

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 290/00256/15

RESERVED ON : 08.02.2018

JODHPUR, THIS THE 4TH DAY OF MAY, 2018

CORAM

HON'BLE MR SURESH KUMAR MONGA, JUDICIAL MEMBER

SMT. TULSHI DEVI W/O LATE SHRI HUKMICHAND JANGID, AGED 67 YEARS, RESIDENT OF –“SHRI-HARI”, PLOT NO. 95-C, GHANCHI COLONY, BHAGAT KI KOTHI, JODHPUR (RAJ.). HER HUSBAND WAS POSTED AS SEA IN THE OFFICE OF ALL INDIA RADIO, JODHPUR.

.....APPLICANT

BY ADVOCATE: MR HIMANSHU SHRIMALI PROXY COUNSEL FOR MR HARISH JANGID.

VERSUS

- 1. THE UNION OF INDIA THROUGH THE SECRETARY, MINISTRY OF INFORMATION AND BROADCASTING, ROOM NO. 655, A WING, SHASTRI BHAVAN, NEW DELHI-110001.**
- 2. DIRECTOR GENERAL, ALL INDIA RADIO, AKASHWANI BHAVAN, PARLIAMENT STREET, NEW DELHI.**
- 3. PAY AND ACCOUNTS (AIR), AKASHWANI BHAVAN, PARLIAMENT STREET, NEW DELHI-110001.**
- 4. PRINCIPAL ACCOUNT OFFICE, 701-A WING, SHASTRI BHAVAN, NEW DELHI.**
- 5. MANAGER, NEW & REVISED SECTION, CENTRALISED PENSION PROCESSING CENTRE, CHANDNI CHOWK, NEW DELHI-110006.**
- 6. BRANCH MANAGER, STATE BANK OF INDIA, UIT BRANCH, OPP. RAILWAY HOSPITAL, JODHPUR.**

.....RESPONDENTS

RESPONDENTS NO. 1 TO 4: BY ADVOCATE MR K.S. YADAV.

RESPONDENTS NO. 5 TO 6: BY ADVOCATE MR MUKUL SINGHVI.

ORDER

THE PLEADED CASE OF THE APPLICANT HEREIN IS THAT HER HUSBAND WAS AN EMPLOYEE OF THE RESPONDENTS. HE WAS DISCHARGING DUTIES OF SEA IN THE OFFICE OF ALL INDIA RADIO, JODHPUR. HE, UNFORTUNATELY, EXPIRED ON 21.05.2002 WHILE IN SERVICE. AFTER HIS DEATH, THE APPLICANT HEREIN WAS ALLOWED THE

