

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR.**

O.A.No.290/00033/2017

Pronounced on : 06.08.2018

Reserved on: 02.08.2018

CORAM: HON'BLE SMT. HINA P. SHAH, JUDICIAL MEMBER

Mahesh Giri S/o Late Shri Munsi Giri, aged about 82 years, R/o Plot No.130 Sugan Vihar, B.R. Birla School Road, Near Dali Bai Mandir, Jodhpur. Retired from the post of Chargeman 'B' from the office of CWM (C&W) Workshop, North Western Railway, Jodhpur.

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Applicant

(By Advocate: Shri S.K. Malik)

Versus

1. Union of India through General Manager, North Western Railway, Jaipur.
2. Chief Workshop Manager (Carriage & Wagon) North Western Railway, Jodhpur.
3. Branch Manager, State Bank of India, Kamla Nehru Nagar, Jodhpur.

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Respondents

(By Advocate: Shri Kamal Dave, for respondent no.1 & 2
Shri J.K. Chanda, for respondent no.3.)

O R D E R

HON'BLE SMT. HINA P. SHAH, MEMBER (J)

1. The applicant has filed the present Original Application (O.A.) seeking the following relief(s):-

- “i) By an appropriate writ order or direction impugned order dated 13.01.2017 at Annexure A1 and impugned PPO reducing the pension of the applicant be declared illegal and be quashed and set aside as if the same was never issued against the applicant.
- ii) By an order or direction the amount already recovered from the account of the applicant may kindly be ordered to be refunded along with 18% interest per annum.
- iii) By an order or direction respondents may be directed to restore the pension of the applicant at Rs.6750/- w.e.f. 01.01.2006 with all consequential benefits.
- iv) Exemplary cost be imposed on the respondents for causing undue harassment to the applicant.”

2. The facts of the case are as under:-

The applicant was initially appointed to the post of Hammer-Man with effect from 13.10.1955 and thereafter promoted to the post of Highly Skilled Grade-II with effect from October, 1982 and thereafter promoted on the post of Mistry with effect from 24.12.1984. He was lastly promoted to the post of Charge-man 'B' in June, 1983.

At the time of his retirement, he was in the pay scale of Rs.1400-2300 which was revised to Rs.5000-8000 with effect from 01.01.1996 and lastly in the pay scale of Rs.9300-34800 with Grade Pay of Rs.4200/- with effect from 01.01.2006.

The applicant submits that all the PPOs were issued after due sanction from the competent authority, there was no fraud or misrepresentation on his part for getting his pension fixed after the Pay Commission's report issued from time to time. The applicant is aggrieved of the impugned order dated 13.01.2017 (Annexure A1) passed by respondent no.3 i.e. Branch Manager, State Bank of India, Kamla Nehru Nagar, Jodhpur, wherein the basic pension of the applicant has been reduced from Rs.6750/- to Rs.5694/- and a recovery of Rs.2 lakhs has already been debited from the account of the applicant on 04.01.2017 and further recovery has been ordered at the rate of Rs.6000/- per month. The applicant being a retired person was sought by the impugned order dated 13.07.2017, the applicant relies on the OM dated 02.03.2016 which is clear that the said OM has been issued after the decision of the Hon'ble Supreme Court in the case of State of Punjab and Ors. Vs.Rafiq Masih and as per the situation mentioned in paragraph 4, the recovery by the employer would be impermissible in law as the case of the applicant is covered by the said judgment. The DoP&T, OM has been applied i.e. mutatis-mutandis to railway employees by Railway Board vide RBE No.72/2016, dated 22.06.2016.

The applicant submits that the impugned order is clearly illegal, arbitrary, discriminatory and is in violation of Articles 14 and 16 of the Constitution of India, and therefore, the same deserves to be quashed and set aside. He further stated that there was no misrepresentation on his part and that pension is not bounty rather it is a property within the meaning of Article 300A of the Constitution of India and the same cannot be taken away at the will and wish of the respondents. He further clarifies that he has retired from railway service way back on 30.09.1993 and he belongs to Class-III railway service and therefore the recovery of excess / wrongful payment, if any, paid to him is clearly arbitrary and the said illegal action of the respondents deserves to be quashed and set aside.

