

**SIN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 21/354/2017

Date of Order: 01.02.2019

Between:

A.Nagamuni Kumari, D/o. late A.V. Ramana,
Aged about 68 years,
R/o.H. No. 24-144/4, Vimaladevi Colony,
Vishnupuri, Malkajgiri, Hyderabad – 47.

... Applicant

And

1. Union of India, Rep. by its General Manager,
South Central Railway, Rail Nilayam,
Secunderabad.
2. The Financial Advisor and Chief Accounts Officer,
South Central Railway, Rail Nilayam,
Secunderabad.
3. The Divisional Railway Manager,
South Central Railway, Secunderabad

... Respondents

Counsel for the Applicant	...	Dr. A. Raghu Kumar
Counsel for the Respondents	...	Mr. V. Vinod Kumar, SC for Railways.

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
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ORAL ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The applicant has filed this OA challenging the action of the respondents in recovering an amount of Rs.8,25,111/-from the pension of her father while he was alive and from the family pension arrears payable to the applicant on the death of her father, against the law laid down by the Hon'ble Apex Court in State of Punjab & Ors Vs. Rafiq Masih (White Washer) & Others reported in 2015 (4) SCC 334.

3(I) Brief facts of the case are that the applicant's father joined Indian Railways on 01.05.1948 and retired on 30.04.1981. The applicant has become a divorcee in 1975 and she joined her parents and since then she was living with them. As per the VI CPC, the respondents revised the pension of the applicant's father vide letter dated 06.11.2009. Accordingly, the revised pension was paid w.e.f. 06.11.2009 vide respondents letter dt. 26.05.2010, which was also communicated to the Banker from where the applicant's father was taking the monthly pension. The banker issued a letter dt. 02.06.2010 stating that excess payment was made to her father due to wrong fitment made as per the old PPO. In the said letter, the banker informed that an amount of Rs.31,161/- is recovered from the pension account and a further amount of Rs.7,30,000/- has to be recovered from him. For the said action, the banker relied upon the Reserve Bank of India letter dt. 19.04.1991 dealing with the subject matter of excess payments to pensioners. The applicant's father made a representation on 07.06.2010 stating that he was aged 87 years and that he did not submit any false information nor made any bogus claim for pension fixation. The pension was fixed by the respondents on their own. In the said representation, the applicant's father has also pointed out to the respondents that the banker and the respondents have threatened with legal action and refused to pay pension for the month of September 2010. They even declined payment of pension when cheque was presented and unilaterally recovered pension due for the month of May 2010. The applicant's father was also not clear as to how the figure of Rs.7,61,161/- was arrived at to recover from his pension. The applicant's father pointed out that there are two entries of recoveries in the passbook dated 29.05.2010 for Rs.31,161/- and Rs.18,821/- totalling to Rs.49,982/- as on 29.05.2010, whereas

the respondents letter only indicated that an amount of Rs.31,161/- was recovered. The applicant's father submitted another representation on 26.06.2010 informing the banker that he is not in a position to refund the excess amount paid due to the mistake of the department and he is unable to meet the day to day requirements. The applicant's father represented on 05.07.2010, 11.07.2010 and 22.08.2010 requesting the respondents to give the particulars of the calculations and also brought to the notice of the respondents that several officers are visiting him in the late hours coercing him to repay the amount which is absolutely unusual. Unable to bear the coercive tactics adopted by the respondents, the applicant's father has given consent to the banker to recover 1/3rd of pension monthly pension.

II. In the meanwhile, the respondents have filed OS No. 985/2011 for recovery of amount of Rs.3,39,549/-. Unfortunately, the applicant's father expired on 23.12.2012 and the respondents filed IA No. 132/2014 in the said OS making the applicant and her mother and other family members as respondents. Generally, when the pensioner expires, the suit filed by the respondents should abate. Instead, the respondents went to the extent of impleading the family members to recover the alleged excess money paid. As the time went on, the respondents recovered an amount of Rs.6,30,702/- from the monthly pension of the applicant's father. The details have been given in para 4.vii of the OA.