FAMILY PENSION AND A PENSION PAYMENT ORDER (PPO) NO. 277520200991 DATED 01.10.2002 WAS ISSUED IN HER FAVOUR. SHE WAS ALLOWED THE PENSION @ RS 4,963/- PER MONTH. THEREAFTER, A LETTER DATED 03.01.2012 WAS ISSUED BY THE OFFICE OF PAY & ACCOUNTS AIR, AKASHWANI BHAVAN, PARLIAMENT STREET, NEW DELHI BY WHICH, THE APPLICANT'S PENSION WAS REVISED TO RS 11,218/- W.E.F. 22.05.2013, TILL DEATH OR HER REMARRIAGE. PURSUANT TO LETTER DATED 03.01.2012, A LETTER DATED 07.03.2012 WAS ALSO ISSUED BY THE PAY & ACCOUNTS OFFICER, NEW DELHI TO THE MANAGER, STATE BANK OF INDIA, CPPC, NEW DELHI FOR REVISION OF APPLICANT'S PENSION. CONSEQUENT UPON THE RECOMMENDATIONS OF 6TH CENTRAL PAY COMMISSION (CPC), ANOTHER LETTER DATED 31.07.2014 WAS ISSUED BY THE PAY & ACCOUNTS OFFICER (AIR), NEW DELHI FOR MAKING ARRANGEMENT FOR CARRYING OUT THE MODIFICATIONS IN BOTH HALVES OF THE PPO. IT HAS FURTHER BEEN PLEADED THAT THE MANAGER, NEW & REVISED SECTION, CPPC, NEW DELHI ISSUED A LETTER DATED 01.05.2015 WITH THE CALCULATION SHEET MENTIONING THEREIN THAT A SUM OF RS 2,85,940/- IS TO BE RECOVERED FROM THE APPLICANT'S ACCOUNT AS PER THE REVISED PPO NO. 277520200991/1666752/A2 AND CONSEQUENTLY, THE RECOVERY WAS STARTED FROM THE MONTHLY PENSION OF THE APPLICANT @ RS 4,645/- PER MONTH. THEREAFTER, THE BRANCH MANAGER, SBI, UIT BRANCH, JODHPUR ISSUED A LETTER DATED 27.05.2015 STATING THEREIN THAT THE APPLICANT'S PENSION HAS BEEN REDUCED FROM RS 11,218/- TO RS 6,732/- SINCE MAY, 2012 AND DIRECTION WAS GIVEN TO DEPOSIT A SUM OF RS 2,85,940/- WHEN THE APPLICANT WENT TO BANK TO WITHDRAW HER PENSION IN THE MONTH OF MAY, 2015, THE SAME WAS NOT REIMBURSED AND IT WAS INFORMED BY THE BANK OFFICIALS THAT SINCE HER PENSION HAS BEEN REDUCED, THEREFORE, A RECOVERY IS TO BE MADE AS PER ORDERS OF THE RESPONDENTS. AGGRIEVED BY THE SAID ACTION OF RECOVERY OUT OF THE APPLICANT'S FAMILY PENSION, SHE HAS INVOKED THE JURISDICTION OF THIS TRIBUNAL UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNALS ACT, 1985.

2. BY WAY OF FILING SEPARATE REPLIES, RESPONDENTS NO. 1 TO 4 AND RESPONDENTS NO. 5 & 6 HAVE JOINED THE DEFENCE AND OPPOSED THE CAUSE OF THE APPLICANT.

3. IT HAS BEEN PLEADED BY RESPONDENTS NO. 1 TO 4 THAT AFTER DEATH OF THE APPLICANT'S HUSBAND, THEY SANCTIONED THE FAMILY PENSION AND ISSUED PPO NO. 27752/02/2009/91. IT WAS ORDERED TO PAY THE ENHANCED FAMILY PENSION @ RS 4,960/- W.E.F. 22.02.2002 TO 21.05.2009 AND THEREAFTER, @ RS 2,978/- PER MONTH W.E.F. 22.05.2009 TILL DEATH OR REMARRIAGE OF THE APPLICANT. ON IMPLEMENTATION OF RECOMMENDATIONS OF THE 6TH CPC, FAMILY PENSION OF THE APPLICANT WAS ORDERED TO BE REVISED VIDE ORDER DATED 03.01.2012 AND PURSUANT THERETO, IT WAS TO BE PAID AT THE ENHANCED RATE, I.E. RS 11,218/- PER MONTH UPTILL 21.05.2011 AS THE PERIOD OF ENHANCED FAMILY PENSION WAS EXTENDED FOR THREE MORE YEARS WITH THE

