

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

Original Application No.290/00240/2017

This, the 5th day of February, 2019

Reserved on 30.01.2019

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CORAM:

HON'BLE SMT. HINA P. SHAH, MEMBER (J)

...

Smt. Bhanwari Devi wife of Late Shri Poonam Chand, aged about 67 years, R/o Village & Post Dhamali via Kherwa, District Pali. Late Shri Poonam Chand was last employed on the Line man Gd-III in the office of Telephone Exchange Dhamli, District Pali.

...APPLICANT

BY ADVOCATE : Mr. J.K. Mishra

VERSUS

1. Union of India through Secretary to the Government of India, Ministry of Communication & Info Technology, Department of Telecom, 20, Ashoka Road, Sanchar Bhawan, New Delhi.
2. The Accounts Officer, Deptt. Of Communication, O/o The Controller of Communication Accounts, Old CTTC Building, Jhalana Dungri, Jaipur-302004.
3. Telecom District Manager, Telecom District, Pali.
4. The Post Master (HSG-I), Marwar Jn. HO-306001.

RESPONDENTS

BY ADVOCATE : Mr. B.L. Tiwari for R/1, R/2 & R/4.
 Smt. K. Parveen for R/3

ORDER

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The applicant filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- "(i) *The impugned PPO dated 01.06.2012 (Annexure-A/1) to the extent of not mentioning details of enhanced family pension and order dated 06.04.2016 (Annexure-A/2) may be declared illegal and the same may be quashed. The respondents may be directed to with all consequential benefits including modification of the impugned PPO and arrears of family pension may be directed to be paid along with interest @ 9% per annum.*
- (ii) *That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.*
- (iii) *That the costs of this application may be awarded."*

2. The brief facts of the case as stated by the applicant are as under:-

The case of the applicant is that she is a legally wedded wife of late Shri Poonam Chand who was last employed on the post of Line Man-Gd.III in the respondent department. Said Shri Poonam Chand took VRS on 01.10.2000 and he was sanctioned pension vide PPO [No.RDOT/8-2/PC 5134 dated 27.02.2001](#) by the respondent No.2. As per sub-rule (3) (a) (ii) of Rule 54 of CCS (Pension) Rules which provides that "in the event of death of a Government servant after retirement, the family pension as determined under sub-clause (i) shall

be payable for a period of seven years, or a period up to the date on which the retired deceased Government servant would have attained the age of 67 years had he survived, whichever is less." It is clear that the annotation was made on the initial PPO issued to the husband of the applicant as per the said rules. The husband of the applicant, Shri Poonam Chand died on 09.05.2012. The applicant accordingly became entitled for family pension. As per above Rule 54, she became entitled for family pension at enhanced rate upto 19.09.2016 on which the deceased government servant would have attained the age of 67 years. The same is earlier to the seven years from the date of death which would be 09.05.2019. The applicant was accordingly paid enhanced rate of family pension. The said family pension was revised vide revised PPO dated 01.06.2012, though in the column 'enhance family pension' it was shown as 0.00 but the applicant continued to get her family pension at enhanced rate till April, 2016, which can be perused from her passbook (Annexure-A/5). Thereafter, the respondent no.4 issued an order dated 06.04.2016 and asked the applicant to deposit an amount of Rs.1,32,090/- or she should get the PPO amended (Annexure-A/2). It is the contention of the

applicant that she had neither been issued any prior show cause notice nor any pre-decisional hearing was given in the matter and her family pension has been completely stopped and she was not paid anything till date. She had also intimated that no family pension would be paid to her till the amount of overpayment is recovered. The applicant is facing a lot of hardship and therefore, she had no option other than to approach this Tribunal for redressal of her grievances. Accordingly, she has preferred the present OA for the reliefs quoted in para no.1 of this order.

