

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-488/2017

Reserved on : 01.03.2018.

Pronounced on : 09.04.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. Mohinder Pal Singh (LRS), 59 yrs
S/o Lt. Sh. Tarlok Singh Lamba,
R/o WZ-152, 2nd Floor, Gali No.8,
Shiv Nagar, New Delhi-110058.

.... Applicant

(through Sh. Anmol Pandita, Advocate)

Versus

1. The Controller General,
The Controller General of Defence Account,
Ministry of Defence,
Office of the CGDA,
Ulan Batar Road, Delhi.
2. The Principal Controller of Defence Account (Pension),
Draupadi Ghat, Allahabad-211014.
3. Indian Bank through
Its Chief Manager,
Indian Bank, CPPC,
4th Floor 66, Rajaji Salai,
Chennai-60001.
4. The Manager,
Indian Bank,
Janakpuri Branch,
Delhi-110058.

..... Respondents

(through Sh. M.S. Reen, Advocate for R-1 & R-2 and Sh. Jasbir Bidhor
and Sh. Pranav Sharma, Advocate for R-3 & R-4.

ORDER

The father of the applicant in the current O.A. has impugned order dated 27.04.2016 of the respondents whereby recovery of Rs. 8,79,644/- has been imposed upon him from his pension. It has been ordered therein that Rs. 10,000/- in 80 months will be recovered from his monthly pension w.e.f. July 2016 to February 2023. The applicant has also challenged the order dated 24.08.2016 whereby his pension has been revised @ Rs. 7350/- w.e.f. 01.01.2006.

2. The facts of the case are that the applicant superannuated as Section Officer Accounts from Defence Account Department on 31.07.1984. On implementation of the 6th Central Pay Commission, the pension of the applicant was re-fixed at Rs. 11,218/- by the respondents. The applicant states that he received an order dated 27.06.2016 issued by Chief Manager, Indian Bank whereby recovery of Rs. 8,79,644/- was imposed upon the applicant on account of over payment to him subsequent to implementation of 6th Central Pay Commission. Against this order, the applicant made a representation dated 16.08.2016 to the competent authority. The same was rejected on 24.08.2016 and he was informed that his pension has been reduced from Rs. 11,043/- to Rs. 7350/- w.e.f. 01.01.2006.

3. The applicant avers that his pension has been re-fixed by the respondents without seeking any clarification or information from him. He has impugned the orders dated 27.06.2016 and 24.08.2016 as being contrary to principles of natural justice. He submits that the respondents did not deem it appropriate even to issue a show cause notice to him before issuing the order of recovery. It has also been informed through the O.A. that an amount of Rs. 70,644/- lying in the account of the applicant has already been recovered by the Indian Bank Authority.

4. The applicant had earlier filed Writ Petition No. 10203/2016, which was decided on 02.11.2016 by the Hon'ble High Court of Delhi giving liberty to the applicant to withdraw the same to prefer it before the appropriate forum. The applicant adds that there was no misrepresentation on his part as a result of which wrong fixation of pension could have taken place. In view of the aforesaid, the recovery of any amount from the pension of the applicant is illegal and contrary to the law declared by the Hon'ble Supreme Court in their judgment in the case of **State of Punjab and Ors. Etc. Vs. Rafiq Masih (White Washer) Etc.**, AIR 2015 SC 696.

5. In the counter, the respondents No. 3 and 4 have submitted that the recovery of wrong payments made to the applicant has been made on the basis of the directions received from the

respondent No. 2 (Principal Controller of Defence Account (Pension) vide their letter dated 24.08.2016. Respondents have also relied upon Notification of the Reserve Bank of India issued in March, 2016 empowering them to do so.

6. Respondents No.1 and 2 aver that after Notification of 6th Central Pay Commission, a circular was issued to all Pension Disbursing Agencies i.e. Bank, Treasuries etc. to revise the pension of pre-2006 pensioners w.e.f. 01.01.2006. It was found that as per existing provision on the subject, the basic pension was based on the 6th Central Pay Commission, which was calculated and found to be Rs. 7350/- as per the following formula:-

“Basic Pension	:	Rs.3252/-
Dearness Pension	:	Rs. 1626/-
Dearness Relief	:	Rs. 1171/- (24% of Basic Pension+Dearness Pension)
Weightage of 40%	:	Rs.1301/- (40% of Basic Pension i.e. 40% of 3252)
Total	:	Rs.7350/-“

They further submit that the Indian Bank erroneously paid pension to the applicant @ Rs.11043/- w.e.f. June, 2013. Further, the applicant has not exhausted the administrative remedy available to him, hence the O.A. is not maintainable under Section 20 of Administrative Tribunals Act, 1985.

7. Consequent upon issue of Government of India, Ministry of P.PG and Pension O.M. dated 01.09.2008, the pension of the

applicant had to be revised to Rs. 7350/- w.e.f. 01.01.2006 by the PDA as per Circular No. 57 dated 17.09.2008 along with Additional pension @ Rs.1470/- w.e.f. 01.08.2006. However, the Pension Disbursing Authority i.e. Indian Bank erroneously paid pension @ Rs.11043/- w.e.f. June, 2013. Since the pension drawn by the applicant was not as per his entitlement and was erroneously paid by the Indian Bank, if needed to be recovered as per the relevant provisions of law.

8. I have gone through the facts of the case and carefully considered the submissions made by both sides. The issue regarding excess payments made to Government servants has been discussed at length by the Hon'ble Supreme Court in their Landmark judgment in the case of **State of Punjab and Ors. Vs. Rafiq Masih (Whitewasher) and Ors.**, AIR 2015 SC 696. The relevant paragraphs are being reproduced for the sake of clarity on the issue to be adjudicated:-

“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."

9. During the course of hearing, it was pointed out by the learned counsel for the applicant that the case at hand would undisputedly fall within the first three categories delineated above. Based on this judgment, the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training have also issued O.M. dated 02.03.2016 wherein they have clarified that the conclusions recorded by the Hon'ble Supreme Court and the ingredients depicted in paras-7 & 10 are indispensable in the aforementioned judgment.

10. In view of the aforesaid discussions, I have no hesitation in concluding that the orders dated 27.06.2016 and 24.08.2016 are violative of the law laid down by the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra). I, therefore, allow the O.A. and quash both the orders directing the respondents to refund the amount recovered from the pension of the applicant within a period of two months from the date of receipt of a certified copy of this order. No costs.

11. After filing of OA an MA No.4328/2017 was filed by the son of the applicant for substitution of LR Shri Mahinder Pal Singh in place of the applicant Shri Tarlok Singh Lamba, which was allowed due to death of the applicant in OA.

(Praveen Mahajan)
Member (A)

/Vinita/