

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.021/00176/2018

Date of CAV: 13.08.2018

Date of Order: 14.08.2018

Between:

K. Surya Kumaran Nair, aged 73 years,
S/o.K. Narayanan Nair,
H. No. 29-1407/B, Deen Dayal Nagar,
Neredmet, Secunderabad.

... Applicant.

And

1. Union of India, Rep. by the General Manager,
South Central Railway, Rail Nilayam, 3rd Floor,
Secunderabad -500025
2. Sr. Divisional Personnel Officer,
Hyderabad Division,
South Central Railway, Hyderabad.
3. Sr. Divisional Finance Manager,
Hyderabad Division,
South Central Railway, Hyderabad.
4. The Chief Manager,
Central Pension Processing Centre,
Bank of India, Nagpur.
5. The Branch Manager,
Bank of India, Neredmet Branch,
PO. RK Puram, Neredmet, Hydereabad.

... Respondents

Counsel for the Applicant	...	Mr. G. Trinadha Rao, Advocate
Counsel for the Respondents	...	Mrs. Vijaya Sagi, SC for Railways.

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
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ORDER

{ As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

This OA is filed by the applicant against the proceedings issued by the 2nd respondent through SCR/P-HYB/695/Sett/DPG/SKN/2017 dated 11.05.2017 in

regard to the alleged excess payment of pension and the consequential proceedings issued by the AGM, Central Pension Processing Centre, Bank of India, Nagpur dated 07.02.2018.

2. The applicant was appointed as Fireman in the year 1965 and retired as Sr. Passenger Driver on 31.05.2005 by drawing a pay of Rs.7330+(DP) Rs.3665/-.

3. At the time of his superannuation, his basic pension was fixed at Rs.8477/- vide Pension Payment Order No. 59031106408 and the same was revised as per VI CPC to Rs.12,773/- vide proceedings No. 33/05-06 dated 27.01.2010 issued by the FA & CAO/SCR/SC.

4. With the implementation of the VII CPC, the pension of the applicant was supposed to be revised with effect from 01.01.2016. The applicant made a representation dated 04.05.2017 for revision of pension. The 2nd respondent while revising the pension as per VII CPC observed that excess pension has been paid and advised the applicant vide letter dated 11.05.2017 (Annexure A-3) to approach the bank authorities for adjusting the same. On approaching the 4th respondent bank authorities, based on the proceedings of the 2nd respondent, the 4th respondent issued proceedings as at Annexure A-4 dated 07.02.2018 informing the applicant that the arrears of pension calculated from January 2016 to January 2018 resulted in excess payment of Rs.3,09,146/- and an amount of Rs.77,000/- has been recovered in lump sum on 07.02.2018 and the remaining amount of Rs.2,32,146/- would be recovered in monthly instalments of Rs.10,941/- from March 2018 pension in 22 instalments as shown in Annexure – 4.

5. The applicant contends that such a recovery is against the principles of natural justice and the same was done without issuing any show cause notice to him. Besides, the applicant stated that he was no way responsible for the alleged excess payment of pension nor there was misrepresentation or any fraud committed by the applicant in gaining the alleged excess payment, if any. Such recoveries at the advanced age of 73 years of the applicant, who retired as Group 'C' employee would cause untold hardship. The applicant mentioned about the Hon'ble Supreme Court judgment in the *State of Punjab & Others Vs. Rafiq Masih (White Washer)* in Civil Appeal No. 11527/2014 dated 18.12.2014, wherein the Hon'ble Supreme Court has declared that recoveries by the employers, would be impermissible in law in the following cases:

- (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.

6. Based on this judgment, the Ministry of Railways issued corresponding orders in RBE No. 72/2016. The applicant claims that he has been put to extreme hardship by effecting recovery after a lapse of 12 years and that too, when it is against the law pronounced by the Hon'ble Supreme Court. The

applicant also states that the 4th & 5th respondents bank are working as agents discharging the statutory duties of the pension disbursement on behalf of the respondents 1 to 3.

7. The respondents in their reply informed that the applicant was paid pension without deducting commuted portion of the basic pension fixed at the time of retirement and the same was informed to the applicant on 11.05.2017 advising him to approach the bank authorities to rectify the discrepancy and the bank authorities who paid the proportionate amount of commuted pension to the retired employee from 01.01.2016 to 31.01.2018 amounting to Rs.3,09,146/- erroneously. The respondent Railways claim that they have not advised that the recovery to be made from the pensioner and it was the decision of the bank authorities.

8. Moreover, the overpayment of Rs.3,09,146/- is not overpayment but pension drawn in excess without deducting the commuted portion of pension erroneously by the bank authorities. Therefore, it does not come under the Railway Board circular vide RBE No. 72/2016. The respondents also contend that the applicant was aware of the excess pension paid by the bank and he has failed to bring it to the notice of the bank authorities with a malafide intention of personal gain.

9. Learned counsels on either side pleaded in accordance with the written submissions made by them.

10. The case has been very well covered by the judgment of the Hon'ble Supreme Court between the Punjab & Others Vs. Rafiq Masih (White Washer) in Civil Appeal No. 11527/2014 dated 18.12.2014. The important paras are

extracted hereunder for coming to a conclusion in regard to the dispute in question.

“2. All the private respondents in the present bunch of cases, were given monetary benefits, which were in excess of their entitlement. These benefits flowed to them, consequent upon a mistake committed by the concerned competent authority, in determining the emoluments payable to them. The mistake could have occurred on account of a variety of reasons; including the grant of a status, which the concerned employee was not entitled to; or payment of salary in a higher scale, than in consonance of the right of the concerned employee; or because of a wrongful fixation of salary of the employee, consequent upon the upward revision of pay-scales; or for having been granted allowances, for which the concerned employee was not authorized. The long and short of the matter is, that all the private respondents were beneficiaries of a mistake committed by the employer, and on account of the said unintentional mistake, employees were in receipt of monetary benefits, beyond their due.

