

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.233/2018

Date of Decision: 25.04.2018.

CORAM:HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)

Lt. Cdr. Jasbir Singh Sodhi (Retd.)
NCCN-PC/12374, Aged about 82 years,
Occ. : Retired, Residing at : B-114,
Oxford Classic, Wanawadi,
Pune – 411 040.

... Applicant

(By Advocate Shri U.G. Dindore)

VERSUS

1. Union of India, through Secretary,
Ministry of Defence, Govt. of India,
South Block, New Delhi 110 011.
2. The Director General, NCC Headquarters,
Govt. of India, Ministry of Defence,
West Block-IV, R.K.Puram,
New Delhi 110 066.
3. The Principal Controller of Defence Accounts
(Pension), Govt. of India, Ministry of Defence,
Draupadi Ghat, Allahabad – 211 014.
4. Assistant General Manager, Bank of India,
Centralized Pension Processing Centre,
4th Floor, Bank of India Bldg., Kingsway,
Nagpur, Maharashtra, Pin 440 001.
5. Senior Branch Manager, Bank of India,
Anchor House, 9, Sahaney Sujan Park,
Kondhwa Road, Wanawadi, Pune 411 040.
6. The Reserve Bank of India,
Central Office Building,
Shahid Bhagat Singh Marg,
Mumbai 400 001.
Through its Chief General Manager.

... Respondents

ORDER (Oral)*Per : Shri R. Vijaykumar, Member (A)*

Today when the matter is called out, heard Shri U.G. Dindore, learned counsel for the Applicant. I have carefully perused the case record.

2. The Applicant has filed an MA for amendment of the OA on 23.04.2018 in which he has enclosed a letter from the Respondent No.3 - Office of the Principal Controller of Defence Accounts (Pensions) number - page 126 dated 22.01.2018 which is a letter addressed to the Bank of India who have disbursed amounts of pension in favour of the applicant in excess of the instructions furnished to them and as a result of audit of the Pension Payment Scrolls by Respondent No.3, they have pointed out the over-payment made to, among others, the applicant, at Annexure A-3(A) page 123 from 2006 onwards. They have also made a demand for repayment of the entire over paid amount by the Bankers to the Government Account in one lumpsum.

3. Learned counsel for the applicant was questioned as to how this would justify the

impleadment of Respondent Nos.1, 2 & 3 since their instructions are in relation to the duties of a Contractor (Bank) to the Government for which the service charges are being paid and not between the Government and the Pensioner. In fact there is no direct locus for the pensioner because the Bank seeks to recover the amount that they are now compelled to pay to their Principal from whom they received the instructions initially, but wrongly misconstrued those instructions which led to the over payment to the pensioner - Applicant.

4. In response, learned counsel for the applicant relies on a decision of the Chandigarh Bench of this Tribunal in ***OA Nos.00054/2016, 000659/2016 & 01033/2016 decided on 17.01.2018.*** However, on perusal of the prayers contained in the case decided by the Chandigarh Bench of this Tribunal, it appears that the petitioners therein disputed the differences being sought to be made by the respondents between regular Armed Forces Officers and Officers like the applicant who are decommissioned and employed elsewhere in institutions such as

NCC. However, the prayers contained in this application are as below:

“8(i). It may be declared that, the master circular dated 01st July, 2015 is not applicable in case of the Applicant in the facts and circumstances of the case.

8(ii). The impugned communication of the Respondent No.3 No.AT/SAC/T-5/2017 dated 22/01/2018 seeking to effect recovery of alleged excess amounts from the Applicant may kindly be quashed and set aside.

8(iii). The impugned communications dated 02/02/2018 and 03/02/2018 seeking to effect recovery of alleged excess amounts from the Applicant may kindly be declared illegal and null and void ab initio and the same may kindly be quashed ^{and} set aside.

8(iv). The Respondent Nos.1 to 5, by way of an appropriate order/direction may kindly be restrained from effecting any recovery of alleged excess payments from the applicants and further from reducing the amount of pension of the Applicant with retrospective effect.

8(v). The Respondent Nos.4 and 5 may kindly be directed to defreeze the pension account of the applicant forthwith and to restore the amounts already withdrawn from the pension account and fixed deposits of the Applicant maintained with the Respondent No.5 and with Bank of India, Salunke Vihar, Pune Branch.

8(vi). The Respondents Nos.4 and 5 may kindly be directed to pay interest at the rate of 18% per annum to the applicant on the amounts illegally seized/recovered by them.

8(vii). Since the Respondent Nos.3 to have acted in violation of the Judgment of the Hon'ble Apex Court in State of Punjab Vs. Rafiq Masih, the Respondent Nos.3 to 5 jointly and severally may kindly be directed to pay compensation of Rs.10,00,000/- to the Applicant towards mental

pain and agony.

