

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00758/2016

Thursday, this the 4th day of October, 2018

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

1. K. Sivasankaran Nair, S/o. Late Kesavan Nair, Retired Chargeman, Grade I Tech., Heavy Vehicles Ordinance Factory, Avadi, Chennai – 600 054, Residing at Kannattu Keezhathil Veedu, Chadayamangalam PO, Kottarakkara, Kollam (died).
2. Padmavathy, W/o. Late Sivasankaran Nair, Aged 69 years, Residing at Kannattu Keezhathil Veedu, Chadayamangalam PO, Kottarakkara, Kollam.
3. S.P. Kailash, S/o. Late Sivasankaran Nair, Aged 45 years, Residing at No. 6A, Indra Street, Near Bible College, Poopomzhil Nagar, Avadi PO, Chennai – 600 062.
4. S.P. Girish, S/o. Late Sivasankaran Nair, aged 43 years, Residing at No. 3549, LIG-I, Tamil Nadu Housing Board, Avadi PO, Chennai – 600 062.
5. S.P. Mahendra, S/o. Late Sivasankaran Nair, aged 39 years, No. 34, Murugankovil Street, Ayyakkam, Chennai-600 077. **Applicants**

(By Advocate : Mr. B. Mohanlal)

V e r s u s

1. The Principal Controller of Defense Accounts (Pension), G1/Civil, Drowpathi Ghut, Allahabad – 211 014.
2. The Controller of Defense (Pension), Office of the Principal Controller of Defense Pension, G1/Civil, Drowpathi Ghut, Allahabad – 211 -014.
3. The Chief Manager, Indian Bank, 4th Floor, 66, Rajaji Salai, Chennai – 600 001.
4. The Manager, Indian Bank, Chadayamangalam Branch, Chadayamangalam PO, Kottarakkara, Kollam. **Respondents**

[By Advocates : Mr. N. Anil Ravi, ACGSC (R1&2) & Mr. P.N. Santhosh (R3&4)]

This application having been heard on 26.09.2018 the Tribunal on 04.10.2018 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The applicants claimed relief as under:

“i) To call for the records leading to Annexures A2 order form the respondents and set aside Annexure A2 and the order issued by the respondents for recovery of excess pension Rs. 9,22,006/- paid to the applicant in PPO No. C/FYS/19097/2005 from January 2006 onwards.

ii) To declare that the applicants is not liable to pay the excess pension Rs. 9,22,006/- obtained from the respondents in PPO No. C/FYS/19097/2005 from January 2006 onwards.

iii) To direct the respondents to disburse Rs. 17,556/- towards normal monthly pension to the applicant from August, 2016 onwards notwithstanding anything contained in Annexure A2 issued by the respondents for recovery of excess pension Rs. 9,22,006/- paid to the applicant in PPO No. C/FYS/19097/2005 from January 2006 onwards.

iv) To direct the respondents to desist from initiating recovery proceedings from the monthly pension of the applicant pursuant to Annexure A2 for recovery of excess pension Rs. 9,22,006/- paid to the applicant in PPO No. C/FYS/19097/2005 from January 2006 onwards.

v) Any other further relief or order as this Hon'ble Court may deem fit and proper to meet the ends of justice.”

2. This Original Application is instituted towards the recovery order made by the respondents for a sum of Rs. 9,22,006/- being the excess payment paid to the applicants from January, 2006 onwards by wrong fixation of pay in the VIth Pay Commission and thereby taking steps to recover Rs. 8,866/- from monthly pension of the applicants for a period of 104 months from August 2016 to March, 2025. The applicants are relying on the judgments of the apex court in *Syed Abdul Qair v. State of Bihar – 2009 (3) SCC 475* and *State of Punjab & Ors. v. Rafiq Mashish*

(Whitewasher) etc. - 2015 (4) SCC 334.

3. Notices were issued to the respondents. Respondents Nos. 1 & 2 filed a reply statement contending that they have neither directed to recover excess payment to the Bank nor they are at fault for making excess payment to the pensioner and it is the Bank who has made excess payment.

