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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00394/2018

Wednesday, this the 27th day of March, 2019

CORAM:

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

Shri Balaraman T.V.,
Aged 80
S/o Velayudhan,
Deputy Conservator of Forests-IFS (Retired),
Residing at IV 5/2, Thottathil House,
Residency Avenue,
Kanimangalam, Thrissur

....Applicant

(By Advocate Mr.P.V.Mohanam)

V e r s u s

1. Union of India,
Represented by the Secretary,
Ministry of Environment, Forest and
Climate change, Indira Paryavaran Bhavan,
6th Floor Prithvi Block, Jorbag Road Alignng,
New Delhi 110 001.
2. The Accountant General,
Office of the Principal Accountant General (A&E),
Kerala, Thiruvananthapuram 695 001.
3. The Manager,
State Bank of India,
Centralized Pension Processing Centre (CPPC),
LMS Compound, Behind Main Block,
Vikas Bhavan, Thiruvananthapuram-695 533.
4. The State of Kerala,
represented by the
Chief Secretary to Government,
Secretariat, Thiruvananthapuram 695 001.Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil for Respondent-1, Mr.M.Rajeev, GP for Respondents-2&4 and Mr.B.S.Syamanthak for Respondent-3)

This application having been heard on 21st March, 2019, the Tribunal on 27th March, 2019 delivered the following :

ORDER

OA No.394/2018 is filed by Shri Balaraman T.V., retired Deputy Conservator of Forests-IFS (Retired) aggrieved by the steps being taken by the 3rd Respondent Bank to recover a large amount from the pension alleging that there is an over payment of pension with effect from 01.01.2006, without notice to the applicant. He seeks the following reliefs:

- i. To declare that no amount is to be recovered from the applicant towards the alleged excess payment.
- ii. To direct the third respondent not to recover any amount from applicant's pension towards the alleged excess payment of Rs.1436809/- and to refund the amount already recovered from the month of March, 2018 with interest at 6% per annum.
- iii. To call for the records leading to Annexure A7 proceeding CPPC/R05075143/MPS dated 27.3.2018 issued by the third respondent and set aside the same in so far as it declares that there is overpayment of pension and an amount of Rs.1436809/- has to be recovered from pension.
- iv. To direct the respondents to protect the pension drawn by the applicant in the month of February, 2018 and disburse the same without deduction.
- v. Any other appropriate order or direction as this Hon'ble Tribunal deem fit in the interest of justice.

2. The applicant entered service in Kerala Forest Service on 01.11.1959.

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He was inducted in IFS cadre on 11.10.1991 and his year of allotment was 1987. The applicant retired on superannuation on 31.03.1997 in the cadre of Deputy Conservator of Forests (IFS) after rendering 38 years of qualifying service. The applicant is pre-2006 pensioner and the pension is being disbursed through State Bank of India.

3. The Government of India by Resolution dated 01.09.2008 (Annexure A3) revised the pension of Pre-2006 pensioners, in terms of VI CPC. The relevant clause applicable to the applicant are Clause 4.1 and 4.2.. According to clause 4.1., the pension of the applicant has to be consolidated w.e.f. 01.01.2006 . Clause 4.2 states that the fixation of pension will be subject to the provision that revised pension, in no case, shall be lower than fifty per cent of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. Clause 11 of the OM dated 01.09.2008 states that it shall be the responsibility of the Head of Department of the Ministry, Department, Office etc., from which the Government servant had retired to revise the pension w.e.f. 01.01.2006, in accordance with the provisions mentioned in clause 4.1 and 4.2 and to issue revised pension Payment Order. Action to revise the pension in terms of these provisions shall be initiated suo motu by the concerned Heads of the Department.

4. As per the resolution, the pension of the applicant as on 01.01.2006

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must be consolidated and refixed by the Accountant General (A&E), Kerala. Consequent to the recommendation of the VI CPC, the IFS (Pay) Rules have been amended vide notification No.14021/3/2008/AIS-II dated 27.09.2008 revising the pay structure of the members of the IFS w.e.f. 01.01.2006. The Respondents-1&2 who is pension sanctioning authority has not made any such refixation of pension w.e.f. 01.01.2006. The 3rd respondent Bank, without consulting with the Respondents-1&2 had suo motu revised the pension w.e.f. 01.01.2006 in the light of the concordance table annexed to OM dated 01.09.2008 without fixing the notional pay in the cadre of Deputy Conservator of Forests.

5. On implementation of VII CPC, the second respondent notionally fixed the pay as on 01.01.2016 at level 12 as Rs.78800/-, as per which the basic pension has been fixed as Rs.39400/- w.e.f. 01.01.2016. The third respondent Bank without notice and without stating reasons has initiated recovery of the alleged overpayment. The applicant sought clarification from the Bank and the third respondent Bank informed that the pension as per the VI CPC was revised by the bank applying multiplication factor of 2.26 and while fixing the pension as per the VI CPC the Dearness pension was also reckoned for revision. Consequent to this there is an over payment of pension to the tune of Rs.1436809/- and the same is sought to be recovered from the pension commencing from 01.03.2018 to 30.11.2016.

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6. As grounds, the applicant has relied on the judgment of **Hon'ble Supreme Court in State of Punjab & others Vs. Rafik Masih (White Washer)**, which held that recovery from pension is illegal and arbitrary and is liable to be refunded.

