

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.60/1197/2018

Date of decision: 09.10.2019

(Reserved on: 05.9.2019)

...

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).

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Poonam Nagpal widow of Late Shri Sunil Nagpal, aged about 39 years, R/o 25-A, Shori Nagar, Polytechnic Road, Amritsar-143001. Group C.

...APPLICANT

VERSUS

1. Union of India through Secretary to Government of India, Ministry of Tourism, Transport Bhawan, Cannaught Place, Sansad Marg, New Delhi.
2. Home Secretary, Chandigarh Administration, U.T. Sector-9, Chandigarh-160009.
3. Principal, Dr. Ambedkar Institute of Hotel Management, Sector 42-D, Chandigarh-160036.
4. Life Insurance Corporation through its Manager, Jeevan Prakash Building, Sector-17 B, Chandigarh-160017

...RESPONDENTS

PRESENT: Sh. Parveen K. Kataria, counsel for the applicant.
None for respondents no.1 to 3.
Sh. Sourav Verma, counsel for respondent No.4.

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J):-

1. The applicant is aggrieved against two orders both dated 23.5.2018 (Annexure A-3 and A-4) and letter dated 23.8.2018 (Annexure A-6), whereby respondents have sought to recover a sum of Rs.9,44,660/- on account of excess payment of family pension.
2. The short question that arose for consideration by this Court is whether respondents can recover excess payment from the amount of family pension.
3. Brief facts, which led to filing of this O.A., are that husband of the applicant Sh. Sunil Nagpal, who was appointed as Assistant Lecturer-

cum-Assistant Instructor with respondent no.3 on 28.8.2002, unfortunately expired on 27.8.2009 after rendering 7 years service. Thereafter, applicant submitted representation for release of death cum retiral benefit, family pension and appointment on compassionate grounds. When her request was not acceded, she approached this Tribunal by filing O.A. No.436-PB of 2013, which was disposed of on 8.10.2013, with a direction to respondent no.3 to take immediate action to disburse family pension along with interest @8% p.a. w.e.f. 1.10.2010. It is the case of the applicant that she was entitled to family pension to be calculated @50% as her husband had completed seven years of service but respondent no.3 calculated family pension wrongly, against which she submitted representation to recalculate pension @50% of basic pay+GP. Instead of considering her representation, as noticed above, respondents vide communication dated 23.5.2018 (Annexure A-3) intimated the applicant that in fact excess payment has been made to her to the tune of Rs.9,33,861/-. She submitted a representation that respondents cannot make recovery from retiral benefits as the same is contrary to law laid down by the Hon'ble Supreme Court, which has been turned down vide impugned order dated 23.8.2018, whereby an amount of Rs.9,44,660/- has been sought to be recovered from her. Against this order, the applicant is before this Court.

4. Respondents No.1 to 3 and respondent no.4 have filed separate written statements, in which they have not disputed factual accuracy of the matter and have submitted that while fixing family pension, as directed by this Court in earlier round of litigation, respondents had calculated D.A. on full salary instead of 50% which resulted into excess payment. While fixing family pension as per 7th CPC, this fact came to

their notice and hence impugned order dated 23.5.2018 was passed directing respondent no.4 to recover excess amount from family pension to be released to the applicant. It has further been submitted therein that as per representation of the applicant to calculate family pension @50% of pay +D.A., case of the applicant was considered and her request was approved vide orders dated 21.12.2018 and 3.1.2019 and direction was issued to respondent No.4 to recalculate family pension and adjust recovery.

5. Respondent no.4 has filed separate reply, wherein it has been submitted that excess payment of Rs.9,44,660/- was made and subsequently by rectifying their mistake, by calculating the pension @50% pay + D.A., the matter was looked into and ultimately out of Rs.9,44,660/-, a sum of Rs.2,09,322/- only remains which they had paid in excess than the entitlement of the applicant while calculating retiral dues of the husband of the applicant. They have justified impugned orders on the basis of judgment passed in the case of **High Court of Punjab and Haryana vs. Jagdev Singh** (2017(2) SCC (L&S) 789 to the effect that applicant herself had given an undertaking on 16.11.2013 that respondents have right to recover amount if she had been paid over and above her entitlement.
6. I have heard learned counsel for the parties.
7. Sh. Parveen K. Kataria, learned counsel for the applicant vehemently argued that action of the respondents in effecting recovery from retiral dues of deceased husband of the applicant is illegal, arbitrary and liable to be set aside. To buttress his plea, he placed reliance on judgment in the case **of Shyam Babu Verma vs. UOI & Ors.** (1994 (2) SCC 521), **Syed Abdul Qadir vs. State of Bihar** (2009 (3) SCC 475 and **State of Punjab vs. Rafiq Masih** (2014 (8) SCC 883).

