

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

...

**O.A. No.60/208/2018  
M.A. No.60/713/2018**

**Date of decision: 16.5.2019**

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).**

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Krishna Vashisht age 68 years, widow of Late Sh. Yoginder Nath (Retired CTS Group-C) R/o #223/3, Sunaro Wali Gali, Ward No.2, Siwan Gate, Kaithal-136027 (Haryana).

**...APPLICANT**

**VERSUS**

1. Union of India through Secretary to Ministry of Communications & IT, Department of Telecommunications, Sanchar Bhawan, 20, Ashoka Road, New Delhi-110048.
2. Communication & IT Development of Telecommunications through its Chairman & Managing Director, O/o Opposite of Janpath Hotel, Bhawan Harish Chan Mathur Lane, Connaught Place, New Delhi-110085.
3. The Controller of Communication Accounts, Haryana Telecom Circle, CTO Building, Larwence Road, Ambala Cantt., Ambala-133001 (Haryana).
4. The General Manager, Karnal, Bharat Sanchar Nigam Ltd., Sector-8, HUDA, Karnal-132001(Haryana).
5. The Divisional Engineer Telecom (BSNL), Kaithal, Purani Anaj Mandi, Kaithal-136027 (Haryana).

**...RESPONDENTS**

**PRESENT:** Sh. Anil Kumar Bhardwaj, counsel for the applicant.  
Sh. Arvind Moudgil, counsel for respondents No.1 to 3 & 5.  
Sh. Madan Mohan, counsel for respondent no.4.

**ORDER (Oral)****SANJEEV KAUSHIK, MEMBER (J):-**

1. Krishna Vashisht, widow of Late Sh. Yoginder Nath is before this Court for invalidation of impugned letter dated 12.6.2017 (Annexure A-6), whereby respondents have decided to recover over payment of Rs.300677/-.
2. Facts broadly are not in dispute.
3. Husband of the applicant, who was working with BSNL, retired on attaining the age of superannuation on 31.7.2005 as CTS. He was getting pension as per regulations. He, unfortunately, expired on 27.1.2008. Thereafter, applicant being widow and nominee as per provisions of CCS (Pension) Rules, 1972, was allowed family pension. Vide communication dated 10.8.2011, she was informed that she will get enhanced family pension @ 11,798/-p.m. up to 9.6.2015 and thereafter she will get normal family pension @ Rs.7095/-p.m. (Annexure A-1). Vide communication dated 27.1.2017 (Annexure A-2), respondent department released pension @ Rs.7491/- w.e.f. 10.6.2013. In the month of June 2017, applicant inquired from the Bank as to why she was receiving less pension @ Rs.10,593/- instead of Rs.16,263/- then for the first time, she was informed that that some over payment has been made to her by the respondents by mistake and same was being recovered from her. She submitted various representations but ultimately by impugned order she has been informed that an over payment of Rs.300677/- has been made in favour of the applicant for which she was not legally entitled and it was informed that wrongly she has been given enhanced pension up to 30.9.2013 whereas the same was to be paid up to 9.7.2012, which

resulted into excess payment, hence the impugned order was passed to recover that amount. Hence the O.A.

4. Respondents have filed written statement wherein they have justified their stand in para no.4 and have submitted that at the time of revision of pension and family pension to the pre-2007 retiree of BSNL w.e.f. 1.1.2007, the pension of the applicant was shown to be paid up to 9.7.2015 erroneously vide letter dated 10.8.2011 instead of 9.7.2012 as shown in the original PPO (Annexure R-1), which resulted into over payment of Rs.300677/-. Therefore, recovery order has been passed to rectify their mistake. Respondents have also submitted that in terms of DoPT circular dated 2.3.2016 and judgment in the case of **Chandi Prasad Uniyal & Ors. vs. State of Uttarakhand & Others.** (2012 SCC (8) 417) and judgment of this Court in the case of **Amrik Singh vs. Union of India & Ors.**, action of the respondents cannot be said to be arbitrary or against any law.
5. I have heard learned counsel for the parties.
6. Sh. Anil Kumar Bhardwaj, learned counsel for the applicant vehemently argued that impugned action of the respondents is in violation of principles of natural justice as before recovery, they have not put applicant on notice and have straightway passed impugned order. He submitted that recovery is from family pension, thus the same be set aside. He also argued that the impugned recovery is hit by judicial pronouncement in the case of **State of Punjab & Ors. vs. Rafiq Masih (White Washer),** 2015(1) SCT 195. The applicant is a pensioner and period for which respondents are effecting recovery is beyond five years thus, the same cannot be affected.

