

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

Dated the 19th OA/310/01245/2015
day of December Two Thousand Eighteen

PRESENT

HON'BLE MR. T. JACOB, Member (A)

P.Kuppammal,
W/o. V.Paramasivam (late),
Old No. 189, New No. 891, T.H.Road,
Varadappa Naidu Senior Citizen Home,
Old Washermanpet,
Chennai 600021.Applicant

By Advocate M/s. C. Samivel

Vs

1.Union of India,
rep by its Secretary,
Ministry of Railways,
Rail Bhavan, New Delhi.

2.FA & CAO/Pension/MAS,
Southern Railway,
Park Town, Chennai 600003.

3.The Manager,
Syndicate Bank,
No. 479, Mint Street,
Chennai 600001.Respondents

By Advocate Ms. R.Sathyabama (R1&R2)



ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member(A))

Heard. The applicant has filed this OA seeking the following relief:

"To issue a direction directing the 2nd respondent to refund the excess pension amount of Rs. 73,000/- which was deducted by the 3rd respondent from the applicant's savings Account No. 60122030001382 and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice."

2. The facts of the case as stated by the applicant are as follows:-

The applicant's husband was working as APO/MAS in the 2nd respondent's office. He retired from service on 01.11.1981 and expired on 09.04.1984 leaving behind the applicant as legal heir. After the death of the applicant's husband the 2nd respondent has sanctioned family pension on 10.04.1984. From the date of sanction of family pension till date, the applicant has been in receipt of the family pension without any default. All of a sudden without issuing notice to the applicant, the 2nd respondent had issued a recovery notice to the 3rd respondent and directed him to deduct a sum of Rs. 73,000/- from the applicant's account which was already paid by the 2nd respondent as excess amount. On receipt of said notice, the 3rd respondent informed the applicant saying that an amount of Rs. 1500/- has to be deducted from the monthly installment of family pension. After receipt of communication from the 3rd respondent the applicant approached the respondents regarding the recovery of the family pension. The respondents informed the applicant that excess pension amount of Rs. 73000/- was paid by the respondents and the same has been recovered from the



applicant's account. The applicant sent a representation to the 2nd respondent for refund of the amount deducted. The applicant would submit that if at all there be any excess payment as alleged, it was due to the mistake committed by the authorities and the same is not attributable to the applicant for there is no misrepresentation on the part of the applicant. It is submitted that she is a senior citizen and living in an old age home and being a diabetic patient the pension amount is not sufficient to meet her requirements. Hence, any excess amount paid to the applicant shall not be recovered from her.

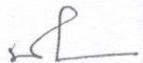
3. The respondents filed reply. The respondents would submit that consequent to the death of Shri. V. Paramasivam, the husband of the applicant on 09.04.1984, the applicant has been receiving family pension. In the year 1998 on implementation of the recommendations of V CPC, the family pension of the applicant was revised to Rs. 1860/- with effect from 01.01.1996 vide revised pension payment order dt. 06.08.1998. Further, based on Railway Board's Order dt. 15.01.1999, the family pension of the applicant was further revised to Rs. 2250/- w.e.f 01.01.1996 and the corresponding scale of pay under V CPC was indicated as Rs. 7500-12000 ie, the scale of pay for the Assistant Personnel Officer with effect from 01.01.1996 (replacement scale for specified category). Subsequently, Railway Board vide order dt. 20.08.2001 ordered for revision of all the pre-1996 pensioners with reference to the corresponding scale of pay and not the higher replacement scales of pay, introduced w.e.f 01.01.1996. The incorrect fixation of pension at Rs. 2250/- instead of Rs. 1860/- from 01.01.1996



has resulted in over payment of pension amounting to Rs. 73000/- Later, while implementing orders on the recommendations of VI CPC, the family pension of the applicant was revised to Rs. 4407 vide revised PPO dt. 01.02.2012 and further revised to Rs. 4487 correctly indicating the corresponding scale of pay as Rs. 6500-10500 as per the concordance table annexed to DOP&PW OM dt. 28.01.2013. Accordingly, the pension paying bank also had revised the family pension and arranged for recovery of excess family pension of Rs. 73000/- for the period from 01.01.1996 to 31.12.2005. The respondent would submit that only the amount not legally due to the applicant has been recovered and hence the claim of the applicant to refund the recovered excess payment is not sustainable. Hence, the respondent has prayed for dismissal of the OA.

4. The learned counsel appearing for the applicant would submit that the recovery made by the respondents in the family pension amount payable to the applicant is totally arbitrary, unjust and against law. Had there been any excess payment made to the applicant, show cause notice could have been issued and enquiry could have been conducted, only after providing reasonable opportunity to the applicant, could any deduction be made by the respondents. Deduction without following principles of natural justice is not legally sustainable. Learned counsel appearing for the applicant pleaded for allowing the OA on the grounds raised by him. He has also relied upon the decision of the Hon'ble Madras High Court dt. 28.11.2013 in WP No. 36507 of 2006 and MP No. 1 of 2006.

