

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00333/2017

Wednesday, this the 27th day of June, 2018

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

K.P. Kunju,
S/o. Late Appukuttan, Aged 80 years,
Gangmate (Retd), Southern Railways (Palakkad Division),
Kulangaraparambil House, Painkulam P.O.,
Cheruthuruthy, Thrissur District – 679 531. **Applicant**

(By Advocate – Mr. C.S.G. Nair)

V e r s u s

- 1 Financial Advisor and Chief Accounts Officer,
Southern Railways, Chennai – 600 003.
- 2 Divisional Railway Manager,
Southern Railways, Palakkad Division,
Palakkad – 678 010.
- 3 Union of India,
Represented by the General Manager,
southern Railways, Chennai – 600 003.
- 4 Chief Manager,
State Bank of India,
Centralized Pension Processing Centre,
L.M.S. Compound, Vikas Bhavan P.O.,
Thiruvananthapuram – 695 033.
- 5 Branch Manager,
State Bank of India,
Shornnur, Palakkad Dist, Pin – 679 121. **Respondents**

(By Advocate – Mr. Sunil Jacob Jose (R1 to R3))

Mr. B.S. Syamanthak & Ms. Bindumol Joseph (R4 & R5))

This Original Application having been heard on 13.06.2018, the Tribunal on 27.06.2018 delivered the following:

ORDER

Per: E.K. Bharat Bhushan, Administrative Member

1. OA No. 180/333/2017 is filed by Shri. K.P. Kunju, who had retired as Gang mate (Palakkad West), Palakkad Division of Southern Railway on 31.10.1994 on superannuation. He had a qualifying service of 28 years. As per PPO No. 0605213879 issued on 02.02.1995 (Annexure A2) he was granted a monthly pension of Rs. 488/-. His pension was revised to Rs. 3,890/- w.e.f. 01.01.2006 and the pension was subject to further revision w.e.f. 01.01.2016 as Rs. 9,998/- per month. Being so, the applicant alleges that the Bank through whom the pension disbursement was being made orally informed him that an amount of Rs. 70,497/- had been paid in excess to him and this amount was going to be recovered @ Rs. 2,000/- w.e.f. July, 2016 onwards. True copies of the pension slips for the month of October, 2016 and December, 2016 issued by the 5th respondent are produced and marked as Annexure A3 and Annexure A4 respectively. Altogether, an amount of Rs. 20,200/- had been recovered from the applicant since July, 2016. The applicant alleges that he is not aware of the reason why this recovery has been effected. It is contended that the recovery from pension had been disallowed by the order in *State of Punjab & others etc. v. Rafiq Masih (White Washer) etc.* in Civil Appeal No. 11527 of 2014 decided on 18.12.2014 and the position had been clearly indicated in the OM No. 18/03/2015-Estt.(Pay-1) dated 02.03.2016 issued by the Ministry of Personnel, Public Grievances and Pension (Annexure A6) in consequence.

2. The respondents 1 to 3 have filed a reply statement in which it is stated that they had no role in effecting the recovery as made out in the OA. The documents filed are Annexure R1, which is the details of the revision of pension in favour of the applicant (Annexure R1) and a communication received from the concerned Bank, namely State Bank of India (Annexure R2) indicating that an additional quantum of pension had been granted to the applicant computing his date of birth as 18.03.1932 as mentioned in the PPO issued in 1995. It came about that actually the applicant would have attained the age of 80, making him eligible for the additional quantum of pension only on 18.10.2016. Hence, the Bank informs that they have started recovery which has been enhanced to Rs. 4,600/- per month from Rs. 2,000/- from March, 2017 onwards. The Bank has started recovery *suo motu* and the official respondents, namely the Southern Railway, had no hand in the same. The respondents 1 to 3 state however that the applicant's date of birth had been amended from 18.03.1932 to 18.10.1936. The applicant was well aware of this and it was his moral responsibility to inform the concerned authorities when an ineligible benefit was extended to him by oversight. The respondents conclude that a sum of Rs. 20,200/-, which has been paid in excess ought to be refunded by the applicant. They further point out that the judgment of the Hon'ble Supreme Court in **Rafiq Masih** pertains to recovery of over payments to the employees by their employers and do not relate to excess payment made to the pensioners by the pension disbursement authority and subsequent recovery of overpayment by the same authority. Clearly, the applicant's studied silence while receiving the additional 20% quantum from 18.03.2012 reveals that his role in the whole matter is by no

means innocent. The respondents 4 and 5 in their statement filed have produced a copy of the original PPO issued in 1995 as mentioned at Annexure R4(a). This document shows the date of birth of the applicant as 18.03.1932. Further, Annexure R4(b) is a letter from the official respondents to the Bank pointing out that as per the record the date of birth of the applicant is 18.10.1936 and he will be eligible for additional quantum only w.e.f. 18.10.2016. It is on account of this fact that the Bank had decided to proceed with the recovery. At Annexure R4(c) the Bank had produced an undertaking submitting that the applicant had agreed to refund any excess payment made but as could be seen from the notation at the top this was in the matter of claiming the Fixed Medical Allowance and for no other purpose.

