

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/361/2017

Date of Order: 24.09.2019

Between:

B. Balya, S/o Late Vachya Naik

Aged about 72 years

Occ: Retired Deputy Director (Inspections)

O/o Director General of Inspections

Customs and Excise, West Regional Unit

Mumbai, R/o Flat No.405, Laxmi Enclave

Near Chaithanya Junior College for Girls

Nizampet Village, Ranga Reddy District.

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Applicant

AND

1. Union of India rep by the Secretary

Ministry of Finance, Department of Revenue

Government of India

New Delhi.

2. The Secretary

Central Board of Customs and Excise

Government of India, North Block

New Delhi – 500 011.

3. The Director General of Inspections

Customs and Excise, West Regional Unit

Transport House, 4th Floor, Puna Street

Masjid (East), Bombay – 400 009.

4. Andhra Bank rep by its Senior Manager

Centralized Pension Processing Centre

3rd Floor, Koti, Hyderabad 0- 500 195.

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Respondents

Counsel for the Applicant

... Dr. A. Raghu Kumar.

Counsel for the Respondents

... Mr. A. Radha Krishna, Sr. PCCG

... Dr. K. Lakshmi Narasimha for R4

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER

2. The OA is filed challenging the inaction of the respondents in stalling the action of Respondent No.4 (Andhra Bank) unilaterally reducing the pension of applicant and ordering a recovery of Rs.9,34,663/-.

3. Brief facts of the case are that the applicant retired from the respondents organization on 30.04.2005 as Deputy Director of inspections. The provisional pension of the applicant was fixed at the rate of Rs.22,682/- from 1.1.2006 to 31.10.2009, which the applicant claims is wrong. The pension arrears from 1.1.2006 to 05.02.2010, as per revised pension, were also not paid. While the matter stood so, the Manager, Andhra Bank vide letter dated 30.01.2017 (Annexure VIII), informed that during the Bank audit, it was found that the applicant's basic was wrongly fixed as Rs.22,682/- instead of Rs.15,120/- w.e.f. 01.01.2006. Based on the audit objection, Andhra Bank, which is the pension disbursing Bank of the applicant reduced the pension of the applicant from Rs.22,682/ to Rs.15,120/- and also recovered an amount of Rs.9,64,663/-. Aggrieved with the same, the OA has been filed.

4. The contentions of the applicant are that his pension has not been paid as per the recommendations of the 6th Central Pay Commission. There has been a grave error in fixing his pension. Besides, Respondent No.4 has gone beyond his jurisdiction in reducing the pension and recovering a huge amount. Further, Respondents No.1 to 3, being the pension paying authorities, need to have intervened and set right the anomalies. The applicant is aged 72 years and is subjected to humiliations

by the action of the respondents, contrary to the OMs issued by the Department of Pensions and Pensioners Welfare on the subject.

5. Separate replies have been filed by Respondents No.1 to 3 and 4th Respondent. Respondents No.1 to 3 claimed that once a Pension Payment Order (PPO) is issued, they have no role in disbursing the pension. Pension cell of the Bank, in the instant case it is Andhra Bank (Respondent No.4), takes over after the PPO is issued, and they will not have any role. Entries in the Service Book indicate that the difference of provisional pension and the actual pension have been paid to him. There is no role of the respondents in reducing the pension of the applicant by the Bank. Therefore, by forwarding the Pension Payment Order to the concerned, Respondents No.1 to 3 have fulfilled their responsibility. Respondents No.1 to 3 do not have any jurisdiction over the 4th Respondent. The issue is between the applicant and the Banker. Hence, it is incorrect to state that there is inaction on the part of Respondents No.1 to 3.

The 4th Respondent in his reply informs that the CPAO of the respondents organization, has mistakenly given the basic pension as Rs.10,036/- in the original Pension Payment Order issued to the applicant instead of showing the basic pension as Rs.6,690/-. The correct pension to be paid to the applicant is Rs.15,120/-. Consequently, it was reduced and an amount of Rs.9,34,663/- paid in excess to the applicant from 1.1.2006 till the date of Audit, was ordered for recovery. The CPAO had issued a revised order of pension dated 30.7.2014 with the revised basic pay as Rs.15,120/- w.e.f. 1.1.2006. Recovery can be made as per Reserve Bank of India guidelines. The 4th Respondent states that they have not committed any error in making the recovery and they have acted as per the

revised Pension Order dated 30.07.2014, issued by the Central Pension Accounting Office, Government of India, Bhikaji Cama Place, New Delhi. The excess amount paid to the applicant was deducted as per RBI guidelines. The revised pension order dated 30.07.2014 was also communicated to the applicant.