8(viii). The Respondent No.3 may kindly be directed to restore pension of the Applicant to its original amount with immediate effect and continue paying it in future. In the event of death of Applicant, family pension as per original rate be directed to be given to the wife of the Applicant, in the future.

8(ix). Interim and ad-interim orders in terms of prayer clause (i) may kindly be granted in favour of the Applicant.

8(x). Cost of the present application may kindly be awarded in favour of the Applicant.

8(xi). To issue such other appropriate orders or directions in the interest of justice, as the Hon'ble Tribunal may deem fit."

5. It is clear that the orders passed by the Chandigarh Bench of this Tribunal are not relevant in terms of the prayers set out in this application. Therefore, the ratio developed in the Chandigarh Bench cannot be applied in view of the nature of the prayers contained in this present application and the application in the present form cannot base itself on those orders.

6. Given the reference now produced from the PCDA - Respondent No.3, it is apparent that the Bankers have made an error in making over payment and are now not only obliged to reimbursed to the Government for the excess billing made by them in the

Monthly Payment Scrolls submitted by them to the respondents 1 to 3 but are in consequence, also obliged to settle their accounts with their customers which in the present case is the Pensioner - Applicant.

7. We have already decided a similar case in ***OA No.701/2016 decided on 02.02.2018 (Vittthal Nathaji Mhaske Vs. Union of India & Ors.)*** by this Bench and the relevant paras are extracted below:

“....6. After hearing of the counsel for the applicant and respondents on the issues related to this matter, it is clear that respondents No.2 and 3 who were entrusted with the task of computing the pension amount payable to the applicant and others for which they hold pension accounts, made an error and overpaid them. Thereafter, R-2 prepared monthly pension scrolls for getting reimbursement from the Government and these were accordingly paid to them in consequence of the agreement between the Government, in this case R-1, and the Bank. This relationship has nothing to do with the applicant and involves a contractual relationship between the Government and the Bank by which the Contractor-Bank provides its services and is reimbursed disbursements and is paid service costs in terms of the contract. The Ministry had only authorized a certain level of payment but the Bank had overpaid in violation of instructions. Upon detection of the excess reimbursement made, the Government in

R-1 had demanded refund of the excess payments from its Contractor-Bank and these were received in consequence. For the Bank, these amounts had been disbursed by them to the pensioner through his pension account by error in their calculation and there is no dispute that this amount was in excess over his entitlement. Between the Pensioner and the Bank, a letter of undertaking is also obtained in terms of the RBI Guidelines and the pensioner is obliged to refund any excess payments made to him by the Bank and this has nothing to do with any excess sanctions reconsidered by R-1. Therefore, these aspects clearly apply in the present case.

7. *The applicant has argued that he would be covered by the principles laid down by the Hon'ble Apex Court in the **Rafiq Masih's** case since he is a retired employee and the payments relate to the period from 2009-2015 and were not due to his fault. In that case, however, the error arose because of excess sanctions against entitlements that were later discovered and orders passed by the Respondent State Government and not by the intermediary Bank which had fully carried out the incorrect instructions of the Government and was directed to effect recoveries from the pensioner. Therefore, Government as a model employer in a welfare state had to abide by certain norms and the Hon'ble Apex Court set out the principles governing such matters. In the present case, the respondent No.1 who is the Government in*

question had no role whatsoever in the excess payments made to the pensioner. They only recovered the excess reimbursements made by them to the Contractor-Bank (R-2 & 3) which had committed errors leading to excess payment to the pensioner.

8. *Between the Bank and the pensioner, the terms of their relationship are governed by the letter of undertaking obtained when the pension account was opened and also the conventional contractual terms between any Banker and their account holder by which no account holder can enrich themselves as a result of mistakes committed by the Bank and are obliged to inform the banker or to repay upon demand. In any case, this Tribunal cannot be the forum for adjudicating on the disputes between an account holder and the Bank for which another forum will have to be sought. This Tribunal cannot also, therefore, interfere in the action of the Bank in withdrawing any amount from the account of the pensioner for the excess payment or in any civil or criminal action that the Bankers may take against the pensioner for his part in this incident.....”.*

8. As decided in that OA, it is clear that in the present case too, Respondent Nos.1 to 3 cannot be impleaded in this matter and shall stand deleted and those orders will apply *mutatis mutandis* to the present case. In the result, with only the

Bankers remaining as respondent, this Tribunal loses jurisdiction over the matter and the application is accordingly dismissed with directions to the applicant to approach the relevant forum for adjudicating his case. The interim orders passed earlier are accordingly withdrawn.

(R. Vijaykumar)
Member (A)

dm.