

**Central Administrative Tribunal
Principal Bench**

OA No. 263/2018

Order reserved on: 16.10.2018
Order pronounced on : 27.11.2018

Hon'ble Mr. Pradeep Kumar, Member (A)

H.C.Soni, Retd. (G.M. (Pensioner),
Age 72 years,
S/o Late Sh. Babulal Soni,
Presently Residing at
37, Bank Enclave, Delhi-110092.

... Applicant

(By Advocate: Sh. M.K.Bhardwaj)

Versus

1. Union of India & Ors.,
Through its Secretary,
Govt. of India,
Ministry of Communication & I.T.,
Sanchar Bhawan, 20, Ashoka road,
New Delhi-110001.
2. The Controller of Communication Accounts,
Ministry of Communication & I.T.,
1st Floor, Sanchar Bhawan, 20,
Bhopal, M.P.
3. The Assistant General Manager,
State Bank of India,
(CPPC) Behind Working Women Hostel,
BHEL, Govindpura, Bhopal-462023
M.P.

... Respondents

(By Advocate: Sh. Subhash Gosain)

ORDER

Heard Sh. M.K. Bhardwaj, learned counsel for applicant and Sh. Subhash Gosain, learned counsel for respondents.

2. The applicant is a Group-A officer, who, after serving for 37 years, retired as a General Manager, Telecom on 31.12.2004 in the Senior Administrative Grade of Rs.18400-22400 with last pay being Rs.21,900/-. As per Pension Payment Order (PPO) issued on 31.12.2004 his pension was fixed at “Rs.9698/- plus CDA” w.e.f. 01.01.2005. The 6th CPC recommendations in respect of pensioners were accepted sometimes in 2008. Pending issue of any formal revised PPO as per 6th CPC, instructions were issued by respondent no.2 on 26.07.2011 revising the pension of the applicant to “Rs.36,529/- p.m. in the corresponding pay scale of Rs.37,400-67,000 with Grade Pay of Rs.10,000/-“ w.e.f. 01.01.2006. The applicant pleads that this revision was done by the respondents on their own without there being any request or any representation by him and this order was also not received by him at relevant point of time. However, the revised pension as well as arrears have since been paid.

3. Thereafter, one case was filed by Pensioners Association, where the applicant was also one of the petitioner, and as a result thereof, the Department of Pension and Pensioners Welfare (DOP&PW) issued OM dated 28.01.2013 and another OM dated

30.07.2015. The applicant pleads that had any revision to pension as per 6th CPC been warranted, the respondents could have revised his pension when these two OMs were issued. But his pension continued to be paid as per the orders dated 26.07.2011 (para 2 supra).

4. Thereafter, the formal instructions were issued by respondent no.2 to Pension Paying Bank vide their letter dated 27.11.2017 regarding revision to 6th CPC pension. It was at this stage that he came to know that pension was revised and reduced to “Rs.24,353/- plus CDA” and that also from retrospective effect from 01.01.2006. Almost simultaneously, the applicant was also advised vide respondent no.2 letter dated 24.11.2017 as under:

“With reference to above your pension as on 01.01.2005 was fixed as Rs.16163 based on basic pay including Dearness Pay Rs.32325/-. Therefore, revision of the pension from 01.01.2006 to be done without Dearness Pay. But alongwith the Dearness Pension revision of your pension from 01.01.2006 was done in the following manner:-

Basic Pension:	16163
Dearness Pension:	8082
D.A Relief 24%:	5819
40% of Basic Pension:	6465
Total Pension:	36529

Whereas it was to be revised as per following:

Basic Pension:	16163 (pension 10775 + D.P 5388)
D.P:	---
Dearness Relief 24% of 10775 :	3880
40% of Basic Pension Rs.10775:	4310
Total Pension:	24353

Accordingly, there was a mistake in pension fixation w.e.f. 01.01.2006 and overpayment has been done. Therefore, contact the bank branch and make the excess payment of the pension.”

5. This came as a shock to the applicant and he advised the pension paying bank with a copy to the respondent no.2 that PPO issued on 24.11.2017 was wrong and no ex parte decision should be taken especially in view of the decision by Hon’ble Apex Court which restrains any recoveries from the pensioners in **State of Punjab and others vs. Rafiq Masih (White Washer) and others**, (2015) 4 SCC 334. This was followed by another representation of the applicant dated 30.12.2017 wherein the applicant drew attention to an OM issued by DOPT vide their letter dated 02.03.2016. The relevant extracts from this OM dated 02.03.2016, are reproduced below:

“4. The Hon’ble Supreme Court while observing that 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 has summarized 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.

