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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

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ORIGINAL APPLICATION NO.290/00160/2017

RESERVED ON

: 08.03.2018

DATE OF DECISION: 04.04.2018

CORAM:

HON'BLE MR. SURESH KUMAR MONGA, MEMBER (J)

SMT SHANTI W/O LATE SH. JAG ROOP MAL AGED ABOUT 79 YEARS, R/O PLOT NO. 1B LAXMI NAGAR, PAOTA B ROAD, JODHPUR. WIFE OF EX. HEAD CLERK RETIRED FROM THE OFFICE OF DRM NORTH WESTERN RAILWAY, JODHPUR.

...APPLICANT

(BY ADVOCATE: SHRI S.K.MALIK)

VERSUS

1. UNION OF INDIA THROUGH GENERAL MANAGER, NORTH WESTERN RAILWAY, JAIPUR

2. DIVISIONAL RAILWAY MANAGER, NORTH WESTERN RAILWAY, JODHPUR

3. ASSISTANT GENERAL MANAGER, CENTRALISED PENSION PROCESSING CENTRE, STATE BANK OF INDIA, 11ND FLOOR, CHANDNI CHOWK, DELHI-110006.

4. CHIEF MANAGER, STATE BANK OF INDIA, RAILWAY STATION BRANCH, JODHPUR.

...RESPONDENTS

(BY ADVOCATE: MR. SALIL TRIVEDI FOR RESP. NOS. 1 TO 3)

MR. GAURAV NIMBAWAT FOR RESP.NO.4)

ORDER

AFTER ATTAINING THE AGE OF SUPERANNUATION, THE APPLICANT'S HUSBAND RETIRED AS HEAD CLERK ON 31.3.1988. AT THE TIME OF HIS RETIREMENT HE WAS GETTING THE SALARY IN THE PAY SCALE OF RS. 1400-2300. THE RESPONDENTS ISSUED PENSION PAY ORDER DATED 30.03.1988 WHEREIN HIS PENSION WAS FIXED AT RS. 820+DA. CONSEQUENT UPON IMPLEMENTATION OF RECOMMENDATIONS OF THE 5TH CENTRAL PAY COMMISSION, HIS PENSION WAS REVISED IN THE PAY SCALE OF RS. 5000-8000 W.E.F. 1.1.1996 AND ACCORDINGLY REVISED PENSION PAY ORDER WAS ISSUED. THEREAFTER, WHILE IMPLEMENTING THE RECOMMENDATIONS OF THE 6TH CENTRAL PAY COMMISSION W.E.F. 1.1.2006 ANOTHER PPO DATED 11.7.2010 WAS ISSUED IN THE PAY SCALE OF RS. 9300-34800 + GRADE PAY OF RS. 4200 AND HIS PENSION WAS FIXED AT RS. 6750/- . THE APPLICANT'S HUSBAND EXPIRED ON 27.07.2011 AND THEREAFTER THE FAMILY PENSION WAS ALLOWED TO THE APPLICANT @ 4050+R WHICH WAS REVISED VIDE PPO DATED 19.08.2013 AS RS. 3500+R. IT HAS BEEN AVERRED BY THE APPLICANT THAT RESPONDENT NO.3 VIDE ORDER ANN.A/1 HAS ORDERED FOR RECOVERY @ 2400 PER MONTH FROM FEBRUARY, 2015 ONWARDS AND STARTED RECOVERING THE SAID AMOUNT FROM HER PENSION. THE WHOLE AMOUNT OF RECOVERY HAS BEEN SHOWN AS RS. 1,38,766/- THEREAFTER, ANOTHER LETTER DATED 18.8.2015 WAS ISSUED BY RESPONDENT NO.3 WHEREIN THE APPLICANT WAS INFORMED THAT A SUM OF RS. 1,26,766/- HAS BEEN PAID IN EXCESS TOWARDS PENSION AND THE SAID AMOUNT IS REQUIRED TO BE DEPOSITED IN THE STATE EXCHEQUER. THE SAID LETTER WAS FOLLOWED BY SUBSEQUENT LETTERS DATED 23.5.2016 AND 28.12.2016. FINALLY, ON 5.1.2017, THE RESPONDENT NO.3 INFORMED THE APPLICANT THAT THERE WAS AN OVER PAYMENT IN THE PENSION ACCOUNT. SINCE THE AMOUNT OF OVER PAYMENT WAS QUITE LARGE, THEREFORE, SHE WAS DIRECTED TO DEPOSIT THE OUTSTANDING OVER PAYMENT IN LUMP-SUM. IT WAS FURTHER ADVISED THAT IN CASE OF NON-AVAILABILITY OF FUNDS, THE APPLICANT CAN APPROACH HER HOME BRANCH TO AVAIL PENSION LOAN TOWARDS LIQUIDATION OF OVER PAYMENT OF PENSION. AGGRIEVED BY THE SAID ACTION, THE APPLICANT HAS PREFERRED THE INSTANT OA U/S 19 OF THE ADMINISTRATIVE TRIBUNALS ACT, 1985.

