

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD

BENCH, ALLAHABAD

Original Application No. 330/00966/2012

Pronounced on 13th day of February, 2019

Hon'ble Mr. Justice Bharat Bhushan, Member (J)

Ali Abbas son of late Sri Abrar Husain resident of S-4/46, Ulfat Bibi Hata, Orderly Bazar, Varanasi.

Applicant

By Advocate: Sri Anuj Kumar Sharma proxy counsel for
Sri Syed Wajid Ali

Versus

1. Union of India through its General Manager, NE Railway, Gorakhpur.
2. Financial Adviser/ Chief Account Officer, NE Railway, Gorakhpur.
3. State Bank of India, Main Branch, Varanasi through its Branch Manager.
4. DRM, NE Railway, Varanasi.
5. Sr. DCM, NE Railway, Varanasi.
6. Sr. DPO, NE Railway, Varanasi.

Respondents

By Advocate: Sri Bashist Tiwari and Sri Satya Prakash
Counsel for respondents No. 1,2,4,5 and 6
Sri Satish Sahu proxy counsel for Sri
Pankaj Srivastava for respondent No. 3

ORDER

By Hon'ble Mr. Justice Bharat Bhushan, Member (J)

Applicant, Ali Abbas, a former Chief Travelling Ticket Inspector (in short CTTI), retired after attaining the age of superannuation on 30.11.2003.

2. It appears that his pension was commuted upto 40% and certain deductions accordingly were to be made

from the pension of the applicant but unfortunately those deductions were not made.

3. In July 2012, State Bank of India, Main Branch, Varanasi (respondent No.3) handed over a copy of impugned order/letter dated 20.6.2012 (Annexure A-1) to the applicant, whereby informing him that he had been paid excess pension and excess amount was to be recovered from his monthly pension on the basis of revised Pension Payment Order (PPO). Applicant has stated that he is not responsible for alleged excess payment of pension. Therefore, proposed recovery is arbitrary and illegal, as such he has filed the present Original Application (O.A.) for the following reliefs:-

- i) set aside the impugned order dated 20.6.2012 passed by the respondent No.2.
- ii) direct the respondents not to make recovery of Rs.92288/- from the pension of the applicant nor any deduction be made from the monthly pension of the applicant.
- iii) direct the respondent concerned to refund the amount which has been deducted from the monthly pension of the applicant.
- iv) any other order or direction as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.
- v) award cost of the application to the applicant.

4. Respondents have filed counter reply claiming that PPO was rightly prepared but on account of inadvertent mistake on the part of the State Bank of India, certain deductions were not made from the final pension. Respondents have also claimed that applicant was aware of excess payment and yet he did not inform the department or the bank about these excess payment. Respondents have claimed that as per Rule 9 of Railway Services (Pension) Rules, 1993, maintenance of good conduct is basic ground for payment of pension by the Railway employee. The conduct of applicant is not good, therefore, on this basis, his pensionary benefits can be withheld by the Railway administration. Respondents have also claimed that it was also duty of the applicant to point out the mistake committed by the State Bank of India in payment of excess money.

5. Applicant has filed Rejoinder Reply, reiterating his earlier claim that he was not aware of any amount of excess payment.

6. Heard Sri Anuj Kumar Sharma proxy counsel for Sri Syed Wazid Ali for applicant and Sri Bashist Tiwari and Sri Satya Prakash Counsel for respondents No. 1,2,4,5 and 6. Sri Satish Sahu proxy counsel for Sri Pankaj Srivastava for respondent No. 3 was also heard.

7. In this O.A., there is no factual dispute. Applicant, a former CTTI at Varanasi Railway Station retired after

attaining the age of superannuation on 30.11.2003. It is also evident that certain deductions were to be made from the pension of the applicant due to commutation of pension but those deductions were not made and applicant was paid excess money in pension. In July 2012, a letter dated 20.6.2012 was issued by the Branch Manager, State Bank of India, Varanasi whereby applicant was informed about the proposed deductions on account of excess payment. This letter is available on record as Exhibit A-1. This kind of dispute has already been settled by the Hon'ble Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) and others reported in (2015) 2 Supreme Court Cases (L&S) 33**, wherein matter of recovery of excess payment from the employees as well as retired employees has been adjudicated threadbare. Hon'ble Supreme Court prohibited the recovery from the retired employees or employees who were due to retire within one year. The relevant portion of judgment is reproduced as below:-

"18. 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 hereinabove, 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.

(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."

8. It is pertinent to point out that the matter of recovery of applicant falls within the category II of para 18 of the aforesaid judgment. The applicant retired in the year 2003. Stated excess payment were made to the applicant till 2012 and now recovery was to be initiated from and after July 2012. These kinds of recovery have been completely prohibited by the Apex Court.

9. It is pertinent to point out that applicant retired in 2003. Proposed recoveries were ordered to be made after 9 years of his retirement. There is no evidence on record to demonstrate that excess payment made to the applicant was on account of any mis-representation or fraud committed by him. There is no whisper of fraud of mis-representation against the applicant by the

respondents. Therefore, it is apparent that applicant had no role in excess payment of his pension. He received what was given to him. Now after 9 years of his retirement, such recoveries cannot be made. Of-course, pension can be adjusted according to correct calculation but it has to be done after 20.6.2012 and not prior to that.

10. In the light of the aforesaid judgment, this O.A. is allowed. Impugned order/letter dated 20.6.2012 (Annexure A-1) is set aside. Respondents are directed not to make any recovery about the said excess payment from the applicant prior to 20.6.2012. It is made clear that respondents can adjust the payment of due pension after making correct calculation subsequent to 20.6.2012. No order as to costs.

(JUSTICE BHARAT BHUSHAN)
MEMBER (J)

HLS/-

