

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

Original Application Nos. 21/134, 228 & 323 of 2017

Date of CAV: 14.08.2018

Date of Pronouncement: 07.02.2019

O. A.Nos. 21/134, 228 & 323 of 2017

Between:

B.V. Seshamma, W/o. late Sri B. Kameswara Rao,
(Retd. Asst. General Manager/ Divisional Engineer,
Telecom/BSNL), aged 69 years, R/o. H. No. 3-12-32/202,
Ramanjana Residency, Ganesh Nagar, Ramanthapur,
Hyderabad – 500 013/ Legal Representative.

... Applicant in all OAs

And

Union of India, Rep. by

1. Chief General Manager, Telecom/BSNL,
A.P. Circle, Doorsanchar Bhavan,
Nampally Station Road, Hyderabad – 500 001.
2. The Principal Controller of Communication Accounts
(Pension Revision Cell), A.P. Circle,
Kavadiguda Telephone Exchange Compound,
Bholakpur, Secunderabad – 500 080.
3. The Chairman cum Managing Director,
Bharat Sanchar Nigam Limited,
Harishchandra Mathur Lane,
Janpath, New Delhi – 110001.
4. Secretary to Govt. of India,
Ministry of Communication & Information Technology,
Department of Telecommunication,
Sanchar Bhavan, 20 Ashoka Road, New Delhi – 110 001.

... Respondents in OA Nos.134/17 & 228/17

Union of India, Rep. by

1. Chief General Manager, Telecom/BSNL,
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4. Secretary to Govt. of India,
Ministry of Communication & Information Technology,
Department of Telecommunication,
Sanchar Bhavan, 20 Ashoka Road, New Delhi – 110 001.
5. Secretary to Govt. of India,
Min. of P, PG & Pensions,
Dept. of Pensions & Pensioners' Welfare,
Loknayak Bhavan, Khan Market,
New Delhi – 110 003.

...Respondents in OA 323/2017

Counsel for the Applicant ... Mr. E. Krishna Swamy

Counsel for the Respondents ... Mrs. K. Rajitha, Sr. CGSC
Mrs.A.P. Lakshmi, SC for BSNL

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)
Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

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

2. The OAs are filed challenging the recoveries effected by the respondents from the terminal benefits of the late husband of the applicant. Three OAs have been filed. Applicant and the Respondents being the same and the issues raised in the OAs are interrelated, a common order is passed.
3. The applicant's late husband retired in 2002 as Asst. General Manager from the respondents' organisation. An amount of Rs.1,78,910/- was withheld from retiral benefits of the late husband of the applicant towards dues to be paid to Guntur Postal and BSNL Employees Mutually Aided Cooperative Thrift and

Credit Society (For brevity, it will be referred to as “*Coop. Credit Society*”), against which, OA No. 134/2017 is filed. Applicant claims that though respondents recovered the amount from the late husband of the applicant, they failed to remit the same. Besides, a sum of Rs.76,583/- was also adjusted from terminal benefits for *alleged* excess payment of pay against which OA 228/2017 is filed. The applicant further claims that another amount of Rs.6,67,569/- which is commutation of pension has been withheld even after adjusting certain sums towards court attachments against which OA 323/2017 is filed. Representation made on 29.6.2016 did not yield any positive result. Hence the OAs.

4. The contentions of the applicant are that the applicant and her family members discharged the debt of Rs.1,78,910 with interest @ 18% by paying a sum of Rs.2,55,510/- to the Coop. Credit Society. After recovery, it was the bounden duty of the respondents to repay the amount to the Coop. Credit Society, but they did not. As per judgment of the Hon’ble Supreme Court in the State of Punjab Vs. Rafiq Masih, it impermissible under law to recover from pensionary benefits, excess payment of Rs.76,583 made on account of overpayment of pay. Pension is a right to property and hence due process of law has to be followed when any part of the property is being deprived of. As per Section 60 of CPC, Commuted value of pension, DCRG, CGEIS, GPF are exempt from the attachment of any court order. Hence withholding of Rs.6,67,569 which is commutation of pension and other pensionary benefits is illegal.

5. In response to the claims made by the applicant, respondents inform that there are 14 court attachments amounting to Rs.10,18,595/- to be complied with. Of them, against 4 court attachments a sum of Rs.2,45,523 was deposited in the

courts. The contention of the applicant that the amount of Rs.1,78,910 constituting dues to the Coop. Credit Society was withheld is false and hence the question of refund does not arise. The Court & Government dues recoverable are more than the retirement benefits payable to the officer. The amount of Rs.6,67,569 had to be withheld as there are court attachments received by the respondents. In terms of section 60 of CPC honouring orders of the court is legal. The letter to the Joint Chief Controller of accounts was in regard to release of Pension, which was never attached. The amount of Rs.76,583 was recovered by treating it as Govt. dues and is according to provisions of Rule 73 (3) of CCS (Pension) Rules 1972.