3. After issue of notice to the respondents, the respondents No.1, 2 & 4 have filed their reply on 06.08.2018 raising preliminary objections pertaining to limitation. It is the contention of the respondents that the PPO dated 01.06.2012 was correct and the applicant was made aware that she is not entitled for any enhance family pension and therefore, challenging the said PPO in 2017 without cogent reasons for delay to be condoned cannot be accepted. Hence, respondents requested for dismissal on this ground alone. Respondents also stated that the date of birth of the deceased employee Poonam Chand is 19.09.1949 and he was due for retirement on

30.09.2009 on attaining the age of superannuation but he took voluntary retirement on 01.10.2000. The entitlements for family pension at enhanced rate upto 19.09.2016 is denied by the respondents stating that these benefits could have been available if the retired employee might have died within a period of 7 years after his retirement i.e. before 01.10.2007. It is also submitted that due to the inadvertent mistake respondent No.4 kept on paying the enhanced family pension till April 2016 and as per Annexure-A/2. The respondents clarified that the applicant is required to pay back the excess amount paid to her for which she was not entitled. She was advised to get her PPO revised also. It is further clarified that Annexure-A/2 is in the nature of a show cause notice to the applicant prior to making the recovery. It is also submitted that as per the rules, husband of the applicant Shri Poonam Chand attained the age of 67 years on 19.09.2016 but a period of seven year after his retirement completed on 01.10.2007, thus enhanced family pension was permissible only up to 01.10.2007, had the retired employee would have died before this date. It is also submitted that Annexure-/1 PPO order was proper but it is only due to mistake of respondent No.4, the applicant

was paid enhanced family pension to which she was not entitled and any amount not legally payable to her does not create any right to her. Hence, the ratio of H.L. Trehan's case is not applicable. It is also submitted that in the present case, the pension payment authority made no mistake in issuing the PPO Annexure-A/1 but respondent No.4, i.e. Postmaster erroneously kept on paying enhanced family pension at the enhanced rate, therefore, DOP&T OM dated 02.03.2016 is not at all applicable in the present case. It is further submitted that the applicant had given an undertaking to refund any excess amount paid by mistake and her PPO also contains such stipulation that the same has to be deposited in the Treasury of the Central Government. Therefore, there is no violation of Article 300-A of the Constitution of India in view that it is public money and also an undertaking had been given by the applicant. Therefore, the excess amount paid by the respondents to the applicant can be recovered by the respondents as the same belongs to public.

4. Respondent No.3 has also filed their reply on 05.04.2018 stating that the husband of the applicant was an employee of the Department of Telecommunication, who retired on voluntary basis on

01.10.2000. The pension papers were forwarded by the Account Officer (cash) office of General Manager, Telecom Department, Pali to Communication Accounts Officer, CCA Jaipur for scrutiny of pension papers and for final process of issuance of pension payment order. The PPO was issued vide No.RDOT/8-2/PC/5134 by the respondent No.2. Shri Poonam Chand died on 09.05.2012. It is submitted that after 01.10.2000 on formation of BSNL and after that in case of any retirement of any employee in the department, the PPO along with all relevant activities of pension/ family pension is done by Communication Accounts Officer, CCA Jaipur being Controlling and PPO issuing authority. Hence, in this case, the respondent No.2 being the controller of Communication Accounts is fully responsible for pension case and respondent No.4 is liable for the payment of pension. It is further submitted that CCS Pension Rule 54 sub rule 3 (a) (ii) does not apply for the purpose of pension at enhanced rate due to premature retirement (on voluntary basis) as this clause pertains to the employee who retires on attaining the age of superannuation, i.e. 60 years of age and there is no mention of word voluntarily in the rules. It is further submitted that in case of retirement on superannuation

(not in voluntarily retired matters), in event of retired employee's death, the family pension would be payable on enhanced rate for a period of seven years, or upto the date on which the retired employee would have attained the age of 67 years (i.e. the period of 7 years in between 61 to 67 years). The deceased employee retired on 01.01.2000 F/N he was eligible for getting the family pension at enhanced rate w.e.f. 01.01.2000 to 30.09.2007 (after seven years from the date of retirement) in case of death during this period. The same clause was clearly mentioned in the employee's pension papers part-II. Thus, the PPO which was issued after the death of late Shri Poonam Chand on 01.06.2012 was proper and justified. Hence, there is no question of awarding family pension to the applicant at enhanced rate as the deceased employee already stood voluntarily retired on 01.10.2000. Therefore, the respondents prayed for dismissal of the OA.

5. Heard Mr. J.K. Mishra, learned counsel for the applicant and Mr. B. L. Tiwari, learned counsel for the respondents No.1, 2 & 4, and Smt. K. Parveen, learned counsel for respondent No.3.

