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**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**

O.A/350/1697/2017
M.A/350/406/2018
M.A/350/611/2018
M.A/350/612/2018

Date of Order: 8.5.19.

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member

Dilip Kumar Das, son of Late Rabindra Nath Das, by faith Hindu, by occupation - family pensioner, residing at 37/C, Dharmatala Lane, P.O Chatra, P.S - Serampore, District Hooghly, Pin - 712204 and family pensioner of The Principal Controller of Communications & Accounts, Calcutta Telephone District, Telephone House, 8, Hare Street, 2nd Floor, Kolkata - 700001.

--Applicant

Versus

1. Union of India represented by its Secretary to Government, Ministry of Communications and IT, Government of India, New Delhi.
2. Chief General Manager, Office of the Chief General Manager, (Department of Telecommunications: Ministry of Communications and IT, Calcutta Telephones, Telephone Bhawan, BBD Bag (S), 5th Floor, Room No. 513A, Kolkata-700001.
3. The Principal Controller of Communications & Accounts, Calcutta Telephone District ((Department of Telecommunications: Ministry of Communications and IT), O/o the Pr. Controller of Communication Accounts Calcutta Telephones District "Telephone House", 8, Hare Street, 2nd Floor, Kolkata - 700001.
4. The Chief Manager, United Bank of India, Centralized Pension Processing Centre, Head Office 4th Floor. 11, Hemanta Basu Sarani, Kolkata 700001.
5. The Branch Manager, United Bank of India, Chatra-Serampore Branch, 70, A.P. Ghosh, P.O Chatra, Serampore, Pin 712204.
6. The Officer (Operation), United Bank of India, Chatra-Serampore Branch, 70, A.T. Ghosh, P.O Chatra, Serampore, Pin 712204.

--Respondents

For The Applicant(s): Ms. M. Ghosh, counsel
For The Respondent(s): Mr. A.K. Roy, counsel
Ms. P. Goswami, counsel
Mr. R. N. Majumdar, counsel

B

ORDER

Per: Ms. Bidisha Banerjee, Member (I):

A family pensioner husband has preferred this O.A aggrieved by and dissatisfied with a reduction and monthly recovery from his payable family pension.

He has sought for the following reliefs:

- "a) An order directing the respondent authorities No. 4 to 6, their men, agents, subordinates not to recover any further the excess payment of pension from the applicant and to restore to pay his present normal family pension plus dearness allowances forthwith;
- b) An order quashing the impugned respondent bank notice dated 15.7.2017 (Annexure A/4) of repayment of overpaid amount and reinstating the applicant's regular payment of pension with all consequential benefits;
- c) Further directions to repay the amount so far recovered in respect of alleged excess payment in favour of the applicant with immediate effect;
- d) Costs;
- e) Any other order or orders, direction or directions as Your Honour may deem fit and proper."

2. The facts narrated by the applicant goes thus:

The applicant is family pensioner of the Calcutta Telephones and the applicant's disbursing bank is United Bank Of India. The applicant's wife Provati Das was an employee (class-III) of Calcutta Telephones, who died while in harness on 20.5.2004. Applicant/family pensioner got pension at enhanced rate initially for seven years (up to 2011) plus Dearness relief as per FPPO (Annexure-A/1). Thereafter due to 6th Pay Commission recommendation, he got pension at enhanced rate which was extended till May 2014 (i.e 10 years) plus dearness relief and thereafter Normal pension from June 2014 onwards. After the 7th Pay Commission his family pension was further revised on 2/05/2017 (Annexure-A/3). But all of a sudden, the applicant was served with the impugned letter bearing Ref. No. Ni, dated 15/09/2017, with enclosed copy of bank pension a/c statement since 2007 (Annexure A/4) from the Respondent No. 3 directing him to repay alleged overpayment of Rs. 85,043/- in lump sum, when there was no fault on his part. The applicant promptly sent a letter of objection, dated 17/10/2017 (Annexure A-5)

against respondent bank's letter/notice. Thereafter respondent bank without furnishing any reply, most illegally and without notice started recovery of the said amount of Rs. 85,043/- in instalment @ Rs. 4489/- per month from meagre family pension, lastly revised normal pension being Rs. 13,469/-.