6. The applicant filed rejoinder in OA 228/2017 seeking exact details of excess recovery of pay and about car and computer advances. Respondents filed additional reply clarifying the same. Further in the rejoinder filed in OA 323/2017 she claimed that the provisions Section 60 of CPC are absolute and that the issue is covered by the verdict of the Hon'ble Ernakulam bench of this Tribunal in TA 113/2008, dt.26.11.2009. Applicant also claims that an amount of Rs.59,010 was not due to any Coop. society. The applicant raised objection as to why one of the creditors Sri N.Sambasiva Rao was paid by the respondents against court orders from gratuity, commuted value, CGEIS and PF against Section 60 of CPC. Besides, the difference in regard to amounts to be recovered were cited by different respondents. Another rejoinder filed in respect of OA 134/2017, applicant reiterates that the amount of Rs.1,78,910 to be paid to the Coop. Credit Society was lying with the respondents in the context of the letter from the office of the Principal Controller of Communication Accounts to the Accounts Officer, office of GMTD, BSNL.

7. Heard Sri E. Krishna Swamy, learned counsel on behalf of the applicant and Smt. K. Rajitha, learned Senior Central Government Standing Counsel and Smt. A.P. Lakshmi, learned Standing Counsel for BSNL for the respondents. Perused the material papers and documents submitted.

8(i) The three OAs essentially broach on recoveries made from the terminal benefits. There are multiple court attachments ordering recovery. Also there are Govt. dues to be recovered from the applicant's late husband. The respondents 1 & 3 and 2 & 4 have filed separate reply statements. The applicant filed rejoinders and the respondents also gave additional reply in OA 228/2017. We have gone through the replies and the rejoinders filed. The different averments made by both sides have been fully examined and considered. After having done so the relevant aspects which have a bearing on the outcome of the cases are discussed hereunder to arrive at a just decision.

(ii) The three main issues that require resolution are:

1. Withholding a sum of Rs.1,78,910/- from the retiral benefits towards payment of dues to Cooperative Credit Society;
2. Commutation of pension to the extent of Rs.6,67,569/- and other pensionary benefits were withheld to comply with court attachment orders received by the respondents;
3. Recovery of overpayment of pay from the retiral benefits to the extent of Rs.76,583/-;

iii) On perusing the documents submitted, it is noticed that there are 14 court attachments issued for recovery from the retiral benefits of the applicant's husband. (Annexure A & B marked as R1 and R3 of Reply Statement in OA 323/2017). The total amount to be adjusted on account of Court attachments is

Rs 10,18,595 whereas the total retiral benefits due to be paid is Rs 8,31,562. The respondents have not attached the pension. The respondents claim that they cannot disobey court orders. The proper course open to the applicant was to contest the orders of attachment of the Hon'ble Civil Courts in the higher judicial forums, if aggrieved, over the attachments. The very conduct of the applicant's late husband in regard to his financial affairs has driven him into a financial abyss, warranting the issue of multiple court attachments. It is against conduct rules to get into frequent debts. In the present case we are coming across a case where the value of the total amount ordered for attachment is more than the retiral benefits. Such attachments have not arisen because of any decision of the respondents. They were all the makings of the applicant's late husband.

iv) The applicant claims that an amount of Rs.1,78,910 due to the cooperative credit society was recovered by the respondents from the applicant's late husband and have not remitted to the cooperative credit society. The respondents have flatly denied the same. The applicant did not produce details as to how and when such recoveries were made from her late husband. Without such details the contention of the applicant based on presumptions by quoting a letter of the respondents is unreasonable. Details are to be specific to decide and not based on assumptions. Hence the claim of the applicant has to be rejected.

v) The applicant cited the Hon'ble Supreme Court judgment in *Radhey Shyam Gupta v Punjab National Bank & Anr* (2009) 1 SCC 376 and the Hon'ble Ernakulam Bench of this Tribunal in TA 113/2008, in regard to recovery from the gratuity and commuted value of pension in the context of withholding a sum of Rs.6,67,569 to honour court attachments received.

