

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00556/2018

Dated this Wednesday, the 9th day of January, 2019.

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

Mrs.K.L.Narayanan, W/o Late K.K.Narayanan, aged 72 years,
House No.29/135, Janatha Road,
Near Toc.H.School, Vytila,
Cochin 682019.

..... **Applicant**

(By Advocates – Mr. C.S.G.Nair)

v e r s u s

1. Director of Accounts (Postal),
Kerala Circle, Trivandrum 695001.
2. Senior Postmaster,
Head Post Office,
Ernakulam, Cochin 682011.
3. Senior Superintendent of Post Offices,
Ernakulam Division,
Cochin 682011.
4. Post Master General
Central Circle,
Cochin 682020.
5. Chief of Post Master General,
Kerala Circle,
Thiruvananthapuram 695033.
6. Union of India,
Represented by its Secretary,
Department of Pension & Pensioners' Welfare,
South Block, New Delhi 110 001.

..... **Respondents**

(By Advocate – Mr. N. Anilkumar, SCGSC)

This Original Application having been heard on 09.01.2019, the Tribunal on the same day delivered the following:

O R D E R (ORAL)

The present O.A. has been filed seeking the following reliefs:

- (i) To call for the records leading up to the issue of Annexure A2 and quash the same.

- (ii) To declare that the family pension of the applicant @ Rs.7681/- paid w.e.f. 21.3.2011 is correct.
- (iii) To direct the respondents to pay family pension @ R.7681 upto 31.12.2015 and @ Rs.19,741 w.e.f. 1.1.2016.
- (iv) To direct the respondents to refund the amount already recovered from the applicant with interest @12% per annum within a stipulated period.

The facts in brief as narrated by the applicant is that the applicant's husband Late K.K. Narayanan retired from service as Sub Postmaster, Shanmugham Road, Ernakulam on superannuation on 31.3.2004. He was issued with PPO No.10556/LPS/TVM. He had expired on 30.10.2008. Ever since, the death of her husband, the applicant is in receipt of family pension, through her SB A/c No.4735 maintained in Vytla Post Office in Ernakulam division. It is submitted that By Annex A2, the applicant was informed that an amount of Rs. 395,653/- was paid in excess from 21.3.2012 to 30.6.2017 and that amount should be re-credited immediately. Even without any intimation an amount of Rs.75,000/- was recovered by the 2nd respondent from her SB A/c. The 1st respondent is the authority to revise/re-fix pension/family pension and the 2nd respondent is only a pension disbursing authority. In the absence of any other order from the 1st respondent the 2nd respondent cannot revise the pension/family pension.

3. It is further submitted that on 28.7.2017 a few persons said to be from the 2nd respondent's office went to the resident of applicant and forced her to write a letter permitting the 2nd respondent to recover an amount of Rs. 7000/- per month towards the alleged excess payment. But, they have recovered Rs.8000/- per month for three months and subsequently, Rs.7000/- each.

4. It is submitted that the family pension of the applicant was fixed during 2008/2009 on implementation of 6thCPC, and the recovery started during 2017 on the ground that the fixation of family pension was erroneous. As per Rule 70 of the CCS (Pension) Rules 1972 no reduction can be effected after the lapse of two years of fixation.

5. Recovery from retired employee is impermissible in law as per the judgment of the Hon'ble Supreme court in *State of Punjab and Raffiq Masih (White Washer)*. Moreover, the DOPT has issued an OM on 2.3.2016 (Annexure A11) prohibiting recovery from

retired employees or employees who are due to retire within one year, of the order of recovery. Therefore, any recovery from the pension of the applicant is illegal and arbitrary and liable to be refunded. Being aggrieved by the inaction on the part of the respondents, the applicant approached this Tribunal for redressal of his grievance with the above reliefs.

6. It is submitted by the applicant that pension of the applicant was originally fixed at R. 3745/- w.e.f. 1.4.2004 and family pension was fixed at Rs.2265/- as can be seen from Annexure A1. This was revised on the basis of the 6th CPC recommendations which came into force w.e.f. 1.1.2006. Based on the recommendations of the 6th CPC, pension of the applicant was revised to Rs. 8465/- and family pension to R.7681/-. The revised amounts were inserted by the 2nd respondent in Annexure A1 PPO. Enhanced family pension was payable upto 20.3.2011 as noted in Annexure A1. It is submitted that the revised family pension @ Rs.7681/- was being paid to the applicant w.e.f. 21.3.2011 as can be seen from Annexe A2. But it is noted in Annexure A2 that the applicant was eligible for only @ Rs..5120/- instead of Rs.7681/-. The reason for such reduction is not known and no explanation was given in the letter Annexure A2.

7. Notices were issued. Respondents put up their appearance through Mr. N.Anilkumar, SCGSC and filed detailed written reply.

