

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00970/2015

Monday, this the 21st day of November, 2016

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member

M.S. Ramachandran Nair, S/o. Late Y.N. Sivasankaran Nair,
aged 71 years, Stores Superintendent (Retd.), Naval Physical
& Oceanographic Laboratory, Geetha Bhavan, Lakkattoor PO,
Kottayam District – 686 502.

Applicant

(By Advocate : Mr. C.S.G. Nair)

V e r s u s

1. Principal Controller of Defence Accounts (Pension),
Draupadi Ghat, Allahabad – 211 014.
2. Director, Naval Physical & Oceanographic Laboratory,
Thrikkakara (PO), Kochi – 682 021.
3. Union of India, represented by its Secretary,
Department of Pension & Pensioners' Welfare,
South Block, New Delhi – 110 001.
4. Chief Manager, State Bank of Travancore,
Centralized Pension Processing Centre, Vazhuthacadu,
Thiruvananthapuram – 695 014.

5. Branch Manager, State Bank of Travancore,
Kooropada, Kottayam District – 686 502.

Respondents

**[By Advocates : Mr. P.R. Sreejith, ACGSC (R1-3) &
Mr. P. Ramakrishnan (R4&5)]**

This application having been heard on 01.11.2016, the Tribunal on
21.11.2016 delivered the following:

ORDER

Hon'ble Mr. U. Sarathchandran, Judicial Member -

The applicant is a pensioner aged 71 years retired on 31.5.2004 as

Store Superintendent from the establishment of respondent No. 2. He had the qualifying service of 35 years, 6 months and 16 days. At the time of retirement he was drawing pay in the pay scale of Rs. 5500-9000/- and his monthly pension vide Annexure A1 Pension Payment Order (PPO) was Rs. 3,433/-. His pension was being received through respondent No. 5 bank through the SB account maintained in the bank. The minimum pay as per the VIth Central Pay Commission (CPC) recommendations vide the fitment table annexed to the CCS (Pension) Rules, 2008 in respect of the applicant was Rs. 14,430/-. According to the applicant he did not receive revised PPO from any of the respondents or any correspondence regarding revision of pension. He was receiving the revised pension with effect from 1.1.2006. However, he received Annexure A5 communication dated 30.7.2015 enclosing a revised PPO fixing his pension as Rs. 7,758/- with effect from 1.1.2006. He has also received Annexure A6 communication along with a worksheet intimating that he was paid an excess amount of Rs. 6,70,702/- and that it would be recovered at the rate of Rs. 5,000/- per month with effect from October, 2015 from his SB account. Already a sum of Rs. 10,000/- was recovered from his pension. Though the applicant sent Annexure A7 letter dated 7.11.2015 there was no reply. Recovery for another Rs. 5,000/- was effected from his pension for the month of November, 2015 also. Hence, the applicant has come with this OA seeking relief as under :

“(i) To call for the records leading up to the issue of Annexure A6 and quash the same,

(ii) To declare that no amount is to be recovered from the applicant towards the alleged excess payment,

(iii) To direct the 1st respondent to inform the applicant as to how his pension was reduced to Rs. 7,758/-,

(iv) Grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.

(v) Grant cost of this OA.”

2. Respondents 1 to 3 filed reply statement contending that after Annexure A1 PPO, following the recommendations of the Vth CPC applicant's pension was revised vide Annexure A3/2 corrigendum PPO dated 29.9.2004 to Rs. 5,149/- per month. After implementation of VIth CPC his pension was further revised to Rs. 7,758/- with effect from 1.1.2006 in terms of Annexure R2(a) OM dated 1.9.2008 of Ministry of Pension & Pensioners Welfare, Government of India. The corrigendum PPO dated 29.6.2015 was forwarded to respondents Nos. 4 & 5 by respondent No. 2 vide Annexure A5 covering letter. According to respondents Nos. 1 to 3 the contention of the applicant that he has not received any revised PPO is incorrect because he himself has produced the revised PPO Annexure A7/3 issued by the 1st respondent and forwarded to the applicant by respondent No. 2. His revision of pension after the VIth CPC has been done correctly in accordance with Annexure R2(b) OM dated 28.1.2013 issued by the Department of Pension & Pensioners Welfare, Government of India in tune with the fitment table annexed to the OM dated 30.8.2008 issued by the Department of Expenditure, Ministry of Finance. According to the revised fitment table for the pre-revised scale of S-10 i.e. Rs. 5500-175-9000/- from which the applicant retired the corresponding revised VIth CPC pay is at PB-2 Rs. 9300-34800/- plus Grade Pay of Rs. 4,200/- and the pension

payable is Rs. 7,215/-. However, as the basic pension of the applicant was already revised on the basis of Annexure R2(a) to Rs. 7,758/- the latter being more beneficial to the applicant had to be continued. The incorrect excess payment of Rs. 11,638/- per month with effect from 1.1.2006 was paid by the pension disbursing authority for which the respondents 1 to 3 are not responsible. It is further stated that the respondents 1 to 3 have not effected any recovery.