IMPLEMENTATION OF RECOMMENDATIONS OF 6TH CPC. THEREAFTER, THE REVISED PENSION WAS REQUIRED TO BE PAID @ RS 6,732/- PER MONTH W.E.F. 22.05.2012 TILL DEATH OR REMARRIAGE OF THE APPLICANT. IT HAS FURTHER BEEN PLEADED THAT DUE INSTRUCTIONS WERE ISSUED BY RESPONDENTS NO. 1 TO 4 THROUGH THEIR PAY & ACCOUNTS OFFICE VIDE ORDER DATED 03.01.2012 MUCH PRIOR TO THE END DATE OF ENHANCED FAMILY PENSION, I.E. 21.05.2012 AND RESPONDENT NO. 5 WAS DULY INFORMED BUT THE SAME WAS REQUIRED TO BE COMMUNICATED AND IMPLEMENTED BY THE PENSION DISBURSING AUTHORITY (RESPONDENT NO. 6), I.E. BRANCH MANAGER, STATE BANK OF INDIA, UIT BRANCH, JODHPUR. IT HAS FURTHER BEEN AVERRED THAT WHATEVER EXCESS PAYMENT HAS BEEN MADE TO THE APPLICANT, THE SAME IS DUE TO INADVERTENT ERROR ON THE PART OF THE DISBURSING AUTHORITY AND THE RESPONDENTS NO. 1 TO 4 CANNOT BE HELD RESPONSIBLE FOR THE SAME. WITH ALL THESE PLEADINGS, PRAYER FOR DISMISSAL OF THE OA HAS BEEN MADE.

4. THE RESPONDENTS NO. 5 & 6 BY WAY OF THEIR SEPARATE REPLY HAVE PLEADED THAT THE RESPONDENT-DEPARTMENT SANCTIONED THE FAMILY PENSION TO APPLICANT AND ISSUED PPO NO. 27752020091/1666752/A2 DATED 08.08.2014 AND ORDERED TO PAY THE ENHANCED FAMILY PENSION OF RS 4,963/- W.E.F. 22.05.2002 TO 21.05.2012 AND THEREAFTER, THE PAYMENT OF FAMILY PENSION @ RS 2,978/- W.E.F. 22.05.2009 ONWARDS TILL DEATH OR REMARRIAGE OF THE APPLICANT. THEREAFTER, ON IMPLEMENTATION OF RECOMMENDATIONS OF 6TH CPC, THE FAMILY PENSION OF THE APPLICANT WAS ORDERED TO BE REVISED ON 03.01.2012 AND PURSUANT THERETO, SHE WAS TO BE PAID ENHANCED FAMILY PENSION TO THE TUNE OF RS 11,218/- UPTIL 21.05.2012 AS THE PERIOD OF ENHANCED FAMILY PENSION WAS EXTENDED FOR THREE MORE YEARS ON IMPLEMENTATION OF RECOMMENDATIONS OF 6TH CPC. IT HAS FURTHER BEEN PLEADED THAT THE REVISED PENSION WAS REQUIRED TO BE PAID @ RS 6,732/- W.E.F. 22.05.2012 TILL DEATH OR REMARRIAGE OF THE APPLICANT. HOWEVER, DUE TO AN INADVERTENT MISTAKE, APPLICANT GOT OVERPAYMENT OF RS 2,85,940/- AS SHE GOT THE BENEFIT OF ENHANCED FAMILY PENSION UPTIL APRIL, 2015. WITH THESE PLEADINGS, RESPONDENTS NO. 5 & 6 HAVE TRIED TO JUSTIFY THEIR ACTION OF RECOVERY OF AN AMOUNT OF RS 2,85,940/- FROM THE APPLICANT'S FAMILY PENSION @ RS 4,645/- PER MONTH. IT HAS ALSO BEEN AVERRED THAT IN TERMS OF A CIRCULAR DATED 17TH MARCH, 2016 ISSUED BY THE RESERVE BANK OF INDIA, THE RECOVERY FROM THE APPLICANT'S FAMILY PENSION HAS RIGHTLY BEEN ORDERED. THE RESPONDENTS ALSO REFERRED TO AN UNDERTAKING GIVEN BY THE APPLICANT TO THE EFFECT THAT IF SHE GETS ANY EXCESS PAYMENT FOR WHICH SHE IS NOT LEGALLY ENTITLED TO, THE BANK WOULD BE ENTITLED TO RECOVER THE SAME FROM HER. BY MAKING THESE ASSERTIONS, THE RESPONDENTS NO. 5 & 6 HAVE ALSO PRAYED FOR DISMISSAL OF THE OA.

