

23

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/00382/2014

Date of Decision : 29.5.2015.
Reserved on : 27.05.2015

CORAM: HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER

Madan Lal son of Sh. Roshan Lal, resident of Mohalla Kumhara, I/S Magezing Gate City, Ferozepur, Punjab.

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Applicant

Versus

1. Union of India through the Secretary, Department of Railways, New Delhi.
2. Senior DAO, Northern Railway, Ferozepur.
3. Bank of India, Ferozepur City Branch, Mallwal Road, Ferozepur City, Punjab-152002 through its Chief Manager.

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Respondents

Present: Ms. Anupama Sharma, proxy for Mr. Padamkant Dwivedi, counsel for the applicant
Mr. Rohit Sharma, counsel for respondents no.1 & 2
Mr. K.P.S.Dhillon, counsel for respondent no.3.

ORDER

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

This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

"8 (i) For declaring the impugned action of the respondents in effecting recovery from the pension of the applicant, on account of alleged excess payment, from his Savings Bank Account No.637010100018243 with Bank-respondent no.3 without giving any show cause notice or affording any opportunity of hearing and without passing any specific order to this effect by the competent authority, as patently illegal, arbitrary, malafide, unconstitutional and violative of the law declared by the Hon'ble Punjab and Haryana

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High Court at Chandigarh in case titled Budh Ram Vs. State of Haryana & Ors, 2009 (3) PLR 511 which stands upheld by the Hon'ble Supreme Court of India in the latest judgment dated 02.08.2013 passed in SLP (C) No.24607 of 2010 titled State of Punjab & Ors. Vs. Krishan Kumar Bansal & Ors.

ii) For issuance of directions to the respondents to continuously grant pension to the applicant without any recovery therefrom and to refund the amount already recovered from the applicant forthwith."

2. Averment has been made in the OA that the applicant retired from service of respondents no.1 & 2 on 31.05.2004 as Head Clerk on attaining the age of superannuation. The applicant thereafter has been drawing his pension w.e.f. 01.06.2004 as sanctioned from time to time by the Central Government through the Bank of India i.e. respondent no.3. His Pension Payment Order Number is 0104052748 and he has been drawing the family pension through his Savings Bank Account No.637010100018243 with respondent no.3 on production of Life Certificate from time to time. A copy of the PPO of the applicant is annexed as Annexure A-1. To the utter shock and surprise of the applicant, the respondents without informing him or without giving any notice or affording any opportunity of hearing, have started deducting an amount of Rs.8,724 from his pension from his bank account held with respondent no.3. The fact came to the notice of the applicant on perusal of his pass book maintained with respondent no.3 which shows that he has received reduced pension for the month of April 2014. A perusal of the pass book would show that for earlier months he had been receiving pension to the tune of Rs.20,755 which has now been reduced to Rs.12,031. A copy of the pass book of the applicant is annexed as Annexure A-2.

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3. In the grounds for relief it has, inter-alia, been stated as follows:-

- i) The Full Bench of the Hon'ble High Court of Punjab and Haryana in its judgment titled Budh Ram & Ors. Vs. State of Haryana & Ors. bearing CWP No.2799 of 2008, decided on 22.05.2009 reported as 2009 (3) PLR 511 while deciding similar issues of recovery of erroneous payments made by the respondent authorities without there being any fraud or misrepresentation on the part of the applicant has held that the respondent authorities are not entitled to recover the benefits that have been received by the applicant on the basis of any such erroneous grant.
- ii) The applicant is an old man aged 70 years and is living his wife and children. The only source of income of the entire family is the pension of the applicant which suddenly has been reduced to the prejudice of the applicant. In such days of high inflation when the prices of essential commodities are sky rocketing, the survival of the applicant and his family members has become very difficult due to reduction of his pension for no justifiable reasons. The applicant has thus approached this Tribunal by way of present application seeking redressal of his grievances.

