notice dated 07.04.2014 in this regard (Annexure A-4). It has further been stated in the O.A. that the Punjab and Haryana High Court and Apex Court had held time and again that where there is no misrepresentation or fraud on the part of employee concerned and department had paid the amount being bonafide under impression that he was entitled to such benefit then recovery cannot be made from such employee. Hence this O.A.

3. In the written statement filed on behalf of respondents no.1 and 3 it has been stated that the applicant had retired from the respondent office on 30.06.2004 and accordingly his Pension Payment Order was received from PCDA, Allahabad (Annexure R-1) and again revised PPO No.C/Corr/Eng/05320/2008 dated 12<sup>th</sup> July, 2008 (Annexure R-2) was received from PCDA (P), Allahabad. The applicant was paid pension accordingly and the answering respondents had not issued any recovery/deduction from the pension of the applicant and as such the answering respondents have unnecessarily been dragged into litigation and as such the O.A. qua them be dismissed.

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4. In the written statement filed on behalf of respondents no.4 and 5 it has been stated that at the time of revision of pension which was notified on 17.09.2008 and which came into force w.e.f. 01.01.2006, the pension of the applicant was wrongly fixed as had been made clear in tabular form appended as Annexure R-4/1. The net consequential arrears which became recoverable was Rs.4,29,793/-. The applicant was being wrongly paid the Basic Pension of Rs.11,783/- instead of 7855/- and thus he kept on drawing excess pension from February 2009. Similarly, the difference in the pension of each corresponding month is shown in the Statement of Account (Annexure R-4/1). The applicant was drawing around 25% more than his admissible amount from February, 2009. In the instant case the applicant retired in June, 2014. His Basic Pension at the time of retirement was Rs.3282/- (without D.P) which was revised to Rs.5213/- (including D.P.) in August, 2008 on the strength of Corr.PPO No.C/CORR/08420/2008. But his Basic Pension was erroneously revised to Rs.11783/-( $5213 \times 2.26$ ) whereas it was to be revised applying a multiplier of pre-revised Basic Pension  $\times 2/3 \times 2.26$  ( $5213 \times 2/3 \times 2.26 = 7855/-$ ) to neutralize the factor of Dearness Pay (50% of Basic Pension) because it was only interim relief sanctioned by the Government from 01.04.2004, which had to be excluded while arriving at Revised Basic Pension w.e.f. January, 2006. Consequently, it was

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incumbent upon the applicant to apprise the competent authority including the bank regarding the wrong pension fixation along with the arrears which have been released to him due to this error.

5. The fact of wrong revision of pension and consequential reduction in pension in respect of the applicant came to light when a massive data purification drive including periodical scrutiny of records was launched at Centralized Pension Processing Centre (CPPC) from June, 2012. Mistake in pension was well within the knowledge of the applicant since he was drawing much more than his colleagues. Same was being received by him without any authority of law. In such a situation, it implies an obligation on payee/applicant to repay the excess money which was being received without any authority. Otherwise, it would amount to unjust enrichment by him. There is no reference in the OA regarding his undertaking given to the Bank that in case of excess amount having been credited to his account, then the same would be debited back to the bank. He also agreed and undertook to indemnify the bank for any loss or costs etc. and further consented on behalf of the legal representatives etc. in this regard (Annexure R-4/2). Otherwise also, the applicant is liable to refund the excess pension as per Para (9) of PCDA (P), Allahabad Circular No.57 dated 17.09.2008 (Annexure R-4/3), which is reproduced as under:

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"If any overpayment is in the process of recovery, the amount still due for recovery should be adjusted in lump sum against the arrears payable."

Letter dated 18.07.2014 (Annexure R-4/4) had also been received from Principal Controller of Defence Accounts (Pensions), Allahabad wherein it was clearly stated that Bank can adjust the excess amount paid to the applicant by preparing a due-drawn statement. A copy of the same has also been endorsed to Sh. Parveen Kumar, counsel for the applicant. Relevant lines of this letter are reproduced as below:

"If pension has not been paid on these rates, a due-drawn statement should be prepared after adjusting excess pension paid, if any, and ensure payment of arrears."

Pension of the applicant was revised on recommendations of 6<sup>th</sup> Central Pay Commission report and it has been mentioned therein that there could be circumstances wherein arrears could be wrongly calculated on account of wrong calculation and as such an undertaking etc. should be taken that account of a discrepancy, incorrect consolidation etc. the amount of overpayment would be repayable. Thus, the applicant was duly bound by the recommendations which were accepted by the Central Government.

6. In the rejoinder filed on behalf of the applicant the contents of the O.A. have been reiterated.

7. Arguments advanced by learned counsel for the parties were heard when learned counsel for the applicant placed reliance on judgment dated 18.12.2014 in State of Punjab Vs. Rafiq Masih, in Civil Appeal No.11527 of 2014 2015(1) S.C.T. 195 and 02.03.2015 in O.A. No.060/00041/2014 titled Tarsem Singh Vs. UOI & Ors. to press that since the applicant was a Group 'C' employee, he was not at fault in the wrong fixation of pension. He was also a retiree hence no recovery could be effected from him. He further stated that the applicant had not signed any declaration regarding liability for refund of excess amount.