Under such circumstances, the applicant has prayed that respondent bank's illegal letter/notice 15/09/2017 (Annexure A/4) be quashed and illegal recovery amount be returned to applicant, in view of several Apex Court's decisions that the Disbursing Authority cannot recover excess payment when there were no fault on the part of the applicant/pensioner.

3. Per contra, to refute the allegation of illegal deduction/recovery, without notice, the respondents' No. 4, 5 & 6 have pleaded as under:

That according to PPO, the applicant was supposed to get Rs. 11688/- as normal family pension, but due to some inadvertent mistake on the part of the Respondent No. 4, 5 and 6 the applicant received sum of Rs. 18452/- as normal family pension from 01.06.2014. When it came to the knowledge of the said Respondents, they informed the applicant that the bank had overpaid an amount of Rs. 85,043/- and further directed the applicant/pensioner to maintain sufficient balance in pension account for recovery of the said amount in one stroke at the earliest. The Respondent Nos. 4, 5 and 6 had also made another excess payments to the applicant, of Rs. 1,74,513/- as normal family pension from 01.06.2014.

The respondents have further contended that as a matter of fact the applicant received Rs. 85,043/- and also Rs. 1,74,513/-, total amount Rs. 2,59,556/- in excess of what was payable to him. In support, they have prepared a due and drawn statement of Rs. 85,043/- and Rs. 2,59,556/- and marked as Annexure R and have banked upon a letter of undertaking before the Respondent Nos. 4, 5 and 6 towards adjustment of the excess amount than what is due and payable to him which the applicant submitted at the time commencement of pension. Hence, they have

defended that excess payment made to the applicant owing to inadvertence was rectified in terms of the letter of undertaking.

Furthermore, the respondents have averred that as per Reserve Bank Guide Lines, if any excess payment is made to any pensioner, as soon as the excess payment made to a pensioner comes to the notice of the paying branch, the branch should adjust the same against the amount standing to the credit of the pensioner's account to the extent possible including lump sum arrears payment. Therefore the contention of the applicant that the recovery of the excess payment is wholly improper, unjust and violative of the existing provision of law is total baseless and has no effect in the eye of law.

4. While the Respondents 4, 5 & 6 have pleaded as supra, Respondent No. 3 has pleaded that this original application is not maintainable in its present form and that as no prayer is made against the Respondent No. 2 and 3, they are not necessary and proper parties and have prayed that the name of the Respondent No. 2 & 3 may be deleted for the ends of justice.

Further that, Provati Das, Ex-T.T.A. expired on 20.05.2004 while in service. After her death, as per CCS Pension Rule, Family Pension was sanctioned to her husband Shri Dilip Kumar Das, the applicant herein, w.e.f 21.05.2004 onwards and the Pension Payment Order was issued by CCA Office (DOT Cell). Accordingly, the disbursing authority i.e concerned Bank i.e U.B.I. has been paying family pension to the applicant.

5. By way of rejoinder, the applicant has categorically denied that the applicant received Rs. 85,043/- and Rs. 1,74,513/- i.e total amount of Rs. 2,59,556/- in excess of what is payable to him, as alleged by the respondents, or at all and that the alleged declaration was a routine undertaking which had nothing to do with the bank's excess payment or its recovery as per their whims. The applicant has alleged that the Bank misunderstood the written RBI guidelines and that the bank has suppressed a material fact that the respondent bank unilaterally and without giving

any opportunity of hearing and without giving mandate or any further notice of recovery to the applicant as per RBI guidelines, already started recovering the alleged amount from applicant's family pension to the tune of 1/3rd of monthly family pension since the month of October, 2017 and continuing the said deduction till date.

