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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00820/2017

Wednesday, this the 19th day of December, 2018

CORAM:

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

K.G.Krishnan,
Aged 81 years,
Vattaparambil (Omana Bhavan),
Peroor P.O.,
Ettumanoor, Kottayam District,
Kerala – 686 637.

....Applicant

(By Advocate Ms.Meera Radhakrishnan)

V e r s u s

1. The Union of India,
Represented by the Secretary,
Ministry of Personnel, PG & Pension,
3rd Floor, Lal Nayak Bhavan,
Khan Market.
New Delhi – 110 001.

2. The Principal Controller of Defence Accounts (Pension),
Allahabad – 311 011.

3. The State Bank of India,
Centralised Pension Processing Centre,
LMS Compound, Vikas Bhavan P.O.,
Thiruvananthapuram-695 001.

...Respondents

**(By Mr.K.C.Muraleedharan, ACGSC for Respondents-1&2 and
Mr.B.S.Syamanthak for Respondent-3)**

This application having been heard on 5th November, 2018, the Tribunal
on 19th December, 2018 delivered the following :

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ORDER

OA No.820/2017 is filed by K.G.Krishnan against the order of recovery imposed upon him by Respondent-3 from the pension which has already been disbursed to him. The prayers containing in the OA are as follows:

- (i) Declare that the action of the respondents in recovering the alleged excess pension from the applicant in the facts of the case is illegal.
- (ii) The respondents may be directed to refund the amounts illegally recovered from the pension of the applicant with interest at 12% per annum.
- (iii) Grant the cost of this original application.
- (iv) issue such other further reliefs as are necessary in the interest of justice.

2. The applicant had retired from the General Reserve Engineering Force on 01.02.1992. He was granted a pension of Rs.761/- per month (Annexure A1). In consequence to the implementation of recommendation of the VI Pay Commission, his pension was refixed at Rs.2,320/- with effect from 01.01.1996 (Annexure A2). However, the pension revision occurred only on 05.04.2006 and the pension amount was to be disbursed through State Bank of India, K.K.Road, Kottayam. Thus in terms of the revised pension, the applicant was drawing a pension of Rs.8,869/- and DA and Medical allowance totaling to Rs.18,869/- till April, 2015.

3. However, from May, 2015 it was revealed that an amount of Rs.3500/-

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was to be recovered from pension by the disbursing bank without assigning any reason. Various representations made to the bank elicited no satisfactory reply. These may be seen at Annexure A7, A8 and A9. However, as per Annexure A10 issued on 05.11.2015 the applicant was informed by the 3rd respondent that an excess amount of Rs.5,94,882/- has been paid to the applicant and this is due for recovery at the rate of Rs.3,500/- per month.

4. Again, the applicant made several representations to various authorities but these were of no avail. The 3rd respondent maintained the stand that there had been wrong payment of pension of Rs.8,869/- instead of Rs.5,244/- every month and thereby recovery is justified (Annexure A18). On 19.07.2017 Ex-General Reserve Engineer Force Welfare Association, Kottayam addressed a letter to the 3rd respondent informing that in view of the judgment in **Ramachandran Nair Vs. Principal Controller of Defence Accounts**, excess payment made to a pensioner cannot be recovered (Annexure A20).

5. As grounds, applicant submits that as per the decision of Hon'ble Apex Court in **State of Punjab and others Vs. Rafeek Masih – Civil Appeal No.11527/2014** – amount paid to the retired employees is not to be recovered. Again this Tribunal in **OA No.970/2015 – M.S.Ramachandran Nair Vs. Principal Controller of Defence** had held that bank officials are not to be allowed to correct their mistake by recovering alleged excess payments made to pensioners.

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6. A reply statement has been filed on behalf of the Respondent-3, wherein it is stated that there had been an error, as a result of which excess amount was paid to the pensioner (applicant). This was due to the fact that basic pension was wrongly revised twice and the 3rd respondent realised the mistake only when it received corrigendum PPO in May, 2015. Thus it was seen that an amount of Rs.5,94,822/- had been paid in excess. The applicant cannot be allowed to profit from a genuine error made by the respondents. The judgment of the Hon'ble Apex court in **Rafeek Masih** is not applicable given the facts and circumstances of the particular case. The applicant had submitted an undertaking (Annexure R3(b)) wherein he had agreed to credit back any amount paid in excess and over and above his eligibility.

