

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No. 290/00467/2016

Reserved on : 25.09.2018

Pronounced on : 05.10.2018

CORAM:

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

Uma Rathore w/o Late Shri Anand Kumar, aged about 67 years, resident of 23-A-16, Bapu Nagar, Bhilwara (Raj.)

...APPLICANT

BY ADVOCATE : Mr.Sanjay Nahar

VERSUS

1. Union of India through the General Manager, North Western Railway, Headquarter Office, Jaipur (Raj.)
2. Senior Divisional Financial Manager, Western Railway, Ratlam (Madhya Pradesh).
3. Deputy Financial Advisor & Chief Accounts officer (W&S), North-Western Railway, Ajmer (Raj).
4. Chief Manager, State Bank of Bikaner and Jaipur, CPCC, SMS Highway, Jaipur (Raj).
5. Branch Manager, State Bank of Bikaner and Jaipur, Branch Bhopalganj, Bhilwara (Raj).

..RESPONDENTS

BY ADVOCATE: Mr.Kamal Dave for resp. 1 to 3 and
Mr. Sachin Acharya for resp. 4 and 5

ORDER

The applicant has filed the present OA u/s 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- (i) By an appropriate order or direction, the impugned order dated 06.10.2015 (Annexure-A/1) may kindly be declared illegal and be quashed.
- (ii) By an appropriate order or direction, the applicant may be declared to be entitled for the family pension she was getting before passing of the impugned order dated 06.10.2015.
- (iii) By an appropriate order or direction, the entire illegal recovered amount as per the arrear sheet or otherwise may kindly be ordered to be refunded to the applicant with interest @ 18%.
- (iv) By an appropriate order or direction, the illegal holding of the amount deposited in the applicant's bank account may be declared illegal and ordered to be released with immediate effect.
- (v) By an appropriate order or direction, the responsible officer of the department as well as of the bank who were part of the process of ordering or effective recovering illegally from the family pension and bank account of the applicant without any authorization may kindly be punished with exemplary cost or suitably in accordance with the service rules.
- (vi) Any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

2. Brief facts of the case, as stated by the applicant, are that her husband was serving in the respondent railway department and after attaining the age of superannuation retired on 1.10.1999. A PPO bearing No. WR/21316/281205 was issued on 10.1.2000. Unfortunately, husband of the applicant expired on 6.11.2003 and thereafter family pension was ordered to be given to the applicant. By communication cum order dated 6.10.2015 it has been alleged by the respondents that the applicant was entitled for enhanced family pension till 12.03.2006 only and

thereafter she was liable to receive Rs. 4101/- only, but the bank has disbursed enhanced amount of family pension of Rs. 6838/- to the applicant till September, 2015. As the said payment was wrongly paid, it is, therefore, required to recover the excess amount of family pension, which has been paid to the applicant and that amount comes to Rs. 4,54,601/- for the stipulated period. The computation of the excess amount paid was also attached with the impugned order dated 6.10.2015 (Ann.A/1). It is for the first time that vide letter dated 13.10.2015, the applicant was asked to come to the bank and contact the Branch Manager (Ann.A/3). The applicant had approached the bank and had a meeting with respondent No.5 who then informed that due to anomaly in revision of pension made in 2006, the applicant has been paid excess family pension since March, 2006 and, therefore, she is required to deposit the excess amount of family pension paid to her and the amount of family pension was also required to be reduced to its actual entitlement amount. Ann.A/4 is the letter from the bank dated 12.11.2015 stating that as per the meeting held on 13.10.2015, the applicant had promised to deposit the excess amount paid within a few days and as the same is not deposited in the bank, it was clarified that the pension

