

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/00280/2018

Friday, this the 16th day of August, 2019.

CORAM

Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member

Gopalakrishna Pillai K., aged 76 years

S/o M.Kesava Pillai

Traffic Inspector I (Retired), Southern Railway.

Residing at Kesavamandiram, Arunoottimangalam,

Mangad P.O., Kollam-691 015.

Applicant

(Advocate: Mr. P. Nandakumar)

versus

1. Southern Railway represented by
Divisional Railway Manager,
Thiruvananthapuram Division, Thycaud,
Thiruvananthapuram-695 014.
2. Senior Divisional Personnel Officer,
Thiruvananthapuram Division, Thycaud,
Thiruvananthapuram-695 014.
3. The Branch Manager
State Bank of India
Kollam-691 001.

Respondents

Advocates:

Mr.V.A.Shaji, ACGSC for R1 & 2 and Mr.B.S.Syamanthak for R3.

The OA having been heard on 13th August, 2019, this Tribunal delivered the following order on 16th August, 2019:

O R D E R

This OA is filed by Sri Gopalakrishna Pillai K, retired Traffic Inspector, Southern Railway challenging the recovery from his monthly pension on the ground that he is ineligible for the Fixed Medical Allowance (FMA) that he

had been drawing since June, 2004. The reliefs sought in the OA are as follows:

- (i) Declare that the recoveries made from the monthly pension of the applicant towards alleged excess payment of Fixed medical Allowance and adjustment of his 7th Pay Commission arrears is highly illegal and arbitrary.*
- (ii) Direct the respondents to reimburse the amounts recovered from the monthly pension of the applicant including the adjusted 7th Pay Commission arrears forthwith, with 18% interest.*
- (iii) Direct the respondents to continue to pay FMA to the applicant including arrears from February 2018 onwards.*
- (iv) Direct the respondents to pay the applicant costs of the proceedings.*

2. The applicant had retired from the service of the Southern Railway as Traffic Inspector on 30.11.2002 after completing 40 years of service. He is at present over 76 years of age and in indifferent health. He had been granted FMA from June, 2004. As having his residence beyond two and half kilometers from Railway Hospital, he had initially been granted an amount of Rs.100/- per month as FMA which was increased to Rs.1000/- per month as per Railway Board's order dated 28.7.2017 at Annexure A1.

3. He alleges that to his great surprise and shock, a sum of Rs.6000 was reduced from his monthly pension by the 3rd respondent in February, 2018, without notice. Copy of the pension slip for the month of February, 2018 is at Annexure A2. This was on account of the fact that no FMA was granted for the month of February, 2018 as per the pension slip. He, therefore, submitted a representation dated 1.3.2018 (Annexure A3) to the 2nd respondent, who did not reply to the same. On a further petition dated 5.3.2018, he received a statement from the 3rd respondent that apart from recovering an amount of Rs.6000 from

his monthly pension, an amount of Rs.38503/- due to the applicant towards arrears of pension as per the 7th CPC was being recovered from him and also indicating that altogether an amount of 50,180/- is proposed to be recovered from the applicant, which could be seen at Annexure A5. The applicant submits that the huge recovery initiated by the 3rd respondent without any notice contravenes the directions contained in the orders of the Apex Court in *State of Punjab and others vs. Rafiq Masih*. Copy of the O.M., issued by the Ministry of Public Grievances and Pension dated 2.3.2016 in the wake of the judgment in *Rafiq Masih* is produced as Annexure A6.

4. The applicant states that he resides 7 kilometers away from the Railway Hospital, Kollam and being a person who is residing beyond two and half kilometers from railway hospital, he is eligible for FMA. He states that he is 76 years old and is physically handicapped due to post polio paralysis. Having undergone prostate surgery, he is also finding it difficult to move about and has been depending on his monthly pension for a living.

5. Reply statement has been filed on behalf of respondents 1 & 2 and a separate one, on behalf of respondent No.3, the pension disbursing bank. In the reply statement filed by respondents 1 & 2, they profess no knowledge of any reduction or recovery effected against the applicant. A copy of the PPO of the applicant is produced as Annexure R1 which appears to show that the applicant had not exercised the option to receive FMA and he was not granted the same as per Column 3 of the PPO. However, it is seen that the applicant has stated in the OA that he has been granted FMA in June, 2004. As opting for FMA is a

one time exercise, he was not eligible for FMA, having not exercised his option at the time of retirement. Under the circumstances, the respondent Railways has no responsibility for any excess payment effected and recovery of the same which has been done by the pension disbursing bank – Respondent No.3 - on their own.

6. Respondent No.3- the pension disbursing bank- have filed their reply statement in which it is stated that it is the Centralized Pension Processing Centre at Vazhuthakadu, which ought to have been made a party and not the disbursing branch at Kollam. The respondent goes on to state that individual branches have no role in processing pension cases and submits that OA is bound to fail for non-joinder of necessary party.

7. A copy of the PPO issued to the applicant by the Pension Sanctioning Authority is at Annexure R3(a) wherein under 'Medical Allowance', it is stated that "*Rs.N.A./- per month w.e.f.*" . However, on the basis of an undertaking dated 25.5.2004, a copy of which is at Annexure R3(b), he was granted FMA on the strength of his statement that he was residing at a particular address, presumably on the ground that it was some two and half kilometers from the Railway hospital. The reply statement goes on to affirm that the applicant had been wrongly granted FMA since June, 2004 and this was due to the fact that he had directly approached the Pension Disbursing Authority - the Bank and not the Pension Sanctioning Authority, as was required under the system introduced in 1999. Thus erroneously the applicant had received an amount of Rs.50,180 and this came to the notice of the bank during February, 2018 during internal

audit. Under the circumstances, the bank decided to recover the amount and Rs.38,503 was recovered on 26.2.2018 from the arrears payable to the applicant as per the 7th CPC and also an amount of Rs.6000 from the pension due in February, 2018 leaving a balance amount of Rs.5677/- to be recovered from the applicant.