8. Learned counsel for respondents no.1 and 3 states that these respondents did not have any responsibility in the matter. The PPO had indeed been issued by the respondents and pension had been correctly fixed in the same. It was the responsibility of the Bank to disburse the correct amount of pension and respondents no.1 and 3 had nothing to do with the matter.

9. Learned counsel for respondents no.4 and 5 stated that the applicant had furnished an undertaking as a pensioner to the Branch Manager, State Bank of India, Ambala City (0608) that he would refund to the Bank any amount to which he was not entitled or any amount credited to his account over that to which he was entitled. Learned

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counsel stated that the amount of pension credited to the account of the applicant had been miscalculated and he had been paid an amount of Rs.4,29,973/- in excess. When this was discovered monthly deduction of Rs.4000/- was started on 01.08.2014 and this would continue till 31.12.2022. Learned counsel also stated that the applicant had got some arrears in 2009 on account of revision of pension and he had enjoyed the benefit of excess amount paid to him. There was no irregularity in the Bank seeking to recover excess amount paid to the applicant. Learned counsel also referred to judgment dated 17.08.2012 in Chandi Prasad Uniyal Vs. State of Uttarakhand & Others (SC), Civil Appeal No.5899 of 2012 wherein it had been held as follows:

"Constitution of India, 1950-Recovery of over payment-Over-payment of amount due to wrong fixation of 5<sup>th</sup> and 6<sup>th</sup> pay scale-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-In the instant case excess payment made to be recovered from the appellants salary in twelve equal monthly installment."

Learned counsel further stated that Rafiq Masih (Supra) did not bar recovery of amount paid to an employee/pensioner and since excess pension paid to the applicant was from public funds, the recovery had to be made.

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10. We have given our careful consideration to the matter. The learned counsel for the applicant has not rebutted the content of Annexure R-4/1 which is the statement regarding amount of pension payable to the applicant from 01.1.2006 and that actually paid. Hence his plea that he should be allowed original amount of pension without deduction is clearly inadmissible.

11. So far as reliance is placed on Rafiq Masih (Supra) it is observed that in that case the Apex Court has provided guidelines vide para 4 where payments that have mistakenly been made should not be recovered. Para 12 reads as follows:

*"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*

*(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*

*(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*

*(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*

*(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has*

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*been paid accordingly, even though he should have rightfully been required to work against an inferior post."*

This para apparently relates to recovery that had been ordered from an employee/ex-employee by the Government who is the employer. However, in the instant case, the recovery has been made by the Bank, which is only a pension disbursing authority, on account of excess pension having been paid to the applicant, against his entitlement as per PPO issued by the respondent Department. The Bank is merely a conduit of the pension amount and Government of India will release funds to the Bank only as per the entitlement of the pensioners. If excess payment is made erroneously by the Bank, the Government of India will not reimburse the Bank on this account. The Bank itself is the custodian of public funds by way of deposits by the general public and its clients and this is public money. Any loss on account of excess payment being made to pensioners by the Bank would therefore have to be charged by the Bank to its internal accruals and thus, it is the public which would pay for such errors.

12. The number of Government employees is over 3 million and the number of pensioners is over a million. When pay/pension revision is effected for such a large number of employees mistakes may take place. Therefore, whenever revision of pay scales and pensions is effected as a result of recommendations of the Pay Commission being

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implemented usually with some time lapse, lump-sum arrears are often released to the pensioners and the revised pension is paid with prospective effect. At the time of release of such revised pay/pension, arrears and revision of pay/pension, the employee/pensioner is required to furnish an undertaking to the Government department in which he/she is working or to the Bank which is disbursing the pension that he/she shall be liable for recovery of any amount paid in excess to employee/pensioner. Such an undertaking has been signed and submitted by the applicant in the present case also after revision of his pension on the basis of 6<sup>th</sup> Pay Commission's recommendations. Hence liability of the applicant to repay the amount of pension paid in excess to him by the Bank cannot be ignored since ignoring this aspect could hit the Banks to the tune of several hundred crores as many cases of excess release of pension are coming to light. The public/tax payers should not be burdened on this account. In this matter we are guided by the judgment dated 17.08.2012 in Chandi Prasad Uniyal (supra) wherein it had been held as follows:

*"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 the cases referred to*

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hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.

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/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."

However, taking a sympathetic view of the matter and keeping in view the fact that the applicant is now around 70 years of age and he is getting pension of around Rs.18,000/- per month the Bank should

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restrict the monthly deduction from his pension to an amount of Rs.2000/- only so that this recovery does not amount to an intolerable burden on the pensioner.

13. The O.A. is disposed of with the above directions.

B. A. Agrawal  
(DR. BRAHM A. AGRAWAL)  
MEMBER (J)

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(RAJWANT SANDHU)  
MEMBER (A)

Place: Chandigarh.  
Dated: 17. 4. 2015.

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