3. The respondents no.1 & 2 in the reply, represented by Railway Department stated that the applicant has no prima-facie case as the revision of pension was consonance with the Railway Board's circular dated 15.09.1999 and subsequent orders for revision of pension were issued and implemented. The pension of the applicant and similarly situated person was revised in view of RBE No.24/2010 as well as RBE No.42/2010 in furtherance towards RBE No.181/2008 resulting in reduction of the pension to Rs.5773/- per month from Rs. 6750/- per month which was allowed vide PPO dated 16.04.2010. It is their contention that the said circular was communicated to the Bank i.e. respondent no.3 vide PPO dated 02.12.2010 for making requisite correction and recovery. They have averred that it is for the bank to implement the directions as per the PPO referred above which the bank failed to carry out the instructions, it is only after receipt of the copy of the OA, respondents no.1 and 2 came to know about the failure of the bank to carry out the directions as per PPO dated 02.12.2010. They have further averred that the revision of pension was directed way back in the year 2010 vide PPO dated 02.12.2010 which was to be carried out by the bank at that time and failure to do so cannot be attributed to respondents no.1 and 2. The respondents further submitted that respondent no.3 i.e. the Bank is responsible for not carrying out the

instructions as per the PPO. The PPO dated 02.12.2010, incorporate specific condition that if any deduction / recovery is to be made, the same is to be made from the applicant's account. The applicant was also served with the copy of the revised PPO along with the calculation sheet and the same were also duly communicated to the bank for implementation but it is the failure on the part of the bank to implement the same resulting in payment of pension beyond the entitlement.

The respondents averred that admittedly the applicant was also aware about the revision and deduction of the pension but failed to raise any grievance in respect of the decision communicated and that he continued to withdraw erroneous higher pension beyond entitlement. They averred that the OM dated 22.06.2016 cannot hold good in the present case as it was passed after the Hon'ble Supreme Court decision in the case of Rafiq Masih whereas the pension of the applicant already stood revised way back in the year 2010. They averred that the disbursing bank i.e. respondent no.3 despite knowledge, failed to implement the same in 2017 and issued the impugned order dated 13.01.2007. Therefore, the fault admittedly lies with the bank to carry out necessary instructions for disbursement of the pension.

They have also filed their Miscellaneous Application bearing diary No.240/2018 on 03.05.2018 to place on record the scheme dated 01.08.1976 wherein a reference has been made to para 8.2 Sub Clause (ii) which provides that the Paying Branch will obtain an undertaking from the pensioner that excess payment credited to his/her account due to delay in receipt of any material information or any bonafide error can be recovered by the bank. In view of the same, R1 and R2 submit that R3 is wholly responsible for recovery.

4. Heard learned counsel for the applicant Shri S.K. Malik as well as Shri Kamal Dave, counsel for respondents no.1 & 2 and Shri J.K. Chanda, counsel for respondent no.3.

5. The learned counsel for the applicant besides reiterating the pleadings in the OA submitted that before ordering and effecting recovery for alleged excess payment made to him, the respondents did not put the applicant on notice, which is a gross violation of principles of natural justice. He further submitted that the applicant has not indulged into any Act of concealment, fraud or misrepresentation for securing more pension than what he was entitled to. He submitted that in terms of law laid down by the Hon'ble Apex Court in State of Punjab and Ors. Vs. Rafiq Masih (White Washer) & Ors. [(2015) 4 SCC 334], no such recovery can be made from the applicant. The applicant further relied in an identical case in OA No.290/00187/2015, passed by this Tribunal dated 19.10.2016 in case of Tikma Vs. UOI & Ors., relying upon the law laid down the Hon'ble Apex Court in Rafiq Masih (supra), this Bench has granted identical relief.

Per contra, Shri Kamal Dave, learned counsel for respondents no.1 and 2 argued that the applicant has been paid excess amount towards his pension due to wrong fixation of his pay scale under 5th and 6th CPC as explained by the respondents in the reply. Hence, this excess amount paid to the applicant is required to be recovered from him. He further argued that Hon'ble Apex Court in case of High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh [AIR 2016 SC 3523] has held that the mistakes committed while granting financial benefits to the Government servant can be rectified and excess amount paid can be recovered. He further submitted that the Hon'ble Apex Court has distinguished its judgment in Rafiq Masih (supra) case in its judgment in Jagdev Singh. He further argued that this Bench as in the case of Umed Raj Singhvi Vs. UOI & Ors. [OA No.290/00305/2015 in its order dated 05.04.2016] has upheld such recovery.

