

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

OA-934/2016

Reserved on : 22.12.2016.

Pronounced on : 05.01.2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Sh. H.K. Sharma aged about 85 years
Ex Section Officer,
S/o late Sh. Raman Lal,
R/o 13-C, Surya Apartments,
Sector-13, Rohini, Delhi-85.

.... **Applicant**

(through Sh. Yogesh Sharma, Advocate)

Versus

1. Union of India through
The Secretary, Ministry of
Communication & I.T.,
Sanchar Bhawan, Ashoka Road,
New Delhi-110001.
2. Department of Telecommunication,
20, Ashoka Road, Sanchar Bhawan,
New Delhi-110001.
3. Central Pension Accounting Office
Through the Secretary Ministry of Finance,
Government of India, Bhikaji Cama Place,
New Delhi-110066.
4. Union Bank of India,
14/15-F, Connaught Place,
New Delhi-110002,
Through its Manager. Respondents

(through Sh. A.K. Singh, Advocate)

ORDER**Mr. Shekhar Agarwal, Member (A)**

The applicant retired from the post of Section Officer from the Department of Communication on 30.11.1990. His pension was fixed at Rs. 1069/- p.m. On implementation of the 5th CPC recommendations his pension was fixed at Rs. 3750/- p.m. Thereafter, on implementation of 6th CPC recommendations, it was fixed at Rs. 8475/- p.m. w.e.f. 01.01.2006. The applicant received a letter dated 11.06.2014 from respondents No.1 informing him that there was a mistake in fixation of his pension, which stands reduced to Rs. 8145/- p.m. w.e.f. 01.01.2006. The applicant was also informed that over payment was being recovered from him. The applicant made several representations against the aforesaid recovery dated 20.11.2014, 03.12.2014 & 02.03.2015. However, he has failed to receive a favourable response from the respondents. He has now filed this O.A. before this Tribunal seeking the following relief:-

- “(a) set aside the order dated 11.06.2014 passed by the respondent No.2.
- (b) set aside the order dated 23.06.2014 passed by the respondent No.3.
- (c) set aside the Order dated 27.12.2014 passed by the respondent No.4.
- (d) pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

2. The contention of the applicant is that there was no misrepresentation on his part in fixation of his pension and, therefore, the recovery being made from him was contrary to the judgment of Hon'ble Supreme Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc.**, (Civil Appeal No. 11527/2014) dated 18.12.2014. He has also relied on the judgment of Apex Court in the case of **Shyam Babu Verma Vs. UOI**, 1994(27)ATC(SC) 121 and **Syed Abdul Qadir Vs. State of Bihar**, (2009) 3 SCC 475.

3. In their reply, the respondents have stated that the pension of the applicant had been erroneously fixed due to a clerical mistake and, therefore, the same was now being reduced in order to correct the mistake. The respondents have relied on the judgment of Apex Court in the case of **Chandi Prasad Uniyal Vs. State of Uttarakhand & Ors.**, (Civil Appeal No. 5899/2012) wherein it has been laid down that excess payment of public money made to employees is recoverable from them.

4. I have heard both sides and have perused the material placed on record. During the arguments learned counsel for the applicant stated that the applicant is not challenging the re-fixation of his pension. He is only aggrieved by the recovery being made from him almost 25 years after his retirement. He has stated that recovery of Rs. 1,33,038/- being made from him would cause extreme hardship.

He has relied on the Circular of DoP&T No. 18/03/2015-Estt. (Pay-I) dated 02.03.2016. On the other hand, the respondents have relied on the judgment of Chandigarh Bench of this Tribunal in **OA-060/01062/2015** (Amrik Singh Vs. UOI & Ors.) dated 25.05.2016.

4.1 I have considered the aforesaid submissions. In my opinion, O.M. dated 02.03.2016 of DoP&T has taken notice of the judgments of Apex Court in the case of **Chandi Prasad Uniyal** (supra) and **Rafiq Masih (White Washer) etc.** (supra). This is evident from mere reading of the first two paras of the aforesaid O.M. Thereafter, consultations have been held with the Department of Expenditure and Department of Legal Affairs and Ministries have been advised to deal with the issue of wrongful/excess payments made to government servants in accordance with the decision of the Apex Court in the case of **Rafiq Masih (White Washer) etc.**(supra). Consequently, in the instant case if this O.M. is applied, the case of the applicant would be covered by para-4(ii) of the aforesaid O.M. wherein it has been laid down that recovery from retired employees or from employees who are due to retire within one year of the order of the recovery would be impermissible in law. It would also be covered by para-4(iii) wherein it is laid down that 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 would be

impermissible in law. Thus, if this O.M. is applied to the applicant's case recovery ordered from him would be impermissible in law.

4.2 As far as the judgment of Chandigarh Bench of this Tribunal relied upon by the respondents is concerned, on going through the same, I find that this judgment has not noticed the O.M. dated 02.03.2016 in which Apex Court's judgments in the case of **Chandi Prasad Uniyal** (supra) and **Rafiq Masih (White Washer) etc.** (supra) have been dealt with. Thus, the judgment of Chandigarh Bench is per incuriam of the aforesaid O.M. Further, the view taken by Chandigarh Bench appears to be that **Rafiq Masih** (supra) judgment applies to recovery of excess payment of salary whereas **Chandi Prasad Uniyal's** judgment (supra) applies to recovery of excess payment of pension. However, a perusal of O.M. dated 02.03.2016 would reveal that this O.M. applies to all cases of recovery of excess payments.

5. In view of the above, I allow this O.A. partly and set aside the order dated 27.12.2014 passed by respondent No. 4. I further direct that no recovery shall be made from the applicant pursuant to orders dated 11.06.2014 of respondent No. 2 and 26.03.2014 of respondent No. 3. No costs.

(Shekhar Agarwal)
Member (A)

/Vinita/