5. The matter has, consequently, been examined in consultation with the Department of Expenditure and the Department of Legal Affairs. The Ministries / Departments are advised to deal with the issue of wrongful / excess payments made to Government servants in accordance with above decision of the Hon'ble Supreme Court in CA No.11527 of 2014 (arising out of SLP (C) No.11684 of 2012) in State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc. However, wherever the waiver of recovery in the above-mentioned situations is considered, the same may be allowed with the express approval of Department of Expenditure in terms of this Department's OM No.18/26/2011-Estt (Pay-I) dated 6th February, 2014."

6. At this stage, the pension paying bank, who are the respondent no.3, vide their letter dated 19.12.2017, advised the applicant that revised PPO dated 24.11.2017 has been received and the pension shall be revised accordingly. Thereafter, the applicant again approached respondent no.2 citing the DOP&T instruction dated 02.03.2016, with a request to advise the bank not to make any recoveries. However, the pension paying bank advised him on 28.12.2017 that an excess payment of Rs.25,68,906/- has since been made which needs to be recovered and recovery @ Rs.26,266/- p.m. w.e.f. 01.01.2018 to 29.02.2026 shall be effected. The applicant again approached the bank through e-mail dated 07.01.2018.

7. The applicant pleads that the action on the part of the respondents cannot be accepted as they had not even given him any opportunity to explain his point of view. Accordingly, he

approached the Tribunal in the instant OA and sought following reliefs:

- “i) To quash and set aside the impugned order dated 24.11.2017 (A-1) and declare the action of the respondents in reducing the pension of applicant from 36,529 to 24,353 w.e.f. 01.01.2006 as illegal arbitrary and unconstitutional and issue directions for restoring the same with all consequential effects.
- ii) To declare the action of respondents in making recovery of the amount already paid to the applicant as per PPO dated 26.07.2011 as illegal and direct the respondents not to make any recovery of the amount already paid to the applicant as per revised PPO and continue to pay pension to the applicant as per his entitlement as per rules.
- iii) To allow the OA with cost.
- iv) to pass any other further orders as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

8. The applicant also sought interim relief in the form of stay on the order dated 24.11.2017 and consequential recoveries from the applicant. In the hearing on 19.01.2018, the Tribunal stayed any recovery as per respondent’s orders dated 24.11.2017 till next date. The applicant had also submitted their written arguments as directed in the hearing on 16.10.2018. The applicant drew attention to following judgements by Tribunal where recoveries of excess payments were disallowed:

- (i) **S.P.Singh and others vs. UOI**, OA No.1882 of 2015, decided on 28.09.2018 by Principal Bench.
- (ii) **Dileep K. Jain and others vs. UOI**, OA No.497/2015 decided on 01.08.2017 by Principal Bench.

(iii) **J.S.Sharma and others vs. UOI**, OA No.363/2012

decided on 05.02.2013 by Principal Bench.

In all these above cases, applicants were serving employees in Senior Administrative Grade and excess payment was in respect of Transport Allowance.

9. The respondents pleaded that in terms of instructions on the recommendations of 6th CPC, contained in DOP&PW OM dated 01.09.2008 all pension disbursing officers (paying bank in instant case, respondent no.3) were authorised to fix pension and pay the same. Bank had to advise this revision to the pension sanctioning authority. The revised pension was correctly fixed by bank at Rs.24,353/- w.e.f. 01.01.2006 and was correctly paid also upto August 2011.

However, while revised pension was advised to pension sanctioning authority (Respondent No.2), a clerical mistake occurred in the office of the respondent no.2, whereupon the revised instruction dated 10.08.2011 got issued to Bank, showing incorrect pension of Rs.36,529/- p.m. with effect from 01.01.2006, due to which excess pension was paid to the applicant. This needs to be recovered to avoid loss to the public exchequer.

10. The respondents also pleaded that subsequent representation of the applicant dated 11.12.2017 was also disposed of on 22.02.2018. Thus, the applicant is fully aware of the clerical mistake and need for recovery.

