

**Central Administrative Tribunal
Madras Bench**

OA/310/01859/2017

Dated Thursday the 1st day of February Two Thousand Eighteen

P R E S E N T

Hon'ble Mr. R.Ramanujam, Member(A)

S.Amanullah
Retd. Telegraph Office Assistant,
O/O/AO/TR(North West),
No.60/15, Mannarsamy Koil Street,
Pulianthope,
Chennai 600 012. .. Applicant

By Advocate **M/s.Ratio Legis**

Vs.

1. Union of India, rep by
The Chief General Manager,
Bharat Sanchar Nigam Limited,
(A Government of India Enterprise),
O/o the Chief General Manager,
Chennai Telephones,
78 Purasawakkam High Road,
Chennai 600 010.
2. The Accounts Officer,
O/o Principal Controller of Communications Accounts,
M/o Communications & IT,
Govt. of India, 60 Ethiraj Salai,
Tamil Nadu Circle,
Chennai 600 008. .. Respondents

By Advocate **Mr.S.Gopinathan(R1), Mr.M.T.Arunan(R2)**

ORAL ORDER

Pronounced by Hon'ble Mr.R.Ramanujam, Member(A)

The applicant has filed this OA seeking the following relief:-

“To call for the records related to the impugned order No.Nil dated 07.1.2015 passed by the respondents and to quash the same and to direct the respondents to do the necessary to refund the amount so far recovered with effect from 2010 and to pass such other order/orders as this Hon'ble Tribunal may deem fit and proper and thus to render justice.”

2. Heard both sides. Learned counsel for the applicant submits that the applicant is aggrieved by the order of recovery from his pension consequent on alleged excess payment due to erroneous fixation of pension in 2010. The amount sought to be recovered is Rs.4,15,804/- as per Annexure A2 Recovery Advice dated 14.3.2015. It is submitted that the recovery had been ordered five years after the alleged erroneous fixation of pension. On enquiry, the applicant was informed that it was purely a matter between him and the Bank and the official respondents had nothing to do with it. However, Annexure A3 communication dated 07.1.2017 from the Office of Principal Controller of Communication Accounts, Department of Telecommunications to the effect that the pensioner was eligible for IDA without merger alongwith a direction to recover the excess amount paid to the pensioner and credit the same to their office account would clearly indicate that it is only consequent thereto, that the recovery had been initiated. The respondents could not, therefore, pretend that they had nothing to do with it.

3. Learned counsel for the applicant further submits that the applicant is a pensioner and the action of the respondents had come after a long delay of about five years during which time the applicant had in good faith believed that he was receiving the correct pension and had also expended it on various commitments. While the applicant is not against the refixation of pension by correction of the alleged error with prospective effect, recovery would drastically reduce the amount paid to him even as per his correct entitlement and make it difficult for him to meet his minimum expenditure commitments at an advanced age.

4. Learned counsel for the applicant seeks to rely case in the judgment of the Hon'ble Apex Court in the Rafiq Masih (Whitewasher) case following which the DoPT had issued an OM dated 02.3.2016 wherein it has clearly been stated that Ministries/Departments had to deal with the issue of wrongful/excess payments made to Government servants in accordance with the decision of the Hon'ble Supreme Court in the said case. The applicant is covered by para 4(ii) of the said OM under which recovery from retired employees, or employees who are due to retire within one year, of the order of recovery would be impermissible in law, it is contended. He would accordingly seek a direction to the respondents to stop the recovery forthwith and refund the amount recovered so far in terms of the impugned Annexure A3 communication and Annexure A2 Recovery Advice dated 14.3.2015.

5. Learned counsel for the respondents would, however, argue that it is purely a matter between Bank and the applicant. As the bank has not been impleaded, no relief could be granted to the applicant against the official respondent. Further there is no reduction in the pension of the applicant as his pension has only been correctly determined now. The pensioner was agreeable to a recovery albeit at a reduced rate of Rs.9000/- instead of Rs.12,000/- as per his own letter dated 24.11.2016. Accordingly, the pensioner is not entitled to the relief sought, it is contended.

6. I have carefully considered the facts of the matter. It is not in dispute that the allegedly erroneous fixation of pension was made in the year 2010 and never noticed by the official respondents thereafter till 2015. Further, in 2015, it is only the official respondent who had pointed out the error to the bank. It is not explained why the official respondent did not notice the error for as long as five years. There is no evidence of the official respondent having proceeded against the employee concerned who ought to have noticed the excess payment in time and taken remedial measures. Monthly statements must have been received from the bank regarding pension paid to the individual pensioners during this time. Pay and pension fixation is the responsibility of the employer and not of the Bank which is only an agency for payment. If such function had been assigned to the Bank for the sake of convenience, there has to be a proper system of monitoring

the payments for their correctness on a periodic basis. However, it appears that while the official respondents virtually disown any responsibility inspite of a patent dereliction of duty on the part of the employee(s) concerned, they seek to recover the alleged excess payment from the hapless pensioner promptly a by communication to the Bank once it was noticed.

7. On a careful examination of facts, I find that the matter is squarely covered by the judgment of the Hon'ble Apex Court in the Rafiq Masih (Whitewasher) case which had been accepted by the DoPT by issuing OM dated 02.3.2016. Clearly the matter has not been possessed in terms of the directions contained therein.

8. I have accordingly no hesitation in directing the respondents to stop the recovery of the excess amount forthwith and refund the amount already recovered in violation of the law laid down by the Hon'ble Apex Court as contained in OM of DoPT dated 02.3.2016.

9. OA is allowed in the above terms. No costs.

(R.Ramanujam)
Member(A)
01.02.2018

/G/