6. The reply verified by Dy. Controller of Communication Accounts Officer in Sept. 2018, reads as under:

"The P&T Audit during its inspection of this office has also pointed out this particular case along with other cases and urged to replenish the loss to the Govt. exchequer. Excess Family Pension was being disbursed to Shri Das by the Bank beyond the admissible period of enhanced family pension authorized by the office in the light of provision laid down in para 3(a)(i) of Pension Rule 54 and thus loss to the public exchequer must be made good by the Bank itself as per RBI guide lines vide circular No. DGBA.GAD. No. H-10450/45.03.001/2008-09 dated 01.06.2009 followed by dated 13.03.2015. The family pensioner had enjoyed the excess payment at the cost of Govt. ex-chequer due to wrongful payment by the bank and this office has no role in this matter. This office had assessed enhanced and normal family pension correctly in the case of Sri Dilip Kumar Das and authorizing the concerned bank to disburse the amount what has been shown in the authority vide No. CCA/CTD/P-9544 dated 29.09.2011 and CCA/CTD/P-9544 dated 02.05.2017. Overpayment of enhanced family pension in this case beyond the date of admissible period authorized by this office attributes to the Bank concerned and this office is anyway not involved in this alleged payment.

The respondent has averred that *Hon'ble CAT, Mumbai Bench in O.A No. 253 of 2017* in the matter of *M.G Arokar vs. Union of India and Others* had vide order dated 07.11.2017, upheld the right of the Government to make recoveries. Similarly, *Hon'ble CAT, Chandigarh Bench in O.A No. 060/01062 of 2015* in the matter of *Amrik Singh Vs. Union of India and Others* had vide order dated 25.05.2016, observed that

the applicant is liable for recovery of excess amount of pension paid to him. *Hon'ble CAT, Ernakulam Bench* in *O.A No. 180/00224/2017* allowed recoveries from pension when the mistake is on the part of the Bank.

7. In reply thereto the applicant has pleaded as under:

Matters in issue between the Respondent No. 1 & 3 and its agent Bank being Respondents No. 4-6, the applicant has no part to play. He on good faith relied upon monthly payments of family pension by the Bank he had no knowledge of the alleged rules of pension or RBI guidelines as stated and is not responsible for the faults of bank. He has stated that respondents have moral and legal obligation to see and supervise their disbursing bank's illegal and malafide acts contrary to law and respondent no. 3's guidelines for calculations of Dearness Relief to be paid to family pensioner. He has alleged that respondent no. 3 attempted to cover-up the illegal acts of the disbursing bank. The respondent No. 3 ought to have investigated into the disbursing bank's illegal and negligent acts before bypassing their duties.

8. Ld. Counsel for the applicant, at hearing would argue with regard to Case Law, cited in paragraphs no.6.7 and 6.8 of the reply about Hon'ble Mumbai Bench and Chandigarh Bench orders that these references have no application to the facts and circumstances of this present case.

On the contrary to support his prayer for refund he would rely upon the following decisions:

- i) *Shyam Babu Verma & Ors. Vs. Union of India & Ors.* reported in (1994)2 SCC 521.
- ii) *In Syed Abdul Qadir vs. State of Bihar* reported in (2009) 3 SCC 475.
- iii) *State of Punjab and Others Vs. Rafiq Masih (White Washer and Others)* reported in (2015) 4 SCC 334.
- iv) *D. Susairaj vrs. District Treasury Officer*, reported in 2016 SCC Online Mad. 21903.
- v) *Jaba Chandra vs. The State of West Bengal & Ors.* in the High Court at Calcutta in W.P.S.T No. 21 of 2018.

9. The Ld. Counsels were heard at length and the materials on record were perused and the cited decisions were considered.