III. After the demise of her father, the applicant represented to the respondents on 30.07.2014, 15.10.2014, 05.11.2014 and 25.12.2014 to grant family pension as per VI CPC recommendations and orders of the Government in regard to the grant of family pension to the divorced daughters. The applicant along with other family members made a representation on 28.2.2014 being

unable to bear the pressure mounted by the respondents stating that they would take the responsibility to clear the dues of her father. The respondents intimated that the request of the applicant for release of family pension cannot be decided till the court case in OS No. 985/2011 is settled. The banker informed that a sum of Rs.1,30,459/- has to be recovered from the legal heirs of the deceased pensioner and also towards court fees and advocate fee totalling to Rs.1,56,985/-. The applicant, on the death of her father on 23.12.2012 and without any means of livelihood for two years represented to the respondents on 15.12.2014 about her difficulties in paying the balance amount. As there was no relief forthcoming, the applicant approached this Tribunal on 28.12.2014 seeking release of family pension in OA 1524/2014. When the OA was pending, the respondents have issued a PPO in favour of the applicant vide letter dated 30.12.2014 and accordingly, the OA was closed as infructuous taking on record the letter dt. 30.12.2014 of the respondents. Despite issue of such a letter, the respondents did not release the family pension up to January 2015. Even at the time of release of family pension, the respondents deducted an amount of Rs.1,56,985/- from the arrears of secondary family pension paid to the applicant. The respondents also decided to recover an amount of Rs.26,526/- towards legal expenses awaiting court hearing. Thus, as can be seen from the facts stated, the respondents adopted several coercive means to recover the excess amount paid against the law of the land.

4. The contentions of the applicant are that coercive methods have been invoked by the respondents in recovering the amount of Rs.8,25,111/- from the applicants father which is bad in law. The action of the respondents is also against the judgment of the Hon'ble Supreme Court in Rafiq Masih case and contrary to the concept of a model employer.

5(I) The respondents in their reply stated that the applicant's father retired from service on 30.04.1981. The 2nd respondent issued PPO in favour of the applicant's father and monthly pension was being paid from the Bank of Maharashtra. With the advent of the VI CPC, the respondents revised pension of the applicant's father and authorised the Bank of Maharashtra to pay the arrears accrued due to the implementation of the pay commission recommendations. While calculating the pension, the respondents made a mistake in reckoning the scale of pay of the applicant's father in VI CPC. The scale payable to a higher officer was fixed and the revised pension was issued. Accordingly, the bank authorities paid the pension arrears to the applicant's father. Later, on review, after detecting the mistake, a revised pension payment order was issued on 06.11.2009 and the banker was advised to calculate the excess pension arrears as per the RBI Pension Circular dated 19.04.1991. Accordingly, the Banker informed the applicant's father that an amount of Rs.7,61,161/- was paid in excess. An amount of Rs.49,982/- was recovered from the pension and an additional sum of Rs.7210/- was also remitted by DD to the respondents by the bank authorities. The respondents claim that the applicant's father has admitted the excess payment vide letter dated 11.07.2010 to the respondents and the bank authorities and also informed that he is not in a position to refund the excess payment made to him in lumpsum and requested to recover the balance amount to the extent of 1/3rd of his monthly pension. On 09.09.2010 the applicant's father informed that he could pool up an amount of Rs.3,50,000/- in lumpsum from his children and deposit in pension account and requested to recover the balance by deducting 1/3rd of his monthly pension. The respondents did not agree for recovery on the basis of 1/3rd of the pension because it would take 4 years. The applicant's father was directed to remit balance of Rs.3,39,549/- in

lumpsum. The applicant's father and family members of the deceased employee executed an indemnity bond on 16.07.2001 to the Bank of Maharashtra with an agreement and undertaking that he and his legal heirs will make good the excess amount paid to him along with any other expenses. The applicant's father also signed a declaration form in favour of the respondents on 19.03.1981 at the time of his retirement with a promise to repay any amount advanced to him in excess of the pension that may be finally sanctioned to him. The fact that the applicant's father informed that he could pool up only Rs.3,50,000/- and he could not pool up the balance indicate that the amount was given to his children. The applicant's father has also indemnified the respondents and their banker by stating that he and his legal heirs will ensure that the excess amount paid will be refunded. A legal notice was also issued to the applicant's father demanding to pay an amount of Rs.3,39,549/- in lumpsum. In response, the applicant's father vide letter dated 18.01.2011 informed that he is not in a position to pay any further lumpsum amount other than the monthly instalment of 1/3rd of pension. After receiving the reply, the respondents filed a civil suit OS No. 985/2011 in the court of the Addl. Senior Civil Judge, R.R. District at L.B. Nagar, Hyderabad for recovery of Rs.3,39,549/-.

