

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

ORIGINAL APPLICATION NO.203/00940/2014

Jabalpur, this Monday, the 6th day of May, 2019

HON'BLE MR.NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR.RAMESH SINGH THAKUR, JUDICIAL MEMBER

Alag Ram Kaiwartya S/o Shri Janak Ram Kaiwartya,
Aged about 65 years, Resident of Vill/PO Gidhori via-Katagi,
Tehsil Kasdol, Dist. Bilauda Bazar (CG) **- APPLICANT**
(By Advocate – Shri Lavkush Sahu)

Versus

1. Union of India through its Secretary, Ministry
of Water Resources, Sewa Bhavan, R.K.Puram, New Delhi-110004
2. The Chairman, Central Water Commission, Seva Bhawan,
R.K.Puram, New Delhi-Pin-110022
3. Chief Engineer, Central Water Commission, Mahanadi & Eastern
River, Plot No.A-13 & 14, Mahanadi Bhawan, Bhoi Marg, Bhubneshwar
(Oddisa) 751007
4. Superintendent Engineer, Central Water Commission, Mahanadi &
Eastern River, Plot No.A-13 & 14, Mahanadi Bhawan, Bhoi Marg,
Bhubneshwar, (Oddisa) 751007
5. Executive Engineer, Central Water Commission, Mahanadi Division,
Doctor's Colony, PO Burla, Dist.Sambalpur (Orissa) 768017
6. Chief Manager, State Bank of India, Centralised Pension Processing
Centre, Govindpura, Bhopal (M.P.)Pin-462026 **- RESPONDENTS**
(By Advocate – Shri Vivek Verma for respondents 1 to 5
Shri Sachin Singh Rajput for respondent-Bank)

(Date of reserving the order: 28.09.2018)

ORDER

By Navin Tandon, AM.-

The applicant is aggrieved by the recovery of Rs.1,22,572/- by the
bank due to excess payment on account of dearness allowance.

2. The brief undisputed facts of the case are that the applicant was initially appointed on the post of Peon on 02.07.1972 with the respondent- department. He was promoted to the grade of Work Sarkar Gr.III vide order dated 15.07.2008 (Annexure A-1). He retired on 28.02.2009 after attaining the age of superannuation. He was issued Pension Payment Order (PPO) at the basic rate of Rs.5225/- which was revised to Rs.5880/- p.m. on 12.07.2012 as per 6th CPC.

2.1 State Bank of India (Respondent No.6) issued letter no.Nil dated 24.07.2012 (Annexure A-3) wherein the applicant was informed that he has been paid Rs.1,22,572/- more than due because of extra DA payment. Therefore, recovery at the rate of Rs.2100/- p.m. will be made w.e.f. July, 2012 to May,2017. The applicant was also asked to pay in one instalment. When he represented on 14.08.2012 (Annexure A-4), he was given a statement (Annexure A-5) wherein “Paid” and “Payable” figures from March 2009 to June 2012 are shown and extra payment of Rs.1,22,572/- is worked out.

3. The applicant has prayed for the following reliefs in this Original Application:-

“(8.1) This Hon’ble Tribunal may kindly be pleased to quash the recovery order dated 24.07.2012 Annexure-A-3;

(8.2) This Hon’ble Tribunal may kindly be pleased to direct the respondent no.6 to pay back the amount recovered from the pension of the applicant with interest;

(8.3) Cost;

(8.4) Any other relief or relief as the Hon'ble Tribunal may kindly deem fit and proper".

4. The respondent-department (Respondents Nos.1 to 5) in their reply have submitted that they have issued PPO dated 11.02.2009 (Annexure R-1) at the time of retirement and 20.04.2012 (Annexure R-2) consequent upon 6th CPC. Other than that they have no role to play. The main issue is between the applicant and State Bank of India (Respondent No.6).

5. State Bank of India (Respondent No.6) (hereinafter referred to as "**the Bank**") have submitted that the applicant was inadvertently paid higher rate of Dearness Allowance (for brevity '**DA**') than what was admissible. When the mistake came to knowledge of the Bank, the recovery order for the same was issued. The applicant can not get undue enrichment by the bonafide mistake or inadvertence committed by the Bank. Further the applicant at the time of start of pension from the Bank has given an undertaking (Annexure R-6/2) that if any amount on account of pension is wrongly paid to him, the Bank has a right to recover it from him. Therefore, the applicant can not say that excess payment made to him due to inadvertence cannot be recovered from him.

6. During course of arguments on 22.02.2018, it was found that the applicant did not have any details of pension being paid to him nor the monthly recoveries made from him. Pass book was the only document

which he could show. Learned counsel for the applicant submits that recovery was being made even after May,2017.