10. The implications of the cited decisions are discussed infra:

i) In **Shyam Babu Verma & Ors. Vs. Union of India & Ors** (supra) when revised higher scale of pay was given to the petitioners therein on and from 1973 and it was proposed to be reduced after 10 years with retrospective effect, Hon'ble Apex Court held "*it shall only be just and proper not to recover any excess amount which has already been paid to them*" and "*no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same.*"

ii) In **Syed Abdul Qadir** (supra), having noticed that the payment was made wrongly because of inaction, negligence and carelessness of the officials of the Government of Bihar, the Hon'ble Apex Court held

"58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess."

iii) In the **State of Punjab and Others Vs. Rafiq Masih (White Washer and Others)**

(supra), Hon'ble Apex Court while dealing with the issue of recovery, would observe thus:

"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.

18. It is not possible to postulate all situations 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 and summarised the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from the 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 again 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 recovery."

(Emphasis added)

- iv) In the case of **D. Susairaj vrs. District Treasury Officer**, reported in **2016 SCC Online Mad. 21903**, when a pension was wrongly fixed at a higher rate which was later on audit objection was reduced and the higher amount of pension already paid was ordered to be recovered, taking note of the case of **Rafiq Masih** (supra) Hon'ble Court ordered as under:

"10. Even though it has been claimed, by the first respondent, that the petitioner had given his consent for the recovery, the said consent cannot be taken into serious consideration, as the petitioner had raised objections against the recovery, in his representations made to the authority concerned. It is also clear from the decision of the Supreme Court, made in **State of Punjab v. Rafiq Masih (White Washer)** reported in (2015) 4 SCC 334 that no recovery can be made from a retired employee.

11. In such circumstances, this Court finds it appropriate to direct the first respondent to refund the amount of Rs. 1,19,735/- to the petitioner, within a period of three months from the date of receipt of a copy of this order. However, the claim of the petitioner for the payment of the interest on the said amount, at the rate of 12% per annum, is rejected. Accordingly, this writ petition stands partly allowed, with the above directions. No costs."

- v) Hon'ble Madras High Court in **J. Kasthuri vs. The Commissioner of Chennai Municipal Corporation** rendered in **W.P. 19611 of 2013 and M. P 1 of 2014** on February 22, 2018, ruled that even if the petitioner was made aware of the amount of pension to be paid the excess amount paid to her could not be recovered as the payment of higher amount was made not because of any active contribution on her part, and in such cases the primary consideration should be the hardship that would be caused to the petitioner.

vi) In *WPST 21 of 2018 Jaba Chandra vs. State of West Bengal* the Hon'ble Court at Calcutta considered the decisions supra, as well as *Kalyan Kumar Chattopadhyay vs The State of West Bengal and Others* reported in *(2006) 1 WBLR (Cal) 591* where the recovery of excess payment was not allowed by the Court, upon holding that equitable considerations could not be held irrelevant, even where a claim for refund was made under Section 72 of the Indian Contract Act. The Hon'ble High Court at Calcutta considered the aforesaid decisions to examine to the issue "*as to whether the bank could recover the excess amount by deducting 1/3rd of the pension amount paid to the pensioner*" and held "*such recovery is impressible in law. The excess amount has been paid for more than 13 years and the ratio of the judgment in Rafiq Masih (supra) squarely applies. We further find that the petitioner will be caused irreparable hardship if such recovery is made and the recovery would be iniquitous. The petitioner was not responsible for the excess payment made and did not misrepresent before the authorities. It was due to the mistake, carelessness and negligence of the authorities that such excess payment was made and the ratio of the judgment in Syed Abdul Qadir (supra) comes to the aid of the petitioner.*"