5. HEARD LEARNED COUNSELS FOR THE PARTIES.

6. MR HIMANSHU SHRIMALI APPEARING AS PROXY FOR MR HARISH JANGID, LEARNED COUNSEL FOR THE APPLICANT, BESIDES REITERATING PLEADINGS IN THE OA, SUBMITTED THAT BEFORE AFFECTING THE RECOVERY FROM THE APPLICANT'S FAMILY PENSION, SHE WAS NEVER PUT ON NOTICE, NOR ANY OPPORTUNITY OF HEARING WAS AFFORDED TO HER. THEREFORE, THE ACTION OF THE RESPONDENTS IS IN GROSS VIOLATION OF THE PRINCIPLES OF NATURAL JUSTICE. HE FURTHER ARGUED THAT THE APPLICANT HAS NOT INDULGED IN ANY ACT OF CONCEALMENT OR MISREPRESENTATION, THEREFORE, NO RECOVERY CAN BE AFFECTED FROM HER FAMILY PENSION. HE RELIED UPON THE JUDGMENT OF HON'BLE SUPREME COURT IN THE CASE OF STATE OF PUNJAB & ORS V. RAFIQ MASIHI (WHILE WASHER) (2014) 8 SCC 883 AND SUBMITTED THAT IN VIEW OF PRINCIPLES LAID DOWN BY THE HON'BLE SUPREME COURT IN THE SAID JUDGMENT, NO RECOVERY CAN BE AFFECTED FROM THE APPLICANT.

7. PER CONTRA, MR K.S. YADAV, LEARNED COUNSEL FOR THE RESPONDENTS NO. 1 TO 4 ARGUED THAT NO RECOVERY WAS ORDERED BY RESPONDENTS NO. 1 TO 4. IT WAS THE RESPONDENT BANK WHO COMMITTED THE MISTAKE IN MAKING THE EXCESS PAYMENT TO THE APPLICANT AND, THEREFORE, RESPONDENTS NO. 1 TO 4 CANNOT BE HELD LIABLE FOR THE SAID MISTAKE OF THE BANK. IN ANY CASE, THE OA AGAINST RESPONDENTS NO. 1 TO 4 CANNOT BE MAINTAINED.

8. MR MUKUL SINGHVI, LEARNED COUNSEL FOR THE RESPONDENTS NO. 5 & 6 WHILE REFERRING TO RESERVE BANK OF INDIA CIRCULAR DATED 17TH MARCH, 2016 AND THE UNDERTAKING GIVEN BY THE APPLICANT, ARGUED THAT THE EXCESS PAYMENT OF FAMILY PENSION MADE TO THE APPLICANT DUE TO INADVERTENT MISTAKE CAN ALWAYS BE RECOVERED AND THE RESPONDENTS ARE WITHIN THEIR RIGHTS TO AFFECT THE RECOVERY OF THE SAID EXCESS PAYMENT.

9. CONSIDERED THE RIVAL CONTENTIONS OF LEARNED COUNSELS FOR THE PARTIES AND PERUSED THE RECORD.

10. ADMITTEDLY, THE RESPONDENT-DEPARTMENT SANCTIONED THE FAMILY PENSION TO APPLICANT AND ISSUED PPO NO. 277520200991/1666752/A2 DATED 08.08.2014 WHEREBY IT WAS ORDERED TO PAY ENHANCED FAMILY PENSION OF RS 4,963/- W.E.F. 22.05.2002 TO 21.05.2009 AND THEREAFTER, THE PAYMENT OF NORMAL FAMILY PENSION @ RS 2,978/- PER MONTH W.E.F. 22.05.2009. ON IMPLEMENTATION OF RECOMMENDATIONS OF 6TH CPC, THE FAMILY PENSION OF THE APPLICANT WAS ORDERED TO BE REVISED VIDE ORDER DATED 03.01.2012 AND PURSUANT THERETO, THE APPLICANT WAS TO BE PAID FAMILY PENSION AT ENHANCED RATE OF RS 11,218/- UPTIL 21.05.2012 AS THE PERIOD OF ENHANCED FAMILY PENSION WAS EXTENDED FOR THREE MORE YEARS ON IMPLEMENTATION OF RECOMMENDATIONS OF 6TH CPC. THE APPLICANT WAS ENTITLED TO GET THE BENEFIT OF ENHANCED FAMILY PENSION TO THE TUNE OF RS 11,218/- UPTIL 21.05.2012. HOWEVER, SHE GOT