for September, 2015 is deposited in her savings account and, therefore, for excess payment of pension, the applicant is required to contact the bank. Thereafter, the applicant contacted Bharat Pensioners Samaj for redressal of her grievance about the illegal recovery being made from her pension account pertaining to family pension. The said Pensioners Samaj in reply gave representation to the respondent bank seeking payment details of the complete family pension paid to the applicant instead of reduced one and also demanded stoppage of recovery of the excess amount from the family pension of the applicant as per their letter dated 1.11.2015 (Ann.A/5). One more representation dated 25.12.2015 was given by the Bharat Pensioners Samaj on behalf of the applicant on the basis of judgment passed by the Hon'ble Apex Court in Civil Appeal No.11527/2014 titled, State of Punjab vs. Rafiq Masih and Ors. along with other bunch cases related with similar controversy. Since the applicant did not deposit the excess amount to the respondent bank, the respondent bank informed the applicant that a recovery of Rs. 3000/- has been started from the family pension of the applicant from the month of October, 2105 and the available balance amount lying in the bank account of the applicant which

was Rs. 1,15,000 was also put on hold and the applicant was denied from withdrawal of the said amount till the recovery amount is deposited by the applicant (Ann.A/7). Since there was no progress, again the applicant gave a representation to the bank dated 25.3.2016 through Pensions Samaj requesting to stop the illegal recovery being made from family pension of the applicant. The applicant avers that the impugned action of the respondents is against the principles of natural justice and without proper application of mind, therefore, the same is in gross violation of Article 14,16, 21 and 300-A of the Constitution of India.

3. After issue of notice, respondent Nos. 1 to 3 have filed their reply dated 21.2.2017 and 18.8.2017 and respondent Nos. 4 to 5 have also filed reply dated 1.2.2017. The official respondents stated that the applicant has challenged the communication dated 6.20.2015 (Ann.A/1) communicated by office of respondent No. 3 to respondent No. 5 intimating the excessive erroneous payment of family pension being paid to the applicant. It is further stated that in the routine inspection carried out in pension cases by respondent No.3, which is a routine procedure for ensuring the correctness of the payment of pension, the instance of excess payment

being made to the applicant was detected. The disbursing authority i.e. SBBJ, Bhopalganj Branch, Bhilwara has to disburse the pension as per terms of PPO dated 10.1.2000 issued by the O/o Senior DFM, Western Railway, Ratlam. The family pension case of the applicant was advised renewal of the pension through SBBJ CPCC Branch, SMS Highway Jaipur and SBBJ, Bhopalganj Branch, Bhilwara vide order dated 6.10.2015. It is clear that the applicant was entitled to receive enhanced family pension Rs. 3025/- (as per 5th CPC) from 7.11.2003 to 31.12.2005 and Rs. 4101/- (as per 6th CPC) from 1.1.2006 to 12.3.2006, but the SBBJ, Bhopalganj, Bhilwara has wrongly disbursed enhanced family pension of Rs. 6838/- upto September, 2015. This error was detected during the course of routine inspection carried out by respondent No.3 and accordingly it was communicated to respondent no.4 bank to take necessary steps to recover the excess payment made to the pensioner. The official respondents have clearly stated that the railway was not at all at fault and it is the disbursing bank which is solely responsible for the erroneous payment and the said bank was chosen by the employee himself. They further submitted that the action with regard to excess payment made to the pension is taken by

respondent No. 4 and 5 solely as the same does not pertain to respondent Nos. 1 to 3. It was also made clear that pension is authorised through PPO and the PPO is strictly passed in adherence to the entitlement for pension/family pension and error in disbursing the pension in accordance with the PPO by the bank cannot be fasten on respondent Nos. 1 to 3.

As per the reply of respondent Nos. 4 and 5, it is submitted that the answering respondent bank was informed by respondent Nos. 1 to 3 vide letter dated 6.10.2015 that the applicant has been paid enhanced pension till October, 2015 which as a matter of fact was supposed to be paid till 12.3.2006. It was further informed that the total amount of pension which was paid in excess amounted to Rs. 4,54,601, therefore, the same is liable to be recovered. In pursuance to the said letter, the applicant was called vide letter dated 13.10.2015. The applicant presented herself before the answering respondents and submitted that she would submit a proposed scheme for the recovery amount of the excess amount so paid to her in excess, but since nothing was received from the applicant in this behalf, the respondent bank was forced to write to the applicant and called upon her to visit the bank in lieu of the