6.1 Bank was directed to file supplementary affidavit regarding status of recovery after June,2017.

7. Bank filed an affidavit on 20.04.2018. Paragraphs 3 & 4 of which stated as under:-

“(3) It is stated that an excess amount of Rs.1,22,572.00 was paid to the petitioner as on 24.07.2012. An amount of Rs.2,100.00 was recovered from pension of July 2012. Subsequently on 21.08.2012 revision arrears of Rs.34,130.00 were adjusted from the balance recoverable amount and the balance recoverable amount stood at Rs.86,342.00 which was recovered in 28 monthly instalments from 01.08.2012 to 01.11.2014 (27 monthly instalments of Rs.3,100.00 each and 28th instalment of Rs.2,642.00).

(4) That it is humbly submitted as per the official record maintained in the office of respondent no.6, no recovery of amount was made after June,2017 and thereafter from the pension account of the petitioner”.

7.1 During the hearing on 20.4.2018, it was observed that deduction of Rs.3100/- p.m. and adjustment of Rs.34130/- was at variance with the letter dated 24.07.2012 (Annexure A-3) issued by the Bank wherein deduction at the rate of Rs.2100/- p.m. was to be made.

7.2 Learned counsel for the applicant submitted that the applicant was not being furnished any break-up of the payment made to him.

7.3 Bank was again directed to file another affidavit about the break up of pension given to the applicant right from his superannuation to the present month.

7.4 Bank filed the required affidavit on 13.07.2018 giving details of payment (Basic Pension + Dearness Allowance) and deductions made from March 2009 to March 2018 as under:-

“(3). That the applicant retired from the service in the month of February 2009. It is humbly submitted that the pension of the petitioner started with the respondent no.6 from the month of March 2009. The details of the pension paid to the applicant with deduction made is mentioned in the tabular form as under:-

<i>Pension Month</i>	<i>Basic Pension</i>	<i>Dearness Allowances</i>	<i>Deduction</i>
<i>March 2009 to June 2009</i>	<i>Rs.5225/-</i>	<i>Rs.3344/-</i>	
<i>July 2009 to December 2009</i>	<i>Rs.5225/-</i>	<i>Rs.3815/-</i>	
<i>January 2010 to June 2010</i>	<i>Rs.5225/-</i>	<i>Rs.4546/-</i>	
<i>July 2010 to December 2010</i>	<i>Rs.5225/-</i>	<i>Rs.5382/-</i>	
<i>January 2011 to June 2011</i>	<i>Rs.5225/-</i>	<i>Rs.6009/-</i>	
<i>July 2011 to December 2011</i>	<i>Rs.5225/-</i>	<i>Rs.6636/-</i>	
<i>January 2012 to June 2012</i>	<i>Rs.5225/-</i>	<i>Rs.7263/-</i>	
<i>July 2012</i>	<i>Rs.5225/-</i>	<i>Rs.3397/- + Rs.406/- arrears</i>	<i>Rs.2100/-</i>
<i>August 2012 to December 2012</i>	<i>Rs.5800/-</i>	<i>Rs.3770/- + Rs.406/- arrears</i>	<i>Rs.3100/-</i>
<i>January 2013 to April 2013</i>	<i>Rs.5800/-</i>	<i>Rs.4176/- + Rs.464/-</i>	<i>Rs.3100/-</i>
<i>May 2013 to June 2013</i>	<i>Rs.5800/-</i>	<i>Rs.4640/-</i>	<i>Rs.3100/-</i>
<i>July 2013 to September 2013</i>	<i>Rs.5800/-</i>	<i>Rs.4640/- + Rs.580/-arrears</i>	<i>Rs.3100/-</i>