II. During the pendency of the suit, the applicant's father has expired leaving behind his legal heirs. Consequently, legal heirs were brought on record for proper adjudication in the above suit. The legal heirs vide letter dated 28.02.2014 had given an undertaking to clear the balance of the excess payment made. On 17.06.2014, the banker informed the respondents that the balance amount to be recovered through the legal heirs is Rs.1,30,459/-. Besides, court fee and advocates fee is to be recovered from the legal heirs. The respondents have paid an amount of Rs.11,526/- towards filing expenses and approximately

an amount of Rs.15,000/- as advocates fee. The respondents informed the applicant vide letter dated 19.09.2014 to remit an amount of Rs.1,56,985/- towards balance of excess amount paid and also towards court fee/ advocate fee. The applicant vide her letter dated 15.12.2014 had given her consent to recover the balance amount of excess arrears from the secondary family pension due to her. The secondary family pension was released on 30.12.2014. An amount of Rs.1,30,459/- was deducted by the banker from the family pension and an amount of Rs.26,526/- was kept in the deposit pension towards legal expenses. This was done as per the consent given by the applicant. After obtaining secondary family pension, the applicant cannot turn around and say that she is withdrawing her consent vide letter dated 31.12.2014. There is no rule prohibiting the department from recovering the excess payment made to any employee. As per para 15 of the Railway Services (Pension) Rules, 1993, the Head of Office can recover overpayment made to an employee. The Hon'ble Supreme Court judgment cited by the applicant is not relevant to the case. The Railway Board circular vide RBE No. 72/2016 dt. 22.06.2016 directed to deal with the issue of recovery of excess payment made based on certain conditions. The Hon'ble Supreme Court in Rafiq Masih has laid down five conditions and these conditions do not apply to the applicant's father because he was a Group A officer. The said judgment applies to Class III & IV employees. Therefore, the case based on the facts stated has to be dismissed.

6. Heard Dr. A. Raghu Kumar, learned counsel for the applicant and Mr. Sambasiva Rao, learned Advocate for Mr. V. Vinod Kumar, learned Standing Counsel for the respondents. Perused the documents on record. Learned counsel argued based on the respective written submissions. Learned counsel for the

respondents fairly admitted that the civil suit was closed by observing that the dues have been paid and that the claim for legal expenses/ fee is rejected.

7(I) The applicant's father was aged 87 years when the order of recovery of excess amount was issued. The respondents without giving any notice straightaway deducted an amount of Rs.49,982/- from the pension account. This is against the principles of natural justice. The respondents have acted in a harsh manner in ordering recovery from the pension of a pensioner who is aged 87 years. Pension is a property as per Article 300-A of the Constitution of India. If any action is to be taken in regard to pension of an employee, due process of law has to be followed because it is covered by Article 300-A of the Constitution of India. The respondents did not take this aspect into consideration. The respondents went to the extent of pressurising the applicant's father by visiting his residence on several occasions in the late hours. The applicant's father was coerced to refund the excess amount. Unable to bear the pressure mounted on the applicant's father, he somehow pooled up Rs.3,50,000/- from his children and friends and remitted it faithfully into the bank account for adjusting against the excess payment made to him. The respondents having succeeded in recovering Rs.3,50,000/- enhanced their pressure tactics. Once again, the aged pensioner not able to take on the stress gave an undertaking to recover the balance amount by deducting 1/3rd of his pension. The applicant's father made several representations indicating the economic distress in which he was placed and his inability to pay the amount as demanded by the respondents time and again. He also brought it to the notice of the respondents the way he was humiliated by refusing to pass the cheque presented against his pension account. The applicant's father expressed his anguish that after having served the

respondent organization for long years, he has never faced the kind of humiliation he has been subjected to by the respondents.

II. In fact, the applicant vide his representation dated 11.07.2010 has stated as under:

“Today I do not have money to repay. Therefore, I gave my consent to the bank to recover 1/3rd pension towards the excess payment, as this is the maximum amount I can afford to pay per month (After recovery of 1/3rd I will be left with similar amount, which I was getting previously, with which we can continue our livelihood as before). Since there is already a provision and as your office also advised bank in similar lines vide your letter No.nil and dated nil signed by AAO/PENSION (to start recovery as per RBIs Circular No. 7/CDB/1991 & DG/N 89 No.44/9A 64 (11-GVL) 90/91 dated 19/04/1991). Please accept my request under this provision and start recovering 1/3rd amount from July 2010 months pension. It may take about 8 years or even less due to change in DA) and not 10 years as indicated in your letter, I am hale and healthy to repay this amount from my pension.

I take this opportunity to bring to your kind notice certain facts about my daughter. She is divorced (out of court settlement) 35 years ago and staying with me since then as she could not get remarried. She has no source of income for her livelihood and fully dependent on me. As she is not legally divorced, I have not declared her to railways as my dependent. She is a cancer patient and operated few years ago and she has to be under treatment/ medication for the rest of her life. I have taken loans for her treatment as I have no other source of income and my pension was inadequate for her treatment. I heard as per the latest govt. rule that a dependent divorced daughter can also be a family pensioner. I will be highly obliged if my daughter's name can be included as my family pensioner. It will be a great help to her and to my family.

