

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00025/2018

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

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

Leelamma Varghese, aged 78 years, (W/o late Eapen Varghese,
Retired APO/DRM/O/SC, Railway, Hyderabad)
Elemathayil House, Vazhappally P.O.
Changanassery, Kottayam 686 103.

Applicant

(By Advocates – Mr. Varkey & Martin)

v e r s u s

1. The General Manager, South Central Railway,
Rail Nilayam, Secunderabad – 500 071.
2. Financial Advisor & Chief Accounts Officer,
South Central Railway, Rail Nilayam, Secunderabad 500071.
3. The Chief Manager, Indian Overseas Bank,
Central Pension Cell, 763, Anna Salai, Chennai 600 002.
4. The Manager, Indian Overseas Bank,
Changanassery Branch, Kottayam 682101.

..... **Respondents**

**(By Advocate – Mrs. Mini R. Menon, ACGSC for R1 & R2
Mr. K.P. Sujesh Kumar, R.4)**

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 applicant is aggrieved by the illegal reduction/recovery in her pension by the disbursing Bank, as shown in Annexure A1 statement. The respondents' railways have blamed the ban for the reduction/recovery according to Annexure A4 order, received in response to Annexure A3.

2. The brief facts as narrated by the applicant in the O.A. are that she is the wife of late Eapen Varghese who had retired as Assistant Personnel Officer, South Central Railway (HYB Division), Secunderabad on 30.6.1989 in the pay scale of Rs. 2000-3200 and his pension was fixed at Rs. 1484/- with effect from 1.7.1989, as per PPO No.

SCR/HQ/1989/S-4485 B dated 30.6.1989. Family Pension (Enhanced) was Rs. 1190 upto 22.6.1996 and thereafter the reduced family pension was R.595 as per the said PPO. Later on it was enhanced to Rs.7000/- as pension plus dearness relief. With effect from 24.5.2010. It was later on increased to Rs.16000/- in November, 2014. It was reduced to Rs.11876/- from May 2016 and again reduced to Rs. 5759 from May, 2017 on wards. Applicant's husband passed away on 23.05.2010. No reason has been given for the reduction of the pension. Aggrieved by the excess pension recovery etc. from respondents, the bank has processed and furnished a statement for the period from 23.11.2016 to 29.6.2017 which is at Annexure A1. On 23.1.2014 the pension is again revised of Eapen Varghese to Rs.10112 and family pension of the applicant is R.4887/- w.e.f. 24.9.2012. A corrigendum letter of even Number dated 14.9.2015 giving retrospective effect to the said revisions of pension from 1.1.2006.

3. The applicant is aggrieved by the illegal reduction/recovery in her pension by the disbursing Bank, as shown in Annexure A1 statement. The respondents' railways have blamed the ban for the reduction/recovery according to Annexure A4 order, received in response to Annexure A3. Aggrieved by this the applicant approached this Tribunal seeking following reliefs:

- (i) Declare that the applicant is entitled to draw family pension at Rs.4887/- per month with allowances with effect from 24.05.2010 without reduction/recovery and to get arrears/refund as the case may be and; direct the respondents accordingly.
- (ii) Hold that 3rd and 4th respondents have no authority to reduce pension or effect recovery as at Annexure A1 and; set aside Annexure A1 statement.
- (iii) Quash Annexure A1 and to set aside Annexure A4 to the extent it seeks to absolve the respondents railways of their duty to redress of the grievance of the applicant in the matter of reduction/recovery of pension.
- (iv) Award costs of and incidental to this application.
- (v) Grant such other relief, which this Tribunal may deem fit and proper in the circumstances of the case.

4. Notices were issued. Respondents put up their appearance through Mrs. Mini R. Menon, ACGSC for Respondent No.1 and 2 and Mr.K.P.Kumar, Respondent No.4 and filed a detailed reply statement resisting the claim of the applicant.