8. Per contra, Sh. Sourav Sharma, learned counsel for respondent no.4 vehemently opposed the prayer and submitted that decision in the case of Shyam Babu Verma (supra) and Syed Abdul Qadir (supra) has been passed under Article 142 of the Constitution and did not amount to declaration of law under article 141. He submitted that the law as declared in the case of **Chandi Prasad Uniyal vs. State of Uttarakhand** (2012(8) SCC 417), is to the effect that except in instances pointed out in the case of Syed Abdul Qadir (supra), excess payment made due to wrong/irregular pay fixation can always be recovered. He placed reliance on the case of Jagdev Singh (supra), as well.
9. I have given my thoughtful consideration to the entire matter and have gone through pleadings available on record and law cited by learned counsel for the parties.
10. It is not in dispute that husband of the applicant died on 27.8.2009. When respondents did not calculate family pension and disburse retiral benefits, then she was forced to file O.A. No.436/PB/2013, which was disposed of vide order dated 8.10.2013 directing the respondents to disburse family pension to the applicant along with interest @8% p.a. w.e.f. 1.10.2010. It is thereafter that the respondents issued PPO on 14.11.2013 after taking an undertaking on 16.11.2013 from the applicant. It has also not been disputed that while calculating benefit, respondents have calculated benefit after taking 30% of the basic salary whereas it should have been 50% of the basic salary +DA which they accepted on representation made by the applicant and for that they have issued the impugned order of recovery. Now the respondents in their written statement have admitted that the applicant is not liable to refund amount of Rs.9,44,660/- as they have

rectified their mistake by recalculating pension payment @50% and only a sum of Rs.2,09,322/- is due on account of excess payment.

11. Facts, as noticed above, make it clear that the payment was made way back in 2013 and after approximately 5 years, respondents have issued notice for recovery of amount. Law regarding recovery is no more res-integra. After considering various judgments including in the case of Chandi Prasad Uniyal (supra), Lordships in the case of **Rafiq Masih** (supra) have carved out exceptions in para 12 of the judgment, which read as under:-

"(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."

Perusal of above extracted para of the judgment makes it clear that recovery cannot be effected from Group C and D employees and employees who are due to retire within one year. Also in cases where the excess payment has been made beyond a period of five years, before the order of recovery is issued has been held to be bad in law. In the present case, recovery is beyond period of 5 years and that too is sought to be recovered from family pension. Thus, action of the respondents in effecting recovery is contrary to settled law. Nowhere, respondents have alleged that excess payment was made due to mis-representation or fraud on the part of the

applicant. Law settled in the case of Rafiq Masih (supra) is more on equity, where Lordships have considered that once a payment has been made to employee, who has retired and is of lower status will be put to hardships if same is sought to be recovered because, he might have used that amount.

12. In the case of applicant, her husband died leaving behind applicant and one minor daughter. She fought for release of family pension on demise of her husband, which was granted after filing O.A. in the year 2013. Her family pension was also not calculated in correct manner as per the law and she was put on disadvantageous position by calculating pension on lower rate than her entitlement, which the respondents rectified on consistent persuasion by the applicant. It cannot be said from any angle that she misrepresented. Undertaking which the applicant had given cannot be used against her because in every case, the employer while making payment takes declaration of the similar nature. Also since recovery is beyond 5 years from date of passing of order, thus in terms of decision in the case of Rafiq Masih (supra), view of the respondents cannot be accepted.

13. Accordingly, the impugned orders are hereby quashed and set aside.
No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 9.10.2019
Place: Chandigarh.

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