

**Reserved**

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**  
**CIRCUIT SITTING : BILASPUR**

**ORIGINAL APPLICATION NO.203/00057/2017**

**Jabalpur, this Tuesday, the 9<sup>th</sup> day of July, 2019**

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

**V.V.Lakshmi Rao** W/o V.Koteshwar Rao, aged about 66 years, Retired Railway Servant, R/o Plot No.153, Surya Kamal, Vivekanand Nagar, Mopka, Bilaspur (C.G.)-495006 **- APPLICANT**

**(By Advocate – Shri A.V.Shridhar)**

**Versus**

**1.** Union of India through the Secretary, Railway Board, Rail Bhawan, New Delhi-110 001

**2.** General Manager, South East Central Railway, New GM Building, Bilaspur (C.G.)-495004.

**3.** Deputy Finance Manager, South Eastern Central Railway, Bilaspur (C.G.)-495004.

**4.** State Bank of India, Through the Branch Manager, Centralized Pension Processing Cell, Govindpura, Bhopal-462023 **- RESPONDENTS**

**(By Advocate – Shri Vivek Verma for respondents Nos.1 to 3, Shri Sachin Singh Rajput for respondent No.4)**

*(Date of reserving the order: 05.12.2018)*

**ORDER**

**By Navin Tandon, AM-**

The applicant is aggrieved by the recovery being made from her pension towards excess payment.

**2.** The brief facts of the case as submitted by the applicant are as follows:-

**2.1** She was working in South East Central Railway. She sought voluntary retirement, which was accepted.

**2.2** Vide PPO dated 09.04.2009 (Annexure A-1) the monthly pension was fixed at Rs.11165/- and a sum of Rs.4466/- was commuted.

**2.3** She was receiving her pension through State Bank of India, Mopka Branch.

**2.4** On 20.10.2015, she was forced to secure loan against her fixed deposits and an amount of Rs.3,50,000/- was debited from her saving account on account of part recovery of excess pension payment.

**2.5** Vide communication dated 31.10.2015 she was informed that an amount of Rs.6,77,427/- is sought to be recovered from her monthly pension. Further vide communications dated 15.12.2015 and 28.03.2016 she was informed that an amount of Rs.6828/- shall be recovered from her monthly pension from 01.03.2016 to 29.02.2020. Copies of the communications dated 31.10.2015, 15.12.2015 and 28.03.2016 are annexed collectively as Annexure R-3.

**2.6** She has received a sum of Rs.18,71,270/- only as pension from January 2009 to October,2015. As per letter dated 31.10.2015 she is entitled for a pension amounting to Rs.15,90,320/-. Accordingly, she has received only Rs.3,51,590/- as excess amount of pension and not Rs.6,77,627/-, as stated by the respondent No.4.

**2.7** Aggrieved by aforesaid communications of recovery, she preferred Original Application No.203/00549/2016 before this Tribunal, which was disposed of vide order dated 13.05.2016 (Annexure A-4) with a direction to respondent No.3 to pass a reasoned and speaking order on her representation.

**2.8** Vide order dated 19.09.2016 (Annexure A-7) the respondent No.3 held that the applicant received a sum of Rs.18,78,781/- from year 2009 to 2015 by way of pension whereas she is entitled for pension of Rs.11,90,908/- from the year 2009 to 2015 and Rs.6,87,873/- has been excessively paid to her. The summary of overpayment has been annexed with the order dated 19.09.2016 (Annexure A-7).

**3.** The applicant has therefore prayed for the following reliefs:-

*“(8.1) That, the learned Tribunal may kindly be pleased to direct the respondents not to make recovery from the pension of the applicant.*

*(8.2) That the Hon’ble Tribunal may kindly be pleased to direct the respondents to refund the amounts deducted from the pension of the applicant as also the amount of Rs.3,50,000/- forcefully recovered from the applicant.*

*(8.3) Cost of the Original Application.*

*(8.4) Any other relief, which the learned Tribunal deems fit and proper may be awarded”.*

**4.** The respondent-Railway have submitted as under:-

**4.1** Due to mistake in calculation of rate of dearness relief by the disbursing bank i.e. respondent No.4 State Bank of India was mistakenly continuing to pay higher amount of dearness relief to the applicant.

**4.2** The applicant herself understood the fact of over payment and has invited the attention of the disbursing bank vide her letter dated 30.04.2010 to review the case.