2. THE RESPONDENT NOS. 1 TO 3 BY WAY OF FILING A JOINT REPLY HAVE JOINED THE DEFENCE AND OPPOSED THE CAUSE OF THE APPLICANT. RESPONDENT NO.4, THE STATE BANK OF INDIA HAS FILED A SEPARATE REPLY AND ALSO PRAYED FOR DISMISSAL OF THE OA ON THE GROUND THAT RECOVERY HAS BEEN AFFECTED FROM THE APPLICANT PURSUANT TO THE DIRECTIONS ISSUED BY THE RAILWAYS WITH REGARD TO INADVERTENT MISTAKE ON THEIR PART IN CALCULATION OF HER HUSBAND'S PENSION. RESPONDENT NOS. 1 TO 3 IN THEIR JOINT REPLY HAVE PLEADED THAT THE RAILWAY BOARD HAS ISSUED A CIRCULAR BEARING NO. 181/2008 BASED UPON THE JUDGMENT RENDERED BY THE HON'BLE SUPREME COURT ON 23.11.2006 IN THE CASE OF K.S.KRISHNASWAMY VS. UNION OF INDIA, WHICH WAS FOLLOWED BY

ANOTHER CIRCULAR BEARING NO. 24/2010 IN WHICH IT WAS ADVISED THAT ALL THE CASES IN WHICH PENSION/FAMILY PENSION HAS BEEN REVISED OR REVISED PPOS HAVE BEEN ISSUED INDICATING 5TH CPC AND 6TH CPC PAY BAND/GRADE PAY, OTHERWISE THAN IN ACCORDANCE WITH DOPT AND PW INSTRUCTIONS MAY BE REVIEWED AND REVISED PPO MAY BE ISSUED AT THE EARLIEST. THE APPLICANT'S HUSBAND RETIRED FROM THE PAY SCALE OF RS. 1400-2300. THE 5TH CPC AND 6TH CPC CORRESPONDING PAY SCALE TO THE SCALE IN WHICH THE APPLICANT'S HUSBAND RETIRED, ARE RS. 4500-7000 AND 5200-20200 + GRADE PAY OF RS. 2800 AS PER THE DOPT OM DATED 14.10.2008 CIRCULATED BY THE RAILWAY BOARD VIDE RBE NO. 181/2008.

IT HAS FURTHER BEEN SUBMITTED BY THE RESPONDENTS THAT THE PENSION OF APPLICANT'S HUSBAND OUGHT TO HAVE BEEN FIXED CORRESPONDING TO THE REVISED PAY SCALE OF RS. 4500-7000 W.E.F. 1.1.1996 AND IN THE PAY SCALE OF RS. 5200-20200 + GRADE PAY OF RS. 2800 W.E.F. 1.1.2006. ACCORDINGLY, THE PENSION OF THE APPLICANT'S HUSBAND OUGHT TO HAVE BEEN FIXED AT RS. 5637/- INSTEAD OF RS. 6750/- AND THE FAMILY PENSION TO THE APPLICANT AS RS. 3500/- + R. WITH THESE ASSERTIONS, THE ORDER OF RECOVERY FROM THE APPLICANT IS SOUGHT TO BE JUSTIFIED BY THE RESPONDENTS.

3. HEARD THE LEARNED COUNSEL FOR THE PARTIES.

4. SHRI S.K.MALIK, LEARNED COUNSEL FOR THE APPLICANT CONTENDED THAT IN VIEW OF THE PRINCIPLES LAID DOWN BY THE HON'BLE SURPEME COURT IN THE CASE OF STATE OF PUNJAB AND ORS. VS. RAFIQ MASI (WHITE WASHER) & ORS., (2015) 4 SCC 334, NO RECOVERY CAN BE AFFECTED FROM THE APPLICANT. HE FURTHER SUBMITTED THAT AN IDENTICAL CONTROVERSY HAS BEEN SETTLED BY THIS BENCH OF THE TRIBUNAL IN OA NO.290/00187/15, TIKMA VS. UOI AND ORS. DECIDED ON 19.10.2016.