6. Heard both the counsel and perused the pleadings on record.

7. (I) The applicant claims that the respondents have not fixed the pension as per the recommendations of the 6th CPC. As can be seen from the reply of the respondents No.1 to 3, they have only stated that it is the responsibility of the Banker, and that they have no role in the reduction of the pension by the Banker. When they received the complaint from the pensioner, it is the responsibility of the Respondents No.1 to 3 to resolve the grievance. The reason being Respondents No.1 to 3 are the pension sanctioning authorities. Their responsibility is perennial. In the instant case, applicant has pointed out in the OA that his pension has been wrongly fixed and there is no averment in the reply statement about the fixation of the pension by the respondents. Hence, it is necessary and proper for the respondents No.1 to 3 to re-examine the case of the applicant in regard to correct fixation of the pension as claimed in the OA.

(II) The letter of 4th Respondent dated 30.01.2017, explains the reasons for reduction of pension of the applicant as under:

“With reference to the above, the Audit was conducted for CPAO pensions in Sept 2013 and found that Basic was wrongly fixed at Rs.22682 instead of Rs.15120 wef 01.01.2006. Your Basic was wrongly fixed by PAO as Rs.22682 instead of Rs.15120 ($10036 \times \frac{2}{3} \times 2.26 = 15120$). Audit team pointed out the excess pension being paid and advised us to correct the Basic to Rs.15120 and recover the excess pension paid Rs.934663. We have already replied to you through your Advocate on 23.10.2015

After 7th CPC revision your Basic is Rs.38859 (15120 x 2.57).

We enclosed the audit report for your reference and for further clarification please approach CPAO.”

As seen from the above letter, it is clearly stated that the PAO of the respondents organisation has fixed the basic pension as Rs.22682/- instead of Rs.15120/-. Therefore, the mistake was committed by the Respondents 1 to 3. Without examining the same, it is seen that the respondents 1 to 3 have claimed that they have no responsibility in disbursement of pension, particularly, when the applicant has been representing to the respondents vide his letter dated 3.3.2017. Hence, excess amount was paid because of the folly of the respondents 1 to 3. Any recovery from the pensioners is not permitted as per Hon'ble Supreme Court observations in **State of Punjab & Ors. v. Rafiq Masih (White Washer)**, (Civil Appeal No.11527 of 2014, decided on 18.12.2014) case, the relevant observations of which read, as under:

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be 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.”

In the instant case, the applicant who is a pensioner has neither misrepresented, misguided or committed any fraud to receive the pension that was disbursed by the Banker. Therefore, as per the Hon'ble Supreme Court observation cited supra, the excess amount of Rs.9,34,663/- stated to be recovered from the applicant has to be refunded.

(III) Respondents in their reply have repeatedly claimed that they have no jurisdiction over the 4th Respondent, and, hence, they cannot provide the relief sought by the applicant. This is rather surprising since there would be an agreement containing terms and conditions between the respondents and bankers for disbursing pension. It is not that Bankers are nominated without any M.O.U. or a simple agreement, particularly when pension disbursement is a huge responsibility. Pension is an important financial element which the pensioners monthly look for and, therefore, Government of India lays lot of emphasis in ensuring that pension is properly disbursed to the pensioners as per their eligibility. In the instant case, the pensioner is aged 72 years and, therefore, it goes without saying that respondents 1 to 3 have to rectify the grievance of the pensioner as per prevailing norms. Though, the applicant has chosen a particular Banker, yet the Respondents No.1 to 3 cannot absolve from their responsibility in disbursement of the pension as per the PPO issued by the respondents. In the instant case, Andhra Bank (Respondent 4) has pointed out that the respondents 1 to 3 have wrongly fixed the basic pension. In this context, it is not understood as to how the respondents have claimed that they have no responsibility in correcting the pension order. Further, the applicant has stated that though the Banker has

pointed out that the action of the 4th Respondent in reducing his pension is not as per the recommendations of the 6th CPC and the Government resolution accepting the same, without going into his grievance, respondents washing of their hands stating that they have no role to play, goes against the observations of the Hon'ble Ernakulam Bench of this Tribunal in OA No.859/2016, wherein it was held as under:

“8. It is well settled position that pension is a property as envisage in Article 300A of the Constitution of India. It is also settled law through different rulings of the apex court including the Constitution Bench of the apex court in D.S.Nakara & Ors. V. Union of India – (1983) 1 SCC 305 that the pension of the pensioner cannot be lightly treated and that any rules relating to the pension has to undergo the interpretative process of the provisions of para IV of the Constitution. It is also settled position that pension is not a bounty but a right of a Government servant [see State of Kerala & Ors. V. M. Padmanabhan Nair – (1985) 1 SCC 429; Dr. Uma Agrawal v. State of U.P. & Anr. – (1999) 3 SCC 438]. Pension has been given a constitutional recognition by including the term ‘pension’ in the definition clause under Article 366 (17) of the Constitution of India. In State of Jharkhand & Ors. V. Jitendra Kumar Srivastava & Anr. = (2013) 12 SCC 210 the apex court held that pension is a constitutional right as it comes within the meaning of ‘property’ the right to which earlier was a fundamental right protected under Article 19(1)(f) and 31(1) of the Constitution of India. The apex court in State of West Bengal v. Haresh C. Banerjee & ors.-(2006) 7 SCC 651 held that even after the repeal of Articles 19(1)(f) and 31(1) of the Constitution pension remains a constitutional right under Article 300A of the Constitution. In D.S.Nakara & Ors. v. Union of India – (1983) 1 SCC 305 – which is a locus classicus – the apex court held that the discernible purpose underlying the pension scheme or a statute introducing the pension scheme must inform interpretative process on the touch stone of directive principles of State policy contained in Articles 38(1), 39(d)(e), 41 and 42 in the light of the preamble of the constitution which guarantees the dignity of the individuals. It was also observed by the Constitution bench that Article 41 obligates the State within the limits of its economic capacity and development to make effective provision for securing the right to work, education and to provide assistance in cases of unemployment, old age, sickness and disablement and in other cases of underserved want. As held by the apex court pension is a Constitutional right of the pensioner and it cannot be lightly interfered with. In certain other cases like family pension the apex court has held that it is a fundamental right of the family pensioner under Article 21 of the Constitution and hence the pensioner matters cannot be dealt with in a casual manner or in a manner not in accordance with the provisions of the Constitution of India.

9. In this case obviously excess payment was happened to be paid on account of the error on the part of the respondent bank. The respondent bank is working as an agent of the pension sanctioning authority for disbursement of pension which is the statutory duty of the pension granting authority, entrusted to the respondent bank under a government of India scheme regulated by the Reserve Bank of India (RBI). The RBI guidelines for recovery of excess payments in the matter of pension also will not stand the test of law in the light of the aforementioned Supreme Court rulings especially in the light of the decision in Rafiq Masih's case (supra) that recovery of excess payment from the pensioner is impermissible in law. That being a decision of the Supreme Court of India it has the force of law under Article 141 of the Constitution and no authority including the RBI has any power to ignore the law laid down by the apex court. Obviously Annexure R3 letter of undertaking also cannot come to the help of the bank because it is clearly mentioned that the letter of undertaking is pertaining to the payment of pension under PPO.

10. In the light of the above discussion it appears to this Tribunal that the error committed by the officials of the respondents bank cannot be fastened on the applicant, the pensioner. Being an agent who has undertaken to disburse the pension as sanctioned by the pension sanctioning authority it is the duty of the agent bank to disburse it strictly in accordance with the directions of the pension sanctioning authority by way of PPO. In this case as no error or fault is discernible on the part of the pension sanctioning authority, the entire fault of paying of excess amount to the applicant is obviously on the part of respondent Nos.3 & 4 bank. The bank, if so advised, is free to initiate appropriate proceedings against the erring officials for recovery of the same. As stated earlier, in view of the law laid down by the apex court in Rafiq Masih's case (supra) and the bank being the agent of the pension sanctioning authority, cannot effect any recovery from the pensioner."

The essence of the above Judgement is that even if a Banker commits a mistake, it is for the respondents to come forward and rectify the mistake committed in any modification of pension disbursal. Banker is the agent of the respondents and, hence, they cannot shirk responsibility. Present case is thus fully covered by the Coordinate Bench observations cited supra.

(IV) Therefore, in view of the above, the respondents 1 to 3 may have to re-examine the fixation of the pension of the applicant and fix it as per the rules and regulations laid down in different OMs consequent to implementation of the 6th CPC recommendations. Further, recovery of

pension is impermissible as laid down by the Hon'ble Supreme Court in **Rafiq Masih** case (supra).

Consequently, the respondents are directed as under:

- a) The Respondents 1 to 3 to refund the recovered amount from the applicant by advising the Banker appropriately.
- b) to re-fix and disburse the pension of the applicant, after detailed examination in terms of the 6th CPC recommendations and relevant OMs issued on the subject and communicate to the applicant with the relevant worksheet.
- c) The time allowed is 3 months.
- d) No order as to costs.

With the above directions, the OA is allowed.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 24th day of September, 2019

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