3. On 26.04.2017 when the case came up for the first time, this Tribunal was pleased to order as an interim measure that the respondents shall ensure no further recovery is effected from the pension of the applicant till the next posting date. This direction was continued with in subsequent postings.

4. We have heard Shri. C.S.G. Nair, learned counsel for the applicant, Shri. Rajesh on behalf of Shri. Sunil Jacob Jose for respondents 1 to 3 and Shri. Syamanthak for respondents 4 and 5. The seminal judgment governing the field in the matter of recovery from pension is *Rafiq Masih*. In this particular case, the recovery from pension of the applicant has been initiated several years after his superannuation. The mistake has occurred in

the Bank relying on the date of birth mentioned in the PPO, which was incorrect. The official respondents by Annexure R4(b) document have chosen to correct the same and the result has been the recovery by which the applicant is aggrieved. The issue of an undertaking obtained by the respondent bank was raised by the learned counsel for the respondent Nos. 4 and 5. Such an undertaking, if issued, would certainly qualify *Rafiq Masih*. In the first instance, the document, which the learned counsel for the respondents 4 and 5 produce, was relating to the application for claiming Fixed Medical Advance and had nothing to do with the matter in question.

5. However, the same respondents have produced document (Annexure R4(g)) which is quoted in full below:

“Letter of under taking to be obtained from pensioners whose pension is paid by the Bank under the scheme for payment of Pensions by public sector banks

The Chief Manager,
STATE BANK OF INDIA
Shoranur.

....Not to be attested...

In consideration of the state Bank of India having agreed at my request to credit to my savings – bank/current account in my single name the amount of pension, payable to me from time to time by the Government of India, as it falls due, under the Scheme for payment of civil pensions of Central Government pensioners by public sector banks / the undersigned Shri. K.P. Kunju S/o. Shri..... aged..... of(address)..... agree and undertake to refund or make good to the Bank any amount to which I am not entitled or any excess amount which may be credited to my account over that to which I am or would be entitled and agree that the amount of money when demanded by the bank from me is due and payable to the bank in respect thereof shall be conclusive as to the amount and shall be binding on me. I also hereby so-as to bind myself and my heirs, executors and administrators-agree and undertake to indemnify the Bank from and against any loss, costs, charges, damages and expenses suffered or incurred by the Bank so crediting my pension to my account under the scheme and to forthwith pay the same to the Bank and also irrevocably authorise the Bank to recover the amount in respect thereof by debit to my said account or any other deposit belonging to

me in the hand of the Bank.

2. I further agree and consent that the Bank may furnish to the President of India or any authority specified or nominated in this behalf by the President of India such information relating to pensions in question which have been paid by the Bank as may be called for by such authority from to time having regard to the provisions of any law which may for the time being be in force or the practice among bankers in regard to the secrecy of the information relating to their customer's account.

Code No. 2488

Sd/-
Signature of the Pensioner”

6. While *Rafiq Masih* is the judgment governing the field, the subsequent order in *Jagadev Singh's* case distinguishes *Rafiq Masih* from cases where undertakings were furnished by the employees. In the said judgment 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”.

7. In this case, it is clearly seen that a undertaking pointing out that the applicant would compensate the disbursing agency for any amount, which may be credited to his account by error has been given. This being so, the Tribunal is of the view that in the light of the clarification by the Apex Court in *Jagadev Singh's* case (*supra*) the case put forth by the applicant is liable to be disallowed. OA is dismissed. No costs.

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures of the Applicant

Annexure A-1 - True copy of the Revised Pension Payment Order issued on 10.08.2011.

Annexure A-2 - True copy of the revised Order No. P500/PGT/Pen/0605213879 dated 19.07.2016.

Annexure A-3 - True copy of the Pension Slip for the month of October 2016 issued by the 5th respondent.

Annexure A-4 - True copy of the Pension Slip for the month of December 2016 issued by the 5th respondent.

Annexure A-5 - True copy of the Pension Slip for the month of March 2017 issued by the 5th respondent.

Annexure A-6 - True copy of the OM F.No. 18/03/2015-Estt.(Pay-1) dated 02.03.2016 issued by the Ministry of Personnel, Public Grievances and Pension.

List of Annexures of the Respondent Nos. 1 to 3

Annexure R-1 - True copy of order dated 17.05.1995 of Senior Divisional Accounts Officer, Southern Railway, Palakkad Division.

Annexure R-2 - True copy of letter dated 23.05.2017 of the State Bank of India.

List of Annexures of the Respondent Nos. 4 & 5

Annexure R4(a) - A true copy of the Pension Payment Order dated 02.02.1995.

Annexure R4(b) - A true copy of the letter issued by the Southern Railway dated 12.01.2016.

Annexure R4(c) - A true copy of the calculation statement of the excess payment made to the applicant.

Annexure R4(d) - A true copy of the letter dated 18.04.2017 along with the calculation statement.

Annexure R4(e) - A true copy of the undertaking executed by the applicant.

Annexure R4(f) - A true copy of the Circular No. RBI/2015-16/340 dated 17.03.2016.

Annexure R4(g) - A true copy of the undertaking executed by the applicant.