**4.3** As per the statement of SBI/CPPC/Bhopal, the applicant has received the excess disbursement of dearness relief on pension of Rs.6,77,427/-. The applicant has already refunded Rs.3,50,000/- against the amount of over payment disbursed to her.

**4.4** The financial status of the applicant is good. After her retirement she receives good amount of pension. In addition, her spouse is also a railway pensioner receiving a good amount of pension. The pensioners undertake air travel to foreign countries at times and have taxable income. Therefore, the applicant is not a low paid employee.

**4.5** The recovery of excess payment is in accordance with law and as per the guidelines of Reserve Bank of India.

**5.** Respondent No.4-Bank has submitted as under:-

**5.1** Due to mistake in calculation of rate of dearness allowances relief by the respondent No.4, the respondent No.4 was mistakenly continuing to pay higher amount of dearness allowance relief to the applicant. This

fact was brought to the knowledge of the respondent No.4 by the applicant vide her letter dated 30.04.2010 (Annexure R-4/1). Thereafter, the respondent No.4 taken the case of the applicant in cognizance and calculated the amount of overpayment.

**5.2** While feeding the pension payment data in the pension software, inadvertently the dearness allowance for 5<sup>th</sup> Central Pay Commission was chosen instead of 6<sup>th</sup> Central Pay Commission. This resulted in payment of excess dearness allowances to the applicant from the beginning and with passage of time the difference of dearness allowances being paid as per 5<sup>th</sup> CPC and to be payable as per 6<sup>th</sup> CPC, increased substantially. This has resulted in the payment of excess pension amount to Rs.6,77,427/- due to payment of excess dearness allowances in monthly pension for the period from 11.01.2009 to October 2015.

**5.3** The actual amount of pension paid to the applicant is Rs.21,96,747/-. But, the applicant is comparing the amount of calculation sheets provided to her by CPPC Bhopal (Bank) with net amount of monthly pension credited to her pension account by Bank from time to time. The said calculation is incorrect because net amount of monthly pension is credited after deducting monthly instalment of commutation of Tax Deduction at Source (TDS). Therefore, it is incorrect to say that the applicant has received Rs.18,71,270/- as pension, as the same is the net pension paid to the applicant after deducting the TDS.

6. Learned counsel for the applicant averred that no overpayment has been made on account of misrepresentation or fraud on the part of applicant. 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.

7. Learned counsel for the Respondent No.4 (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.

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

9. We find that the respondent No.4-Bank in the their reply have specifically stated that the actual amount of pension paid to the applicant was Rs.21,96,747/- during the period under question. But, the applicant is comparing the amount of calculation sheets provided to her by the CPPC Bhopal (Bank) with net amount of monthly pension credited to her pension account by Bank from time to time. The respondent No.4 has also stated that the said calculation is incorrect because net amount of

monthly pension is credited after deducting monthly instalment of commutation of Tax Deduction at Source (TDS), which has not been controverted by the applicant by filing any rejoinder. Therefore, it is incorrect to say on the part of the applicant that she had received Rs.18,71,270/- as total pension and Rs.3,51,970/- as excess amount of pension.

**10.** 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”.*

**11.** 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-4/8) that if any amount is wrongly paid to her, she would be responsible for returning all the excess payment made to her, there is no irregularity on the part of the respondents in making the recovery.

**12.** Further, the Chandigarh Bench of this Tribunal had an occasion to consider a similar matter in the case of **MES NO.358767 Surinder Pal Singh Vs. Union of India and others**, in Original Application No.060/00561/2014 decided on **17 April, 2015**. 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”.*

**13.** 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”.*

**14.** Thus having considered the facts of the instant case as well as the decisions referred to above, we are of the considered view 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 reliefs sought for by the applicant in this Original Application can not be granted.

**15.** Before parting with, we are constrained to observe that though the applicant had herself being an honest citizen duly intimated to the disbursing bank vide her letter dated 30.04.2010 (Annexure R-4/1) that she is being paid higher amount of dearness relief and had requested them for proper fixation and recovery of higher amount in monthly instalments. However, thereafter the respondents had taken more than five years to search their mistake and huge amount of recovery has been imposed upon the applicant in the years 2015-2016. This is not a happy situation wherein a retired railway servant was made to suffer. Accordingly, we direct the Bank (Respondent No.4) to pay Rs.10,000/- (Rs.Ten Thousand only) as cost to the applicant, which should be paid to her within a period of one month from the date of communication of this order.

**16.** 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**

*rkv*