11. The respondents also pleaded that the DOPT instructions dated 02.03.2016, in respect of impermissibility of recoveries from the pensioners and procedure to be followed, are more in the context of Group 'C' and 'D' employees, which are not applicable in the present case as the applicant is a Group A officer retired from Senior Administrative Grade. Excess pension paid, was only on account of clerical error.

Further, the applicant had given a declaration and indemnity bond to the bank as well as to the respondent no.2 on 02.08.2004 and 29.11.2006 showing his consent for such recoveries. Therefore, the recoveries, for inadvertent excess past payments, are in order and they are necessary to avoid loss to public exchequer.

12. Respondent No.3, the pension paying bank brought out that they are only a via media between pension paying authority – respondent no.2 and the beneficiary, i.e. applicant and they cannot be made to suffer any loss on account of excess payment which are primarily due to instructions issued by respondent no.2. Further, in respect of such recoveries, Reserve Bank of India (RBI) had

issued a circular vide their letter dated 17.03.2016 wherein following directions are given:

“Recovery of excess/wrong payment made to a pensioner

12. Details of the uniform procedure evolved for recovery of excess/wrong payments made to pensioner drawing pensions under the Scheme for payment of pension to Central/Civil/Defence/Railways pensioners through agency banks, are given below:

a) As soon as the excess/wrong payment made to a pensioner comes to the notice of the paying branch, the branch should adjust the same against the amount standing to the credit to the pensioner's account to the extent possible including lump sum arrears payment.

b) If the entire amount of overpayment cannot be adjusted from the account, the pensioner may be asked to pay forthwith the balance amount of overpayment.

c) In case the pensioner expresses his inability to pay the amount, the same may be adjusted from the future pension payments to be made to the pensioners. For recovering the overpayment made to pensioner from his future pension payment in instalments 1/3rd of net (pension + relief) payable each month may be recovered unless the pensioner concerned gives consent in writing to pay a higher instalment amount.

d) If the overpayment cannot be recovered from the pensioner due to his death or discontinuance of pension then action has to be taken as per the letter of undertaking given by the pensioner under the scheme.

e) The pensioner may also be advised about the details of over payment/wrong payment and mode of its recovery.”

13. The respondents also brought out that as per 7th CPC which has come into force w.e.f. 01.01.2016, the applicable pension for the applicant works out to “Rs.78,800 + CDA”. Accordingly, recovery at the rate of Rs.26,266/- per month w.e.f. January 2018 had now been ordered which works to 30% of current pension. This is in accordance with the RBI instructions. The respondent no.3 also brought out that the ratio of Hon’ble Apex Court judgment

dated 18.12.2014 in the matter of **State of Punjab and others vs. Rafiq Masih (White Washer) and others**, (2015) 4 SCC 334, is not applicable in the instant case, as there is no employer – employee relationship between the bank and the applicant and also that the applicant is not a Group ‘C’ or ‘D’ employee but was a very senior gazetted officer, who are more likely to be aware of rules and instructions.

Further, the applicant had also given an undertaking for making good any excess paid. The respondent – Bank also quoted a decision by the Jodhpur Bench of the Tribunal in OA No.290/00305/2015 titled **Umed Raj Singhvi vs. Union of India and others** wherein it was held that Bank cannot be made to bear the burden of an excess payment and recovery of excess amount paid was allowed in easy instalments without any interest. Another case was cited wherein Hon’ble High Court of Rajasthan in Civil Writ Petition No.4179/2016 titled **Lt. Col. R.C.Setia vs. State Bank of India and another** have upheld the recovery of excess amount vide their order dated 08.11.2017.

The respondents also drew attention to a decision by Hon’ble Apex Court in the case of **High Court of Punjab and Haryana & others vs. Jagdev Singh**, 2016 (14) SCC 267, wherein the Court made a reference to **Rafiq Masih** (supra) judgment and thereafter decided that if the officer to whom the payment was made, was

clearly placed on notice in the first instance that any payment found to have been made in excess would be required to be refunded and if the officer had furnished such an undertaking while opting for the revised pay scale, he is bound by such an undertaking and recoveries shall be admissible.

The respondents also submitted their written arguments and drew attention to following judgments:

(1) Hon'ble Supreme Court case titled **High Court of Punjab and Haryana and others vs. Jagdev Singh**, 2016 (14) SCC 267.

