

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00277/2015

Monday, this the 4th day of February, 2019

CORAM:

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

1. C.L.Vilasini,
W/o Kannan Menon N.K.,
Manager (retired), ESI Corporation,
Aged 80 years, Red Star,
Palliyil Lane, Cochin -16.
2. N.V.Joseph,
S/o Varkey N.J.,
Aged 84 years,
Manager (Retired),
ESI Corporation,
residing at Nedumparambil,
Maradu PO, Kannadikkadu, Ernakulam.
3. R.Venkiteshwara Sait,
S/o Radhakrishana Sait,
Aged 73 years,
Manager (retired),
ESI Corporation,
residing at House No.201,
North J.D.Street, Cochin-682 001.
4. P.J.Joseph,
S/o John U,
Aged 80 years,
Insurance Inspector (Retired),
ESI Corporation,
residing at Pulari House ,
Kothavara PO,
Vaikom, Kottayam – 686 607.

5. A.Abraham,
S/o Avira,
Aged 77 years,
Manager (Retired),
ESI Corporation,
residing at Varikal,
Peruva PO 686 610.
6. P.T.Joseph,
S/o Thomas M.O.,
Aged 70 years,
Insurance Inspector, (Retired),
ESI Corporation,
Perayil House,
Near Holy Mary,
School, S.H.Mount PO,
Kottayam – 686 006.
7. K.C.Mathai,
S/o Chandy,
Aged 69 years,
Manager (Retired),
ESI Corporation,
residing at Kavitha House,
Athirampuzha PO,
Kottayam – 686 562.
8. K.N.Radhamani Amma,
W/o Sivasankara Panicker,
Aged 69 years,
Manager (Retired),
ESI Corporation,
residing at Karothkunnel House,
Areyparambu PO – 686 501.
9. P.A.Narayanan,
S/o Achutha Menon,
Aged 76 years,
Manager (Retired),
ESI Corporation,
Vedikadath House,
Mulakulam South PO,
Via Peruva,
Kottayam – 686 610.

10. T.M.Thomas,
S/o Mathai T.,
Aged 69 years,
Insurance Inspector (Retired),
ESI Corporation,
residing at Thalappalli House,
Meenadam PO,
Near 210 NSS Building,
Kottayam – 686 015.

11. A.C.Mukundan,
S/o Narayana Menon C.,
Aged 77 years,
Manager (Retired),
ESI Corporation,
residing at Raj Nivas,
Kunnukara PO – 683 524.

12. V.Aravindakshan,
S/o Kumaran Nair,
Aged 74 years,
Manager (Retired),
ESI Corporation,
residing at Kilikkote House,
Kandamkulam PO,
Kodungallur – 680 669.

13. M.V.Joseph,
S/o Geevarghese,
Aged 73 years,
Manager (Retired),
ESI Corporation,
residing at Malikudy House,
Rayamangalam PO – 683 545.

14. Valsala M.,
W/o N.S.Kartha,
Aged 74 years,
Manager (Retired),
ESI Corporation,
residing at 44/1250
Sreevalsam,
ACS School Road,
Kaloor, Cochin -17.

15. K.A.Kousallya,
W/o Sukumaran Nair,
Aged 75 years,
Manager (Retired),
ESI Corporation,
residing at Manappadan House,
Madaplanthuruthu,
Moothakunnam PO 683 516.

16. K.N.Karunakaran Nair,
S/o Narayana Pillai K.K.,
Aged 68 years,
Manager (Retired),
ESI Corporation,
residing at Sreemurugavilasam,
Kareekad PO,
Ernakulam – 682 305.

17. B.Krishnankutty,
S/o Neelakanda Pillai,
Aged 71 years,
Manager (Retired),
ESI Corporation,
residing at Menon Mattu,
Kuttikattu House,
Sreemoolanagaram PO,
Aluva – 683 580.

18. B.Saraswathy Amma,
W/o C.P.A.Panicker,
Aged 76 years,
Family Pensioner,
residing at 3A Golden Residency,
SA Road, Near Chaithanya ENT
& ICICI Bank, Cochin -16.

19. Pennamma Punnose,
W/o Punnose N.P.,
Aged 77 years,
Family Pensioner,
residing at Naicheril House,
Malloosseri PO,
Kottayam – 41.

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20. P.Santhakumari,
W/o Madhavan,
Aged 62 years,
Family Pensioner,
residing at Keerampilly Parambu,
Edayakunnam,
South Chittoor – 682 027.

21. Thressiamma Joseph,
W/o Joseph,
Aged 74 years,
Family Pensioner,
Chazhoor House,
K.K.Padmanabhan Road,
Ernakulam,
Cochin – 682 018.Applicants

(By Advocate Mr.Brijesh Mohan)

v e r s u s

1. The Union of India,
Represented by its Secretary to
Government of India,
Ministry of Personnel, Public Grievances
and Pensions, Department of Personnel and Training,
New Delhi – 110 001.

2. The Director General,
ESIC Head Quarters Office,
Panchdeep Bhavan, CIG Marg,
New Delhi – 110 002.

3. The Finance Commissioner,
Head Quarters Office,
ESI Corporation,
Panchdeep Bhavan, CIG Marg,
New Delhi – 110 002.

4. The Regional Director,
Regional Office (Kerala),
ESI Corporation, Panchdeep Bhavan,
North Swaraj Ground,
Thrissur – 680 020.