3. In the rejoinder filed by the applicant to the reply statement by respondents 1 to 3 it is contended that he was not aware of the correct revised pension fixed by the 1st respondent.

4. In the reply statement filed by respondents 4 & 5 it is contended that it was by mistake they happened to pay Rs. 11,638/- instead of Rs. 7,758/- with effect from 1.1.2006 and this mistake could be detected only when a verification of the pension paid was done. As the applicant having been made overpayment of Rs. 6,70,702/-, the same has to be recovered from him and he was informed that the same would be recovered at the rate of Rs. 5,000/- from his pension.

5. Heard the learned counsel for the parties. Mr. C.S.G. Nair, learned counsel appeared for the applicant, Mr. P.R. Sreejith, learned ACGSC for respondents 1-3 and Mr. P. Ramakrishnan, learned counsel for respondents 4 & 5. Perused the record.

6. Annexure A5 covering letter dt. 30-7-2015 enclosing Annexure A7/3 corrigendum PPO was issued by the official respondents to respondents Nos. 4 & 5 bank. Annexure A5 indicates that copies of A5 and A7/3 were sent to the applicant also. Annexure A7/3 clearly shows that his pension has been revised to Rs. 7,758/- However, the applicant denies that he has been communicated as to what was his revised pension after the implementation of VIth CPC recommendations. It appears that, according to him he believed that what he has been receiving as pension continuously from 1.1.2006 is the revised pension after the VIth CPC revision. Respondents Nos. 1-3 point out that as Annexure A7/3 corrigendum PPO No. 002498/2015 was sent to the applicant along with Annexure A5 the applicant was quite aware that the pension to which he is entitled to is only Rs. 7,758/-. It is worth mentioning that Annexure A7/3 corrigendum PPO was issued only on 29-6-2015. But Annexure A6 calculation statement issued by respondent Nos.4 and 5 bank shows that the bank had already started paying pension to the applicant @ Rs.11,638/- per month from January 2006 itself.

7. According to respondents Nos. 4 & 5 pension they paid to the applicant at the rate of Rs. 11,638/- with effect from 1.1.2006 was by mistake. According to them on a latter occasion when the pension payments were verified they detected that the applicant is entitled to only Rs. 7,758/- as his pension and there is an excess payment of Rs. 6,70,702/-. Accordingly, they sent Annexure A6 communication to the applicant intimating that the excess amount will be recovered at the rate of Rs. 5,000/-

per month with effect from October, 2015 up to November, 2026 and plus Rs. 702/- recovered from his SB account.

8. Shri C.S.G. Nair learned counsel for the applicant relied on the judgment of the Supreme Court of India in *State of Punjab & Ors. v. Rafiq Masih (White Washer)* in CA No. 11527 of 2014 wherein it was held that recovery of excess payment from the retired employees would not be permissible in law. However, on a close perusal of the aforesaid judgment of the apex court it can be seen that while laying down the law that recovery of excess payments from certain categories of employees is permissible in law a caveat was noted by the apex court in paragraphs 2 & 3 of that judgment wherein it is stated that the judgment is being delivered under the circumstance that the employees had not contributed in any manner for the employer to commit such mistake and that the employees had not practiced any fraud or misrepresentation in the matter of such mistake. In the instant case Annexure A5 and Annexure A7/3 were issued to the applicant only on 30-7-2015. There is nothing to show that the applicant was informed that he is entitled to only Rs.7758/ prior to the over payments effected by the bank.

9. It is not clear from the contentions of respondents Nos. 4 & 5 as to on what basis they paid Rs. 11,638/- per month from 1.1.2006. There is nothing to indicate that the applicant had any part in the commission of mistake by respondents 4 & 5 in payment of Rs. 11,638/- per month from 1.1.2006, at least till 30.7.2015 when Annexure A5 communication was issued. There is no case for the respondents that applicant committed fraud

or misrepresentation in the matter.