7. Respondents-2&4 and Respondent-3 have filed separate reply statements. Respondents-2&4 submits that the revised pension w.e.f 01.01.2016 of pre-2006 pensioners shall be determined by multiplying the pension as had been fixed at the time of implementation of the recommendation of the VI CPC by 2.57 and the pay of the applicant was notionally arrived at Rs.78,800/- w.e.f. 01.01.2016 at level 12 of the pay matrix. The 3rd Respondent has revised the pension of the applicant as per VI CPC by applying the multiplication factor of 2.26 taking into account the basic pension and dearness pension, instead of taking into account the basic pension alone. The Respondents-2&4 submit that the revision under VI CPC has not been authorised by the 2nd Respondent and the details of the same, were not communicated to the 2nd Respondent either by the 3rd Respondent or by the applicant. They submit that they are not responsible for the erroneous fixation of pension made by the 3rd Respondent since the mistake crept in, in the records of 3rd Respondent. They further submit that as per the Circular issued by the Reserve Bank of India, the recovery proceedings initiated by the Bank is in order.

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8. The 3rd Respondent in their reply statement submit that as per the office Memorandum No.F.N105/1/2004-1C dated 01.03.2004, 50% of DA was to be converted as Dearness Pension and balance amount as DA. The applicant was paid a basic pension of Rs.6058/- and Dearness pay of Rs.3029/- w.e.f. 01.03.2004. On implementation of the VI CPC, the basic pension of the applicant ought to have been revised on basic pension of Rs.6058/- alone and to be fixed at Rs.13,692/- due to an inadvertent mistake instead of fixing his basic pension as Rs.13,692/-, his basic pension was revised as Rs.20,538/- w.e.f. 01.01.2006 reckoning the basic pension as Rs.9057/- (Rs.6058 + Rs.3029). The mistake was detected when the revision order from the Office of the Accountant General No.PM/1/AIS Rev/304/2017-18/1437 dated 04.02.2018, revising the pension of the applicant was received by the Bank. It is submitted that the Bank is authorised by the pensioner to make recovery of excess payment made, if any, executed at the time of the commencement of pension payment by the Bank.

9. The applicant has filed rejoinder submitting that the pay of the applicant should have been notionally fixed at PB-4 Rs.37400-67000 + Grade Pay Rs.8700/- w.e.f. 01.01.2006 and the pension should have been consolidated. The same has not been done by the Accountant General (A&E), Kerala and had it been done, the pension of the applicant as on 01.01.2006 would have been higher. The 3rd Respondent Bank has also filed additional reply statement reiterating the submissions made in the reply

statement. The respondent Bank submit that as per Office Memorandum No.38/37/08-P&PW(A) dated 01.09.2008 they were authorised to pay pension at the consolidated rates in terms of para 1 of the OM without any authorization from the concerned Accounts Officer/ Head of Office.

10. Heard Shri PV.Mohanan on behalf of the applicant and Shri Alfred Lionel Winston for Shri Thomas Mathew Nellimootttil for Respondent-1, Shri M.Rajeev (GP) for Respondents-2&4 and Shri B.S.Syamanthak for Respondent-3.

11. It is clear from the facts before us that the disbursement by the Bank had been erroneous and the applicant was paid a pension significantly more than his eligibility. The applicant contended that the Accountant General was required to revise the pension with effect from 01.01.2006 and this has not been done. However, it is seen that the revision order from the office of the Accountant General dated 04.02.2018 revising the pension of the applicant has correctly considered the eligibility of the applicant.

12. The applicant has relied upon the judgment of the Hon'ble Supreme Court in **Whitewasher**. This judgment has been qualified through the judgment of the Hon'ble Apex Court in the case of **High Court of Punjab and Haryana and others Vs. Jagdev Singh – Civil Appeal No.3500 of 2006 dated 29.07.2016**. It is seen that he had submitted an undertaking that he is bound

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to pay back any excess payment made (Annexure R3(a)). Thus on the facts before us, we are of the view that the OA lacks merit and is liable to be dismissed. Accordingly, we proceed to do so. No costs.

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

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List of Annexures in O.A. No.180/00394/2018

1. **Annexure A1** – True copy of the G.O.(RT) No.6349/97/Fin dated 6.11.1997 issued by G.Santhamma Deputy Secretary (Fin).
2. **Annexure A2** – True copy of the proceeding PA/2/B/PR98/I/B/107 dated 8.5.1998 issued by Accounts Officer.
3. **Annexure A3** – True copy of the OM F.No.38/37/08-P&PW(A), dated 1.9.2008.
4. **Annexure A4** – True copy of the extract of details of pension drawn from the Bank from 19.12.2007 till 29.07.2013.
5. **Annexure A5** – True copy of the proceeding PM/1/HS Rev/304/2017-18/1440 dated 04.02.2018 issued by Senior Accounts Officer.
6. **Annexure A6** – True copy of the Pass Book evidencing the disbursal of pension for the month of February and March, 2018.
7. **Annexure A7** - True copy of the proceeding No.CPPC/RO5075143/MPS dated 27.3.2018 issued by the third respondent.
8. **Annexure A8** - True copy of the OM F.No.18/03/2015-Estt.(Pay-I) dated 2.3.2016 issued by A.K.Jain Deputy Secretary to the Government of India.
9. **Annexure R4(A)** - Reserve Bank of India Circular DGBA GAD No.2960/45.01.001/2015-16 dated 17.03.2016
10. **Annexure R3(a)** - True copy of the undertaking executed by the applicant.
11. **Annexure R3(b)** – True copy of the Circular No.RBI/2015-16/340 dated 17.03.2016.
12. **Annexure A9** – True copy of the OM No.38/37/08-P&PW(A).pt.I dated 14.10.2008.
13. **Annexure R3(c)** – True copy of the Office Memorandum OM No.F.No.38/37/08-P&PW(A) dated 01.09.2008.