8. The applicant had also given an undertaking as per Annexuree R3(e) dated 4.2.2003 which empowers the disbursing bank to recover any amount wrongfully credited to his account and such recovery is allowed as per the orders of the Apex Court in *High Court of Punjab & Haryana and others vs. Jagdev Singh* reported in AIR 2016 SC 3523.

9. Heard Sri P. Nandakumar, learned counsel for the applicant, Sri V.A.Shaji, Standing counsel for Railways (R1&2) and Sri B.S.Syamanthak for R3.

10. The applicant admittedly is a senior citizen aged 76 years and is in poor health. He is eligible for FMA as he is residing beyond two and half kilometers from the Railway hospital. The ground on which the Pension Sanctioning Authority is stating that he is not eligible is because at the time of his retirement he had not opted for FMA and when he did so, as per Annexuree R3(b) on 25.5.2004, he did not address the request to the respondent Railways but to the pension disbursing bank. We do not have the benefit of perusing any railway record to see what was his residential address when he was issued the PPO and sanctioned the pension. We have only the statement of the respondents with an entry made against the medical allowance “*Rs.N.A./- per month w.e.f.*,” which,

according to the Railways, amounts to refusal to opt for FMA. However, the option at Annexure R3(b) filed before the disbursing bank is very clear indicating that he is staying in such and such place and he wishes to opt for monthly FMA.

11. As a retired employee, we see no impropriety in his having approached the bank who are disbursing his pension with his claim. In any case, the bank obliged his request and started disbursement of FMA from that date onwards. While we agree that the respondent Railways may not be at fault in their contention, we see no condition introduced in the relationship with a pensioner that in the event of a change in residence or some other valid reasons, the pensioner cannot opt for FMA on a subsequent date.

12. The disbursing bank has acquitted themselves very poorly in this episode. Firstly, they have tried to state that it is another office of the bank and not themselves who are responsible. We reject this contention entirely. The pensioner's interaction is with the branch who are paying pension and it is for that branch, in the event of any clarification required, to either contact the central pension processing office or the pension sanctioning authority. No doubt appears to have clouded their mind when the bank readily started disbursing FMA from the date the applicant submitted his option and they continued to do so for the next 13 years. Then it appears that internal audit pointed out the alleged discrepancy and the bank, even without the courtesy of a notice to the aged pensioner, swung into action by even attaching a large part of his eligible arrears of pay, apart from portion of the pension for February, 2018. We find the

action of the disbursing bank totally unacceptable and callous. The reply statement seems to add insult to injury when it avers as below:

"It is quite natural that mistake in calculation and disbursal of pension may occur in individual cases occasionally."

If it is the considered view of the bank that there has been a mistake, is it not necessary on their part to examine who among their staff are responsible for the same? The applicant clearly had no role in allotting himself more amounts than what was due to him. The undertaking pointed out at Annexure R3 (e) which dates back to 2003, the disbursement of FMA itself having started well after one year from that date, does not empower the bank to act in the manner they did. An undertaking extracted while approving initial pension disbursement cannot be turned into a license to strike, decades later.

13. We have no hesitation in holding that the bank has acted in an extremely callous fashion in its treatment of an aged person who is admittedly in poor health. We direct that the entire amount recovered from the applicant is to be returned to the applicant within a month of receipt of a copy of this order. Being a resident of a place more than two and half kilometers away from the railway hospital, the applicant is eligible for FMA at approved rates. Payment of the same shall be resumed from March, 2019 onwards. Orders to be issued within a month of receipt of copy of this order. OA stands allowed. No order as to costs.

**(E.K.Bharat Bhushan)
Administrative Member**

aa.

Annexures filed by the applicant:

Annexure A1: Copy of Railway Board order No.PC-v/2016/A/Med/1(FMA) dated 28.7.2017.

Annexure A2: Copy of the pension slip of the applicant for the month of February 2018.

Annexure A3: Copy of representation dated 1.3.2018 submitted by the applicant to the 2nd respondent.

Annexure A4: Copy of petition dated 5.3.2018 submitted by the applicant to the 3rd respondent.

Annexure A5: Copy of statement issued by the 3rd respondent.

Annexure A6: Copy of office memorandum dated 2.3.2016.

Annexure A7: Copy of the pension slip of the applicant for the month of February, 2018.

Annexure A8: Railway Board's letter No.PC/V/98/1/7/1/1 dated 21.4.1999.

Annexure A9: Railway Board's letter No.PC-V/98/1/7/1/1 dated 1.3.2004.

Annexures filed by the respondents:

Annexure R1: Copy of the PPO bearing No.0604205043 in favour of the applicant.

Annexure R2: Copy of the Railway Board's letter No.PC-V/2011/A/Med./2 dated 1.8.2013.

Annexure R3(a): Copy of the PPO No.06004205043.

Annexure R3(b): Copy of the undertaking submitted by the applicant dated 25.5.2004.

Annexure R3(c): Copy of the undertaking submitted by the applicant dated 25.5.2004.

Annexure R3(d): Copy of the cir circular No.P(R)64/P/FMS dated 12.2.2015.

Annexure R3(e): Copy of the undertaking executed by the applicant.

Annexure R3(f): Copy of the Circular No.RBI/2015-16/340 dated 17.3.2016.