4. Counsel for respondents Nos. 3 & 4 had filed a reply statement contesting the present Original Application stating therein that this Tribunal cannot restrain them for effecting recovery of the excess payment. The fact remains that the applicant No. 1 has passed away during the pendency of the proceedings and recovery is being made through the legal heirs of the applicant No. 1. The respondents Nos. 3 & 4 rely on the judgment of the apex court in *High Court of Punjab & Harayana & Ors. v. Jagdev Singh* – (2016) 14 SCC 267 and submitted that they can recover the excess payment.

The relevant portion of *Jagdev Singh's* case (supra) is extracted below:

“11.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.”

5. Heard the learned counsel appearing for the applicant, Shri Anil Ravi, ACGSC learned counsel appearing for respondents Nos. 1 & 2 and Shri P.N. Santhosh learned counsel appearing for respondents Nos. 3 & 4. Perused the records.

6. The point raised before this Tribunal is regarding an undertaking submitted by the applicant No. 1. The same has not been placed on record despite repeated opportunity given to the respondents Nos. 3 & 4 (Bank). Learned counsel for the respondents Nos. 3 & 4 kept silent when a specific query was put to him regarding any undertaking taken from the applicant No. 1. Therefore, the judgment of the apex court in *Jagdev Singh's* case (supra) will not apply to the present case. In this case the judgment of the apex court in *Rafiq Mashish's* case (supra) shall apply. Accordingly, the respondents cannot make any recovery from the pension of the applicants. This Tribunal hold so.

7. The Original Application is allowed. There shall be no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

“SA”

Original Application No. 180/00758/2016

APPLICANTS' ANNEXURES

- Annexure A1** - True copy of the order No. C/FYS/19097/2005 dated 27.9.2005 issued by the respondents 1 and 2 to the applicant.
- Annexure A2** - True copy of the notice dated 9.8.2016 issued by the 3rd respondent to the applicant for recovery of the excess pension paid in PPO No. C/FYS/19097/2005 dated 27.9.2005.
- Annexure A3** - True copy of the judgment of the Hon'ble Supreme eCourt in Civil Appeal No. 11527/2014 dated 18.12.2014 in State of Punjab & Ors. etc. v. Rafiq Masih (Whitewasher) etc.
- Annexure A4** - True copy of the judgment in DB Civil Writ Petition No. 5771/2016 dated 22.8.2016 of the Hon'ble High Court of Rajasthan at Jodhpur.
- Annexure MA1-** True copy of the death certificate dated 12.6.2018 of the Original Applicant Sri Sivasankaran Nair obtained from the Registrar of Births and Deaths, Avadi Municipality, Chennai.

RESPONDENTS' ANNEXURES

- Annexure R1** - Copy of the circular No. 57 dt. 17.9.2008.
- Annexure R2** - GOI OM No. 38/37/08-P&PW(A) dt. 1.9.2016.
- Annexure R3** - Copy of the circular No. 141 dt. 7.12.2009.
- Annexure R4** - RBI letter No. H-10450/45.03.001/2008-09 dated 1.6.2009.
- Annexure R5** - Hon'ble CAT Jodhpur order dated 5.4.2016.
- Annexure R6** - Copy of Annexure K.
- Annexure R7** - Circular No. 141 dated 7.12.2009.
- Annexure R3(a)-** True copy of the order dated 5.4.2016 in OA No. 290/00305/2015 of the Hon'ble Jodhpur Bench of the Central Administrative Tribunal.

Annexure R3(b)- True copy of the communication dated 17.3.2016 issued by the Reserve Bank of India to all agency Banks in the country.

Annexure R3(c)- True copy of the communication dated 29.12.2009 issued by the Circle Office of the Indian Bank to all Branch Managers.

Annexure R3(d)- True copy of the communication dated 8.1.2010 issued by the Chadayamangalam Branch to Mr. S.K. Bhatnagar, Senior Accounts Officer, Office of the PCDA (P) Draupadi Ghat, Allahabad – 211014.

Annexure R3(e)- True copy of the RBI circular No. DGBA. Gad. No. 2960/45.01.001/2015-16 dt. 17.3.2016.

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