Further, while dealing with the question of bankers lien as argued by the respondents, Hon'ble Court would observe "*in Kalyan Kumar Chattopadhyay (supra) it has been categorically held that Section 72 of the Contract Act does not apply in cases where equitable considerations are paramount.*" Hon'ble Court finally held "*recovery of the amount of Rs. 6, 11, 522/- will cause hardship to the petitioner and the same cannot be allowed on equitable considerations and directed that the amount deducted so far towards adjustment of Rs.6,11,522/- shall be refunded to the petitioner along with interest at the highest prevailing rate payable on fixed deposits per annum by a Nationalised Bank payable, from the date of deduction of 1/3rd of the pension amount upto the date of refund. The petitioner shall be paid the actual amount of pension payable as per the pension payment order on and from the month of April, 2016.*"

vii) In *S.S. Guraya vs. Union of India & Ors.* in *CWP No. 23915 of 2015 (O&M)*, The High Court of Punjab and Haryana at Chandigarh having noticed that the monthly pension of the pensioner suddenly dropped from 43,692/- to 25,087/- due to recovery @ 10,000/- per month on some alleged over payment, and without notice held "*the writ petition is allowed and the respondent-bank will return the money recovered by it so far within a period of one week from the date of receipt of certified copy of this order. The future monthly entitlements to pension will remain in original*"

copy of this order. The future monthly entitlements to pension will remain in original position. The action of Union of India and the Bank in reducing the pension of the petitioner and effecting recovery is held illegal, arbitrary and unconstitutional and violative of petitioner's rights inter alia under Article 300A of the Constitution of India. The petitioner 4 of 5 will have costs of this petition assessed at 50,000/- to be paid by the respondent Punjab National Bank for not even raising plausible defence in the reply. The costs be deposited together with the recovered amount within the same time frame with interest @ 18% per annum from the date of illegal ex parte deduction till deposit."

viii) In **Chandeshwar Singh vs. Union of India and Ors**, reported in **2007 (2) SLJ 206 CAT**, CAT Mumbai Bench having noticed reduction of pension from Rs. 5572 to Rs. 3391 and having considered the submission of the respondents that the error in calculation fell in the category of "clerical error" and had to be rectified, moreover some Rs. 66,023 was paid in excess and having observed that the applicant had no role in issuance of a PPO held as under:

"In view of this I hold that the applicant is entitled for the benefit of the ratio laid down by the Apex Court in the case of Shyam Babu Verma (supra). It is therefore directed that no recovery of alleged overpayment be made from the applicant.

12. In view of the analysis of the case in the foregoing paragraphs, I hold that (a) The amount of pension initially worked out in pursuance of the recommendations of the Fifth Pay Commission, by taking basic pension as Rs. 1209 per month vide PPO dated 11.3.1996 based on, Fourth Pay Commission pay scales, can be rectified after detection of the mistake mentioned in this case.

(b) No recovery on account of alleged over payment of pension and terminal benefits can be made from the applicant.

13. The O.A. is disposed of as above with no order as to costs"

11. In the present case it could be deciphered from the materials that the mode of fixation of family pension and its consequent revisions were as under:

1) On 30.05.2005, i.e almost 1 year from the death of the employee, her husband's PPO was issued. The payable amount was Rs. 11,807/-. It further stipulated

2. Provisional pension/Family Pension @ Rs. 4463 (Rupees four thousand four hundred sixty three only) plus D.R @ Rs. 2022/- from 21/5/2004 to 28/02/2005 has been paid by C.G.M Calcutta Telephone.

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3. Arrear of Pension/Family Pension Plus D.R. from 21/05/04 to 28/2/2005 amounting to Rs. 1132/- (Rupees one thousand one hundred thirty two) only may be paid to Shri Dilip Kumar Das.

At Section 2, it provided

	Amount Rs.	From	To
i) At Enhanced rate	Rs. 4463/- pm Plus DR as admissible	01/03/2005	20/05/2011
ii) At Normal rate	Rs. 2678/- pm Plus DR as admissible	21/05/2011	Onwards

II) On 20.09.11, the Family Pension was revised as under:

1. (a) Existing of enhanced family Pension Rs. 4463
(RS. FOUR THOUSAND FOUR HUNDRED SIXTY THREE ONLY)
- b) Revised Enhanced Family Pension Rs. 9794
(Rs. NINE THOUSAND SEVEN HUNDRED NINETY FOUR ONLY)
Effective from 01/01/2007.
- 2) Revised Family Pension
 - iii) Rate of family pension
 - a) At Enhanced Rate Rs. 9794 up to 20/05/2014
(Rs. NINE THOUSAND SEVEN HUNDRED NINETY FOUR ONLY)
 - b) At Normal Rate Rs. 5877 Start from 21/05/2014
(Rs. FIVE THOUSAND EIGHT HUNDRED SEVENTYSEVEN ONLY)

III) Further on 02.05.2017, the Family Pension was revised to the following:

1. (a) Pay Structure i.e Pay Band & Grade Pay/IDA Pay Scale Rs. 14900-27850
- b) Last Basic Pay Rs. 8,925.00
2. Revised Family Pension
 - i) Pre-revised family pension Rs. 4,463.00
Rupees Four Thousand Four Hundred Sixty Three Only
 - ii) Existing Enhance family Pension Rs. 9,794.00 upto 09.06.2013
Rupees Nine Thousand Seven Hundred Ninety Four Only
 - iii) Revised Enhance family Pension Rs. 10,339.00 w.e.f. 10.06.2013
Rupees Ten Thousand Three Hundred Thirty Nine only to 20/05/2014
 - iv) At Revised Normal Rate Rs. 6,204.00 w.e.f. 21/05/2014
Rupees Six Thousand Two Hundred Four Only.
2. Arrears due to the family pensioner on the basis of the revised rate of family pension and DR as indicated at para 1 above may be paid after deducting the payments already made.
3. The Pensioner/family pensioner is also eligible for DR as per IDA pattern. The revised rate of IDR (Type III duly ticked) is enclosed in Annexure "A".

IV) On 15.09.2017, the applicant was informed that

"We have prepared due & drawn statement, on revised basic pension, wef 01-01-2017 upto 30/06/2017; from where it has been observed that an amount of Rs. 85,043/- been overpaid. So you are hereby informed that the said amount is to be recovered in one stroke, as per letter of undertaking submitted by you, before starting of your pension. You are requested to maintain sufficient balance in your Pension SB ap/c, so that the recovery process can be completed at the earliest."

V) Part extracts of due drawn statement go thus:

i)

Month	Particular	Paid	Rate	Payable Basic	Payable DA	Total payable	Net
From 01.01.2007 IDR Type III							
26/11/2009	PENSION FOR	13907	25.30	9794	2478	12272	-1635
12/09	PENSION FOR	9444	25.30	9794	2478	12272	2828
01/10	PENSION FOR	9444	30.90	9794	3026	12820	3376
02/10	PENSION FOR	10284	30.90	9794	3026	12820	2536
		XX	XX	XX	XX	XX	

ii)

Month	Particular	Paid	Rate	Payable Basic	Payable DA	Total payable	Net
From 01.01.2007 IDR Type III							
05/14	PENSION FOR	18658	88.4	10339	9140	16714	-1944
06/14	PENSION FOR	18452	88.4	6204	5484	11688	-6764
07/14	PENSION FOR	18452	91.3	6204	5664	11868	-6584
08/14	PENSION FOR	19020	91.3	6204	5664	11868	-7152
09/14	PENSION FOR	18736	91.3	6204	5664	11868	-6868
		xxx	xxxx	xxxx	xxx		

iii)

Month	Particular	Paid	Rate	Payable Basic	Payable DA	Total payable	Net
From 01.01.2007 IDR Type III							
04/17	PENSION FOR	21498	117.1	6204	7265	13469	-8029
05/17	PENSION FOR	21499	117.1	6204	7265	13469	-8030
06/17	PENSION FOR	21263	117.1	6204	7265	13469	-7794
	PENSION FOR	GRAND TOTAL					-85043

Against the date 26.11.09 in extract (i), the figure Rs. 13907/- is shown as paid, whereas payable =11606/-. Therefore an overpayment of Rs. 1635/- is manifested by records.

