

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 3309/2015

Reserved on: 29.01.2018
Pronounced on: 28.03.2018

Hon'ble Mrs. Jasmine Ahmed, Member (J)

Shri Kranti Deo S/o Late Shri Sitaram Saran
R/o D-13E, Second Floor, Vatika Apartment,
MIG Flats, G-8, Area Mayapuri,
New Delhi-64

....Applicant

(Through Shri U. Srivastava, Advocate)

Versus

Union of India Through

1. The Secretary
Ministry of Law and Justice,
Govt. of India, Deptt. Of Legal Affairs,
Shastri Bhawan, New Delhi
2. The Pay & Accounts Officer,
Department of Legal Affairs,
4th Floor, Janpath Bhawan,
New Delhi-01
3. The Pay & Accounts Officer,
Central Pension Accounting Office,
GOI, Trikot-II, Bhikaji Cama Place,
New Delhi-66
4. The Assistant General Manager,
Centralized Pension Processing Centre,
SBI, 2nd Floor, Chandni Chowk,
Delhi-06

....Respondents

(Through Shri Rajesh Katyal, Advocate)

ORDER**Mrs. Jasmine Ahmed, Member (J)**

The applicant joined the respondents as Assistant Legal Advisor in the year 1986. He got his due promotions during his service and finally retired from the post of Joint Secretary and Legal Advisor, Ministry of Law and Justice on attaining the age of superannuation with effect from 31.12.2013. He was issued PPO No.314381300784 and his pension was fixed at Rs.43340/- with effect from 1.01.2014. When he felt that a less amount of pension was being released by the bank, he approached the bank authorities to know the reasons but did not get satisfactory reply. Thereafter, the applicant approached the respondents and he was provided with an order dated 26.03.2015 under the covering letter dated 16.06.2015, operative part whereof reads as follows:

“With reference to your letter no.CPAO/A1/2015/KM/Vol-84/P-66 dated 30 Jan 2015, we have to advise that correct rate of D.A. is being paid to the above cited pensioner with effect from Jun 2014. Due to excess pension paid on account of old D.A. was paid instead of new D.A. with effect from Jan 2014 to May 2014. It creates a recovery of Rs.110415.

Since the recovery is fairly large, we have started the recovery of the said amount from the monthly pension of the pensioner @ Rs.15000/- p.m. from Mar 2015 till full amount is adjusted.”

2. Being aggrieved by order dated 26.03.2015, the applicant submitted a representation to the respondents dated 29.06.2015 with the request to stop the deduction of pension amount. When he did not receive any response from the respondents, he submitted a legal notice to the respondents dated 31.07.2015. Thereafter, he came to know that the matter has been referred to respondent no.2 for further necessary action but till date nothing has come out.

3. In support of his case, the applicant has relied upon **Bhagwan Shukla Vs. Union of India & ors.**, 1995 (2) AISLJ 30 and **State of Punjab and others Vs. Rafiq Masih (White Washer) etc.**, 2015 (2) AISLJ 151.

4. The respondents in their reply have stated that disbursement of pension was to be done by the authorized bank after adding the dearness relief at the rate as admissible from time to time. At the time of disbursement of pension, an undertaking had been given by the applicant to respondent no.4 for recovery of excess payment if any made by the bank from his pension. However, inadvertently while adding the dearness relief, it was calculated at the rate of 183% on the basis of 5th Pay Commission fixing his total pension at Rs.67312/- per month whereas it should have

been fixed at Rs.45,229/- (Rs.18624/- reduced pension + 100% DR of Rs.26,605/-) from 1.01.2014 to 30.06.2014 on the basis of 6th Pay Commission as the applicant retired on 31.12.2013 after the implementation of 6th Pay Commission recommendations. This resulted in excess payment of Rs.22,083/- per month from 1.01.2014 to 31.05.2014, totalling to Rs.1,10,415/- which was recovered in monthly instalments from the pensioner as he had given an undertaking to that effect to the bank. In this regard, reliance on behalf of respondents was placed on the judgment of the Hon'ble Apex Court in **High Court of Punjab & Haryana & ors. Vs. Jagdev Singh**, Civil Appeal No.3500/2006.

5. It is further submitted by the learned counsel for the respondents that excess payment was made due to a clerical mistake and thus recovery of excess payment was permissible under Rule 70 of the CCS (Pension) Rules 1972. Moreover, the clerical mistake was noticed within two years of the date of authorization of pension and, therefore, recovery of excess payment was justified and as per rules.

6. Heard the learned counsel for the parties and perused the pleadings available on record.

7. The controversy involved herein is within a narrow compass i.e. whether recovery of excess payment is permissible under the law, though made without any misrepresentation on behalf of the employee. The learned counsel for the applicant argued with vehemence that as the recovery was ordered without putting the applicant to notice, it was against the law settled by the Hon'ble Apex Court in **Bhagwan Shukla** (supra). On the other hand, in view of the ratio decided in **Jagdev Singh** (supra) after taking into consideration the ratio laid down in **Rafiq Masih** (supra), the respondents were entitled to recover the excess payment made as an undertaking was furnished by the officer in this regard while his pension was being fixed. Learned counsel for the applicant though stated that Show Cause was not issued and, therefore, recovery was impermissible but he failed to explain how the recovery was impermissible when an undertaking was given by the applicant that any excess payment was liable to be adjusted. Moreover, the applicant himself was a Legal Advisor and being an officer from the legal background, he is supposed to better understand the sanctity of an undertaking given. As regards reliance on **Rafiq Masih** (supra), we find that he is not covered by the exceptions also where under recovery by the employer has been held to be impermissible in law by the Hon'ble Apex

Court. Since the applicant belonged to Group `A' service and excess payment has not been made for a period in excess of five years before the order of recovery was issued, the judgment in **Rafiq Masih** (supra) also will not come to the rescue of the applicant.

8. In view of above discussion, I do not find any reason to interfere in the impugned order. The OA is, therefore, dismissed. No costs.

(Jasmine Ahmed)
Member (J)

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