4. In the written statement filed on behalf of respondents no.1 & 2, it has been stated that at the time of retirement of the applicant on 31.05.2004, he was drawing basic pay of Rs.6350. Since at that time there was a benefit of Dearness Pay equal to 50% of basic pay, so his pension was calculated as $6350+3175=9525/2=4763$ as his qualifying service was 33 years. The official respondents had issued his PPO on 01.06.2004 i.e. next day of his retirement. Now when the recommendations of 6th Pay Commission came, his basic pension was revised as $4763 \times 2.26 = 10764.38 \times 2/3 = 7177$ and for the same the PPO of even number dated 08.10.2013 was again issued to his Pension Disbursing Bank i.e. Bank of India, Main Branch, Ferozepur for Bank of India, Udhampur Chowk, Ferozepur City. The respondent Railway has issued the Pension

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Payment Order twice to the disbursing bank of the applicant one at the time of his retirement i.e. on 01.06.2004 for Rs.4763 and one on 08.10.2013 (on implementation of 6th CPC recommendations) for Rs.7177. In between, what were the reasons that the Bank has given him excess pension and is now effecting recovery is an issue between the pensioner and the Bank and the Railways are not concerned with the matter.

5. In the written statement filed on behalf of respondent no.3, it has been stated that the answering respondent received the revised PPO from respondent no.2, which was to be implemented with effect from 01.01.2006 and according to the revised PPO recovery of Rs.5,46,500 is to be made from the applicant. As per the PPOs of employees issued by the Railway Department, stamp showing 50% DP included was endorsed on the PPOs whereas the stamp was not endorsed on the PPO of the applicant and the same resulted in calculating the excess payment. Thus, the wrong calculation of the excess amount was due to the negligence of respondents no.1 & 2 as they failed to put the stamp on the PPO of the applicant and same was informed later on to the answering respondent for deducting the excess amount.

6. Further, the answering respondent has deducted the excess amount from the pension as per the revised PPOs and due to the wrong calculations. There is no illegality in the action of the answering respondent and further there is no violation of the principles of natural justice in deducting the excess amount paid to the applicant. M

7. Arguments advanced by the learned counsel for the parties were heard. Learned counsel for the applicant stated ~~that~~ the back ground of the matter and asserted that the applicant had not been afforded any opportunity of hearing by the respondents before reducing his pension. She referred to "State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc." in Civil Appeal No.11527 of 2014, decided on 18.12.2014 to support her claim that the applicant being a pensioner, no recovery could be effected from the pension of the applicant as the alleged wrong payment of pension had been made to the applicant for no fault of his.

8. Learned counsel for respondents no.1 & 2 stated that the PPOs had been issued to the respondent Bank. From these, it was clear that excess payment had been made to the applicant and since this was public money, the amount was required to be refunded by the applicant. Learned counsel for respondent no.3 reiterated the content of the counter reply and stated that the mistake had taken place on the part of respondent no.2, the Bank had made the payment as per the PPO received from respondent no.2 and it was only much later that it came to light that an amount of Rs.5,46,500 had been paid in excess to the applicant after the revised PPO was received from respondent to be implemented w.e.f. 01.01.2006. Hence, an amount of Rs.8,000 per month was being deducted from the pension of the applicant in order to effect the recovery of the excess payment paid to the applicant.

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9. I have carefully considered the pleadings of the parties and perused the material on record. Learned counsel for the applicant has not rebutted the content of Annexure A-3 appended with the OA which is a statement regarding amount of excess payment made to the applicant during the period from 01.01.2006 to December, 2014. Hence, his plea that he should be allowed the original amount of pension without deduction is clearly inadmissible.

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

16

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.

11: 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 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

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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 would have been submitted by the applicant in the present case also after revision of his pension on the basis of 6th 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 Vs. State of Uttarakhand & Ors. (SC), Civil Appeal No.5899 of 2012 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 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

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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."

In view of the above and taking a sympathetic view of the matter as the applicant is now around 71 years of age, while it is concluded that the applicant is bound to repay the excess pension paid to him, it is directed that the Bank should 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.

12. The O.A. is disposed of with these above directions.

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**(RAJWANT SANDHU)
MEMBER (A)**

Place: Chandigarh
Dated: 29/5/2015

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