Whereas against the extract (ii), as against the date 5/14 the amount drawn is Rs. 18658/-. But adding payable basic to payable DA the sum comes to Rs. 19478, whereas the total payable is shown as 16714/- and excess which is -1944/- has not been accounted for, whereas in the next entry 6/14 payable basic+ payable DA = 11688/- shown as "total payable". Therefore the sum of Rs. 1944/- shown as excess against entry 5/14 is therefore unsubstantiated.

Similarly, in extract (ii) reduction in payable basic of Rs. 10339/- (5/14), Rs. 6204/- (6/14) is not explained. Therefore, factual discrepancies exist in the statement.

Even a bare perusal of the orders aforesaid would therefore exemplify and demonstrate that the overpayment was adjudged without notice and before effecting recovery, applicant was simply informed of the alleged excess payment and asked to either go for lumpsum recovery or monthly recovery without explaining to him the alleged overpayments.

12. Further, it is evident that the applicant, on 17.10.2017, corresponded with the respondent's bank as under:

"I state that due to my financial incapability and good old age, I am not able to repay the alleged overpaid amount, which I do not admit, in lump sum. I also suffered serious mental pain and agony due to the faults of the pension disbursing bank resulting abrupt cessation of my pension from Rs. 21,263/- drawn on 28 June 2017 to Rs. 13,469/- drawn on 27 July 2017.

In view of above circumstances I state I cannot agree with the Bank's present calculation of such an huge amount i.e Rs. 85,043/- unless and until it be ratified by the my family pension giver Telecom authority. So I request you to give me at least three months time (i.e till January 2018) to check the amount of bank's claim of overpaid amount.

However, I sincerely state that within this period of three months if I be satisfied with the bank's calculation of overpaid amount, I, hereby, agree to repay the actual correct amount overpaid in monthly instalments calculated as 1/3rd of my monthly net pension in terms of RBI guide lines contained in RBI letter Ref. No. RBI/2015-16/340 DGBA.GAD.NO.2960/45.01.011/2015-16 dated March 17, 2016 addressed to all agency banks.

Without admitting correctness of the pension statement attached with your said letter, I further state that as per the said RBI guide lines contained in the aforesaid RBI letter, I am entitled to be notified or informed beforehand or to get bank's confirmation letter with regard to the mode of recovery by the bank of the overpaid amount and the future date from when the recovery instalments in terms of 1/3rd of net pension per month would start."

But without responding to his request, the bank started deduction and recovery.

13. The present applicant is not a pensioner; he is a family pensioner, who never had access to the official records. If over payment was made, he obviously had no

role to play in issuance of PPO or in the revision of his pension, or alleged erroneous overpayment made to him, but suddenly as a bolt from the blue found his pension to be reduced considerably to his disadvantage, and to such an extent as to affect him financially and mentally and that too without any notice, without explaining the reduction in his payable basic, etc, as enumerated supra.

14. I gave my anxious consideration to the decisions cited and enumerated supra which renders such recovery as impermissible, particularly, in terms of para (v) of the **Rafiq Masih** (supra) rendered by Hon'ble Apex Court.

15. I have also considered the decisions of various Benches of this Tribunal as placed by the respondents. Having imagined the plight of the pensioner, who on one fine morning finds his pension is substantially reduced, abruptly from 21,263/- to 13469/- i.e to such an extent as is likely to affect his monthly budget, coupled with recovery of Rs. 2,59,556/- without any fault on his part, when it can only be gain said that such drastic reduction and recovery would not disturb his monthly budget, I hold such unexplained recovery as unjust, iniquitous, harsh and arbitrary and therefore impermissible.

16. Accordingly, I direct the respondents to immediately stop any further recovery and refund the entire recovered amount, as expeditiously as possible and preferably within 1 month from the date of receipt of a copy of this order with liberty to rectify the PPO, if required, upon due notice, and to act accordingly.

17. The O.A as well as the M.As are disposed of. No costs.

(Bidisha Banerjee)
Member (J)