5. Learned counsel for the respondents would submit that excess payment

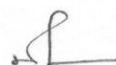


which is not otherwise legally due to the applicant, request for refund of the same is not sustainable. The recovery of the excess payment from the applicant being legal based on extant orders issued by the governing bodies the prayer sought by the applicant is devoid of merits and need to be dismissed.

6. I have carefully considered the relevant material and rival submissions.

7. It has been made clear that the pension paying bank had arranged for recovery of excess family pension of Rs. 73000 for the period from 01.01.1996 to 31.12.2005 without any notice being issued on the applicant and providing reasonable opportunity.

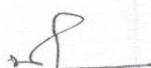
8. Law is settled in this regard. When any excess payment has resulted as a consequence of any misrepresentation or fraud committed by an employee or any undertaking given by the individual, there could be a justification in demanding recovery. Here again there should be a due notice in advance since such recovery results in a civil consequence. It is not the case of the respondents that there has been any such misrepresentation or the like. Again, the recovery due to alleged excess payment is stated to be pertaining to 1996 to 2005 vintage ie, more than a decade ago and it is trite that there has been a system of annual audit, internal audit and the like to ensure that accurate payments are made and any difference is made good within a reasonable time. If there is any excess payment made, the fact that the same excess is not even known to the applicant and that would also have been spent by the applicant for which she could not be made responsible. When there is no misrepresentation or fraud committed by the



employee, excess payment paid cannot be recovered from him. Further, without providing reasonable opportunity deducting any amount in the pension on the ground of excess payment made is against law as held by the Hon'ble Apex Court.

9. In the instant case, the family pension amount has been deducted even without providing reasonable opportunity to the applicant. Hence, it is ex facie against law and not legally sustainable. On similar circumstances, the Hon'ble Supreme Court has categorically ruled that such excess amount recovered should also be refunded to the retired employee, since such recovery has been made against law. The Hon'ble Supreme Court in Babulal Jain Vs. State of MP, reported in MANU/SC/7324/2007 : (2007) 6 SCC 180 has categorically ruled that the excess payment having been made by allowing higher pay to the appellant, based on misconception of law and not due to any mistake, misrepresentation or fraud on the part of the appellant, recovery or excess payment, without issuing any show-cause notice to the appellant was not justified and the Hon'ble Apex Court directed the State of Madhya Pradesh, respondent to refund the said sum of Rs. 22000/-, that had been deducted from the pension amount payable to the appellant therein without any justification. The said decision is squarely applicable to the identical facts and circumstances of the case.

10. The Ernakulam Bench of this Tribunal had an identical case of Smt. Girija Kumari Vs. Union of India and ors in OA No. 287/2017 decided on 19th July



2017. The Tribunal has held in para no. 11 to 13 as under :-

.....
11. The matter revolves around the recovery of a large sum of money from the family pension of the applicant. Admittedly, the mistake has occurred due to lack of diligence on the part of the disbursing agency viz., the bank. As pointed out, the PPA clearly indicated that the cut off date for the enhanced pension was March 2015. That was ignored by respondent No.3 who continued to disburse the enhanced pension until it was detected and recovery notified as per communication at Annexure A1. The beneficiary of the pension is a widow whose husband had died while in service 12 years ago. As pointed out in the OA, she had no role whatsoever in the enhancement or reduction of her pension and is only an inanimate recipient of the same. The arrangement worked out is for the Railways to calculate the pension with modifications from time to time and instruct the distributing agency that it has selected accordingly. Here apparently the blemish has occurred on the part of the distributing agency which has chosen to rectify the error on their part by ordering recovery from the aged pensioner. This is clearly unacceptable.

12. While the pension sanctioning and distributing authorities are eager to set the records in order by recovering from the pensioner, one needs to look at the issue from the point of view of the pensioner also. She cannot be made to pay for the lack of diligence on the part of the bank and I am not inclined to consider the general undertaking given before commencement of the pension as an anticipatory bail for inefficiency for all time to come.

13. This case is clearly covered by the decision of the Hon'ble Supreme Court in *State of Punjab & Ors. vs Rafiq Masih (White washer)*. After analyzing the precedents, the Apex Court had held that in the following few circumstances, recovery by the employers is impermissible in law:

(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.*"

.....



11. In view of the above and since the applicant had no knowledge that the amount that was being paid to her was more than what she was entitled to and excess payment made was the result of mistake of the authorities, the ends of justice would be met if a direction is issued to the respondents to refund to the applicant the amount of Rs. 73000/- wrongly deducted from the amount of family pension payable to the applicant within 60 days from the date of communication of this order. Ordered accordingly.

12. The OA is allowed as indicated above. No order as to costs.