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**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No.180/00129/2019**

**Wednesday, this the 17<sup>th</sup> day of July, 2019**

**CORAM:**

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER**

Shri M. Ayyasamy,  
Aged 95 years,  
S/o late Marimuthu Mudaliar,  
Retired Senior Dresser,  
Railway Hospital,  
Palakkad Division,  
Residing at No.B-137,  
Maragatham Street,  
S.R.E.Garden  
Erode – 638 009. ....Applicant

**(By Advocate Ms.Shameena Salahaudheen)**

**V e r s u s**

1. The Union of India,  
rep by the General Manager,]  
Southern Railway,  
Park Town,  
Chennai – 600 003.
2. The Chief Personnel Officer,  
Southern Railway, Park Town,  
Chennai – 600 003.
3. The Divisional Railway Manager,  
Palakkad Division,  
Southern Railway,  
Palakkad – 678 002.
4. The Senior Divisional Personnel Officer,  
Southern Railway Palakkad Division,  
Palakkad – 678 002.

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5. Sr. Divisional Finance Manager,  
O/o Sr.Divisional Finance Manager,  
Southern Railway, Palakkad – 678 002.
6. Indian Overseas Bank,  
Centralised Pension Processing Centre,  
Central Office, P.B.No.3765,  
763 Annasalai,  
Chennai – 600 002.
7. The Branch Manager,  
Indian Overseas Bank,  
126 Park Road,  
Periyar District,  
Erode – 638 003. ....Respondents

**(By Advocate Mr.Thomas Mathew Nellimoottil, for Respondents-1to5)**

This application having been heard on 3<sup>rd</sup> July, 2019, the Tribunal on 17<sup>th</sup> July, 2019 delivered the following :

**ORDER**

OA No.129/2019 is filed by Shri M.Ayyasamy, retired Senior Dresser, Railway Hospital, Palghat, against action taken by the respondents for recovery and downward revision of his pension on the ground that there has been over payment and erroneous fixation subsequent to Vth Pay Commission effected more than 30 years back. The relief sought in the OA are as follows:

- I) Call for the records leading to Annexure A-5 and set aside the same.
- (II) Declare that no recovery or reduction from the Applicant's pension can be effected.

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- (III) Direct the respondents to not to reduce the pension of the Applicant.
- (IV) Such other reliefs as may be prayed for and this Hon'ble Tribunal may deem fit to grant.

2. Grant the cost of this Original Application.

2. The applicant had retired from service on 31.10.1982 as a Senior Dresser in Railway Hospital, Erode, which was then under Palghat Division. After the VI Pay Commission, the applicant's pension had been revised to Rs.4520/- + DA which the applicant had contested as erroneous. He had submitted his grievances at Pension Adalat on 05.07.2013. The respondents did not address his grievances and instead asked him to make further grievances in the mid term Pension Adalat, which was conducted at Palaghat. He could not do so in view of his indisposition.

3. Now the applicant is in receipt of a communication from the 5<sup>th</sup> Respondent stating that he had received an over payment of a sum amounting to Rs.4,27,904/- due to erroneous fixation from the Vth Pay Commission and the said amount is liable to be recovered. It was also pointed out that his pension stood revised to a lesser amount of Rs.10,150/- per month, a copy of the communication impugned in this OA is annexed as Annexure A5. The applicant submitted a representation in answer to Annexue A5 on 18.01.2019, a copy of which is annexed as Annexure A6. The OA was taken up for hearing for the first time on 25.02.2019 and this

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Tribunal was pleased to stay further recovery from pension until further orders in line with the judgment of Apex Court in **Rafiq Masih**.

4. The applicant maintains that he is 95 years old and at the fag end of his life. The issuance of Annexure A5 communication has come to him as a shock and the attempt of the 2<sup>nd</sup> Respondent to refix the original fixation done 30 years ago to his detriment, is clearly against the dictum laid down by the Hon'ble Apex Court in Rafiq Masih's case. The applicant contends that the respondents are confused to the extent that they believe that he retired as Dresser at the Railway Hospital, whereas he had retired as Senior Dresser and was entitled for a higher grade. In his representation, copy of which is at Annexure A6, he had clearly established this, but there had been no positive intervention in his case. Having got no reply to his representation and placed in severe financial penury, the applicant had no other alternative but to rush to this Tribunal for relief.

