

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00224/2017

Thursday, this the 22nd day of March, 2018

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member

E. Bhaskaran,
S/o. Late Eacharan, Aged 66 years,
Senior T O A (P) (Retd), Dept. of Telecommunications,
Kayarathu Valappil, (Gokulam)
Pilathara Chunangad P.O.,
Palakkad District – 679 511 **Applicant**

(By Advocate – Mr. C.S.G. Nair)

V e r s u s

1. Controller of Communication Accounts,
Dept. of Telecommunications,
Thiruvananthapuram – 695 033.
2. The Asst. General Manager,
State Bank of India,
Centralized Pension Processing Centre,
L.M.S. Compound, Vikas Bhavan P.O.
Thiruvananthapuram – 695 033.
3. Branch Manager,
State Bank of India,
Ottapalam – 679 101.
4. Union of India,
Represented by its Secretary,
Department of Pension & Pensioners' Welfare,
South Block, New Delhi – 110 001. **Respondents**

[By Advocate – Mr. K. Kesavankutty, ACGSC (R1&R4)]
[Mr. B.S. Syamanthak & Ms. Bindumol Joseph (R2&R3)]

This Original Application having been heard on 19.03.2018, the Tribunal on 22.03.2018 delivered the following:

O R D E R

Per: Mr. U. Sarathchandran, Judicial Member

Applicant, a Senior TOA retired from the Telecommunication Department, has approached this Tribunal being aggrieved by Annexure A-2 letter No.CPPC/SUD/Misc/16/2016-17 dated 25.5.2016 issued by the pension disbursing Bank, the contents of which is extracted below:

"To

THE BRANCH MANAGER
STATE BANK OF INDIA
OTTAPALAM

CPPC/SUD/Misc/16/.../2016-17 25/05/2016

Dear Sir,

Shri.Bhaskaran E
SB:10641334928
PPO:771461006296

We have been advised by Controller of Communication Accounts, Officer of the Ministry of Communications and IT, Dept of Telecommunications vide their letter CCA/KRL/PVA/18 dated 13.04.2016 that the above pensioner is entitled to Dearness Relief at the rates applicable to IDA on revised pay. But it is noticed that Dearness Relief applicable to 50% IDA merged have been paid, resulting in overpayment of rupees Rs.512776/. The calculation sheet of pension overpaid is attached herewith.

In terms of GAD Circular No.:NBG/GAD-PENSION/1/2016-17, sl no.7/2016-17 dt 1/4/16, the over paid amount may be recovered from the pensioner immediately and credited to us through IBTS.

As the pensioner does not have sufficient balance in his account, recovery has been set from 01/05/2016 to 31/07/2022 at Rs.6900/- pm for 75 months.

The pensioner may be advised accordingly.

Yours faithfully

Assistant General Manager “

2. According to the applicant, he being a pensioner is entitled to the protection of the judgment of the Hon'ble Supreme Court in ***State of Punjab and Others etc v. Rafiq Masih (White Washer) etc.*** decided on 18.12.2014 in Civil Appeal No.11527/2014 [AIR 2015 SC 696] wherein it was held that recoveries from the retired employees would be impermissible in law. He therefore seeks relief as under:

- “(i) To call for the records leading up to the issue of Annexure A2 and quash the same
- (ii) To declare that no amount is to be recoverd from the applicant towards the alleged excess payment.
- (iii) To direct the 2nd and 3rd respondents to refund an amount of Rs.69,000/- from the pension of the applicant from 1.5.2016 to 28.2.2017
- (iv) Grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case
- (v) Grant cost of this O.A. “

3. The respondents filed reply statement. In the reply statement filed by respondent nos.2&3 it is stated that the pension of the applicant was revised in November 2013and that while revising the pension, the pensioner was paid inadvertently DA at the rate of '50% IDA merged' instead of actual DA rate of 'IDA on revised pay '. This has resulted in excess payment of Rs.5,12,766/-. When this error was detected the Department of Telecommunications intimated the Bank to correct the applicable rate of DA

and also to recover the excess amount paid. A similar reply statement was filed by respondent nos.1-4 also.

4. The counsel appearing on both sides were heard. Perused the record .

5. Shri.Syamanthak, learned counsel appearing for respondent nos.2&3 -pension disbursing Bank submitted that in fact the excess payment was happened to be given to the applicant on account of an error occurred on the part of the Bank. Relying on the decision of Hon'ble Apex Court in ***High Court of Punjab & Haryana & Others v. Jagdev Singh*** reported in AIR 2016 SC 3523. He submitted that the applicant had furnished Annexure R-2 undertaking dated 16.6.2011 that any excess amount paid to him would be indemnified by him to the Bank.

6. In ***State of Punjab and Others v. Rafiq Masih*** AIR 2015 SC 696 the Apex Court held that in the following situations recovery by the employer 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."

7. Nevertheless, in *Jagadev Singh*'s case (*supra*) distinguishing *Rafiq Masih* (*supra*) judgment from the cases where undertakings were furnished by the officers, the Apex Court held:

"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. "

8. This Tribunal is of the view that in the light of the above clarification by the Apex Court in *Jagadev Singh* (*supra*), the case put forth by the applicant cannot be allowed. The Original Application is dismissed. No order as to costs.

(U.SARATHCHANDRAN)
JUDICIAL MEMBER

SV

List of Annexures of the applicant

Annexure A-1 - True copy of the PPO No. 771461006296/
DOT/KRL.

Annexure A-2 - A true copy of the Letter No. CPPC/SUD/Misc/16/
2016-17 dated 25.05.2016 issued by the
2nd respondent.

Annexure A-3 - True copy of the representation dated 10.06.2016.

Annexure A-4 - True copy of OM No. 18/03/2015-Estt.(Pay1) dated
02.03.2016 issued by the DoPT.

List of Annexures of the Respondents 1 & 4

Annexure R1 - True copy of pension revision authority
No. CCA/KRL/1-3 CC168/10-11/9646-48 dated
31.10.2013.

List of Annexures of the Respondents 2 & 3

Annexure R2(a) - A true copy of the undertaking executed by 5 the
applicant.

Annexure R2(b) - A true copy of the Circular No. RBI/2015-16/340
dated 17.03.2016.