10. Learned counsel for the respondents 4 & 5 bank submitted that as per the Reserve Bank of India instructions the amount paid in excess has to be repaid in lump sum. A copy of the Reserve Bank of India(RBI) instruction was produced by learned counsel for respondents 4 & 5. It reads:

“RBI/2014-2015/500
Ref.DGBA.GAD.No.H4054/45.03.001/2014-15

March 13, 2015

The Chairman / Chief Executive Officer
All Agency Banks

Dear Sir

Refund of overpayment of pension to the Government Account – Recovery of excess/ wrong pension payments made to the pensioners

Please refer to our circular DGBA.GAD.No.H-10450/45.03.001/2008-09 dated June 1, 2009 on the above subject advising that whenever any excess payment of government pension is detected, the entire amount should be credited to the government account immediately.

2. It is hereby clarified that the above instructions contained therein presume an act of omission on the part of the agency bank. On the other hand, if the agency bank is of the view that the excess/wrong payment to the pensioner is due to errors committed by the government, they may take up the matter with full particulars of the cases with respective Government Department for a quick resolution of the matter. However, this must be a time bound exercise, and the government authority's acknowledgement to this effect must be kept on the bank's record. The banks may take up such cases with government departments without reference to the Reserve Bank of India.

3. In all other cases, where the excess payment has arisen on account of mistakes committed by the bank, the amount paid in excess should be credited back to government account in lump sum immediately, as advised in the circular referred to above.

Yours faithfully

(Monisha Chakraborty)
General Manager”

11. A reading of the above RBI circular shows that it is obligatory on the part of the pension disbursing bank to repay the excess amounts to the

Government account in lump sum. There is nothing in that RBI circular authorising the bank to recover it from the pensioner. In such circumstances the respondents 3 & 4 cannot place reliance on the afore quoted circular of the RBI for recovering the excess payments from the SB account of the applicant. In the above circumstances this Tribunal is of the view that the law laid down in *Rafiq Masih's* case (*supra*) will come into play and the banks being agent of the pension granting authority cannot effect any recovery from the pensioner, so long as there is no contributory act or misrepresentation or practice of fraud by the pensioner. The pleadings of the respondents 3 & 4 make it abundantly clear that it was on account of their sheer mistake the excess payments were made to the applicant. It is not justifiable that for each and every mistake committed by the bank and its employees the pensioners should suffer, especially when the pensioner was not responsible for such mistakes. Pension being an amount the pensioner depends on for his livelihood and survival during his old age, it is quite possible that the amounts he has received have been spent for his sustenance including medical expenses for treating age related ailments.

12. Learned counsel for respondents Nos. 4 & 5 bank referred to a decision of the co-ordinate bench of this Tribunal at Chandigarh in OA No. 060/561/2014 pronounced on 17.4.2015 wherein it was held that the bank is entitled to recover the excess amount paid by mistake. However, the facts in that case are totally different from the fact situation in this case. Moreover, it has to be noted that if the burnt of all errors committed by the banks without any knowledge or active participation of the pensioner have to be

finally borne by the pensioners, the banks will tend to be less vigilant in effecting pension payments thinking that they can conveniently recover it from pensioners even if some errors or mistakes are committed by the bank.

13. In the above circumstances this Tribunal is of the view that in the light of the apex court ruling in *Rafiq Masih's* case (*supra*) the excess payments made by respondents 4 & 5 bank cannot be recovered from the applicant. As there is nothing to indicate that Annexure A7/3 corrigendum PPO was communicated to the applicant prior to Annexure A5, it cannot be said that he was aware that he was being paid excess payment due to the mistake of the bank. Hence any excess amount paid to the applicant cannot be recovered from him in the light of the *ratio* of the *Rafiq Masih's* case (*supra*). The respondents bank may conduct internal inquiry to fix the liability for making excess payment and may recover such amounts from the officials responsible for committing such mistakes. As per the aforesaid RBI instructions excess amount by shall be remitted **by the bank** to the Government account immediately, failing which the respondents 1 to 3 are free to initiate appropriate steps for recovering such excess amount from respondents 3 & 4 bank. Ordered accordingly.

14. The Original Application is disposed of as above. No order as to costs.

(U. SARATHCHANDRAN)
JUDICIAL MEMBER

“SA”