6. The respondent no.3 i.e. Bank in its reply dated 20.03.2017 has submitted that the respondent bank had been paying the pension to the applicant as per Pension Payment Order. The audit was conducted by the employer of the

applicant and during the said audit, it was found that an excess / wrong payment has been made to the applicant as such the employer of the petitioner directed to the respondent bank to recover the excess / wrong payment made to the petitioner. As per the directions of the employer a sum of Rs.2 lakhs has been debited / recovered from the petitioner and the same have been remitted to the employer. It is pertinent to mention here that on 02.11.1993, the petitioner submitted an undertaking to the respondent bank that "I, the under signed, agree and undertake to refund or make good any amount to which I am not entitled or any amount which may be credited to my account in excess of the amount to which I am or would be entitled. I, further hereby undertake and agree to bind myself my heirs, successors, executors and administrators to indemnify the bank from and against any loss suffered or incurred by the bank.....". It is their contention that since the petitioner has submitted the above undertaking as such an amount for which the petitioner was not entitled has been recovered from the petitioner. They have also relied from the Reserve Bank of India's circular dated 01.06.2009 and 17.03.2016 which has expressly instructed all the banks to recover the excess / wrong payment made to the petitioners. It is their contention that the employer himself conducted the audit of its pensioners with CPPC branch and instructed to recover excess / wrong payment made to the petitioner. He further averred that respondent no.3-Bank is an agent of the employer and is bound to obey all the instructions issued by the employer. So, whatever recovery has been effected, it was the amount for which the petitioner was not entitled as he is bound of the terms and undertaking submitted by him.

7. I have considered the arguments of the learned counsels for the parties and I have also perused the pleadings and documents annexed thereto.

8. It is an admitted fact that the applicant had no role to play in the issuance of the PPO to him at any point of time. He has also not indulged into any Act of

concealment or misrepresentation. Admittedly, he retired from a post falling in Group 'C' category more than 30 years ago.

9. As explained by the respondents, it is an admitted fact that the replacement scale of Rs.1400-2300, 4th CP, under 5th CPC Rs.4500-7000/-, which has been subsequently replaced under 6th CPC to Rs.5200-20200/- + Grade Pay of Rs.2800/-. The Railway Board has issued RBE No.24/2010 whereby pension of the applicant and many other such retired employees of the Railway Board Department might have been revised. Thus, I do not find any fault in the action of the respondents in rectifying the mistake, which was committed in fixation of the pension of the applicant at the time of revising his pension pursuant to implementation of 5th and 6th CPC with effect from 01.01.1996 and 01.01.2006 respectively.

10. Undisputedly, such revision of pension has entailed into a recovery of Rs.2 lakhs from the applicant as communicated to him vide impugned order dated 13.01.2017 as well as further recovery @ Rs.6000/- per month from his pension as communicated to him vide impugned order at Annexure A1 by the respondent no.3. In this regard, I would like to mention here that the Hon'ble Apex Court in the case of Rafiq Masih (supra) has clearly held that no such recovery can be made from Group 'C' employee, also particularly, in view of the fact that excess payment has been made due to the mistake of the respondents and not due to any misrepresentation or concealment on the part of the applicant.

11. I, therefore, hold that no recovery should be made from the applicant for any excess payment made to him towards his pension.

12. As I have discussed in the foregoing paragraphs, applicant's pension has been wrongly fixed at the time of revising his pension pursuant to the implementation of 5th and 6th CPC recommendations. The respondents have now

clarified that the applicant is entitled to pension of Rs.5694/- per month with effect from 01.01.2006 after the 6th CPC recommendations. I, therefore, hold that the applicant is entitled for pension @ Rs.5694/- per month only.

13. In view of the discussions made by me in the aforesaid paragraphs, I dispose of this OA in the following terms:

- a) The recovery of Rs.2 lakhs ordered vide Annexure A1 letter of respondent no.3-Bank dated 13.01.2017 is held illegal and is hereby quashed and set aside. The amount recovered from the applicant so far on this account from his pension shall be refunded to him by the respondents within three months from the date of this order.
- b) The action of the respondents in re-fixing the pension of the applicant at Rs.5694/- per month in terms of 6th CPC is upheld. The pension shall be made effective from this month i.e. from 01.08.2018.
- c) In case the applicant's pension has been revised as per 7th CPC, then he shall be paid the revised pension from the effective date of such implementation (01.01.2016) considering his pension under 6th CPC as Rs.5694/- per month.

14. MA bearing Diary No.248/2018 filed by respondents no.1 and 2 i.e. Railway Administration is also accordingly disposed of.

15. No order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

Place: JODHPUR
Dated: 06.08.2018

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