I also would like to bring to your kind notice that some staff/ officers from the pension section of your office are coming to our house and causing inconvenience and embarrassment to us. I request you to advise them not to visit our house. If they have anything to communicate with me, they may do so in writing and sent it by post. ”

This letter of the applicant's father explains the difficult circumstances in which he has been placed as well as officers coming to his house and embarrassing him. Such an action of the respondents, more so being a Wing of the State, is unexpected. Judgment of the Hon'ble Supreme Court in Rafiq Masih case fully covers the case of the applicant's father. One of the five

conditions stipulated in the said judgment is that recovery from the employee any excess amounts paid by the employer would be impermissible in law, in case of retired employees, or employees who are due to retire within one year of the order of recovery. The applicant's father retired on 30.04.1981 and the respondents started recovery in 2010. This is against the observation of the Hon'ble Supreme Court wherein it was observed that the 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. Thus, the respondents action is against the judgment of the Hon'ble Supreme Court in Rafiq Masih case. Learned counsel for the respondents stated that the above judgment of the Hon'ble Supreme Court was not available at the time of recovery in 2010. It is important to note that the principles laid down by the Hon'ble Supreme Court are applicable retrospectively because it involves question of law.

III. Even the action of the respondents in filing a civil suit for recovery from pension is against the Pension Act, 1971. Section 4 of the Act, which is extracted hereinbelow bars filing of suits relating to pension.

4. *Bar on suits relating to pension.*- Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land-revenue conferred or made by the Government or by any former Government, whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim or right for which such pension or grant may have been substituted."

Thus, the respondents have acted in a manner which has caused severe inconvenience and harassment to an aged pensioner. Involving the family members after the death of the pensioner is unusual. The respondents have gone to the extent of recovering from the secondary family pension granted to a

pensioner's daughter despite being aware of the poor economic condition in which the divorced daughter was placed. The sanction of family pension was delayed and was granted only when the applicant approached this Tribunal in OA No. 1524/2014. The circumstances of the case again makes it explicit that the secondary family pension was granted only when the applicant expressed willingness for recovery of the excess amount paid. Respondents filed a civil suit to recover balance amount along with legal expenses and advocates fee.

IV. Consequent to the judgment of the Hon'ble Supreme Court in Rafiq Masih case, Department of Personnel and Training in OM No. F.18/03/2015-Estt.(Pay-1) dt.2.3.2016 issued instructions to all the departments to implement the directions of the Hon'ble Apex Court in Rafiq Masih case. Accordingly, the respondents have also issued such an order vide Serial Circular No. 75/2016 dt. 19.07.2016 applying the same mutatis-mutandis to Railway employees also and stating that such recoveries should not be made. It is ironical that the respondents are not following their own rules. The stand of the respondents is against their own Board letter.

V. To sum up, the action of the respondents is against the observations of the Hon'ble Supreme Court and the Principles of natural justice. The consents were taken from the pensioner and also from his family members under coercion against the legal principles laid down by the Hon'ble Supreme Court. The action of the respondents has been illegal, arbitrary and unreasonable. The fact that pension is a property has not been properly appreciated by the respondents while initiating action against the applicant's father. We are also aware that the respondents organization is a public enterprise. It should not be put to any loss

since it is a public enterprise. As the law stipulates that there should be no recovery on account of excess payment made to the pensioner as per the Hon'ble Supreme Court judgment in Rafiq Masih case, the respondents have to bear the burden of excess payment. Nevertheless, the respondents do have an army of employees who assist the organization in calculating and disbursing pension. They are paid for doing such duties. Nowhere in the reply statement was it mentioned that action shall be initiated against those who failed to discharge their duty in properly disbursing the pension. Right course would have been for the respondents to fix responsibility on those who committed the mistake and recover the excess amount. We find no such submission in the reply statement. Unless such recoveries are made, the respondents would be given a wrong signal that even if mistakes are committed, they would be glossed over. The respondents may have to keep this in view for future so that a public institution like Railways is not put to unwarranted loss.

VI. With the above observations, keeping in view the legal principles laid down by the Hon'ble Supreme Court and upholding the Principles of Natural justice, the OA has to be allowed. Therefore, the respondents are directed as under:

- i) To refund the amount already recovered from the pension of applicant's father and also from the secondary family pension granted to the applicant;
- ii) To refund the amount of Rs.3,50,000/- remitted by the applicant's father towards excess amount paid to him.
- iii) Time allowed for compliance is three months from date of receipt of this order.

- iv) In case the respondents fail to refund the amount within the stipulated period of three months, they shall refund the amounts directed to refunded at (i) & (ii) supra, with interest at the rate of 18% p.a. reckoning from the expiry of three months period till the date of payment.

VII. With the above directions, the OA is allowed. There shall be no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 1st day of February, 2019

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