

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH, AHMEDABAD.**

Original Application No. 495/2017

Date of Reserve :03.04.2019

Date of Order : 16.04.2019

CORAM :

Hon'ble Sh. M.C. Verma, Member (Judicial)

Gordhanbhai Govindbhai Prajapati Aged about 82 years retired citizen,
residing at 3003 Ayodhya Nagar Society, Link Road, Bharuch – 392001.

Applicant

[By Advocate Ms. Vilas Purani]

Versus

- 1- Union of India notice to be served through the Secretary, Ministry of Communication and IT, Department of Post, Dak Bhavan, New Delhi – 110 001.
- 2- The Chief Postmaster General, Gujarat Circle, Khanpur, Ahmedabad-380 001.
- 3- The Post Master, Bharuch Head Offices, Bharuch – 392001.

Respondents

[By Advocate Ms. R.R.Patel]

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O R D E R

PER M.C.VERMA, MEMBER (J) :

Applicant, by filing instant O.A., has prayed to declare the order dated 14.8.2015 (Annex.A/1) passed by the respondent No. 3, as illegal, unjust, arbitrary being violative of Articles 14 and 16 of Constitution and therefore, the same be quashed and set aside and further, respondents be directed to refund Rs. 86,346/- to the applicant with cost.

2. Applicant was retired as Postal Assistant on 30.06.1993 and after two years of his retirement, respondent No. 3 ordered for recovery of Rs. 86,346/- stating that excess pension was paid to him from September 2012 to July 2015 on the ground that applicant's pension was

not revised. Thereupon applicant deposited Rs. 86,346/- vide Receipt No. 366 on 21.08.2015.

3. It is submitted by the applicant that in view of Circular dated 06.04.2016 issued by the respondent No. 1 provides for granting benefits of revision of pension to pre-2006 pensioners as per the fitment table dated 28.01.2013 which was applicable to those whose qualifying service was less than 33 years and the arrears were to be paid accordingly w.e.f. 1.1.2006, but his request dated 12.5.2016 (Annex.A/3) was turned down.

4. Respondents have filed their reply stating that applicant's pension was fixed as Rs. 3633/- w.e.f. 1.12006 and paid up to 23.09.2012. Thereafter, his pension was revised w.e.f. 24.09.2012 to Rs. 4920/- as per Memorandum dated 28.01.2013 the same was paid to him up to July 2015 and subsequently, it was found that applicant's pension was wrongly fixed at Rs. 4920/- instead of Rs. 3633/- hence the impugned order of recovery was issued. It is further submitted that as per order of the Ministry of Personnel, PG & Pension dated 6.4.2016 applicant's pension was revised thereafter to Rs. 4,030/ w.e.f. 1.1.2006 against actually drawn Rs.3633/- of which, arrears of Rs. 83,505/- was paid to him. It is submitted that excess paid pension Rs. 1287/- i.e. difference of Rs. 4920/- and Rs. 3633/- paid during 24.09.2012 to 31.7.2015 was Rs. 86,346/- and the same was rightly recovered from him. It is reiterated that recovery of Rs. 86,346/- was affected as due to calculation mistake, excess payment was made. Ms. R.R.Patel, therefore, prayed that O.A. be dismissed being devoid of merit.

5. Heard Ms. Vilas Purani counsel for the applicant and Ms. R.R.Patel counsel for respondent Nos.1 to 3.

6. Learned counsel Ms.Vilas Purani submits that applicant was superannuated in 1993 and his pension was refixed in the year 2012 by the respondents department. That on 14.8.2015, he got notice from the

respondent-department about recovery of excess payment of pension i.e. Rs. 86,346/- made to him during September, 2012 to July, 2015. That applicant being an old person so as per notice, he deposited the desired amount. It is submitted that due to compelling circumstances, he could not approach the Tribunal in time and therefore, he preferred a M.A. for condonation of delay also. It is informed that delay has already been condoned by the Tribunal vide order dated 21.8.2018. She urged that recovery was not permissible in view of judgment of Hon'ble Supreme Court in case titled ***State of Punjab & Ors. etc. Vs. Rafiq Masih (White Washer)*** delivered on 18th December, 2014 in Civil Appeal No. 11527/2014. Learned counsel urged that respondents may be directed to refund the amount. Learned counsel also submitted that applicant is waiving his right to claim interest and urged that the grievance of applicant will be redressed, if amount which has been deposited by the applicant only be directed to be refunded.

7. Ms. R.R.Patel, learned counsel appearing for the respondents vehemently opposed the request of refund of amount and contended that there was bonafide mistake in calculating pension of the applicant at the time of re-fixation and mistake came to the knowledge of respondent-authority in year 2015. It is urged by her that immediately thereafter applicant was given show cause notice either to deposit amount in lump sum otherwise Rs. 2000/- per month will be deducted from his pension from August, 2015 till the excess paid is amount is fully recovered. She further contended that the ratio decendi of ***Masih's*** case does not apply to the fact of this case as applicant himself has tendered the said amount. She also urged that OA was preferred with about two years delay though delay has been condoned by the Tribunal but while arriving at conclusion at least it is to be taken note of. She requested to dismiss the OA.

8. Considered the submissions. In **Rafiq Masih's** case endeavour of Hon'ble Supreme Court was to lay down the parameters of fact situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employer, may not be compelled to refund the same.

9. It is the contention of learned counsel for respondents that when applicant himself did deposit the amount, it cannot be said to be recovery as envisaged in **Masih's** case (cited supra). I take note of the submission but did find that respondents had given notice to the applicant that if he would not deposit the amount same shall be deducted from his pension. Taking note of entirety, it cannot be said that for the only reason that applicant himself deposited the amount it cannot be termed as recovery. The only issue that needs adverting now is whether the recovery from the applicant was permissible and if not why respondents could not be directed to refund the amount ?

10. For the purpose of case in hand the situation summarise by Hon'ble Supreme Court in para 12 of judgment, delivered in **Masih's** case (cited supra) is relevant. The contents of para 12 of said judgment is reproduced herein-below :

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid*

accordingly, even though he should have rightfully been required to work against an inferior post. State Of Punjab & Ors. vs Rafiq Masih (White Washer) on 18 December, 2014.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

11. It is undisputed that the applicant is a retired employee, that his pension was re-affixed in year 2012 and some mistake occurred in calculation, the mistake yielded into excess payment to the applicant till year 2015 when the mistake was detected. After receiving notice applicant himself deposited the excess paid amount.

12. In view of the foregoing discussions and having taken cue from **Rafiq Masih's** case (cited supra) it is held that respondents had no right to recover the excess paid amount of pension for the period from September 2012 to July 2015, which was paid due to wrong calculation by the respondent-department, from the pensioner / applicant, who is aged about 83 years as on date. Accordingly, the O.A. succeeds and the respondents are directed to refund the recovered amount i.e. Rs. 86,346/- to the applicant within 8 (eight) weeks from the date of receipt of a copy of this order.

13. The O.A. is disposed of accordingly.

(M.C.Verma)
Member (J)

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