

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00779/2017

Tuesday, this the 29th day of January, 2019

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

V.G.Appu, S/o.Late.Govindan, aged 67 years
 Senior Telephone Operative Assistant(Phones) BSNL (Retd.)
 Viyyokkaran House, Moorkanikara P.O
 Kozhukkully, Thrissur – 680 751 **Applicant**

(By Advocate : Mr.C.S.G Nair)

V e r s u s

1. The Controller of Communication Accounts
 5th Floor, BSNL Bhavan
 Thiruvananthapuram-695033
2. Chief Manager
 State Bank of India, Central Pension Processing Centre
 LMS Compound, Vikas Bhavan P.O
 Thiruvananthapuram-695 033
3. Branch Manager
 State Bank of India
 Ayodhya Arcade, Thrissur Round West
 Thrissur – 680 001
4. Chief General Manager
 Bharat Sanchar Nigam Limited
 BSNL Bhavan
 Thiruvananthapuram-695 033
5. Union of India
 Represented by the Secretary
 Department of Pension & Pensioners' Welfare
 Lok Nayak Bhawan, Khan Market,
 New Delhi – 110 001 **Respondents**

**(By Advocate : Mr.M.K.Padmanabhan Nair, ACGSC for R1 & 5,
 M/s.Nathan & Nathan for R 2&3, Mr.Thomas Mathew Nellimootttil for
 R4)**

This application having been heard on 29.1.2019 the Tribunal on the same day delivered the following:

O R D E R (ORAL)

Hon'ble Mr. Ashish Kalia, Judicial Member –

The reliefs prayed for in the Original Application are as follows:-

- “(i) To call for the records leading upto the issue of Annexure A3 and quash the same.
- (ii) To direct the 2nd and 3rd respondents not to effectany recovery from the pension of the applicant.
- (iii) To direct the respondents to release the amount of Rs.64,785/- withheld by the 2nd respondent with interest @ 12% p.a within a time frame.
- (iv) To grant such other relief or reliefs that may be prayed for or that are found to be justand proper in the nature and circumstances of the case.
- (v) To grant cost of this O.A. ”

2. The brief facts of the case are as under:

Applicant is a pensioner, who retired as a Telephone Operative Assistant in BSNL. He joined service as a Boy Peon on 14.9.1973 and retired on superannuation on 30.6.2010. After completing qualifying service of 36 years 9 months and 13 days, his pension was originally fixed at Rs.7,538/- per month. An amount of Rs.2,96,459/- as commuted value of pension has been paid as per Annexure A-1. It is also noted that an amount of Rs.3,015/- would be deducted from monthly pension as commuted portion of pension. Reduced monthly pension is noted as Rs.4,523/-.

3. Applicant has received a letter from the 3rd respondent stating that an excess amount of Rs.78,705/-was paid to the applicant from June 2013 to August 2017. An amount of Rs.64,785/- towards arrears payable to the applicant was withheld without even any intimation to him. According to the applicant, respondent no.1 also did not intimate the applicant about the alleged additional payment of commuted value of pension and also the amount of arrears of pension payable to the applicant. Thus the applicant is kept in dark about the arrears due to him as well as the alleged excess payment by respondent no.1. The applicant is drawing his pension from the 3rd respondent Bank through his Savings Bank Account No.80458803807. Applicant alleged that this recovery is made in violation of the O.M dated 2.3.2016 issued by the 5th respondent(Annexure A-4), which deals with the Hon'ble Apex Court's decision in the case of ***State of Punjab & Ors v.Rafiq Masih (White Washer)*** etc in C.A No.11527 of 2014. Feeling aggrieved by the action of respondent nos.2 & 3, applicant has approached this Tribunal for redressal of his grievance mainly relying on the judgment of ***RafiqMasih's*** case supra.

4. Notices were issued and the respondents put their appearance through their counsel and filed a detailed reply statement and submitted there in that the applicant was retired on superannuation from Bharath Sanchar Nigam Ltd. (BSNL) on 30.06.2010.The Bank started disbursing pension from September 2010 with effect from July 2010. In the Original Pension Payment order dated 19.6.2010 the Basic Pay after commutation is Rs.4523/- and pay before commutation was Rs.7538/- and accordingly

commutation recovery was made for Rs.3015/-. Thereafter in the subsequent revision order dated 10.4.2013 received from the Controller of Communications, additional amount of commutation of pension for Rs.1485/- was mentioned. In the revision order it was also mentioned that “Different commuted value of pension payable by the bank, Nil (Already paid)”. A true copy of the revised Pension Payment Order dated 10.4.2013 is marked as Annexure R2(a). The additional commutation recovery was omitted to carry out from the pensioner. The said omission was came to the notice of the respondents only when revision order No.Pen(IDA)/Post-2007/771461006442 dated 30.5.2017 was received wherein the total commutation recovery was mentioned as Rs.4500/-. As per the revision order dated 30.5.2017 the pensioner was to be paid an arrear amount of Rs.64785/- and the short fall of commutation recovery was Rs.78705/-. The arrear amount of Rs.64,785/- was adjusted towards the short recovery and balance amount was recovered in three installments and the entire shortfall was recovered by November 2017.

5. Heard Mr.C.S.G Nair, learned counsel for the applicant, Mr.M.K.Padmanabhan Nair, ACGSC, learned counsel for respondent nos.1 & 5, Mr.Thomas Mathew Nellimoottil, learned counsel for respondent no.4 and Mr.Syamanthak representing M/s.Nathan and Nathan, learned counsel for respondent nos.2 &3. Perused the records.

6. The short question is whether the applicant is required to be given notice before making any recovery which is not done by respondent nos.2

&3. However, as the legal right of the respondents, learned counsel for the respondents has cited the Hon'ble Apex Court's decision in High Court of Punjab and Haryana and others v.Jagdev Singh wherein the apex court has held as under:

“11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12. For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years.”

7. The plea of applicant that he is covered by *Rafiq Masih*'s case is not tenable. Recovery of excess payment is initiated by respondent nos.2&3 Bank. Thus question does arises for the application of the *Rafiq Masih*'s case. However, present case is covered by the *Jagdev Sing*'s case supra wherein the apex court held that where an undertaking is given by retired employee then recovery could be made for the excess payment made to him.

8. Keeping in view of the facts and circumstances, this Tribunal is of the view that the recovery made by respondent nos.2 &3 is hit by law of limitation, which is 3 years available to the Bank. This is for the recovery which is ordered by respondent no.1 in view of the payment which is given by mistake by respondent nos.2 & 3 Bank.

9. Hence, I hereby hold that respondent nos.2 &3 are entitled to recover the money in view of the undertaking, only for a period of 3 years which is prescribed under the law of limitation. This Original Application is disposed of with this direction. No costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

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List of Annexures

Annexure A-1 - True copy of the PPO No.771461006442

Annexure A-2 - True copy of the revised PPO dated 30.5.2017 issued by the 1st respondent

Annexure A-3 - True copy of the letter No.CPPC/TVM/ARREAR/RO 5139333 dated 29.8.2017 issued by the 2nd respondent

Annexure A-4 - True copy of O.M F.No.18/03/2015-Estt.(Pay-I) dated 2.3.2016

Annexure R2(a) - A true copy of the revised pension payment order dated 10.4.2013

Annexure R2(b) - A true copy of the undertaking executed by the applicant dated 22.9.2010

Annexure R2(c) - A true copy of the Circular No.RBI/2015-16/340 dated 17.3.2016

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