

**Central Administrative Tribunal
Principal Bench**

OA No.4349/2015

New Delhi this the 29th day of November, 2017.

Hon'ble Mr. K.N. Shrivastava, Member (A)

Tilak Raj Gupta,
S/o Late Sh. Bishamber Dass,
Aged about 82 years,
R/o 40C-Masjid Moth,
DDA Flats (Phase-II),
New Delhi-110048.

... Applicant

(By Advocate: Shri R.K. Jain)

Versus

1. Union of India
Ministry of Finance,
Through its Secretary
New Delhi.
2. The Pay and Accounts Officer
Central Pension Accounting Office,
Ministry of Finance,
Trikoort-2 Complex, Bikaji Cama Place,
R.K.Puram, New Delhi-110066.
3. Pay and Accounts Officer No.1,
Govt. of NCT of Delhi,
West Block-7,
R.K.Puram, New Delhi-110066.
4. Assistant General Manager,
Centralized Pension Processing Centre,
State Bank of India,
3rd Floor,, Chandni Chowk,
Delhi-110006.
5. The Branch Manager,
State Bank of India,
Masjid Moth Branch,
Panchsheel Enclave,
New Delhi.

... Respondents

(By Advocate: Ms. Alka Sharma)

O R D E R (Oral)

Through the medium of this Original Application (OA) filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

“a. declare the action of the respondents in recovering an amount of Rs.90,000/- from the CBS account of the applicant, and (ii) the order dated 12.5.2014 (Annexure A-1) vide which the respondents ordered recovery of the balance amount of pension allegedly excess paid to the applicant, as illegal.

b. direct the respondents to refund an amount of Rs.90,000/- alongwith such further amount recovered from the applicant pursuant to the impugned order dated 12.5.2014 (Annexure A-1).

c. direct the respondents to pay additional family pension in terms of Sub Rule (2-B) of Rule 53 of the Central Civil Services (Pension) Rules, 1972, w.e.f. 5.6.2012 i.e. the date when the applicant/family pensioner attained the age of 80 years.”

2. The factual matrix of this case is as under:

2.1 The applicant's wife Smt. Chandrakanta Gupta was working as a Teacher in the Government School of Govt. of National Capital Territory of Delhi, (GNCTD). She retired from the service on attaining the age of superannuation on 31.05.2001. At the time of her retirement she was in the pay scale of Rs.7500-12000 as per 5th CPC. She was sanctioned pension w.e.f. 01.06.2001 vide PPO No.696740100766 dated 31.05.2001. She was drawing pension from State Bank of India, Masjid Moth Branch, New Delhi-48.

2.2 Smt. Chanderkanta died on 10.09.2007. The applicant informed the Bank about her death and also furnished Annexure A-3 Death Certificate to the Bank. He also requested for grant of

family pension to him as per rules. The applicant was sanctioned family pension and he started receiving the same in his account in the said Branch of the Bank.

2.3 As per sub-rule (2-B) of Rule-54 of the CCS (Pension) Rules, 1972, a family pensioner becomes entitled for receiving enhanced pension to the extent of 20% of the basic family pension on attaining the age of 80 years. The pension gets further enhanced as the pensioner becomes older and older. The table below gives the details:-

Age of family pensioner	Additional family pension
From 80 years to less than 85 years	20% of basic family pension
From 85 years to less than 90 years	30% of basic family pension
From 90 years to less than 95 years	40% of basic family pension
From 95 years to less than 100 years	50% of basic family pension
From 100 years or more	100% of basic family pension

2.4 The applicant attained the age of 80 years on 05.06.2012 and represented to respondent no.5 that his family pension be enhanced by 20% in terms of Rule-54 of CCS (Pension) Rules, 1972.

2.5 Consequent to the implementation of the 6th CPC recommendations, the respondent no.3 (Pay & Accounts Officer-I) sent an amendment letter dated 04.03.2014 to respondent no.2 to carry out modifications in both the halves of PPOs of the pensioner as per the details given therein. The applicant did not hear

anything from the respondents in regard to the enhancement of his pension on attaining the age of 80 years. On the contrary he received a copy of the impugned A-1 letter dated 12.05.2014 from Asstt. General Manager of Centralized Pension Processing Centre (CPCC) of State Bank of India, addressed to the Branch Manager, State Bank of India, Masjid Moth Branch, New Delhi advising that the pensioner was getting enhanced rate of family pension instead of normal rate of family pension, and the error has been rectified and according to due/drawn statement enclosed, a recovery of Rs.3,46,799/- is to be made from the pensioner and that an amount of Rs.90000/- has already been recovered from the CBS account of the pensioner. The letter further advised that the recovery for the remaining amount, @ Rs.5800/- per month should be started from May, 2014 from the family pension of the applicant.

2.6 Aggrieved by the impugned Annexure A-1 letter dated 12.05.2014, the applicant has filed the instant OA praying for the reliefs as indicated in para-1 (supra).

3. The applicant has pleaded the following grounds in support of the reliefs claimed:

- a) No show cause notice was issued to him before recovering Rs.90,000/- from his CBS account.
- b) The family pension of the applicant has been correctly fixed and there was no justification for reducing the family pension of the

applicant by ordering recovery of any alleged excess payment made. The official respondents have not passed any formal order regarding the recovery to be made.

c) The applicant has not indulged in any act of misrepresentation or fraud nor has suppressed any information which could have resulted into excess payment. Any excess payment made to a Government servant and particularly to a retiree without any malfeasance on his part cannot be recovered. Reliance in this regard is placed on the following judgments of the Hon'ble Supreme Court:

- i) **B.K. Akkara v. Govt. of India**, [(2006) 11 SCC 709.
- ii) **Premlata Joshi v. Chief Secretary, State of Jharkhand**, [2013 (15) JT 429: 2013 (13) Scale 703.
- iii) **State of Punjab v. Rafiq Masih (White Washer)**, [(2015) 4 SCC 334.

d) In terms of sub-rule (2-B) of Rule 54 of the CCS (Pension) Rules, the applicant is entitled for enhanced pension @20% of his basic pension after he completed the age of 80 years on 05.06.2012.