7. The Respondents-1&2 have filed a separate reply statement wherein the facts of the case have been admitted. It has been submitted therein that the Hon'ble Supreme Court in the judgment in **CA No.3500/2006 – High Court of Punjab & Haryana and others Vs. Jagdev Singh** had clarified that:

“.....This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.”

There are several judgments from adjoining Benches of the Tribunal which had

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permitted recovery on the basis of the particular facts relating to each case.

8. Heard Mr.Joji for Ms.Meera Radhakrishnan, learned Counsel for the applicant and Mr.Sinu G. Nath for Mr.K.C.Muraleedharan, ACGSC for Respondents-1&2 and Ms.Anju Anilkumar for Mr.B.S.Syamanthak for Respondent-3.

9. While it has been held in **State of Punjab and others Vs. Rafeek Masih (Whitewasher)** that recovery from retired employees is not to be resorted to, the subsequent case, **Jagdev Singh** has permitted it in the event of the party having been put at notice and had submitted an undertaking that he is liable to refund any amount which is found to be in excess of his eligibility. In the light of **Jagdev Singh's** case, the claim of the applicant is found to be not valid. The OA is dismissed as devoid of merit and the interim order issued on 12.10.2017 is hereby vacated. No costs.

(Dated this the 19th of December 2018).

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

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List of Annexures in O.A. No.180/00820/2017

1. **Annexure A1** – True copy of the pension payment order of the applicant dated 08.01.1992.
2. **Annexure A2** – True copy of application for revision of pension submitted by the applicant dated 06.09.1999.
3. **Annexure A3** – True copy of the communication issued to the applicant dated 29.12.2005.
4. **Annexure A4** – True copy of the order dated 05.04.2006 by which the pension of the petitioner.
5. **Annexure A5** – True copy of the corrigendum of pension payment order dated 26.03.2015 issued in respect of the petitioner.
6. **Annexure A6** – True copy of the representation submitted by the applicant before the 2nd respondent dated 13.07.2015.
7. **Annexure A7** – True copy of the communication issued by the applicant to the Head Quarters Chief Engineer dated 29.08.2015.
8. **Annexure A8** – True copy of the representation dated 08.06.2015 submitted by the applicant before the 3rd respondent.
9. **Annexure A9** – True copy of the representation submitted by the applicant to the 3rd respondent dated 26.10.2015.
10. **Annexure A10** - True copy of the communication dated 05.11.2015.
11. **Annexure A11** – True copy of the representation submitted by the applicant to the Secretary to Government Ministry of Defence, dated 11/2/2016.
12. **Annexure A12** – True copy of the representation dated 08.04.2016 issued by the petitioner to the Deputy Secretary, Department of Pension and Pensionery Welfare.
13. **Annexure A13** – True copy of the communication issued to the applicant by the Ministry of Personnel Public Grievances and Pension dated 26.4.2016.
14. **Annexure A14**– True copy of the representation submitted by the applicant dated 18.05.2016.

15. **Annexure A15** – True copy of the communication dated 30.05.2016.
 16. **Annexure A16** – True copy of the communication dated 03.06.2016 issued by the Chief Engineering Project, Udayak to the 3rd respondent.
 17. **Annexure A17** – True copy of the communication issued by the applicant dated 02.07.2016.
 18. **Annexure A18** - True copy of the communication dated 01.07.2016 issued by the 3rd respondent to the counsel for the applicant.
 19. **Annexure A19** – True copy of the communication issued to the applicant dated 16.11.2016.
 20. **Annexure A20** - True copy of the communication dated 19.07.2017.
 21. **Annexure R1** – Copy of PPO No.C/Corr./Gref/Post-86/15001/2006.
 22. **Annexure R2** - Copy of Circular 57 along with OM dated 01.09.2008.
 23. **Annexure R3** - Circular No.141 dated 07.12.2009.
 24. **Annexure R4** – Copy of Hon'ble Supreme Court order dated 29.07.2016.
 25. **Annexure R5** – Copy of Hon'ble CAT Jodhpur Bench Order dated 05.04.2016.
 26. **Annexure-R6** – Copy of the Hon'ble CAT, Chandigarh Bench order dated 17.04.2015.
 27. **Annexure R3(a)** – A True copy of the calculation statement of the excess payment made to the applicant.
 28. **Annexure R3(b)** – A true copy of the undertaking executed by the applicant.
 29. **Annexure R3(c)** – A true copy of the Circular No.RBI/2015-16/340 dated 17.03.2016.
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