7. A faint attempt was made by learned counsel for the respondents to support the impugned order by cited various judgments annexed with written statement as Annexure R-5 but he is not in position to cite any law contrary to what has been held in the case of Rafiq Masih (supra). They submitted that in terms of judgment in the case of **Chandi Prasad Uniyal & Ors.** (supra), recovery can be made. Thus, he submitted that their action is legally valid.
8. I have given my thoughtful consideration to the entire matter and also gone through judgments cited by learned counsel for the respective parties.
9. Solitary issue in this case is with regard to recovery of excess payment from employees/retirees has been put to rest by the Lordships in the case of **Col. B.J. Akkara (Retd.) vs. Govt. of India & Ors.** reported as 2007(1) SCC (L&S) 529, where while answering to question no.4 dealing with recovery of excess payment made on account of wrong interpretation/understating and by relying upon various judgment i.e. in the case of **Sahib Ram vs. State of Haryana**, 1995 Suppl. (1) SCC 18, **Shyam Babu Verma vs. Union of India**, 1994 (2) SCC 521, Lordships have opined that if excess payment made on account of mis-representation or fraud on the part of employee then employer has right to recover the said amount otherwise if there is no misrepresentation or fraud play by employee then excess payment cannot be recovered. Lordships have reiterated finding in para 28 as under:-
- “28. Such relief, restraining recovery back of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion, to relieve the employees, from the hardship that will be caused if recovery is implemented. A Government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of

his family. If he receives an excess payment for a long period, he would spend it genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, Courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.”

Lordships have further gone to record finding that to a pensioner recovery at later stage is mis-advantageous position when compared to a in service employee and intention to recover excess payment would cause undue hardships to him where there is no finding by the department that the excess payment to employee has been made on account of misrepresentation or fraud. This view has consistently been followed in the case of **Chandi Prasad Uniyal & Ors.** (supra) also. Subsequently, while summarizing their view after considering judgment on recovery in the case of Rafiq Masih (white washer) (supra), Lordships have recorded findings in para no.12 where they have held that recovery from retired employee would be inadmissible in law and have held that it is not possible to palpitate all circumstances of hardships and laid down criteria where recovery cannot be effected.

The same reads as under:-

- “(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." (emphasis supplied).

Perusal of above extracted para of the judgment makes is clear that recovery cannot be effected from Group C and D employees. Based on the judgment in the case of Rafiq Masih (supra), DoPT issued OM dated 2.3.2016, where they have followed judgment and circulated it to departments under them to comply with the mandate, given by the Apex Court.

10. In view of the above, applicant being widow and in receipt of family pension, her case is covered under exceptions carved by the Lordships and thus I find that recovery which the respondents have ordered by impugned order cannot sustain firstly because she is a pensioner and secondly, at this stage, respondents cannot be allowed to recover amount which they have paid in the year 2012 because at this stage it will cause hardships to a widow.
11. I will fail in my duty if I do not consider judgment cited by the respondents in the case of Amrik Singh (supra). The said judgment of the Tribunal has been upset by the Hon'ble High Court in the judicial review in CWP No.14638 of 2017 decided on 19.12.2017, where Lordships have considered judgment in the case of Rafiq Masih (white washer), and have set aside order of this Court and held that impugned recovery by department is bad in law. Therefore, this judgment will not render any assistance to respondents. For the same reason, the decision relied upon by learned counsel for respondent No.4, on two decisions namely **Dr. Sadanand vs. Reserve Bank of India**, 2011 (IV)LLJ 103 and **Ashish Kumar Bhowmik vs. State of West Bengal and Others**, 2019(1) Lab I.C.

1507, are not applicable to the facts of the instant case in view of indicated decision of Apex Court in the case of Rafiq Masih (supra).

12. Accordingly, the impugned order is set aside and O.A. is allowed. If respondents have already recovered amount, the same be refunded to her within a period of one month from the date of receipt of a certified copy of this order. M.A. also stands disposed of. No costs.

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

Date: 18.5.2019.  
Place: Chandigarh.

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