5. PER CONTRA, LEARNED COUNSEL FOR THE RESPONDENTS CONTENDED THAT RECOVERY FROM THE APPLICANT HAS BEEN RIGHTLY ORDERED BY THE RESPONDENTS AS A CONSEQUENCE OF IMPLEMENTATION OF THE INSTRUCTIONS ISSUED BY THE RAILWAY BOARD. HE FURTHER SUBMITTED THAT PENSION OF THE APPLICANT'S HUSBAND OUGHT TO HAVE BEEN FIXED CORRESPONDING TO THE REVISED PAY SCALE OF RS. 4500-7000 UNDER 5TH CPC AND LIKEWISE UNDER 6TH CPC HIS PENSION WAS TO BE FIXED IN THE PAY SCALE OF RS. 5200-20200 + GRADE PAY OF RS. 2800/- W.E.F. 1.1.2006. THEREFORE, HIS PENSION HAS BEEN RIGHTLY FIXED AT RS. 5637/- INSTEAD OF RS. 6750/-.

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

7. UNDISPUTEDLY, THE APPLICANT'S HUSBAND AT THE TIME OF RETIREMENT WAS IN THE PAY SCALE OF RS. 1400-2300. HIS PENSION WAS REVISED IN THE PAY SCALE OF RS. 5000-8000 W.E.F. 1.1.1996 CONSEQUENT UPON IMPLEMENTATION OF RECOMMENDATION OF 5TH CPC. THEREAFTER, WHILE IMPLEMENTING THE RECOMMENDATIONS OF THE

6TH CPC W.E.F. 1.1.2006, ANOTHER PPO DATED 11.7.2010 WAS ISSUED IN THE PAY SCALE OF RS. 9300-34800 + GRADE PAY OF RS. 4200 AND HIS PENSION WAS FIXED AT RS. 6750/- . WHEREAS, IN VIEW OF THE INSTRUCTIONS ISSUED BY THE RAILWAY BOARD UNDER RBE NO.181/2008 AND 24/2010, PENSION OF THE APPLICANT'S HUSBAND WAS REQUIRED TO BE FIXED CORRESPONDING TO THE REVISED PAY SCALE OF RS. 4500-7000 UNDER 5TH CPC AND LIKEWISE UNDER 6TH CPC HIS PENSION WAS TO BE FIXED IN THE PAY BAND OF RS. 5200-20200 + GRADE PAY OF RS. 2800 W.E.F. 1.1.2006. IN THIS VIEW OF THE MATTER, I DO NOT FIND ANY INFIRMITY IN THE REVISED PPO WHERE HIS PENSION HAS BEEN FIXED AT RS. 5637/- INSTEAD OF RS. 6750/- . HOWEVER, IN VIEW OF THE PRINCIPLES LAID DOWN BY THE HON'BLE SUPREME COURT IN RAFIQ MASIH'S CASE (SUPRA), NO RECOVERY CAN BE AFFECTED FROM THE APPLICANT.

8. IN THE CONSPPECTUS OF DISCUSSIONS IN THE FOREGOING PARAS, THE INSTANT OA IS DISPOSED OF IN THE FOLLOWING TERMS:-

(A) THE RECOVERY OF RS. 138,776/- ORDERED VIDE COMMUNICATION ANN.A/1 IS HELD TO BE ILLEGAL AND THE SAME IS QUASHED AND SET-ASIDE. THE AMOUNT RECOVERED FROM THE APPLICANT SO FAR ON THIS ACCOUNT FROM HER PENSION SHALL BE REFUNDED TO HER BY THE RESPONDENTS WITHIN A PERIOD OF THREE MONTHS FROM THE DATE OF RECEIPT OF A CERTIFIED COPY OF THIS ORDER.

(B) THE ACTION OF THE RESPONDENTS IN REFIXING THE PENSION OF THE APPLICANT'S HUSBAND AT RS. 5637/- PER MONTH IN TERMS OF 6TH CPC IS UPHELD.

NO ORDER AS TO COSTS.

(SURESH KUMAR MONGA)

MEMBER (J)

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