matter vide letter dated 12.11.2015. The applicant was having full knowledge of excess payment being made to her and that she was liable to pay back the same. It is further submitted that the applicant became aware about the proposed recovery of excess pension paid to her in excess on 13.10.2015, but she on her own volition chose not to do anything about it. It is an admitted fact that the applicant was aware that she had been given excess pension. In such situation, there is a delay on the part of the applicant in filing the present OA, which cannot be condoned. It is also wrong on the part of the applicant to contend that she was being pressurized by the respondent bank to repay the excess amount of family pension. In fact, the applicant was asked to submit her proposed scheme for the recovery of the excess amount, which can be made, but the applicant failed to do the needful. It is also clear that the applicant has not deposited the excess amount which has been paid to her and in lieu of the same the recovery was initiated. They have further submitted that opportunity was granted by the respondent bank to suggest a scheme for the recovery, but she did nothing and now the applicant is alleging against the respondent bank that she is being forced to pay the excess amount. The respondents further

state that as it is public money, whatever the excess family pension paid to the applicant from 2006 to 2015 is sought to be recovered back from her. Therefore, the impugned order passed by respondents Nos. 1 to 3 is fully justified.

4. Heard Shri Sanjay Nahar, counsel for the applicant, Shri Kamal Dave for respondent Nos. 1 to 3 and Shri Sachin Acharya for the respondent Nos. 4 and 5.

5. It is the plea of the applicant that the respondents vide impugned order 6.10.2015 are trying to recover the excess payment pertaining to family pension from March, 2006. According to the applicant, it is clear from letter dated 6.10.2015 that the applicant was entitled to pension from 1.1.2006 @ 5369/- but the bank has paid Rs. 5585/-. Therefore, after deducting the amount of Rs. 5369/- from Rs. 5585/-, the excess payment is Rs. 216/- and accordingly, the amount of Rs. 38300/- is sought to be deducted. The applicant was entitled for her enhanced family pension since 12.3.2006 at , but it is respondent Nos. 4 and 5 who have paid Rs. 6838/- to the applicant. Therefore, after deducting Rs. 4101/- from Rs.6838/- it becomes to 2737/- and total amount as calculated from 13th March, 2006 comes to Rs. 4,54,601. The applicant further

contended that the said amount was recovered without any show-cause notice being given to her and the respondent railway as well as the bank have acted in a discriminatory and arbitrary manner while initiating process of revision and recovery. Admittedly, neither the question of holding the post in the respondent department by the husband of the applicant was in dispute nor the pay scale. Family pension was also allowed to the applicant but the revision and recovery since October, 2015 came to the notice of the applicant subsequent to letter dated 13.10.2015 which is illegal to the extent of withholding of amount lying in the pension account of the applicant and starting recovery from the same from the family pension from October, 2015. It is the respondents who in a mechanical manner without application of mind and without following the principles of natural justice are trying to reduce the family pension and therefore, passing of order for withdrawal of the amount lying in her pension account is completely criminal breach of trust and against the ethics that such recovery is being done from a widowed pension. It is her plea that no notice effecting revision/recovery or withholding was ever provided to the applicant. In support of her contentions, the applicant relied on the judgment of the Hon'ble Apex

Court in the case of **State of Punjab vs. Rafiq Masih** and stated that the recovery is not permissible as she falls under the criteria/condition as referred in the said judgment of Rafiq Masih.

6. The official respondents controverted the claim of the applicant and stated that the applicant was entitled only to enhanced family pension from 7.11.2003 to 31.12.2005 at Rs. 3025/-, as per the 5th CPC recommendations. Also the applicant was entitled to receive the enhanced family pension of Rs. 4101/- as per 6th CPC from 1.1.2006 to 12.3.2006, but the applicant was wrongly disbursed enhanced family pension to the tune of Rs. 5585/- and Rs. 6838/- respectively instead of Rs. 5369/- and Rs.4101/-. It is the plea of the respondent Nos. 4 and 5 that as per communication dated 13.10.2015 (Ann.A/3), the applicant was informed to come to the bank and accordingly the applicant had approached the bank and it was the applicant who had agreed that the amount of family pension, which is excess, is to be recovered in instalments and she will repay the same to the respondent bank, but since the applicant did not approach the bank, the respondent bank vide its letter dated 12.11.2015 (Ann.A/4) intimated the applicant that since she had agreed to deposit the excess payment