This judgment is in context of a serving employee. In this case **Rafiq Masih** (supra) judgment was discussed and Hon'ble Court held that:

“11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12. For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years.”

14. Matter has been heard at length. Pension is a social security paid by the employer to the pensioner in lieu of past service rendered. The scheme is implemented through bank and thus paying bank is only a via media. In the instant case, three parties

are presently before us, namely, the recipient pensioner as applicant, the paying department as respondent no.2 and the paying bank as respondent no.3. In all such cases, the respondents are expected to calculate the payable amount correctly before disbursement. However, a mistake has admittedly happened at the end of respondents and admittedly without any representation or any request on the part of the applicant, and excess amount has been paid over long duration from 01.01.2006 till November 2017 and this excess payment is now sought to be recovered in easy instalments as permitted by RBI circular.

15. In respect of the excess payment, it is the **Rafiq Masih** (supra) judgment which has been relied upon in many other judgments. This judgment has made very important observation in para 6 and 7 of the same. This is reproduced below :-

“6. In view of the conclusions extracted hereinabove, it will be our endeavour, to lay down the parameters of fact situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employer, may not be compelled to refund the same. In our considered view, the instant benefit cannot extend to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee.

7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made.

In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under [Article 142](#) of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court."

The Hon'ble Supreme Court also expressed its concern for the employers, in case the monetary benefit has been wrongfully extended to an employee. In other parts of this judgment, it is also mentioned that directions issued in the interest of equity in exercise of jurisdiction under Article 142 of the Constitution of India cannot be treated as the basis in all such cases. As many as five instances where recovery is impermissible, were mentioned by Hon'ble Apex Court, and they were said to be not exhaustive.

16. In this context, it is the view of this Tribunal that even though there was absolutely no misrepresentation on the part of the applicant, this excess payment ought to have caught his attention, he being a senior officer and was also pursuing pension related cases in Tribunal. However, excess amounts were being paid and were received without raising any concern. These excess amounts are in the nature of unsolicited advance.

17. In instant case, three parties are presently before us, namely, the recipient pensioner as applicant, the paying department as respondent No.1 and the paying bank as respondent No.4. However, this Tribunal is aware that pressure on the public

resources, from which such pensions are actually being paid, and the same is to be kept in view.

18. The judgment in **Rafiq Masih** (supra), is in context of an employee primarily from Group C and Group D level and Hon'ble Apex Court had defined certain circumstances like total innocence of recipient, vintage of excess payment and there being no misrepresentation on the part of employee, when recoveries may not be permissible.

In the instant case, applicant was a very senior Group A officer who retired as a General Manager from Senior Administrative Grade. He had pursued court case also as a pensioner (para 3 supra). This Tribunal finds it inconceivable that despite this visible proactiveness on the part of applicant to agitate on pension related issues, there would have been no occasion for him to get warned about excess payment, when his pension increased from Rs.24,353/- p.m. to Rs.36,529/- p.m. sometime in September 2011, and that too retrospectively from 01.01.2006, despite there being no new CPC.

19. Further, the applicant had given two undertakings also dated 02.08.2004 and 29.11.2006 to the respondents, to the effect that any excess payments can be recovered. It is also noted that despite there being a specific averment in para 4.7 of counter by Respondent No.2, the rejoinder is totally silent about acknowledging

or denying this undertaking. This indicates admittance of having given such an undertaking. It is only natural that undertakings are to be taken seriously and given effect to if a situation so emerges.

20. On consideration of the issues involved in this OA, it is felt that it does not fall into any of the five categories mentioned in the said judgment (**Rafiq Masih** supra). Though the excess payment was not on the basis of any misinformation by the applicant, he cannot be permitted to enrich himself from the limited public resources. It is also noted that the difficulty, in the context of recovery from the applicant, is also substantially mitigated now on account of the fact that the pension payable to the applicant has been substantially increased in the recent past under the 7th CPC, which has come into effect from 01.01.2016.

21. Accordingly, this OA is disposed off with the directions that the details of monthwise “dues”, “drawn” and excess payment be advised to the applicant within two weeks of the receipt of these orders and excess be recovered in monthly instalments, without any interest, and such recovery will not exceed 20% of current monthly pension, till entire excess amount is fully recovered.

There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

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