4. Pursuant to the notices issued the respondents entered appearance. However, the reply was filed only on behalf of respondents no.4 & 5 in which the following important averments have been made:

4.1 The applicant signed a letter of undertaking in favour of respondent no.5 stating that “Payment of Pension under PPO no.696740100766 through your office in consideration of your having at my request agreed to make payment of pension due to me every month by credit to my account with you. I, the under signed agree and undertake to refund or make good any amount to which I am not entitled and or any amount which may be credited to my account in excess of the amount to which I am or would be entitled.....”

4.2 On completion of all formalities, the applicant’s family pension is being regularly credited to his account maintained with respondent no.5.

4.3 After the applicant attained the age of 80 years, on his letter dated 21.09.2013 to respondent no.5 to enhance his family pension by 20% in terms of Rule 54 of CCS (Pension) Rules, the respondent no.5 sent the request of the applicant to respondent no.4 for necessary approval.

4.4 The Central Pension Accounting Office (CPAC) of Ministry of Finance, Govt. of India vide letter dated 25.03.2014 forwarded the amendment letter in respect of PPO No.696740100766 with instruction that the amount mentioned in this SSA may be verified from the original documents for payments and modification may be carried out in both the halves of the PPO for revision of pension of

Smt. Chandrakanta Gupta, holder of PPO no.696740100766. As per the said letter the enhanced family pension payable to the applicant was @ Rs.11,021/- p.m. till 13.05.2008 and thereafter was at the normal rate of Rs.7290/- p.m. from 14.05.2008.

4.5 Respondent no.4 after receiving the instructions from CPAC, Ministry of Finance, Government of India, i.e., respondent no.2, calculated the enhanced rate of family pension payable to the applicant and found that due to clerical mistake an excess amount of Rs.3,46,799/- had been paid in the account of the applicant. The enhanced basic family pension payable to the applicant in May, 2008 was Rs.8853/- whereas the amount paid was Rs.11,021/- (basic) and basic family pension payable to applicant from June, 2008 was Rs.7290/- whereas he has been paid @ Rs.11,021/- (basic) upto April, 2014. The excess amount paid to the applicant comes to Rs.3,46,799/- The applicant has given an undertaking vide letter dated 08.05.2014 to respondent no.4 to recover any extra amount of pension paid to the applicant and to give him the additional family pension after considering his age. Accordingly, an amount of Rs.90,000/- has been deducted from his CBS account on 12.05.2014 and the balance amount of Rs.2,56,799/- is required to be recovered from him @Rs.5800/- p.m. from his family pension from May, 2014 onwards.

4.6 The applicant had filed W.P. (C) no.6213/2014 before the Hon'ble High Court of Delhi, challenging therein the order dated 12.05.2014 of respondent no.4. The Hon'ble High Court was pleased to stay the operation of the order dated 12.05.2014 vide interim order dated 09.12.2014. In terms of the interim order, the respondent no.4 informed respondent no.5 that a sum of Rs.34,800/- recovered from the family pension of the applicant @Rs.5800/- p.m. from December, 2014 to May, 2015 has since been refunded to him.

4.7 The family pension is payable as per the Govt. of India policy on which respondents no.4 & 5 (State Bank of India) have no control and that they have to act as per the instructions of the Govt. of India (respondents 1 to 3). Hence, the applicant is not entitled to get back Rs.90,000/- and is liable to pay the balance excess amount of Rs.2,56,799/-

5. Arguments of Shri R.K. Jain and that of Ms. Alka Sharma, learned counsel for the respondents were heard.

6. From the pleadings and documents on records, it is crystal clear that the applicant was entitled to get family pension @ Rs.7290/ p.m. w.e.f. 1.1.2006 in terms of 6th CPC. On attaining the age of 80 years on 05.06.2012 he was entitled for enhanced family pension @ Rs.8853/- p.m. The applicant, however, had been paid pension @Rs.11021/- from 1.1.2006 to 13.05.2008 and thereafter

at the normal rate. This mistake has been detected by the respondents. They have determined the excess payment made to the applicant on this account at Rs.3,46,799/- The respondents were, therefore, justified in taking necessary action to recover the excess payment made and to re-fix the family pension of the applicant as per the rules.

7. It is also not in dispute that the applicant has not indulged in any act of misrepresentation or malfeasance for securing pension at a higher rate to which he was not entitled. The excess payment had been made to him over a long period of more than two years. On the issue of excess payment, the Hon'ble Apex Court in **Rafiq Masih** (supra) laid the following ratio of law:

“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.”

8. In terms of the judgment of the Hon'ble Apex Court in **Rafiq Masih** (supra), I am of the view that a direction is required to be issued to the respondents not to recover the excess payment made to the applicant. However, at the same time, I am also of the view that re-fixation of the pension of the applicant at the normal rate in terms of the rules is also justified.

9. In the conspectus of the discussions in the foregoing paras, the respondents are directed not to recover the excess payment of Rs.2,56,799/-. They are further directed to refund the amount of Rs.90,000/- already recovered from the applicant. I also uphold the action of the respondents to re-fix the pension of the applicant at the normal rate of Rs.7290/- p.m. w.e.f. 1.1.2006 and at the rate of Rs.8853/- after he attained the age of 80 years on 5.6.2012.

10. The OA stands allowed in the aforesaid terms. No costs.

(K.N. Shrivastava)
Member (A)

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