which was wrongly paid, but as the same has not been paid and no such correspondence pertaining to instalments for recovery has come forward from the applicant till date, therefore, the respondents are entitled to recover the excess payment made. It is therefore, contended that the applicant was informed about the recovery and she cannot state that respondent bank has violated the principles of natural justice. Pertaining to the judgment referred by the applicant, the respondents state that the applicant is not covered by the judgment of Rafiq Masih or the judgment in the case of Mahesh Giri as cited by the applicant. In the case of Mahesh Giri, it was the applicant himself whose recovery was to be done from his pension, but in the present case, it is the widow of late employee of the department who has been paid enhanced family pension. Respondent Nos. 1 to 3 also stated that it is respondent 4 and 5 i.e. the bank which is responsible for not carrying out the instructions as per PPO and therefore, failure on the part of the bank to implement the instructions resulted into over payment beyond the entitlement of the pensioner. So whatever recovery has been effected, the applicant is bound to repay the same as it is the public money. Therefore, the recovery order is wholly justified.

7. I have considered the arguments of the learned counsel for the parties and perused the material available on record.

8. It is admitted fact that the applicant had no role to play in issuance of PPO issued to her at any point of time. She has also not indulged in concealment or misrepresentation. It is also admitted fact that husband of the applicant expired on 6.11.2003 and the applicant was entitled to get family pension after his death. It is only on 13.10.2015 on which the applicant was informed by respondent No.5 that there is a difference in her family pension and excess pension is being paid to her since March, 2006 and therefore the applicant is required to deposit excess amount of family pension as informed to her by respondent No.5 by letter dated 12.11.2015. It is seen that the family pension of the applicant has been wrongly fixed since 2006. It is clear that the applicant was entitled to receive enhanced family pension at Rs. 3025/- as per 5th CPC from 7.11.2003 to 31.12.2005 and at Rs. 4101/- as per 6th CPC from 1.1.2006 to 12.3.2006, but the respondent bank has disbursed enhanced family pension of Rs. 6838/- upto September, 2015. PPO was sent by respondent No.3 to respondent bank, but it is mistake of

respondent bank to pay the enhanced family pension. I do not find any fault in the action of the respondents in rectifying the mistake, which was committed in fixing the family pension of the applicant at the time of revising the pension pursuant to implementation of 5th and 6th CPC recommendations w.e.f. 1.1.1996 and 1.1.2006.

9. Undisputedly, due to such revision of family pension recovery of Rs. 4,54,601/- has occurred and as per the impugned order dated 6.10.2015, the applicant was required to deposit the said amount immediately. In this regard, I would like to mention that the Hon'ble Apex Court in the case of **Rafiq Masih** (supra) has held that no recovery can be made from the employees/pensioners when the excess payment is made for a period in excess of five years before the order of recovery is issued. I am of the considered view that no recovery can be made from the applicant towards excess payment of family pension.

10. As discussed in the preceding paragraphs, the applicant's family pension which has been wrongly fixed on revision of pension pursuant to implementation of 5th and 6th CPC recommendations can be rectified and the applicant is entitled to receive Rs. 4101/- from 12.3.2006 after the

6th CPC, but no fault can be found on the part of the applicant. Therefore, the OA is disposed of with following directions:-

(i) Recovery of Rs. 4,54,601/- ordered vide order dated 6.10.2015 (Ann.A/1) is held illegal and hereby quashed and set aside. The amount recovered from the applicant so far from her pension account shall be refunded to her by the respondents within a period of three months from the date of receipt of a copy of this order.

(ii) The action of the respondents in revising the family pension of the applicant at Rs. 4101/- in terms of 6th CPC recommendations is upheld. The applicant shall be entitled to the same from October, 2015.

(iii) In case the applicant's family pension is being revised as per 7th CPC recommendations, then she shall be paid revised family pension from the effective date of its implementation.

11. No order as to costs.

(HINA P.SHAH)
JUDL. MEMBER

R/