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5. The Assistant Director (Finance),
ESI Corporation,
Sub Regional Office,
Ernakulam, Malu's Complex,
St.Francis Church road,
Kaloor, Cochin - 682 017.Respondents

(By Advocates Mr.N.Anil Kumar, SCGSC [R1] & Mr.T.V.Ajaykumar [R2-5])

This application having been heard on 24th January, 2019 the Tribunal on 4th February, 2019 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

OA No.277/2015 is filed by Smt.C.L.Vilasini and 20 others who had been working in ESI Corporation in various posts and retired from service prior to 01.01.2006. The applicants-1 to 17 are challenging reduction in their pension. Applicants-18 to 21 are widows of retired employees of ESI Corporation who are challenging the reduction in family pension. The reliefs sought in the OA are as follows:

- i. Call for the records leading to Annexure A2 and similar orders and A4 and set aside the same.
- ii. declare that the action of the respondents in ordering recovery from the pension/family pension of the applicants without notice and without stating reason is arbitrary, illegal and unsustainable.

And

- iii. such other and further reliefs as this Hon'ble Tribunal may find just and proper.

2. The first respondent as per OM dated 01.09.2008 revised the pension of pre-2006 pensioners at the rate of 150% of existing pension. Yet another OM was issued by Respondent-1 dated 28.01.2013 revising the pension/family pension (Annexure A1). Annexure A1 was adopted by 2nd respondent and pension/family pension at the revised rates based on Annexure A1 was disbursed from May 2013 onwards. As per Annexure A1 the monetary benefits were to be disbursed only with effect from 24.09.2012 and there was to be no change in the amount of pension paid between 01.01.2006 and 23.09.2012.

3. However, the applicants were shocked to get a communication dated 21.11.2014 (Annexure A2) informing them that their pension has been reduced. This communication states no reason for the said recovery and it was done without any notice and opportunity of hearing granted to the applicants. The 12th applicant submitted a representation at Annexure A3 protesting against the reduction. The 5th respondent replied to that representation as well as those presented by other applicants, that the reduction of pension is based on a direction from the Headquarters (Annexure A4).

4. It has come to the knowledge of the applicants that the reduction in pension has been due to OA No.464/2014 filed before this Tribunal by certain retired employees complaining that the revision of pension granted to the

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applicants were not extended to them. The said OA is reportedly pending. As can be seen, the case brought up by certain other employees ought to have no bearing upon the benefits already disbursed to the applicants. At any rate, the order to effect recovery from the pension of the applicants after such a long time and that too without notice, cannot be justified. An amount of Rs.10,000 to 92,000/- is ordered to be recovered from each of the applicants.

5. The respondents have filed a reply statement, wherein it is maintained that the recovery ordered is justified. The impugned orders are the result of a detailed assessment of fitment tables annexed to the Ministry of Finance, Department of Expenditure orders dated 30.08.2008. There has been meaningful consultation between ESIC and the Government of India, Ministry of Finance before adopting the stand, they did. The earlier orders at best can be stated to be an error and this is sought to be corrected by the orders of recovery which are under challenge.

6. It is further maintained that the recovery order only in respect of one of the applicants has been filed and the case of the others are not maintainable on that account. The Tribunal is being called upon to set aside the orders which are not produced before the Tribunal.

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7. Heard Ms.Neetu Vinod for Mr.Brijesh Mohan, learned Counsel for the applicant, Mr.T.V.Ajayakumar, learned Counsel for Respondent Nos.2-5 and Shri N.Anilkumar, learned SCGSC for Respondent No.1. All pleadings oral and documentary were examined.

8. The challenge in this case is against large recoveries from pension consequent to the order for refund of amounts found to have been wrongly disbursed to the applicants. The seminal judgment on the subject of recovery made from retired employees in **Rafiq Masih**, wherein recovery from retired employees is forbidden. The fact that only one of the applicants has produced the order is no reason to continue recovery with respect to others as the fact of the reduction in pension ordered and consequent recovery are not denied by the respondents. After considering all factors, we direct that there shall be no recovery whatsoever from the pension granted to the employees and their dependents at the time of retirement of the employee concerned. Any recovery made already will be refunded to the pensioners within three months from the date of receipt of a copy of this order. OA is disposed of with the above direction. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00277/2015

1. **Annexure A1** – Copy of OM F.No.38/37/08-P&PW(A) dated 28.01.2013 issued by the 1st respondent.
2. **Annexure A2** – Copy of the Order No.47.A.40/11/01/09 Acs. Dated 21.11.2014 issued by the 5th respondent.
3. **Annexure A3** – Copy of representation dated 22.12.2014 submitted by the 12th applicant.
4. **Annexure A4** – Copy of the Order No.47.A.40/11/01/09 Acs. Dated 20.1.2015 issued by the 5th respondent.
5. **Annexure A5** –Copy of communication No.A-40/11/29/2014-E.III dated 27.10.2014 issued by the Assistant Director to the 4th respondent.
6. **Annexure R2(a)** – True copy of the letter No.PFB-11/14/1/05-E III dated 24.10.2007 of the ESIC to the Regional Directors/Directors etc.
7. **Annexure A6**– True copy of Office Memorandum dated 13/11/2009.
8. **Annexure A7** – True copy of the Office Memorandum dated 08/12/2009.
9. **Annexure A8** – True Copy of Memorandum dated 3.4.2013.
10. **Annexure A9** - True copy of the Office Memorandum dated 28.01.2013.
11. **Annexure A10** – True copy of the Office Memorandum dated 13.02.2013.
12. **Annexure A11** - True copy of the revised pension order dated 23.05.2013 issued to the 12th applicant.
