

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**CHANDIGARH BENCH**

...

OA No.060/00041/2014

**Date of decision:** 02.03.2015

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)  
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

Tarsem Singh age 81 years son of Jagan Nath retired Master Crafts Man  
PPO No.RCF/19900039 Bank Account No.10387162467, House No.B-9,  
356 Santokh Pura, Jalandhar.

**..APPLICANT**

**BY ADVOCATE:** Sh. Balram Singh

**VERSUS**

1. Union of India through its Secretary-cum-Chairman, Railway Board, Rail Bhawan, New Delhi.
2. Rail Coach Factory Kapurthala through its General Manager.
3. State Bank of India, Railway Station Branch, Jalandhar City through its Branch Manager.

**..RESPONDENTS**

**BY ADVOCATE:** Sh. L.B. Singh (R-1 & 2) & Sh. R.K. Sharma for Sh. S.K. Gupta (R-3)

**ORDER (ORAL)**

**Mr. Sanjeev Kaushik, Member (J):**

The applicant assails an order dated 24.01.2013 and the order dated 13.12.2013 issued by respondent no.2 whereby the applicant has been informed about the recovery of an amount of Rs.1,85,605/- from his pension in instalments at the rate of Rs.4500/- per month.

2. The facts, which led to filing of the present Original Application, are that the applicant, who was working with the respondents, retired on attaining the age of superannuation on 30.06.1990. By the impugned letter dated 24.06.2013 he has been informed by respondent no.1 that his pension has been revised and reduced by issuing a revised PPO and by another communication dated 13.12.2013 issued by respondent no.3 to the effect that the above recovery is to be effected from his pension in monthly instalment at the rate of Rs.4500/- per month from December, 2013 onwards. Both these above communications are under challenge in the present OA.

3. Shri Singh, learned counsel appearing for the applicant vehemently argued that the action of the respondents in passing the impugned orders is in flagrant violation of the principles of natural justice, as before passing the impugned orders the applicant was never put to notice and straightaway the impugned orders have been passed. Therefore, he prayed that the impugned order be set aside. He then

urged that the action of the respondents in ordering recovery from the pension of the applicant is also bad in law and they cannot recover the amount, which had already been paid to him because there is no misrepresentation or misstatement of facts on his part. To buttress his submission learned counsel placed reliance on the following judgments passed by the Hon'ble Supreme Court:

- i) **Syed Abdul Qadir and Ors. v. State of Bihar and Ors.**, (2009) 3 SCC 475.
- ii) **Sahib Ram v. State of Haryana**, 1995 Supp (1) SCC 18.
- iii) **Shyam Babu Verma v UOI**, 1994 SCC (2) 52.
- iv) **Jeewan Singh and others v. State of Punjab and others**, 2013 (1) SLR 204 (P&H).
- v) **Kusheswar Nath Pandey v. State of Bihar & Ors.**, Civil Appeal No.6658 of 2013.
- vi) **Budh Ram v. State of Haryana**, 2009 (3) SCT 333.
- vii) **Chandi Prasad Uniyal and Ors. v. State of Uttarakhand and Ors.**, 2012 (8) SCC 417

4. Per contra, the respondents have filed their separate written statements. Respondents no.1&2 have submitted in their written statement that when the pension of the applicant was revised they immediately sent order to the Bank to pay applicant pension at the rate of Rs.5135+DA, whereas the Bank has paid the pension at the rate of Rs.6750/- from August, 2010, which resulted into excess payment for which he was/is not entitled to. It is further submitted that the respondents issued the revised PPO on 24.06.2013 inadvertently, which was not implemented by the Bank and, therefore, a corrigendum was

issued on 12.02.2014 where the Bank has been informed that they had paid excess amount to the applicant. Averment to this effect has been made in para 4.1 & 4.2 of the written statement, which reads as follows:

"4.1 & 4.2 The applicant retired from Railway service on 30.06.1990. His pension was fixed @ Rs.736/- plus DA. Vide Pension Payment Order dated 26.6.1990, Ann. A-2, and revised vide Revised PPO dated 25.04.2009 to Rs.5135/- plus DA Ann. R-3. On attaining the age of 80 (60-sic) his pension was to be enhanced 20% w.e.f. 01.07.2012 to Rs.6162/-.

The pension is being disbursed through SBI, Railway Station Branch, Jalandhar City, Resp. No.3 which paid to the applicant excess amount of basic pension @ Rs.6750/- from August 2010 instead of @Rs.5135 plus DA and @ Rs.8100 from July 2012 instead of @ Rs.6162 plus DA. The revised PPO dated 24.06.2013 Ann. A-1 was incorrectly/inadvertently issued. The same was not implemented by the Bank as per its statement Ann.R-4 and a corrigendum dated 12.02.2014 Ann. R-5 has been issued in this regard. As the Bank has paid excess amount without any authority, the excess amount paid to the applicant is being recovered by the Bank and Resp. nos 1&2 are not a party to the same. Resp. Nos.1&2 have neither authorized the Bank to make over payment nor advised it effect recovery from the applicant's pension. The present is not a case of reduction of pension."

5. The Bank has filed its separate written statement wherein it has been submitted that no cause of action arose against it as it has acted upon the order passed by the Railways and there cannot be any fault on its part in making the payment at higher rates as being the disbursing authority only, it has only acted upon the orders of the Railways.

6. The applicant has filed rejoinder, reiterating the averments made in the Original Application.

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7. We have given our thoughtful consideration to the entire matter and perused the pleadings on record with the able assistance of the learned counsel appearing for the respective parties.

8. The only question to be answered now is as to whether recovery on account of wrong payment can be effected or not?

9. There is a plethora of decisions which have considered the similar issue whether a recovery can be ordered or not. In a recent judgment in the case of **Chandi Prasad Uniyal and Ors. V.State of Uttarakhand and Ors** 2012 AIR SCW 4742, the Hon'ble Supreme Court has considered the earlier precedent on this subject and 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 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."

10. Recently again their Lordships of the Hon'ble Supreme Court in the case of **State of Punjab v. Rafeeq Masih** (Civil Appeal No.11527/2014) decided on 18.12.2014 have again held that if a recovery is ordered from an employee belonging to Class-III and Class IV for no fault of him, then the action of the department is to be held to be illegal. Para-12 of the order reads as under:-

"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. (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

11. Perusal of the above legal position makes it clear that three exceptions have been carved out, viz. 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 cause extreme hardship, was not allowed.

12. In the light of above authoritative law on the subject, Considering that the applicant before us is a Class-III employee and comes within the exceptions carved out by the Hon'ble Supreme Court in the case of Rafeeq Masih (supra), we accept the present original application and declare the action of the respondents effecting recovery as bad in law and accordingly their decision to effect recovery is hereby quashed and set aside. However, the action of the respondents in correcting the error is upheld. We are not deciding the issue whether the Railways or the Bank are at fault in making excess payment to the applicant. Therefore, it is left upon for them to decide the inter-se dispute and in any case this is also not the issue before us. No order as to costs.

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

**(UDAY KUMAR VARMA)**  
**MEMBER (A)**

Place: Chandigarh  
Dated: 02.03.2015.  
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