

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

OA-4183/2013

New Delhi this the 12th day of May, 2016.

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

Smt. Murti Devi,
Aged about 56 years
W/o late Sh. Sant Ram,
Ex-Postman, Kalkaji HPO,
R/o Village Anangpur,
P.O. Amar Nagar, 121003,
Distt. Faridabad (Haryana).

Address for Service of Notice-
C/o Sh. R.P. Sharma, Advocate,
CAT (PB) Bar Room,
Copernicus Marg, New Delhi-110001.

.... Applicant

(through Sh. R.P. Sharma, Advocate)

Versus

1. The Union of India,
Ministry of Communication & IT
Through the Secretary, Department of Posts,
Dak Bhawan, Sansad Marg,
New Delhi-110001.
2. Chief Postmaster General,
Delhi Postal Circle, Meghdoot Bhawan,
Link Road, New Delhi-110001.
3. The Senior Superintendent of Post Offices,
New Delhi South Division,
Nehru Place, New Delhi-110019.
4. The Postmaster (H.S.G.-I),
Kalkaji Head Post Office,
New Delhi-110019.

.... Respondents

(through Sh. Rajeev Ranjan Rai, Advocate)

O R D E R (Oral)

The applicant is an illiterate widow belonging to SC community. Her husband was working as a Postman when he expired on 09.04.2007 while in service. The applicant was granted family pension @ Rs. 3600/- p.m. + DA.

Since then the family pension was being deposited in her savings bank account. However, vide their order dated 24.05.2013, the respondents have intimated to her that her family pension was wrongly fixed and that she was entitled to get Rs. 5950/- p.m. instead of Rs. 8136/- p.m. that was being paid to her. As a result, an amount of Rs. 2,19,622/- has been paid excess to her during the period 10.04.2007 to April, 2013 and they were proposing to recover the same in instalments. Aggrieved by the aforesaid order, the applicant has approached this Tribunal.

2. In their reply, the respondents have stated that due to a calculation mistake the pension of the applicant got wrongly fixed at Rs. 8136/- p.m. instead of Rs. 5950/-. This mistake was detected only in the year 2013. The respondents have now started paying the reduced pension to the applicant and were proposing to recover the excess amount of Rs. 2, 19, 622/- paid to her.

3. I have heard both sides and have perused the material placed on record. Learned counsel for the applicant argued that the applicant was not contesting the reduced family pension that has been granted to her. However, she was contesting the recovery of Rs. 2, 19, 622/-, which the respondents were proposing. Learned counsel further argued that this recovery was impermissible under law as the applicant belongs to an under privileged class and such recovery after a gap of several years of payment, would cause great hardship to her. In support of his contention, learned counsel has relied on the judgment of Hon'ble Supreme Court in the case of **State of Punjab and Ors. etc. Vs. Rafiq Masih (White Washer) etc.**, 2015 (2) SLJ 151, in para-12 of which the following has been laid down:-

"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."

3.1 Learned counsel argued that applicant's case was squarely covered by this judgment. Learned counsel also cited the judgment of Hon'ble Supreme Court in the case of **Col. (Retd.) B.J. Akkara Vs. Govt. of India & Ors.**, 2006(11) SCC 709, in paras-28 to 30 of which the following has been laid down:-

"28. Such relief, restraining recovery back of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion, to relieve the employees, from the hardship that will be caused if recovery is implemented. A Government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, Courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.

29. On the same principle, pensioners can also seek a direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to in-service employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that

Respondents shall not recover any excess payments made towards pension in pursuance of circular dated 7.6.1999 till the issue of the clarificatory circular dated 11.9.2001. In so far as any excess payment made after the circular dated 11.9.2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made.

30. A faint attempt was made by the learned Addl. Solicitor General appearing for Respondent to contend that all such wrong payments could be recovered and at best the pensioners may be entitled to time or instalments to avoid hardship. No doubt in *Union of India vs Sujatha Vedachalam* [2000 (9) SCC 187], this Court did not bar the recovery of excess pay, but directed recovery in easy instalments. The said decision does not lay down a principle that relief from recovery should not be granted in regard to emoluments wrongly paid in excess, or that only relief in such cases is grant of instalments. A direction to recover the excess payment in instalments or a direction not to recover excess payment, is made as a consequential direction, after the main issue relating to the validity of the order refixing or reducing the pay/allowance/pension is decided. In some cases, the petitioners may merely seek quashing of the order refixing the pay and may not seek any consequential relief. In some cases, the petitioners may make a supplementary prayer seeking instalments in regard to refund of the excess payment if the validity of the order refixing the pay is upheld. In some other cases, the petitioners may pray that such excess payments should not be recovered. The grant of consequential relief would, therefore, depend upon the consequential prayer made. If the consequential prayer was not for waiving the excess payment but only for instalments, the court would obviously consider only the prayer for instalments. If any decision which upholds the refixation of pay/pension does not contain any consequential direction not to recover the excess payment already made or contains a consequential direction to recover the excess payment in instalments, it is not thereby laying down any proposition of law but is merely issuing consequential direction in exercise of judicial discretion, depending upon the prayer for consequential relief or absence of prayer for consequential relief as the case may be, and the facts and circumstances of the case. Many a time, the prayer for instalments or waiver of recovery of excess, is made not in the pleadings but during arguments or when the order is dictated upholding the order revising or re-fixating the pay/pension. Therefore, the decision in *Sujatha Vedachalam* (supra) will not come in the way of relief being granted to the pensioners in regard to the recovery of excess payments."

3.2 Learned counsel argued that the case of pensioner was even stronger than that of serving employee in so far as recovery was concerned.

3.3 On the other hand, learned counsel for the respondents relied on the judgment of Hon'ble Supreme Court in the case of **U.T. Chandigarh & Ors. Vs. Gurcharan Singh & Anr.**, (Civil Appeal No. 9873/2013 arising out of SLP(C) No.

17881/2008) dated 01.11.2013 in which it was held that even after retirement from service an employee cannot escape the recovery of excess amount that has been credited to his account due to an error.

4. After considering the rival submissions of the parties, I am of the opinion that the respondents have acted against the law laid down by Hon'ble Supreme Court in ordering recovery of excess amount from the family pension of the applicant. This is because admittedly the error was on the part of the respondents themselves and applicant had no role to play in the same. The applicant's husband was a Group-D employee and she herself is a widow from an under privileged class. The recovery pertains to period in excess of 05 years and would undoubtedly cause great hardship to her. Therefore, I hold that this case is squarely covered by the judgment of Hon'ble Supreme Court in the case of **Rafiq Masih** (supra) and recovery from the applicant is impermissible under law.

5. I, therefore, allow this O.A. and set aside the impugned order dated 24.05.2013. I further direct that no recovery shall be made from the applicant of the excess amount already paid to her. If any amount has been recovered from her pursuant to the impugned order, the same shall be refunded to her within a period of 60 days from the date of receipt of a certified copy of this order. However, I am not inclined to allow any interest on the amount to be refunded to the applicant. No costs.

(Shekhar Agarwal)
Member (A)

/Vinita/