In *Radhey Shyam Gupta* (supra) the Apex Court has held that both pension and gratuity enjoy immunity from any court attachment, not merely till these are disbursed but even thereafter. The Apex Court in that case, *inter alia* held as under:-

22. *Ms Shobha's submission finds support in the decision of this Court in *Calcutta Dock Labour Board v. Sandhya Mitra* wherein it was reaffirmed that gratuity payable to dock workers under a scheme in absence of a notification under Section 5 of the Payment of Gratuity Act, 1972, would not be liable to attachment for satisfaction of a court's decree. The same principle was reiterated by this Court in *Union of India v. Wing Commander R.R. Hingorani and Gorakhpur University v. Dr. Shitla Prasad Nagendra*.*

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33. *However, we are also of the view that having regard to proviso (g) to Section 60(1) of the Code, the High Court committed a jurisdictional error in directing that a portion of the decretal amount be satisfied from the fixed deposit receipts of the appellant held by the Bank.In other words, the High Court erred in altering the decree of the trial court in its revisional jurisdiction, particularly when the pension and gratuity of the appellant, which had been converted into fixed deposits, could not be attached under the provisions of the Code of Civil Procedure. The decision in *Jyoti Chit Fund* case has been considerably watered down by later decisions which have been indicated in para 22 hereinbefore and it has been held that gratuity payable would not be liable to attachment for satisfaction of a court decree in view of proviso (g) to Section 60(1) of the Code.*

In *Union of India vs Jyoti Chit Fund and Finance* (1976) 3 SCC 607, the Apex Court held that provident fund amounts, pensions and other compulsory deposits covered by the provisions we have referred to, retain their character until they reach the hands of the employee. However, the later judgment in *Radhey Shyam Gupta*, the same has been dissented from.

The next question is whether there is any onus on the part of the respondents to maintain an application for removal of attachment or it is for the

heir of the deceased government employee to move an application for removal of the court attachment. Pension as well as gratuity are held by the respondents as a trustee of the applicant's spouse till his demise and thereafter as a trustee of the applicant. As such, it becomes imperative of the Trustee to safeguard the interest of the applicant/her spouse. The Apex Court has held in the case of **Union of India vs Radha Kisan Agarwala (1969) 1 SCC 225** as under:

8. It was somewhat faintly suggested that the Union of India had no interest in maintaining an application for removal of attachment. But the Union of India was a trustee for the subscriber of the money. When the amount lying with the Reserve Bank as the agent of the Railway Administration was attached the Union had clearly an interest to maintain the application for removal of attachment.

Needless to emphasise that the Tribunal is bound by the law laid down by the Apex Court. The respondents should have thus brought to the notice of the respective judicial forum which issued the attachment orders about legal position in regard to immunity from attachment of gratuity and commuted pension and applied for removal of attachment..

vi) In regard to recovery of excess amount of Rs.76,583 paid to applicant due to overdrawal of pay, the action of the respondents is against the Hon'ble Supreme Court judgment in Rafiq Masih case. Recoveries of excess payments should not be made from the terminal benefits of retired employees. The applicant's late husband has neither misguided nor misrepresented to obtain the excess payment of pay from the respondents. Also, it is not the case of the respondents that any undertaking for such recovery had been given by the spouse of the applicant. Therefore the action of the respondents in this regard is arbitrary and illegal.

vii) Hence, keeping the aforesaid in view, the respondents are directed to consider as under:

- a) Refund of the amount of Rs.76,583 held back by the respondents , within 60 days of receipt of the receipt of this order.
- b) In regard to the retention of the amounts of gratuity and commuted pension in view of court attachment, the respondents shall take up with the concerned Judicial forums for seeking removal of attachment citing the provisions of Section 60 of CPC and the Hon'ble Supreme Court Judgment on the issue. On a final decision by courts in that regard, the withheld amounts be released to the applicant within a period of one month. However, till such time the amount is disbursed, the same shall accrue interest at a rate applicable to interest on the deposit in the provident fund account.
- c) With the above directions, the OA 228/2017 is allowed and OA Nos.134/2017 & 323/2017 are disposed of.
- d) No order to costs.

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

**(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)**

Dated, the 7th day of February, 2019

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To

Sri B.K. Sahoo,
Private Secretary
CAT, Cuttack Bench

Sir,

Ref: RA No.20/2018 in OA 761/2012 on the file of the Hyderabad Bench

I am directed by Hon'ble Sri B.V. Sudhakar, Administrative Member, Hyderabad Bench to inform that in para 9 at page 4 of the order in RA 20/2018 in OA 761/2012 dt.28.01.2019, circulated for signature, it is mentioned that "*the Review applicant Nos.1 &2 were not the parties in the OA..... since Applicant Nos. 1 & 2 were not the Respondents Nos. 1 & 2 in the OA No. 761 of 2012, they do not have locus standi to seek review of the order....*" whereas, on perusal of the records in OA and the RA, it appears that the Review Applicant No.2 is the 2nd respondent in the OA.

The same may be brought to the kind notice of the Hon'ble Judicial Member.

Thanking you,

(E. VISWESWARA RAO)
Private Secretary