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**Central Administrative Tribunal
Chandigarh Bench**

OA No.060/00123/2014

Pronounced on: 7.11.2014

Coram:

**Hon'ble Mr. Sanjeev Kaushik, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A)**

I.S. Chadha, Ex. I.F.S. age 80 years son of Sh. Harnam Singh Chadha, resident of House No.1104, Sector: 36-C, (Retd.) As Secretary, Ministry of External Affairs, New Delhi).

-Applicant

(By Advocate Shri D.R. Sharma)

-Versus-

1. Union of India through Secretary, Ministry of External Affairs, New Delhi.
2. The Pay and Accounts Officer, Central Pension Accounting Office, Ministry of Finance, Govt. of India, Trikoot II Complex, Bhikaji Cama Place, R.K. Puram, New Delhi-110066.

(By Advocate Shri A.L. Vohra)

3. The Branch Manager, State Bank of India, Sector 37, Chandigarh.

-Respondents

(By Advocate Shri S.K. Gupta)

O R D E R

Per Mr. Sanjeev Kaushik, Member (J):

By means of this Original Application the applicant has impugned the statement (Annexure A-1) vide which the respondents have effected recovery from the pension of the applicant to the tune of Rs.4,26,533/- allegedly paid in excess to him during the period from 01.01.2006 to 31.12.2013.

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2. The moot question that arises for our consideration is whether a recovery can be effected from a pensioner of an amount paid to him in excess of his admissibility?

3. The facts, which led to the filing of the present Original Application in brief are that the applicant here Shri I.S. Chandra joined the Government of India as an I.F.S. officer on 02.05.1956 in the Ministry of External Affairs. After rendering 30 years of qualifying service, for the purpose of pension, he retired on attaining the age of superannuation on 31.07.1991, while working as Ambassador and Permanent Representative to United Nation Office, Geneva, in the grade of Secretary to Government of India, Ministry of External Affairs. The Secretary's grade was corresponding to Grade-I of I.F.S and as such on his retirement he was drawing a fixed salary of Rs.8,000/- and accordingly his pension was fixed at Rs.3637/- p.m. on proportionate basis. Consequent upon implementation of the V Central Pay Commission's recommendations, his pension was revised, with reference to the corresponding revised pay scale of Rs.26,000/-, to Rs.11,819/- w.e.f. 01.01.1996. Subsequent to that while implementing the recommendations of the VI Central Pay Commission the applicant's pension was revised with reference to the corresponding revised scale of pay of Rs.80,000/- to Rs.36,364/- p.m. w.e.f. 01.01.2006. The applicant represented the

respondent no.3 for revision of his pension w.e.f. 01.01.2006 to Rs.36,364/- p.m. vide letter dated 30.09.2008. Respondent no.1 informed respondent no.3 to revise the pension of the applicant in accordance with the Department of Pension and Pensioners' Welfare, Government of India's OM dated 01.09.2008 regarding revision of Pension of pre-2006 pensioners/family pensioners etc. consequent upon implementation of Government's decision on the recommendations of VI Central Pay Commission. It is the case of the applicant that he wrote a letter to respondent no.1 informing that his pension is to be revised to Rs.36,364/-. The applicant was informed by the Ministry vide their letter dated 06.10.2008, and simultaneously it was informed to respondent no.3 also, that revised pension of applicant w.e.f. 01.01.2006 is Rs.36,364/- and accordingly revised PPO dated 10.02.2012 was also issued. Despite there being a clear letter by the Ministry, respondent no.3 continued to pay applicant pension at the rate of Rs.40,000/- for the period 01.01.2006 to 31.12.2013. The applicant was shocked and surprised when he received the impugned statement indicating recovery of Rs.4,26,533/- w.e.f. 01.01.2006 to 31.12.2013 on account of excess payment made to the applicant in 15 installments from 01.01.2014 to 30.04.2015, @ Rs.27,637/-. Hence the Original Application.