<i>October 2013 to December 2013</i>	<i>Rs.5800/-</i>	<i>Rs.5220/-</i>	<i>Rs.3100/-</i>
<i>January 2014 to March 2014</i>	<i>Rs.5800/-</i>	<i>Rs.5220/- + Rs.580/-</i>	<i>Rs.3100/-</i>
<i>April 2014 to June 2014</i>	<i>Rs.5800/-</i>	<i>Rs.5800/-</i>	<i>Rs.3100/-</i>
<i>July 2014 to September 2014</i>	<i>Rs.5800/-</i>	<i>Rs.5800/- + Rs.406/- arrears</i>	<i>Rs.3100/-</i>
<i>October 2014 to December 2014</i>	<i>Rs.5800/-</i>	<i>Rs.6206/-</i>	<i>Rs.3100/- October Rs.2642/- November</i>
<i>January 2015 to April 2015</i>	<i>Rs.5800/-</i>	<i>Rs.6206/- + R.348/-arrears</i>	<i>Nil</i>
<i>May 2015 to June 2015</i>	<i>Rs.5800/-</i>	<i>Rs.6554/-</i>	<i>Nil</i>
<i>July 2015 to September 2015</i>	<i>Rs.5800/-</i>	<i>Rs.6554/- + Rs.348/- arrears</i>	<i>Nil</i>
<i>October 2015 to December 2015</i>	<i>Rs.5800/-</i>	<i>Rs.6902/-</i>	<i>Nil.</i>
<i>January 2016 to March 2016</i>	<i>Rs.5800/-</i>	<i>Rs.6902/- + Rs.348/-</i>	<i>Nil</i>
<i>April 2016 to June 2016</i>	<i>Rs.5800/-</i>	<i>Rs.7250/-</i>	<i>Nil</i>
<i>July 2016</i>	<i>Rs.5800/-</i>	<i>Rs.7250/- + Rs.299/- arrears</i>	<i>Nil</i>
<i>August 2016*</i>	<i>Rs.14906/-</i>	<i>Rs.299/-arrears Rs.12,992/- of 7th pay</i>	<i>Nil</i>
<i>September 2016 to December 2016</i>	<i>Rs.14906/-</i>	<i>Rs.299/-</i>	<i>Nil</i>
<i>January 2017 to March 2017</i>	<i>Rs.14906/-</i>	<i>Rs.299/- + Rs.299/-</i>	<i>Nil</i>
<i>April 2017 to June 2017</i>	<i>Rs.14906/-</i>	<i>Rs.597/-</i>	<i>Nil</i>
<i>July 2017 to September 2017</i>	<i>Rs.14906/-</i>	<i>Rs.597/- + Rs.150/-</i>	<i>Nil</i>
<i>October 2017 to December 2017</i>	<i>Rs.14906/-</i>	<i>Rs.746/-</i>	<i>Nil</i>
<i>January 2018 to March 2018</i>	<i>Rs.14906/-</i>	<i>Rs.746/- + Rs.299/-</i>	<i>Nil</i>

** Pension revised from 01.01.2016 (under 7th Pay Commission and arrears of Rs.12,992/- (arrears for the period 01.01.2016 to 30.07.2016) paid on 30.08.2016.*

(4) It is stated that an excess amount of Rs.1,22,572.00 was paid to the petitioner on 24.07.2012. An amount of Rs.2,100.00 was recovered from pension of July,2012. Subsequently on 21.08.2012 revision arrears of Rs.34,130/- were adjusted from the balance recoverable amount and the balance recoverable amount stood at Rs.86,342.00 which was recovered in 28 monthly instalments from 01.08.2012 to 01.11.2014 (27 monthly instalments of Rs.3,100.00 each and 28th instalment of Rs.2,642.00) ”

7.5 It was observed that the entire recovery has been completed by November, 2014, after which no recoveries have been made.

8. Heard the arguments of learned counsel of all the parties and pleadings available on record.

9. Learned counsel for the applicant averred that no overpayment has been made on account of misrepresentation or fraud on the part of employee. Thus, the impugned order is arbitrary, illegal and contrary to law. He placed reliance on **State of Punjab Vs. Rafiq Masih (White Washer)** (2015) 4 SCC 334 wherein Hon'ble Supreme Court has listed few situations wherein recoveries from the employees would be impermissible in law. Further, Hon'ble High Court of Chhattisgarh has granted relief to the employee in the matters of **Surendra Singh Vs. State of Chhattisgarh** in WP(S) No.1181 of 2017 and its subsequent Writ Appeal No.164 of 2017, as the case squarely within the criteria narrated in **Rafiq Masih** (supra).

9.1 It was also highlighted that the respondents have not provided the Pension Service Book to the applicant.

10. Learned counsel for the Respondent No.6 (Bank) placed reliance on **Chandi Prasad Uniyal and others Vs. State of Uttaranchal**, (2012) 8 SCC 417 as well as **High Court of Punjab and Haryana Vs. Jagdev Singh**, (2016) 14 SCC 267 to emphasise that this is a case of undue enrichment and recovery can always be made.

FINDINGS

11. Hon'ble Supreme Court in the matters of **Rafiq Masih** (supra) has held as under:-

“(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. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise 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 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”.

12. However, the Hon'ble Supreme Court in a subsequent matter in the case of **Jagdev Singh** (supra) have held that recovery from retired

employees can be made, in cases where the officer to whom payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. Since in the present case the Bank has specifically submitted that the applicant has given an undertaking (Annexure R-6/2) that if any amount is wrongly paid to him, he would be responsible for returning all the excess payment made to him, there is no irregularity on the part of the respondents in making the recovery.

