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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00758/2017

Monday, this the 25th day of February, 2019

Hon'ble Mr.Ashish Kalia, Judicial Member

V.Syamala, W/o.late K.Radhakrishnan, aged 50 years
Vadakumchery House, Kaiparambu P.O
Thrissur -680 546

..... **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 – 695 033
2. Chief Manager
State Bank of India
Central Pension Processing Centre
Thiruvananthapuram – 695 014
3. Branch Manager
State Bank of India, Thrissur Round South
Thrissur – 680 001
4. Union of India
Represented by the Secretary
Department of Pension & Pensioners' Welfare
Lok Nayak Bhawan, Khan Market
New Delhi – 110 003

..... **Respondents**

**(By Advocate – Mr.K.C.Muraleedharan,ACGSC for R 1&4,
Mr.P.Ramakrishnan for R2&3)**

This Original Application having been heard on 25.2.2019, the Tribunal on the same day delivered the following:

O R D E R (ORAL)

Per: 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 effect any recovery from the pension of the applicant.

(iii) To direct the respondents to refund the amount of Rs.11,471/- recovered from the pension of the applicant with interest @ 12% p.a.

(iv) To grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.”

2 Applicant is the widow of Late Shri.K.Radhakrishnan, who was a Telephone Mechanic in BSNL and was expired on 9.2.2010. Upon his death, the applicant was granted family pension @ Rs.7690/- from 10.12.2010 to 9.12.2020 and then @ 4614 from 10.12.2020 onwards. The applicant is drawing her pension from State Bank of India Thrissur Round South Branch through her S.B A/c No.67141049562. Suddenly, recovery order has been issued by the 2nd respondent on 23.6.2017 by which the applicant was informed that an amount of Rs.65,069/- was paid in excess of the eligible pension and it would be recovered in 11 instalments of Rs.5927/- p.m as per Annexure A-3. Another amount of Rs.8,699/- was recovered from the pension for August 2017. Thus, a total of Rs.11,471/- was recovered from the pension. Feeling aggrieved by this, applicant has approached this Tribunal for redressal of her grievances. Applicant has relied upon the judgment of the Hon’ble Apex Court in ***State of Punjab &***

others v. Rafiq Masih (White Washer) etc. in Civil Appeal No.11527 of 2014 decided on 18.12.2014.

3. Notices were issued and respondents entered their appearance through their counsel and filed reply statement. It is submitted therein that the applicant had opted the 3rd respondent bank for receiving family pension and at the time of opening of savings bank account, she had submitted a letter of undertaking to the effect that it authorizes the bank to recover the excess amount if found paid, as per Annexure R2(b). The applicant was actually entitled for basic enhanced family pension of Rs.7690/- per month till 9/12/2020 and in addition she was also entitled for Industrial Dearness Allowance (IDA). The family pension of the applicant was subsequently revised as per order dated 23.6.2017 vide Annexure R2(c). It is further submitted that on receipt of Annexure R2(c), the respondents had realized that there was a mistake in calculating the dearness allowance of the pension payable to the applicant since it was noted wrongly as BSNL (CDA) category instead of IDA category and was disbursed pension under the CDA rate till the receipt of Annexure R2(c) revision order by the Bank. Hence the respondents are entitled to recover an amount of Rs.65,069. Learned counsel for the respondents has relied upon the judgment passed by the Hon'ble Apex Court in ***High Court of Punjab and Haryana v. Jagdev Singh*** in CIVIL APPEAL No. 3500 OF 2006 where the Hon'ble Apex Court has decided that wherever an undertaking is given, the recovery can be made by the employer. Learned counsel for the respondents submitted that the recoveries was made by the Bank. I disagree with this contention

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raised by the respondents and I am of the view that in fact mistake is noticed by the respondents themselves and thereafter on receipt of Annexure R2(c) and accordingly instructions were issued to the Bank.

4. Heard Mr.C.S.G Nair, learned counsel for the applicant and Mr.Sinu G nath representing Mr.K.C.Muraleedharan, ACGSC for respondent nos.1&4 and Mr.Prathap representing Mr.P.Ramakrishnan for respondent nos.2 & 3.

Perused the records.

5. The short question raised in this Original Application is whether recovery pursuance to erroneous calculation of Dearness Allowance or other count can be recovered from the pensioner as per the judgment of **Rafiq Masih**'s case. In subsequent judgment in passed by the Apex Court in **Jagdev Singh**'s case, it was held that wherever an undertaking is given by the employee, recovery can be made by the employer.

6. This Tribunal, after considering the rival contentions in the case of recovery by the Bank, is of the view that it can only be done within the prescribed period of limitation i.e, 3 years because there is a relationship between the applicant and the Bank i.e, customer and Banker relationship, which will govern altogether different rules. This Tribunal is of the considered view that the Bank can only recover the amount prior to three years only from the pension of the applicant. The recovery prior to three years is barred by limitation. However, the bank is otherwise entitled to pay pension to the applicant in accordance with rules.

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7. The Original Application is disposed of as above. No costs.

**(ASHISH KALIA)
JUDICIAL MEMBER**

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List of Annexures

Annexure A1 - True copy of the PPO No.771461101116

Annexure A2 - True copy of the letter No.Pen(IDA)/Post-2007/771461101116 dt. 23.6.2017 issued by the 1st respondent

Annexure A3 - True copy of the letter dated 23.6.2017 issued by the 2nd respondent

Annexure A4 - True copy of OM F.No.18/03/2015-Estt.(Pay-I) dt.2.3.2016

Annexure R2(a) - True copy of the pension payment order no.771461101116 dated 27.9.2011

Annexure R2(b) - The true copy of letter of undertaking dated 12.10.2011

Annexure R2(c) - True copy of the Revised Pension Payment order No.Pen(IDA)/Post-2007/771461101116/6829 dated 23.6.2017

Annexure R2(d) - True copy of the Pension Calculation sheet for the period from December 2010 to June 2017 in relation to the pension paid to the applicant

Annexure R2(e) - True copy of the notice dated 23.6.2017 issued by the 2nd respondent to the applicant

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