8. Heard the learned counsel appearing on both sides and perused the pleadings.

9. The respondents submitted that the excess payment is liable to be recovered from the family pension of the applicant which was wrongly revised as Rs.7681/- instead of Rs.5120/- w.e.f. 21.03.2011. The letter of Authority revising the pension was received from the Office of the Director of Accounts (Postal), Trivandrum vide Memo No. 690/Pen-2/C.No./PPO No.10556/LPS/TVM dated 29.10.2013 only whereas the wrong fixation was made w.e.f. 21.3.2011. The discrepancy of irregular fixation of pension was noticed only at the time of implementation of the 7th CPC recommendation during 2017. The applicant was intimated the details of the overpaid amount vide Annexure A2 dated 28.07.2017 with detailed calculation sheet. The applicant expressed her willingness to refund the excess paid amount in installments @ R.7000/- per month. Rs.75,000/- was adjusted from the

monthly family pension deposits made through her SB Pension Account No. 9477114735 (Old A/c No. 837347) Monthly recovery @ 8000/- was initiated w.e.f. August 2017 to adjust the remaining excess paid amount on the strength of undertaking in Annexure A submitted while opening SB pension account by the applicant.

10. Heard the learned counsel on both sides and perused the pleadings and considered the rival submissions. Also carefully gone through the Judgement of the Hon'ble Supreme Court in ***Rafiq Masih (White Washer (supra)***.

11. The short point raised by the applicant in the present original application is whether recovery can be made from family pension of the retired deceased employee. As rightly pointed out by the learned counsel for the applicant the issue in question has already been answered by the Hon'ble Supreme Court in the case of ***State of Punjab & Ors. v. Rafiq Masih (White Washer) etc.*** - (2015) 4 SCC 334 in which it is held that recovery of excess payments is impermissible in law in the following cases:

"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.*
- (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."*

12. Clause (ii) deals with recovery from retired employees, or employees who are due to retire within one year, of the order of recovery and (iii) deals with 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.

13. After a careful reading of the above clauses in the above judgement of the Hon'ble Supreme Court in ***Rafiq Masih (White Washer)(supra)*** this Tribunal is of the view that the present case falls within the ambit of the guidelines issued by the Hon'ble Apex court and the issue in hand is squarely covered by the above decision. Accordingly, it is ordered that Annexure A.2 is hereby quashed and set aside and hold that the applicant is entitled to draw family pension at Rs. 7681/ per month with allowances with effect from 21.3.2011 without reduction/recovery and to get arrears/refund as the case may be. It is also ordered that the applicant is entitled to get family pension @ R.19741 w.e.f 1.1.2016. Respondents are directed to refund all the amount already recovered. This exercise shall be completed within a period of 90 days from the date of receipt of a copy of this order without any interest.

14. The Original Applicants stands allowed. However, it is made clear that this order will not come in the way of respondents to rectify any wrong calculation. No order as to cost.

**(ASHISH KALIA)
JUDICIAL MEMBER**

sj*

Annexures
(Applicant's)

- Annexure A2 - True copy of the letter No.AN-2/Family pension/2017-18 dtd. 28.7.2017 issued by the 2nd respondent along with its enclosure.
- Annexure A1 - True copy of the PPO No. 10556/LPS/TVM
- Annexure A3 - True copy of letter dt. 7.9.2017 issued to the 4th respondent.
- Annexure A4 - True copy of the complaint given to the 5th respondent.
- Annexure A5 - True copy of the letter No. CPT/CPCGRAM/2016(Vol.2) dt. 22.11.2017 issued by the 4th respondent.
- Annexure A6 - True copy of the letter No. DOPPW/E/2017/17691 dt. 23.11.2017 issued by the 3rd respondent.
- Annexure A7 - True copy of the letter No. DOPW/E/2017/17691 dt. 3.1.2018 issued by the 3rd respondent.
- Annexure A8. - True copy of the letter dt. 3.4.2018 to the 5th respondent
- Annexure A9. - True copy of the reminder submitted by the applicant on 4.4.2018.
- Annexure A10. - True copy of the letter dt. 7.5.2018 submitted by the applicant to the 5th respondent.
- Annexure A.11 - True copy of the OM NoF.No.18/03/2015-Estt. (Pay.I) dt.2.3.2016 issued by the DOPT .

Respondents' Annexures

- Annexure R1: Annexe R.1 A copy of Enfacement No.8699/Pen-2/C-425/03-04 dated 15.03.2004 issued by the Director of Accounts (Postal), Trivandrum.
- Annexure R2 : True copy of DoP&T, O.M.No. 105/I/2004-IC dated 01.03.2004.
- Annexure R3 : True copy of the Dept. of Pension & Pensioner's Welfare O.M. No.38/37/08-P & PW (A) dated 01.09.2004.
- Annexure R4 : True copy of the letter of Authority issued by Office of Director of Accounts (postal), Trivandrum vide Memo No. 690/Pen/2/C No.PPO No. 10556/LPS/TVM/ dated 29.10.2013.
- Annexure R5 : True copy of Letter dated 31.07.2017 received from the applicant.
- Annexure R6 : True copy of the undertaking submitted by the applicant.
