

**CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD**

**Original Application No.494 of 2017
Date of order : 05-02-2018**

Between :

G.Sathyavahi W/o G.Suryanarayana,
Aged about 87 years, Occ : House wife,
D.No.4129, Vidyanagar,
Gopalapatnam, Visakhapatnam,
Andhra Pradesh – 530027.

....Applicant

AND

1. Union of India,
Represented by Chairman,
Railway Board, Rail Bhavan,
New Delhi.
2. The General Manager,
East Coast Railway, Chandrasekharpur,
Bhubaneswar, Orissa State.
3. The Divisional Railway Manager,
East Coast Railway, Waltair Division,
Visakhapatnam,
Andhra Pradesh.
4. The Senior Divisional Finance Manager,
East Coast Railway, Waltair Division,
Visakhapatnam, Andhra Pradesh.
5. The Assistant General Manager,
State Bank of India,
Centralised Pension Processing Centre,
1st Floor, SCAB Building, SBI-LHO Compound,
Hyderabad-500095.Respondents

Counsel for the Applicant : Mr M.C. Jacob

Counsel for the Respondents : Mr.S.M.Patnaik, SC for Rlys
M/s V.Uma Devi for R-5

CORAM :

THE HON'BLE MR.JUSTICE R.KANTHA RAO, JUDICIAL MEMBER
THE HON'BLE MRS. MINNIE MATHEW, ADMINISTRATIVE MEMBER

(Oral order per Hon'ble Mr.Justice R.Kantha Rao, Judicial Member)

(Oral order per Hon'ble Mr.Justice R.Kantha Rao, Judicial Member)

Heard Mr. M. C. Jacob, learned counsel appearing for the applicant and Mr. S. M. Patnaik, learned Standing Counsel appearing for the Respondents.

2. The applicant is a family pensioner. Her husband worked under the 3rd Respondent as Passenger Guard (Guard 'A') AND RETIRED FROM SERVICE ON 31.07.1983. He was granted pension from 01.08.1993 at Rs.593/- and family pension at Rs.140/- . After implementation of 4th Central Pay Commission recommendations, the pension was fixed at Rs.1166/-. After implementation of 5th Central Pay Commission recommendations with effect from 01.01.1996, the pension was fixed at Rs.4,876/- and family pension was fixed at Rs.2,888/-. Based on the pay scale in the Railway Services (Revised) Pay Rules, it was further revised pursuant to the 6th Central Pay Commission recommendations to Rs.11,021/- and family pension at Rs.6,528/-. While so, the pension is refixed consequent to removing the Running Allowance. Pensioner expired on 03.11.2011. The applicant was granted family pension on 04.11.2011. In the 7th Central Pay Commission recommendations the family pension was revised to Rs.16,777/- with effect from 01.01.2016. In the meanwhile the revised Pension Payment Order is issued revising the Pension and Family Pension from 01.01.2016 ordering recovery of excess paid pension. Accordingly the 5th respondent commenced recovery of Rs.3,900/- from family pension.

The representation against the recovery is rejected by proceedings dated 12.05.2017. Feeling aggrieved, the applicant filed the present OA.

3. The Respondents in their reply statement justified the revision of pension and also the recovery directed by the Department. According to the Respondents, an amount of Rs.7,89,642/- was over paid.

4. In the instant OA, the applicant questioned only the recovery proposed by the Respondents but not the refixation of the pension. The question that falls for consideration in the present OA is whether the Respondents can recover any amount from the family pension of the applicant after refixation of the pension. The Hon'ble Supreme Court in State of Punjab Vs. Rafiq Masih (White washer) dealing with the issue of recovery by the department from the payments mistakenly made, held as follows :-

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law :

- (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.

Recently, the Hon'ble High Court of Madras in the case of Smt.V.Jayalakshmi Vs. The Government of Tamil Nadu (WP No.13715 of 2017 and WMP.No.149 of 2017), held as follows :-

"The Hon'ble Apex Court in sub clause (ii) of the paragraph 18 held that no recovery can be imposed in respect of the retired employees. In the case on hand, the writ petitioner is a family pensioner and aged about 87 years old. Thus, the writ petition deserves consideration in the hand of this Court. Accordingly, the order impugned passed by the fifth respondent in proceedings Na.Ka.No.005237/2017/C/3, dated 23.02.2017 is quashed and the respondents are directed to reimburse the amount already recovered from the writ petitioner, within a period of four weeks from the date of receipt of a copy of this order".

5. In view of the law laid down by the Hon'ble Apex Court which is followed by the Madras High Court in the case of Smt.V.Jayalakshmi Vs. The Government of Tamil Nadu (supra), the Respondents are stopped from imposing recoveries from family pension of the applicant on the ground that she was excess paid. However, the Respondents can pay the family pension as per the refixation to the applicant but they shall not make any recovery from the family pension of the applicant.

6. It is submitted by the learned counsel for the applicant that Respondents have already recovered the excess paid amount from February, 2017. If that is so, the Respondents are directed to re-pay the recovered amount to the applicant.

7. The Original Application is disposed of accordingly. No order as to costs.

(MINNIE MATHEW)
ADMINISTRATIVE MEMBER

(R.KANTHA RAO)
JUDICIAL MEMBER

Dated : 5th February, 2018.
Dictated in Open Court.

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