5. A reply statement has been filed on behalf of the Respondents-1to5, wherein the contentions raised in the OA have been controverted. It is maintained that the applicant had retired while working as Senior Dresser in pay scale of Rs.225-308 on 31.10.1982. His qualifying service in the Railways was assessed as 34 years. At the time of retirement, he was drawing a pay of Rs.284/- in the scale of Rs.225-308 (IIIrd Pay Commission) and accordingly, his basic pension at the time of retirement was fixed at Rs.223/- with effect

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from 01.11.1982 as per order dated 31.10.1982 (Annexure R2). The IVth Pay Commission came into effect from 01.01.1986 and the applicant who had been on the pay scale of Rs.225-308 was considered as belonging to the corresponding scale of Rs.825-1200. Accordingly, his pension was consolidated to Rs.480/- with effect from 01.01.1986. During the Vth Pay Commission the scale that was considered was Rs.,2,750-4400. This is evidenced from the Railway Board RBE No.138/1997 dated 16.10.1997, a copy of which is at Annexure R3. Further as per guidelines contained in the Office Memorandum dated 10.02.1998 of DOP & PW, for revision of pension of pre-1986 pensioners with effect from 01.01.1986, pay of all Government servants who retired prior to 01.01.1986 and were in receipt of pension as on 01.01.1986 was to be fixed on notional basis in the revised scale of pay for the post held by the pensioner as at the time of retirement and notional pay so arrived at as on 01.01.1986, shall be treated as average emoluments for the purpose of calculation of pension. And accordingly, the pension shall be calculated as on 01.01.1986 as per the pension formula then prescribed and worked out. This shall be consolidated as on 01.01.1996 in accordance with provisions contained in para 4.1 of OM dated 27.10.1996.

6. It is submitted that the review as conducted by the Railway Board in Annexure R10 and R11 was not carried out in the case of the applicant. His pension ought to have been revised duly reckoning the corresponding pay scale of Rs.2750-4400 and not Rs.4000-6000 as already authorised . The

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pension of the applicant which was revised to Rs.2000/- with effect from 01.01.1996 vide Annexure R9, was not correct and in fact the applicant is eligible for pension of only Rs.1600/- with effect from 01.01.1996 authorised vide Annexure R6, letter of authority dated 09.12.1998. Thus, the applicant was not entitled to receive the pension of Rs.4,520/- with effect from 01.01.2006 authorised vide Annexure A2 and actually was eligible to only receive Rs.3,665/- with effect from 01.01.2006.

7. It is further submitted that while revising the pension of pre-2016 retirees based on the notional pay as per VIIth Pay Commission recommendations, the above anomaly came to light and the revised PPO consequent on VIIth Pay Commission revision (Pre-2016) bearing new PPO number dated 27.10.2018 (Annexure A5/2-3) revising the pension to Rs.10,150/- with effect from 01.01.2016 was issued for payment duly reckoning the last pay drawn as Rs.1040/- in IVth Pay commission scale of Rs.825-1200. His revised pension of Rs.10,150/- as on 01.1.2016 was correctly arrived at through successive Pay Commissions adopting concordance Table No.9 as per the Railway Board directives as at Annexure R13.

8. It is stated that the applicant had been enjoying the unintended benefit not legitimately due to him and over payment involved for the period from 01.01.1996 to 30.06.2018 works out to Rs.4,27,904/- and the Manager, IOB

was advised vide Annexure A5 to recover the over payment under advice to the pensioner. It is further conceded that by an inadvertent error the over payment period for the amount to be recovered has been mentioned in Annexure A5 as 01.01.2006 to 30.06.2018 instead of actual period from 01.01.1996 to 30.06.2018. Failure to recover the over payment will result in loss to the public exchequer and hence it is essential that the over payment is recovered from the applicant.