5. It was submitted on behalf of the respondents that late Eapen Varghese Husband of the applicant passed away on 23.05.2010. He was entitled for pension @Rs.10,112/- plus Dearness Relief w.e.f. 01.01.2006 to 23.5.2010 (as per VI CPC) and Applicant (Smt. Leelamma Varghese W/o Late Eapen Varghese) is entitled for Normal Family Pension @ Rs.4887/- plus Dearness Relief as admissible from time to time from the date following date of death of pensioner i.e. 24.5.2010 as per Lr.No. APN/1/773, dated 23.01.2014, true copy of which is produced herewith and marked as Annexe R1. But Bank has continued to pay pension @ Rs.10112/- plus relief even after demise of Sr. Eapen Varghese instead of Rs. 4887/- plus relief to Smt. Leelamma Verghese. Pension Disbursing Agency (PDA) the 3rd & 4th respondents should explain the reason why higher rate of pension was paid initially and reduced subsequently. However, the family pensioner cannot claim for more pension than what is due to her. The excess paid family pension should be recovered from Smt. Leelamma and remitted to Railways by Pension Disbursing Agency (Bank) i.e. R-3 & R.4.

6. It is also submitted on behalf of the respondents that they are not aware of the demise of Eapen Varghese husband of Applicant. Neither the Pension Disbursing Agency nor the family pensioner has intimated this Office about the demise of the pensioner. Respondent No.1 & 2 have come to know about the demise of Sri Eapen Varghese only on receipt of letter dt. 14.08.2017 by the Advocate. A reply has been issued to Advocate vide letter No. APN/1/1/773, dated 03.10.2017 stating that the Applicant's grievance has been examined and observed that neither the death of Sri Eapen Varghese was informed nor death certificate has been submitted to this office by the Applicant nor by R.3 nor R.4. As per the procedure in vogue, the date of death of pensioner should be intimated to the respondents while commencing payment of family pension.

7. It is submitted that due to some over payment the respondents has ordered recovery from the pension of the applicant's family pension.

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

9. The short point raised by the applicant in the present original application is whether

recovery can be made from family pension w.e.f. 23.05.2010 after seven years of the demise of applicant's husband. The learned counsel for the applicant relied upon 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. "*

10. 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.

11. 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 the applicant is entitled to draw family pension at Rs. 4887/ per month with allowances with effect from 24.05.2010 without reduction/recovery and to get

arrears/refund as the case may be. 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.

12. The Original Applicants stands allowed. No order as to cost.

**(ASHISH KALIA)
JUDICIAL MEMBER**

sj*

Annexures
(Applicant's)

Annexure A1 - True copy of the Statement of applicant's family pension from November, 2016 to June 2017 issued by the 4th respondent.

Annexure A4 - True copy of the Letter No.APN/1/1/773 dated 3.10.2017 issued by the 2nd respondent.

Annexure A2(a) - A true copy of the letter No.APN/1/1/773 dated 23.1.2014 issued by the 2nd respondent.

Annexure A2(b) - A true copy of the letter No. APN/1/1/773 dated 14.9.2015 issued by the 2nd respondent.

Annexure A3 - A true copy of the lawyer notice dated 14.8.2017

Annexure A5 - A true copy of the letter No. Nil dated 22.8.2017 issued by the Senior Manager, Indian Oversea Bank.

Respondents' Annexures

Annexure R1: True copy of the letter No. APN/1/1/773, dated 23.01.2014

Annexure R2 : Copy of the letter No.APN/1/1/773, dated 29.09.2011

Annexure R3 : True copy of the Government of India OM dated 02.03.2016 (at page No16) circulated vide Serial Circular No.75/2016 dated 19.07.2016

Annexure R4 : True copy of the High Court of TS/AP Interim Order, dt. 06.04.2018 in IA. No.01/2018 in WP No.11512/2018.

Annexure R5 : True copy of the RBI Guidelines dated 17.3.2016.

Annexure R6 : True copy of the RBI instructions issued vide Master Circular No. RBI/2015-16/63 dated 01.07.2015.