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4. Pursuant to the notice the respondents resisted the claim of the applicant by filing separate detailed statements. Respondent no.1, Government of India, Ministry of External Affairs, New Delhi have taken a Preliminary Objection that the OA *qua* them is liable to be dismissed because no relief has been claimed against them. Consequent upon revision of pay scales by Vth and VIth Central Pay Commissions the revised PPO was issued and the applicant was informed vide Ministry letter dated 06.10.1998 that he is entitled for revised pension at the rate of Rs.36,364/- p.m. It is submitted that the said order was also communicated to respondent no.3 bank who paid pension at the rate of Rs.40,000/- for the period starting from 01.01.2006 to 31.12.2013, resulting in excess payment of Rs.4,26,533/-. Since the matter is between the applicant and respondent no.3 bank, the Original Application *qua* them be dismissed. The written statement has been filed by respondent no.2 also on similar lines. The contesting respondent No.3, who effected recovery, filed a detailed written statement wherein it is admitted in paragraph 5.B that due to inadvertence and technical error the applicant has been paid the pension at the rate of Rs.40,000/- p.m. instead of Rs.36,364/-. When this fact came to their knowledge they immediately took action to effect recovery of the excess amount in installments. They also submit that the applicant being an IFS officer was well aware of the fact

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that he has been paid wrongly calculated pension at Rs.40,000/- instead of admissible pension of Rs.36,364/- . He chose not to bring it to the notice of respondent no.3 and kept on getting the higher pension for which he was not entitled. The relevant averment reads as under:

"5.B That the contents of this para are incorrect and denied. The wrong calculation of his pension Rs.40,000/- per month instead of actual pension of Rs.36,364/- for the period of 01.01.2006 to 31.12.2013 due to inadvertence and some technical error.

It is pertinent to mention here that the petitioner being highly educated and Ex. I.F.S. Officer was well aware of the fact that he was being paid wrongly calculated pension Rs.40,000/- instead of Rs.36,364/- . He never brought this fact to the notice of any of the Respondents and kept on getting higher pension than what was entitled to him. Had he brought this fact to the notice of Respondent no.3, his pension would have been rectified to Rs.36,364/- . He thus intentionally and deliberately concealed this fact and misused tax payers' money. Therefore, he has not approached the Hon'ble Central Administrative Tribunal with clean hands."

5. The applicant has also filed a replication wherein apart from contradicting the averments made in the written statement by the contesting respondent he has placed reliance on the following judicial pronouncements to the effect that no recovery can be effected from a pensioner for an excess amount paid to him for no fault of his:

1. CAT Principal Bench in OA no.2843/2010 – Kishan Singh v. IARI, decided on 28.04.2011.
2. CAT Principal Bench in OA no.3989/2010 – Smt. Surekha Guria v. Union of India decided on 08.11.2011.

3. CAT Ernakulam Bench in OA no.96 of 2012 – K.B. Abdul Khader v. Union of India decided on 28.06.2013.
4. P.H. Reddy & Ors. v. National Institute of Rural Development and Others, 2007 (15) SCC 598.
5. Union of India and another etc. etc. v. M. Bhaskar and others etc. etc. 1996 (3) RSJ 205.
6. Chandi Prasad Uniyal and Ors. v. State of Uttaraljand and Ors., decided on 17.08.2012.
7. Syed Abdul Qadir, 2009 (3) SCC 475.
8. J.S. Parmar v. State of Haryana & Others decided on 05.02.2010 [RSA no.1906 of 2009].
9. Surinder Kaur v. State of Punjab and others, decided on 27.11.2009 [CWP no.13066 of 2009].

6. We have heard Shri D.R. Sharma, learned counsel for the applicant, Shri A.L. Vohra, learned counsel for respondents 1 & 2 and Shri S.K. Gupta, learned counsel for respondent no.3.

7. Shri Sharma, learned counsel appearing on behalf of the applicant argued that the action of the respondent no.3 in effecting recovery from the pension of the applicant, without putting him to notice, is liable to be set aside being violative of principles of natural justice. He further submitted that there is not even a whisper in the written statement to suggest that the applicant has played any fraud which resulted in calculation of pension on higher side than admissible to him. Therefore, he submitted that being a pensioner no recovery can be effected for the excess amount paid by the bank to the applicant for no fault of him. He placed reliance on the various judgments which have already been noticed above.