6. Learned counsel for the applicant while reiterating the submission made in the OA contended that as per OM dated 28.05.2018, the applicant is entitled for enhanced family pension upto 19.09.2016, the date on which the deceased government servant would have attained the age of 67 years. The learned counsel for the applicant also heavily relied upon the sub rule 3 (a) (ii) of Rule 54 of CCS (Pension) Rules and stated that no recovery can be done from family pension as there was no misrepresentation or fraud on the part of the applicant and as she was also not party to the said mistake. It is further contended that the applicant has not been given any pre-decisional hearing before making recovery or reduction in pension. The law on this point is fairly settled by the Apex court in case of H. L. Trehan and Ors. Reported in AIR 1989 SC 568. It is the case of the applicant that there is no misrepresentation or fraud on her part for receiving enhanced pension from the respondents. Further, it is the case of the applicant that before making recovery from family pension, no show cause notice was given to her and as such making recovery from her family pension is therefore clearly against the principles of natural justice. The learned counsel for the applicant further contended that in view

of the principles laid down by Hon'ble Apex Court in the case of *State of Punjab and Ors, vs. Rafiq Masih (white washer) and Ors.*, reported in 2015 (4) SCC 334, no recovery can be affected from the pension account of the applicant.

7. Learned counsel for the respondents No.1, 2 & 4 while reiterating the submission made in the reply has stated that the present OA is barred by limitation as the applicant was awarded PPO dated 01.06.2012, but she has filed by the present OA on 6th July, 2017 only on the basis of the Annexure-A/2 dated 06.04.2017 cannot be a ground for entertaining the present OA as the same is barred by limitation. It is further contended that the present case also does not fall under the category of recurring cause of action and therefore the OA deserves to be dismissed on limitation itself. He further contended that it is only due to mistake of disbursing agent, i.e. respondent No. 4 that the enhanced family pension was given to the applicant for which the applicant was not entitled. It is further stated that the PPO dated 01.06.2012 (Annexure-A/1) is just and proper and it clearly reflected '(0.00)' as enhanced family pension of the applicant. It is further contended that it

was only due to the mistake that the applicant was being given enhanced family pension. But, due to the undertaking given by her, the same can be recovered from her. It is further contended that from perusal of the Rule 54 (3) (a) (ii) as well as OM dated 28.05.2018, the applicant is not entitled to any enhanced family pension. In support of his argument, he relied upon the judgment of High Court of Punjab 7 Haryana & Ors v. Jagdev Singh reported in (2016) 14 SCC 267, wherein the Hon'ble Apex Court held that the recovery can be made on the basis of undertaking given by the delinquent.

8. Learned counsel for the respondent No.3 also while reiterating the submission made in the reply has stated that the present OA is time barred and she further added that sub rule (3) (a) (ii) of Rule 54 of the CCS Pension Rules is very clear and the same does not state anything about voluntarily retirement, therefore, the benefits of Rule 54 cannot be given to the applicant. It is further contended that intimation was given to the applicant on 15.07.2016 (Annexure-A/6) and the applicant had also replied on 08.09.2016 (Annexure-A/7), therefore, the applicant cannot state that no show cause notice was

given to her prior to issuing the recovery order by the respondents. It is further contended that as per undertaking given by her, it is clear that the recovery can be made from the amount to which she was not entitled and which is a public exchequer money.

9 I have considered the arguments of the learned counsels for the parties and perused the material available on record.

10. It is an admitted fact that the date of birth of the husband of the applicant is 19.09.1949. He was due to retire on 31.09.2009 on attaining the age of superannuation but he took voluntary retirement on 01.10.2000 and unfortunately, expired on 09.05.2012. Further, sub-rule (3) (a) (ii) of Rule 54 of CCS (Pension) Rules provides that "in the event of death of a Government servant after retirement, the family pension as determined under sub-clause (i) shall be payable for a period of seven years, or a period up to the date on which the retired deceased Government servant would have attained the age of 67 years had he survived, whichever is less.". According to the said rules, it is

clear that the applicant never became entitled for enhanced family pension as this benefit could only be available if the retired employee would have died within a period of 7 years after his retirement i.e. before 01.10.2007. But, admittedly, the deceased employee expired on 09.05.2012 and thus, the applicant was not entitled for family pension at enhanced rate as the aforesaid rule is clear that for enhanced family pension, it is incumbent that deceased employee would have expired within a period of 7 years after his retirement or would have attained the age of 67 years whichever is less. Deceased employee would have attained the age of 67 years only on 19.09.2016 if he survived but after taking voluntary retirement on 01.10.2000, he expired on 09.05.2012. Therefore, the applicant is not entitled for any enhanced family pension.