13. Further, the Chandigarh Bench of this Tribunal had occasion to consider a similar matter decided on **17 April, 2015** in the case of **MES NO.358767 Surinder Pal Singh Vs. Union of India and others**, in Original Application No.060/00561/2014. Relevant extracts from the said order read thus:

*“(11) So far as reliance is placed on **Rafiq Masih** (Supra) it is observed that in that case the Apex Court has provided guidelines vide para 4 where payments that have mistakenly been made should not be recovered.However, in the instant case, the recovery has been made by the Bank, which is only a pension disbursing authority, on account of excess pension having been paid to the applicant, against his entitlement as per PPO issued by the respondent Department. The Bank is merely a conduit of the pension amount and Government of India will release funds to the Bank only as per the entitlement of the pensioners. If excess payment is made erroneously by the Bank, the Government of India will not reimburse the Bank on this account. The Bank itself is the custodian of public funds by way of deposits by the general public and its clients and this is public money. Any loss on account of*

excess payment being made to pensioners by the Bank would therefore have to be charged by the Bank to its internal accruals and thus, it is the public which would pay for such errors.

*(12). The number of Government employees is over 3 million and the number of pensioners is over a million. When pay/pension revision is effected for such a large number of employees mistakes may take place. Therefore, whenever revision of pay scales and pensions is effected as a result of recommendations of the Pay Commission being implemented usually with some time lapse, lump-sum arrears are often released to the pensioners and the revised pension is paid with prospective effect. At the time of release of such revised pay/pension, arrears and revision of pay/pension, the employee/pensioner is required to furnish an undertaking to the Government department in which he/she is working or to the Bank which is disbursing the pension that he/she shall be liable for recovery of any amount paid in excess to employee/pensioner. Such an undertaking has been signed and submitted by the applicant in the present case also after revision of his pension on the basis of 6th Pay Commission's recommendations. Hence liability of the applicant to repay the amount of pension paid in excess to him by the Bank cannot be ignored since ignoring this aspect could hit the Banks to the tune of several hundred crores as many cases of excess release of pension are coming to light. The public/tax payers should not be burdened on this account. In this matter we are guided by the judgment dated 17.08.2012 in **Chandi Prasad Uniyal** (supra) wherein it had been held as follows:*

“(15). We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.

(16). We are concerned with the excess payment of public money which is often described as “tax payers money” which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment”.

However, taking a sympathetic view of the matter and keeping in view the fact that the applicant is now around 70 years of age and he is getting pension of around Rs.18,000/- per month the Bank should restrict the monthly deduction from his pension to an amount of Rs.2000/- only so that this recovery does not amount to an intolerable burden on the pensioner”.

14. We find that in the aforementioned order the Chandigarh Bench of the Tribunal has specifically held that “Bank is merely a conduit of the pension amount and Government of India will release funds to the Bank only as per the entitlement of the pensioners. If excess payment is made erroneously by the Bank, the Government of India will not reimburse the Bank on this account” and further that “Any loss on account of excess

payment being made to pensioners by the Bank would therefore have to be charged by the Bank to its internal accruals and thus, it is the public which would pay for such errors”.

15. We find that the instant case is squarely covered by the decisions of Hon’ble Supreme Court in the matters of **Jagdev Singh** (supra), as well as of Chandigarh Bench of this Tribunal in the matters of **MES No.358767 Surinder Pal Singh** (supra). Accordingly, the relief sought for by the applicant to quash the recovery order dated 24.07.2012 Annexure-A-3; as well as direction to respondent no.6 to pay back the amount recovered from the pension of the applicant with interest can not be granted.

16. Before parting with we are constrained to observe that the applicant was neither given any details of the pension or deductions which were being made from his pension by the Bank. Just like a working employee is issued a ‘**pay slip**’ every month, the pensioner is also entitled to receive a ‘**pension slip**’ from the bank. A large number of pensioners would not be having access to internet or may not be tech-savvy to find the details through the internet. Therefore, every branch of the bank which is disbursing the pension is also obliged to give a ‘**pension slip**’ to each of the pensioners.

16.1 The Registry of the Tribunal is directed to send a copy of this order to the Finance Secretary, Government of India, who may get necessary instructions issued by the Reserve Bank of India to all the Pension Disbursing Banks to issue a printed copy of the ‘**pension slip**’ to all the pensioners with effect from 1st of August, 2019.

16.2 It is also seen that even though the Bank through the impugned order dated 24.07.2012 (Annexure A-3) had communicated to the applicant that the deductions will be made at the rate of Rs.2100/- per month, the bank has unilaterally enhanced the recovery to Rs.3100/- per month and adjusted Rs.34130/- from revision arrears. This is not a happy situation wherein a person retired from the lower echelons of the Government hierarchy was made to suffer. Accordingly, we direct the Bank (Respondent No.6) to pay Rs.10,000/- (Rs.Ten Thousand only) as cost to the applicant.

17. In the result, the Original Application is dismissed with the directions as contained in the preceding paragraph.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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