9. Heard Smt.Shameena Salahudeen on behalf of the applicant and Shri Thomas Mathew Nellimottil on behalf of Respondents-1to 4. All pleadings both documentary and oral were examined. The pensioner against whom the recovery has been ordered had retired from service as early as 1982 and is at present at a ripe old age of 95 years. It is only last year that the official respondents have woken up to the fact that there had been an erroneous fixation which was done as early as in 1996 and now have instituted recovery. As per orders of the Hon'ble Supreme Court in **Rafiq Masih**, recovery from pensioner is illegal and a recovery of Rs.4,27,904/- cannot be made from the applicant. It is further pointed that the respondent Railway have detected this over payment several years after the applicant retired. This raises a very serious question about financial accountability of the employer organisation. To be abruptly told that the pension of a person who is aged more than 90 years will be drastically reduced from next month onwards, itself is a shock which few can withstand. The applicant has made out a case

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in the OA which is sufficiently serious to the extent that the respondent organisation should take a fresh look at the special circumstances that the applicant has narrated in the OA. It is inconceivable that the omission came to be detected so many years after the applicant retired, when we consider that there had been more than one Pay Commission review in the meanwhile. Hence we further direct that Respondents-4&5 shall duly look into contentions raised by the applicant in the OA and institute refixation only after duly considering the arguments raised by the applicant. It is also specifically ordered that in the event that refixation is deemed correct and legal, it shall have only prospective effect from the date such orders are issued. OA stands disposed of. No costs.

**(E.K.BHARAT BHUSHAN)  
ADMINISTRATIVE MEMBER**

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**List of Annexures in O.A. No.180/00129/2019**

- 1. Annexure A1:** True copy of the PPO No.8605200544 of the applicant.
- 2. Annexure A2:** True copy of the applicant's Fixation Statement of the 6<sup>th</sup> P.C.
- 3. Annexure A3:** True copy of the Application submitted by the applicant before the Pension Adalat.
- 4. Annexure A4:** True copy of the Communication No.J.P.626/Mid-term/PA/65 dated 27.6.2013.
- 5. Annexure A5:** True copy of the Communication No.P.500/PGT/P/6732 dated 21.12.2018 along with the Statement and Revised PPO.
- 6. Annexure A6:** True copy of the Representation submitted by the Applicant dated 18.1.2019.
- 7. Annexure R1:** True copy of common order dated 21.12.2016 of this Hon'ble Tribunal in OA Nos.389/2015, 850/2015 etc.
- 8. Annexure R2:** True copy of the Order dated 31.10.1982 of Senior Divisional Accounts Officer/Palghat.
- 9. Annexure R3:** True copy of relevant portion of Railway Board RBE No.138/1997 dated 16.10.1997.
- 10. Annexure R4:** True copy of Railway Board RBE No.55/1998, dated 10.03.1998 along with DOP & PW OM dated 10/02/1998.
- 11. Annexure R5:** True copy of Fitment Table3 showing the pay to be fixed in IVth P.C.Scale of Rs.825-1200.
- 12. Annexure R6:** True copy of Letter of Authority dated 09.12.1998.
- 13. Annexure R7:** True copy of relevant portion of Railway Board letter dated 10.05.1998.
- 14. Annexure R8:** True copy of representation dated 20.08.2000 of the applicant.
- 15. Annexure R9:** True copy of Letter of Authority dated 28/9/2000.
- 16. Annexure R10:** True copy of Railway Board letter dated 20/08/2001.
- 17. Annexure R11:** True copy of Railway Board letter dated 01/10/2001.
- 18. Annexure R12:** True copy of Railway Board order dated 11/02/2013 along with DOP&PW Om dated 28/01/2013.

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**19. Annexure R13:** True copy of Railway Board order dated 11/07/2017 along with DOP&PW OM dated 06/07/2017 and relevant Table No.9.

**20. Annexure A7:** True copy of the relevant page of the Memorandum No.SA/P.524/VIII/MEDICAL dated 15.05.19.

**21. Annexure A8:** True copy of the Railway Servants (Pass rules), 1986-Schedule-IV Post Retirement Complementary Pass.

**22. Annexure A9:** True copy of the Record of Free Passes and PTOs of the Applicant.

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