3. Another essential factual component in this bunch of cases is, that the respondent-employees were not guilty of furnishing any incorrect information, which had led the concerned competent authority, to commit the mistake of making the higher payment to the employees. The payment of higher dues to the private respondents, in all these cases, was not on account of any misrepresentation made by them, nor was it on account of any fraud committed by them. Any participation of the private respondents, in the mistake committed by the employer, in extending the undeserved monetary benefits to the respondent-employees, is totally ruled out. It would therefore not be incorrect to record, that the private respondents, were as innocent as their employers, in the wrongful determination of their inflated emoluments.”

The Hon’ble Supreme Court has summarised the situations wherein the recoveries by the employers would be impermissible in law, as stated at para 5 supra.

11. In one another case of similar nature, which comes to the rescue of the applicant is in W.P. (MD) No. 17838/2015 & MP (MD) No. 1/2015, between A. Muthuiruvakkal Vs. the State Bank of India & Others, the Hon’ble Madurai Bench of Madras High Court, rendered a verdict on 27.11.2015, wherein the Hon’ble High Court has observed as under:

“5. The question now that arises for consideration before this Court is as to whether the respondent bank is justified in attaching the pension amount of the petitioner by passing the present impugned order for realization of the outstanding dues, as claimed by the respondent bank.

6. It is well settled that attachment of pension amount cannot be made for realization of any outstanding. In this aspect, the above decision of the Apex Court relied on by the learned counsel appearing for the petitioner can be usefully quoted, wherein, in paragraph No.33, the Supreme Court has observed that the pension and gratuity amount should not be attached under the provisions of the Code of Civil Procedure.”

12. The responsibility of the respondents Railway in settling the grievance of the applicant has been dealt at length by the Ernakulam Bench of CAT in OA No. 180/00859/2016 vide order dated 14.03.2017, wherein it has been observed as under:

“9. In this case, obviously excess payment happened to be paid on account of the error on the part of the respondent Bank. The respondent bank is working as an agent of the pension sanctioning authority for disbursement of pension which is the statutory duty of the pension granting authority, entrusted to the respondent bank under a government of India scheme regulated by the Reserve Bank of India (RBI). The RBI guidelines for recovery of excess payments in the matter of pension also will not stand the test of law in the light of the aforementioned Supreme Court rulings especially in the light of the decision in Rafiq Masih’s case (supra) that recovery of excess payment from the pensioner is impermissible in law. That being a decision of the Supreme Court of India it has the force of law under Article 141 of the Constitution and no authority including the RBI has any power to ignore the law laid down by the apex court. Obviously Annexure R-3 letter of undertaking also cannot come to the help of the bank because it is clearly mentioned that the letter of undertaking is pertaining to the payment of pension under PPO.

10. In the light of the above discussion, it appears to this Tribunal that the error committed by the officials of the respondents bank cannot be fastened on the applicant, the pensioner. Being an agent who has undertaken to disburse the pension as sanctioned by the pension sanctioning authority, it is the duty of the agent bank to disburse strictly in accordance with the directions of the pension sanctioning authority by way of PPO. In this case, as no error or fault is discernible on the part of the pension sanctioning authority, the entire fault of paying of excess amount to the applicant is obviously on the part of the respondent Nos. 3 & 4 bank. The bank, if so advised, is free to initiate appropriate proceedings against the erring officials for recovery of the same. As stated earlier, in view of the law laid down by the apex court in Rafiq Masih’s case (supra)

and the bank being the agent of the pension sanctioning authority, cannot effect any recovery from the pensioner.”

They apply mutatis mutandis to this case as well, since the present one is a mirror image of the case dealt by the said Bench.

13. The construction of the judgment is so clear that needs no elaboration. The banker in question cannot recover for follies committed by him.

14. One another pertinent judgment relating to the case is that of Hon’ble High Court of Judicature at Bombay, Bench at Aurangabad in WP No. 4610 of 2010, wherein when a contest between Babruwan Vs. State of Maharashtra & Others was adjudicated upon, the Hon’ble High Court upheld that there should not be any recovery from the excess payment of pension since the petitioner claimed that the excess payment of pension was not made to him because of indulging in any fraud or misrepresentation made by him. It was the mistake of the Respondents office due to which the excess payment was made.

15. The judgments cited and the Railway Board circular vide RBE No. 72/2016 tilt the balance of convenience in favour of the applicant. The law is well settled.

16. To conclude in view of what has been stated above, the applicant’s prayer seeking relief has to be acceded on the following grounds:

- i) The applicant is a Group ‘C’ employee
- ii) The applicant has retired from service,
- iii) Excess payment was made due to an error committed by the banker

- iv) The applicant has not misrepresented facts nor did he commit any fraud and on the contrary, he approached the respondents Railway vide letter dated 04.05.2017 to clear the discrepancies noticed. It was on his representation that the issue came to light.
- v) The respondent bankers are the agents of the respondent Railways undertaking the responsibility of discharging the pension on behalf of the respondents 1 to 3. Therefore, they are bound by the judgment of the Hon'ble Supreme Court.

17. Hence, the OA is allowed. The respondent Banks being the agents of the Respondent Railways, the Respondents 1 to 3 are directed to instruct the respondents 4 & 5 not to effect any recovery with immediate effect from the pension of the applicant. The amount already recovered from the applicant be refunded to the applicant within a period of 30 days from the date of receipt of this order. Pension payable to the applicant would be paid as per the Pension Payment Order issued by the pension sanctioning authority and revised from time to time, as per relevant rules on the subject.

18. No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 14th day of August, 2018

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