

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/01078/2017

Date of decision 14.11.2018

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

P.A.Nalini, W/o, Late. P.R.Balakrishnan, age 72 years,
Peruvallur House, Pazhamukku,
Mundoor P.O., Thrissur – 680541.
Kerala State.

..... **Applicant**

(By Advocate – Mr.C.S.G.Nair)

V e r s u s

1. Deleted.
2. Chief Manager,
State Bank of India, Central Pension Processing Centre,
Thiruvananthapuram 695033.
3. Branch Manager,
State Bank of India, Kunnakulam Branch,
Thrissur 680 503.
4. Union of India,
Represented by the Secretary,
Department of Pension & pensioners' Welfare,
Lok Nayak Bhawan, Khan Market,
New Delhi 110 003.

..... **Respondents**

(By Advocate – Mr.Thomas Mathew Nellimoottil R.4

**Mr. K.I.Mayankutty Mather (R.1)
M/s R.S. Kalkura & Harish Gopinath for R2 & R3)**

This Original Application having been heard on 14.11.2018, the Tribunal on the same day delivered the following in open court:

O R D E R (ORAL)

The present O.A. is filed by the applicant aggrieved by the recovery of Rs.3,87,619/- paid in excess of her eligible family pension and it could be recovered @ Rs.3000/- per month from her pension beginning from December, 2017. The applicant has submitted letter dated 9.12.2017 on receipt of Annexure A.2 order requesting not to recover any

amount from her family pension on alleged excess payment made to her. But her request was not found favourable with the respondents. Hence she has approached this Tribunal for redressal of his grievance.

2. The applicant has assailed the recovery on the ground that the Hon'ble Apex Court has laid down the procedure for recovery from retired pensioners in the case of State of Punjab & ors v. Rafiq Masish (White Washer) CA No. 11527 of 2014 (arising out of SLP(C) No. 11684 of 2012) in which it was held the recovery from retired group C employee can be made within five years and not prior to that.

3. Notices were issued. The respondents No.1 has filed reply statement opposing the reliefs claimed for in the original application. In the reply it is submitted that the enhanced payment of family pension was made by mistake to the applicant herein on 19th March 2012 which was first time pointed out by the audit team of the centralised pension accounting office, New Delhi. Immediately on receipt of information respondents took action of recovery of payment made by mistake to the tune of Rs. 3,87,619/- It is further submitted that the applicant was not entitled for the said payment since this amount was paid by mistake by R.2 and R.3 and then they are entitled to recover the said amount. In support of their claim the respondents have submitted that the applicant had furnished an undertaking which is annexure at Annexure R2(a). In this undertaking it is stipulated as under:

“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 pension in question which have been paid by the Bank as may be called for by such authority from time 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. “

Heard the learned counsel for the parties and perused the record.

4. During the course of arguments, learned counsel for the applicant Mr.C.S.G.Nair has produced copy of two judgements of Madhya Pradesh High Court and Rajasthan High

Court in which the judgement in the case of *High Court of Punjab & Haryana & Others v. Jagdev Singh* reported in (2016) 14 SCC 267 has been discussed at length. In the case of *Mohd. Shahid v. The State of Madhya Pradesh* in WP. No. 5937/2016 & 13828/2016 para 8 of the judgement it is stated as under:

“8. After the judgement of Jagdev Singh (supra), the issue came for consideration before the Division Bench of the High Court of Rajasthan in Mohdmmmed Yusuf (supra) wherein the Division Bench has held as under:

WP Nos. 5937-2016 & 13828-2016 “In the case in hand it is not disputed that the fixation impugned were made atleast 10 years earlier i.e. from the date the respondent University pass an order to effect recovery. It is also the position admitted that the appellants prior to their retirement were in employment of the University on the post of Technician/Junior Mechanic, the posts is Group C cadre and the appellants stood retired from service much back in the year 2002. So far as the issue with regard to undertaking given by them is concerned, that cannot be equated with the undertaking given by the Officer whose case was dealt with by the Hon'ble Apex Court n the State of Punjab & Haryana & ors. (supra) . In the case aforesaid, the person concerned was a Civil Judge (Junior Division) and further the undertaking given by him was in quite specific terms that any payment found to have been made in excess would be liable to be adjusted and further that fixation of the refund made was to be used for adjustment of excess payment, if any given.

In the instant matter, the undertaking said to be given is in a proforma that simply mentions for refund of over payments, if any made, on account of in correct fixation. The undertaking is a part of proforma and it is sell known that the persons belonging to lower posts put signatures on such undertaking without application of mind.

In these circumstances, we are of the considered opinon that cases of the present appellants are required to be dealt with in accordance with law laid down by the Apex Court in the case of Rafiq Masih (supra).

The appeals are accordingly allowed. The judgement impugned atd 24.2.2004 passed by the learned Single Bench is set aside. The writ WP No. 5937/2016 and 1328/2016 petitions preferred by the petitioners are allowed to the extent that the respondent University shall not effect any recovery from pay/pensionary benefits/post retiral benefits or otherwise from them on account of the amount said to be paid in excess while awarding selection grades or making pay fixation.”

5. The thrust of the argument of Mr.C.S.G.Nair learned counsel for the applicant is that this undertaking format is given by the aggrieved employee while taking pension from the respondents and they are under undue authority for getting accepting this undertaking and

shall not be effect recovery in view of the judgement cited herein above.

6. On the contrary, the respondents in the reply has submitted that they are relying on the judgement of *Jagdev Singh* (surpa) of the Hon'ble Apex Court where an undertaking is accepted, the department or bank is entitled to recover the excess payment made to the employee concerned.

7. Having heard the learned counsel on both sides, this Tribunal is of the view that taking the shelter of judgment passed in *Jagdev Singh* (supra) and narrow downing the scope of undertaking i.e. three years even if the Tribunal holds, the bank is entitled to recover the dues of excess payment made to the employee. The law of limitation would come into play where the limitation prescribed is three years, not more than that.

8. In view of the above, it is ordered that the respondent No.2 and 3 are at liberty to recover the dues of excess payment from the pension of the applicant of last three years only. Meaning thereby they can recover from 2009 to 2012. Rest of the recovery order is hereby set aside. Recovery will be made on equal monthly installments only.

9. The original application stands disposed of with the above direction. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

sj*

List of Annexures of the Applicant in O.A. No. 180/01078/201

Annexure A-1 True copy of the PPO No. 618080301458

Annexure A2. True copy of the Letter No.CPPC/PVB/FO5090768 dtd. 29.11.2017 along with calculation sheet issued by the 2nd respondent.

Annexure A.3 True copy of the letter dt. 9.1.2017 addressed to the 2nd Respondent.

Annexure A-4. True copy of OM F.No. 18/03/2015-Estt. (Pay.I) dt. 2.3.2016

List of Annexures filed by the respondents in O.A. No. 180/1078/2017

Annexure R1 (a) : True copy of the letter of undertaking executed by the defendant in favour of the bank.

Annexe R2(b) True copy of the Reserve Bank Circular bearing No. DGNA.GAD No. 2960/45.013001/2015-16 dated 17.03.2016.