8. Per contra, Shri S.K. Gupta, appearing on behalf of the bank, the contesting respondent, very fairly submitted that before

effecting recovery the applicant was not issued any show cause notice. However, he submitted that it was within the knowledge of the applicant that he is not entitled to pension at the rate of Rs.40,000/- which was paid by the bank wrongly as he was informed by the Ministry vide their letter dated 06.10.2008 that his pension is to be fixed at Rs.36,364/- only. The said letter, though addressed to the Bank Manager, endorsement thereof was also made to the applicant. Thus, despite being in knowledge of said fact, the applicant chose not to point out the mistake committed by the bank and kept on receiving the pension on a higher side to which he was not legally entitled to. Therefore, it cannot be said from any angle that the applicant was not aware of the fact that he was getting a higher pension and hence the third respondent is well within its right to recover the excess amount paid to him in view of the law laid down by the Hon'ble Supreme Court in the various judicial pronouncements relied upon by the learned counsel for the respondents.

9. We have given our thoughtful consideration to the entire matter and perused the pleadings on record and the judgments relied upon by the parties with the able assistance of the learned counsel appearing for the respective parties. The underlined theme of the above judgments is that no recovery can be effected from an employee for the excess amount paid to him for

no fault of his unless it is established that he was instrumental in getting the said amount by misleading or by misrepresentation of the facts to the authority concerned. In the recent case of Chandi Prasad Uniyal (supra) their Lordships of the Hon'ble Supreme Court have carved out three exceptions where recovery cannot be effected and except those circumstances their Lordships have held that if an amount, to which an employee is not entitled to, is paid to him, then the authorities are entitled to recover such amount. The relevant portion of the order is reproduced as under :-

"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 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."

Hon'ble Supreme Court also distinguished the declining recovery of excess payment in view of the peculiar facts and circumstances of those cases so as to avoid extreme hardship to the concerned employees, for example, where the employees concerned were mostly junior employees, or they had retired or were on verge of retirement, the employees were not at fault, and recovery which was ordered after a gap of many years would have caused extreme hardship, was not allowed.

10. It would, thus, be apparent that the finding of the Hon'ble Court that the recovery of excess payment is to be stopped as a matter of rule, proceeded to carve out specific situations where stoppage of recovery could be ordered. In other words, the recovery cannot be stopped as a matter of rule. It has been explained that recovery could be stopped where the employees concerned were on lower ladders or they had retired or were on verge of retirement, the employees were not at fault, and recovery which was ordered after a gap of many years and same would have caused extreme hardship to the concerned employee. Though the pensioners come within the exceptional clause carved out by the Hon'ble Supreme Court in **Chandi Prasad Uniyal** (supra), but the case in hand is slightly distinguishable on facts. In the instant case

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vide communication dated 06.10.2008 when pension of the applicant was revised after accepting the recommendations of the VIth Central Pay Commission it was categorically indicated therein that the applicant was entitled to a sum of Rs.36,364/- as revised pension w.e.f. 1.1.2006. This letter, copy of which has been annexed at Annexure A-4, is addressed to the Manager and was also endorsed to the applicant at his residential address. The applicant though has written a letter to the Manager on 26.09.2008 indicating therein that he also become entitled for revised pension at the rate of Rs.36,364/- despite that he kept on receiving pension on a higher side. This conduct of the applicant leads to an inference that he has not only received the pension on higher side but also he did not bother to inform the bank not to pay him the pension on the higher side or correct their statement for paying the lesser pension to which he was actually entitled to. Therefore, the applicant cannot be absolved from his liability to pay back the money for which he was not entitled to legally. Insofar as the contention of the applicant that there is violation of principles of natural justice, as before effecting recovery no show cause notice was served on him is concerned, considering the facts of the case where the applicant has nothing to say more than what he has already brought before us in this case, remanding the matter to the appropriate authority to comply with the principles of natural justice

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would be an empty formality only. Therefore the mistake on the part of the bank in paying the pension on the higher side cannot be allowed and considering that the tax payers' money cannot be allowed to be misused, we are left with no option but to uphold the action of the respondent-bank in effecting the recovery which is being made in installments.

11. Accordingly, the OA is dismissed, without any order as to costs.

(Uday Kumar Varma)
Member (A)

Place: Chandigarh.
Dated: 7.11.2014

'San.'

(Sanjeev Kaushik)
Member (J)