

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
**Order reserved on: 04.09.2019
Order pronounced on: 09.10.2019**

ORIGINAL APPLICATION NO. 060/1506/2018

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

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Ved Parkash Chawla aged 75 years son of Sh. Madan Lall Chawla, R/o House No. 6323, Nicolson Road, Ambala Cantt. 133001 (Haryana).

....APPLICANT

(By Advocate: Shri Shailendra Sharma)

VERSUS

1. Union of India through Secretary Ministry of Defence, South Block, New Delhi-110001.
2. Garrison Engineer (Air Force) Ambala Cantt. (Haryana) 133901.
3. The Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad (Uttar Pradesh) 2110011.
4. The Chief Manager, Central Bank of India, CPPC, 2nd Floor MMO Building M.G. Road, Fort Mumbai, Mumbai 400001 (Maharashtra).
5. The Manager, Central Bank of India, Nicolson Road, Ambala Cantt. 133001 (Haryana).

....RESPONDENTS

(By Advocate: Shri Sanjay Goayl for respondents no. 1 to 3
Shri Ravi Sharma for respondents no. 4 & 5.)

ORDER

SANJEEV KAUSHIK, MEMBER (J)

The applicant by means of present Original Application (O.A.) has challenged order dated 22.11.2018 (Annexure A-7), whereby the respondents have decided to impose recovery amounting to Rs.

11,49,933/- on account of excess payment made to him, from his pension in installments @ Rs. 11,000/- per month.

2. Ved Parkash Chawla, applicant is 75 years old and has approached this Tribunal by filing the present O.A. wherein he seeks invalidation of impugned order of recovery on the ground that the same has been passed without following the principles of natural justice as he has neither been put on notice nor given an opportunity of hearing and secondly the impugned order of recovery is against the judgment of Hon'ble Supreme Court rendered in the case of **State of Punjab vs. Rafiq Masih, (2014) 8 SCC 883**. In support of his claim, Mr. Shailendra Sharma, learned counsel for applicant vehemently argued that the impugned order of recovery is illegal and arbitrary and liable to be set aside on the grounds mentioned in the O.A. He further argued that the respondents have alleged in the impugned order that they have paid amount over and above the entitlement of the applicant by wrongly fixing his pension w.e.f. 1.1.2006, therefore, after realizing that he has been paid pension on higher side, the Competent Authority has decided to recover the excess amount paid to him, which is illegal. He argues that since, the applicant had retired on 30.4.2004 and his pension has been paid as per the PPO issued by the Govt. of India, therefore, the respondents at this stage, after lapse of 14 years and the applicant being at the age of 75 years, cannot pass such order of recovery which is in contravention of the judgment passed by the Hon'ble Supreme Court of India in the case

of Rafiq Masih (supra). Thus, he submitted that the impugned order of recovery be quashed and set aside.

3. Respondents no. 1 to 3 have filed their written statement and separate written statement by Banker (respondents no. 4 & 5) has also been filed. The respondents no.1 to 3 have submitted that since the applicant has received pension over and above his entitlement, therefore, the impugned order of recovery has been passed rightly. It is submitted that the applicant had already given an undertaking, while fixing his pension, that in case later on it is found that he has been given excess payment then the respondents can recover said amount from his pension and, therefore, the impugned order of recovery has been passed in consonance with the directives given by the Apex Court in the case of **High Court of Punjab & Haryana vs. Jagdev Singh**, Civil Appeal No. 3500 of 2006 decided on 29.7.2016. The respondents have also relied upon decision of the Coordinate Bench of this Tribunal in the case of **Surinder Pal Singh vs Union of India & Ors**, O.A. NO. 060/00561/2014 decided on 17.4.2015 (Annexure R-1).

4. The respondents No. 3 & 4 (Banker), submit that in view of undertaking given by the applicant at the time of refixation of his pension, the respondents in furtherance thereto have passed the impugned order of recovery. It is also submitted that in terms of Reserve Bank Guidelines dated 17.3.2016 (Annexure R-2), the respondents are well within their right to recovery the excess amount from the applicant.

5. The learned counsel for the respondents argued on similar lines as the stand takes in their written statements, that applicant was paid over payment by mistake and recovery can be made.

6. I have heard the learned counsel for the parties, gone through the pleadings available on record including judgments cited by them and given my thoughtful consideration to the entire matter.

7. The law on recovery is no longer res-integra. The Lordships have repeatedly held since decision in the case of **Shyam Babu Verma vs. Union of India**, (1994) 3 SCC 521 that if an employee gets an amount over and above his entitlement because of his fault or mis-representation then the employer has a right to recover the said amount. But, if the facts are otherwise, that there is no mis-representation or fraud on his part then the respondents are restrained from effecting recovery. On similar lines, the Lordships in subsequent decision in the case of **Syed Abdul Qadir vs. State of Bihar**, (2009) 3 SCC 475 and latest one in the context in case of Rafiq Masih (surpa) has summarized the entire law and have recorded their observations in para 12 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 the above extracted para of the judgment, makes it clear that no recovery can be made from (i) an employee belonging to Class III & IV service (Group-C & D), (ii) from a retired employee, or who are due to retire within one year of order of recovery and (iii) when excess payment has been made for a period in excess of five years, before the order of recovery is issued etc. The case of the applicant falls within four corners of the above cited judgment as the applicant had retired in the year 2004 and his age is of more than 75 years and recovery, which the respondents are effecting, will certainly cause hardship to him as he must be dependent on his pension.

8. The Lordship, while considering the similar matters in case of **Syed Abdul Quadir** (supra), have observed that the relief against recovery is granted by Courts not because of any right in the employees, but on equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. The said judgment as noticed above, has been considered in the latest judgment in case of Rafiq Masih (supra), where Lordship have clearly held that the recovery cannot be effected from a retired employees, if he was/is at no fault, which is exactly the case in hand. Therefore, the impugned order cannot be sustained in the eyes of law.

9. Before, parting with the judgment, it is necessary to deal with the objection raised by the respondents that recovery has been effected in terms of undertaking given by the applicant. In this regard, it may be observed that it is open secret that forms of declaration are signed by the employees under compelling

circumstances, as no real choice is left to them in the matter. That undertaking or declaration will not give a handle to the employer to use it at any time and order recovery from the pension of an employee. Thus, the plea of the respondents cannot be accepted.

10. In the wake of above noted facts, the O.A. is allowed and impugned order of recovery is quashed and set aside. The amount which they have already recovered may not be refunded, but further recovery in pursuance to impugned order is hereby quashed and set aside. No costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

Dated: 09.10.2019
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