

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No. 330/446/2015

Allahabad this the 06th day of July, 2018

Hon'ble Mr. Justice Vishnu Chandra Gupta, Member- J

Ms. Km. Monica Jain, Daughter of Late B.D. Jain, Mother's name Late Smt. R.V. Jain, Resident of – 8/5A, Shambhoo Estate (Barracks), New Cantt., Allahabad-211001, Uttar Pradesh.

Applicant

By Advocate: Mr. S.C. Kushwaha

Vs.

1. Union of India through the Secretary, Civil Defence, Union Secretariat, New Delhi.
2. Central Pension Accounting Officer (CPPC), Government of India Trikot-2, Bhika Ji Cama Place, New Delhi-110066.
3. Director of Audit, Defence Service, Central Command, O/o C.C. Meerut Cantt.
4. Assistant General Manager, Centralized Pension Processing Centre (CPPC), Sector-1, Janki Puram, Lucknow-226021.
5. State Bank of India, S.M.E., Civil Lines, Branch (Code 03126) Allahabad through its Branch Manager.

Respondents

By Advocate: Mr. R.K. Rai

O R D E R

Justice Vishnu Chandra Gupta, Judicial Member

Heard, Shri S.C. Kushwaha, learned counsel for the applicant and Shri Dharmendra Tiwari proxy counsel to Shri R.K. Rai, learned counsel for the respondents.

2. In this case, the impugned order has been passed by respondent Nos. 4 and 5 in pursuance of the Order passed by this Tribunal in OA No. 852 of 2011 on 01.06.2012. The operative portion of the Order is extracted herein below: -

"I have given thoughtful consideration to the arguments and counter arguments of both the counsel and have also perused the record. The fact of overpayment, in view of the PPO issued to the applicant is not disputed. It is also an undisputed fact that extra payment of family

pension to the applicant does not entail any misrepresentation or fraud or any fault on the part of the applicant. It is only due to fault and error on the part of the respondents 5 and 6 that alleged extra payment has taken place. It is thus settled principle of law as is clear from the judgments relied upon by the learned counsel the applicant that in such cases, where any pecuniary benefit is given to the applicant/employee for none of his/her fault it has happened due to error on the part of the respondents, then in that case recovery of the paid amount can take place but after giving opportunity of hearing or issuing show cause notice against the person to whom the said amount has been paid over and above whatever is due to him/her. In the instant case the recourse to this principle of natural justice has not been resorted to. Hence the recovery order passed by respondents No. 5 and 6 by way of impugned orders, cannot be sustained in the eye of law. The impugned orders dated 17.3.2011 and 1.4.2011 are quashed. The O.A. is allowed. However, the respondents shall be at liberty to take up the proceedings again after affording the opportunity of hearing or by way of show cause notice to/against the applicant, if so legally advised."

3. In pursuance of the aforesaid Order of this Tribunal, a show cause notice has been issued and after consider the reply, the recovery was directed to be made.

4. The contention of applicant is that as over payment has been made due to mistake of respondents and not of the applicant, therefore, the amount cannot be recovered from the applicant. This argument cannot be allowed to be raised_in view of the earlier Order dated 01.06.2012 passed by this Tribunal as this point was available to the applicant at that very particular stage. This question was also considered in the earlier proceeding but no relief has been granted to the applicant on that point. The relief was granted to the extent that the excess payment, admittedly, made to the applicant cannot be recovered unless an opportunity of being heard is given. The present impugned order has been passed after giving show cause notice to the applicant.

5. In view of the findings recorded in the earlier OA No. 852 of

2011 and keeping in view the principles enumerated under Order 2 Rule 2 and 3 C.P.C., the claim of the applicant is not allowed on this count. The Hon'ble Supreme Court in the case of "***State Bank of India v. Ram Chandra Dubey (2001) 1 SCC 73***" enumerated the same principle of law.

6. It is a fact that the over payment of pension was made which is now being recovered after issuing notice in pursuance of earlier Order passed in OA No. 852 of 2011.

7. Hence, the Tribunal does not find any reason to interfere with the impugned order. The OA lacks merit and the same is accordingly dismissed. No order as to cost.

Member – J

/M.M/