11. In view of above discussions, it is clear that due to inadvertent mistake committed by the respondent No.4, the applicant was paid enhanced family pension till April, 2016 and only vide order dated 06.04.2016 (Annexure-A/2), the applicant was asked to deposit an amount of Rs.1,32,090/- given as family pension at enhanced rate for which she was not entitled. Annexure-A/1 PPO

issued to the applicant showed family pension to be paid to the applicant at normal rates and it was correctly mentioned therein enhanced family pension as '0.00'. Thus, it is clear that the applicant was aware about PPO dated 01.06.2012 (Annex. A/1) that she is not entitled for any enhanced family pension. However, due to mistake of respondent no.4, the applicant was paid enhance family pension.

12. I have gone through the judgments cited by both the parties. The Hon'ble Apex Court in the case of State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc in CA No.11527 of 2014 (arising out of SLP (C) No.11684/2012) wherein Hon'ble Court on 18.12.2014 decided a bunch of cases in which monetary benefits were given to employees in excess of their entitlement due to unintentional mistakes committed by the concerned competent authorities in determining the emoluments payable to them, and the employees guilty of furnishing any incorrect information/ misrepresentation/ fraud, which had led the concerned competent authorities to commit the mistake of making the higher payment to the employees have been considered. In that case, the employees were as

innocent as their employers in the wrongful determination of their inflated emoluments. The Hon'ble Supreme Court in its judgment dated 18th December, 2014 ibid has, inter alia, observed as under:-

"7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the interference at the hands of this Court."

"10. In view of the afore-stated constitutional mandate, equity and good conscience, in the matter of livelihood of the people of this country, has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the

obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in [Article 14](#) of the Constitution of India."

The Hon'ble Supreme Court while observing that it is not possible to postulate all situation of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement has summarized the following few situations, wherein recoveries by the employers would be impermissible in law:-

- "(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) 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.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

13. In my considered view, the case of the applicant does not fall in the aforesaid categories, because the case of Rafiq Masih's (*supra*) is only applicable to the employee of the department whereas in the present case, the enhanced family pension had been given by

the respondents mistakenly and any payment found to have been made in excess is liable to be recovered as the applicant had furnished an undertaking while opting for pension as per revised pay scale and she is bound by that undertaking. In this regard, in my opinion, the judgment of Jagdev Singh's case is fully applicable in the facts and circumstances of the present case. Further, any excess payment made to the delinquent mistakenly can be recovered as the money belongs to public exchequer. Further, the H.L. Trehan's case (*supra*) is not applicable to the facts and circumstances of the present case because the applicant in the present case had been given the opportunity of hearing by way of Annexure-A/6 dated 15.06.2016 before passing the impugned order. Further, the case of *Ramesh Chand Sharma v. Udhamp Singh* reported in 1999 SC 3837, the Hon'ble Apex Court held that the Tribunal could not have been admitted the appeal without filing the application for condonation of delay in view of the statutory provisions contained in Section 21 of the AT Act. In the present case, the applicant was aware about the PPO dated 01.06.2012 that she was not entitled to any enhanced family pension but she has approached this Tribunal in the year 2017 that too without filing any application for condonation of

delay. Therefore, the present OA deserves to be dismissed on limitation also.

14. Notwithstanding observation made above, it is clear, as expressed hereinabove, that the applicant is not entitled for benefits under sub-rule (3) (a) (ii) of Rule 54 of CCS (Pension) Rules, which provides that "in the event of death of a Government servant after retirement, the family pension as determined under sub-clause (i) shall be payable for a period of seven years, or a period up to the date on which the retired deceased Government servant would have attained the age of 67 years had he survived, whichever is less." OM dated 28.05.2018 also provides that the family pension at enhanced rate will be payable for 7 years or till the deceased retired government servant would have attained the age of 67 years had he survived, whichever is less, irrespective of type of retirement, date of retirement and age of superannuation application in the case of retired government servant. Therefore, keeping in view Rule 54 (3) (a) (ii) as well as the OM dated 28.05.2018, the applicant is not entitled family pension at enhanced rate and as such, there is no question of any interference towards recovery of enhance family

pension as per impugned order dated 01.06.2012 (annexure-A/1) and 06.04.2016 (Annexure-A/2) which are just and proper.

14. However, since applicant is a widow and aged about 67 years, it is directed that respondents shall recover the excess amount in easy instalments not exceeding 30% of the total payable family pension to her at any point of time.

15. In view of above direction, OA is disposed of with no order as to costs.

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