THE BENEFIT OF ENHANCED FAMILY PENSION UPTIL APRIL, 2015 DUE TO MISTAKE OF THE RESPONDENTS. THE APPLICANT HAD NO ROLE TO PLAY IN GETTING THE SAID ENHANCED FAMILY PENSION UPTIL APRIL, 2015. SHE DID NOT INDULGE INTO ANY ACT OF CONCEALMENT OR MISREPRESENTATION. THE RESPONDENTS NO. 5 & 6 WHILE WORKING AS AGENTS OF RESPONDENTS NO. 1 TO 4, NOTICED THEIR MISTAKE IN THE YEAR 2015 AND STARTED AFFECTING RECOVERY FROM THE APPLICANT'S FAMILY PENSION WITHOUT EVEN FOLLOWING THE BARE MINIMUM PRINCIPLES OF NATURAL JUSTICE. THE RESERVE BANK OF INDIA CIRCULAR DATED 17TH MARCH, 2016 REFERRED TO BY THE LEARNED COUNSEL FOR THE RESPONDENTS NO. 5 & 6 IN ORDER TO JUSTIFY THEIR ACTION OF RECOVERY CANNOT BE RELIED UPON IN THE INSTANT CASE IN VIEW OF THE PRINCIPLES LAID DOWN BY THE HON'BLE SUPREME COURT IN RAFIQ MASIH'S CASE (SUPRA) . EQUALLY UNTENABLE IS THE PLEA RAISED BY LEARNED COUNSEL FOR THE RESPONDENTS NO. 5 & 6 THAT THEY ARE WITHIN THEIR RIGHTS TO AFFECT THE RECOVERY FROM THE APPLICANT'S FAMILY PENSION IN TERMS OF UNDERTAKING GIVEN BY THE APPLICANT WHILE GETTING THE FAMILY PENSION SANCTIONED. IT APPEARS THAT THE RESPONDENTS NO. 5 & 6 WHILE AFFECTING THE RECOVERY FROM THE APPLICANT'S FAMILY PENSION REMAINED TOTALLY OBLIVIOUS ABOUT THE PRINCIPLES LAID DOWN BY THE HON'BLE SUPREME COURT IN RAFIQ MASIH'S CASE (SUPRA). IN THE FACTS AND CIRCUMSTANCES OF THE INSTANT CASE, I AM OF THE VIEW THAT RECOVERY OF RS 2,85,940/- FROM THE APPLICANT'S FAMILY PENSION IS INEQUITABLE AND ARBITRARY AND, THEREFORE, THE SAME DESERVES TO BE QUASHED.

11. ACCORDINGLY, THE INSTANT OA IS ALLOWED. RECOVERY OF RS 2,85,940/- FROM THE FAMILY PENSION OF THE APPLICANT IS HELD TO BE ILLEGAL AND IS HEREBY QUASHED. THE AMOUNT RECOVERED FROM THE APPLICANT'S FAMILY PENSION SO FAR SHALL BE REFUNDED TO HER BY THE RESPONDENTS WITHIN A PERIOD OF 02 MONTHS FROM THE DATE OF RECEIPT OF CERTIFIED COPY OF THIS ORDER.

12. ORDERED ACCORDINGLY. NO ORDER AS TO COSTS.

(SURESH KUMAR MONGA)

MEMBER (J)

SS/-

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