

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO.210/00598/2018

Dated this Tuesday, the 22nd day of October, 2019

CORAM : SHRI R. VIJAYKUMAR, MEMBER (ADMINISTRATIVE)

Smt. Sunita Vijay Sonpatki,
 Age 68 years,
 Wd/o Vijay Sonpatki,
 Retired Senior Accountant in the Office of
 Accountant General (A&E) – I,
 Mumbai,
 Residing at 202, Tulasi Villa,
 Plot No.12, Postal Colony,
 Chembur (East), Mumbai 400 071. ... *Applicant*
 (By Advocate Shri S.V. Marne)

VERSUS

1. Union of India, Through the Secretary,
 Ministry of Finance,
 Department of Expenditure,
 Central Pension Accounting Office,
 Trikoot – II, Bhikaji Cama Place,
 New Delhi 110 066.
2. Accountant General of Maharashtra,
 Pratishtha Bhavan,
 New Marine Lines, 101,
 M.K. Road,
 Mumbai 400 020. ... *Respondents*
 (By Advocate Shri V.S. Masurkar, R-1 and Shri
 V.B. Joshi, R-2)

Order reserved on 30.09.2019
Order pronounced on 22.10.2019

ORDER

This application has been filed
 on 07.09.2018 under Section 19 of the
 Administrative Tribunals Act, 1985

seeking the following reliefs:

“8.a. This Hon'ble Tribunal may graciously be pleased to call for all the records of the case from the Respondents and after examining the same, quash and set aside Order dated 16.09.2016 of Respondent No.2 and revised Pension Payment Order dated 19.10.2016 issued by Respondent No.1 resulting in arbitrary reduction of pension of the Applicant from 06.01.2004 and all other consequential actions of the Respondents.

8.b. This Hon'ble Tribunal may further be pleased to direct the Respondents to restore the basic pension of the Applicant at Rs.31,943/- and net payable pension of Rs.30,477/- w.e.f. 01.11.2016 with further directions to pay pension at the said rates are revised from time to time.

8.c. This Hon'ble Tribunal may further be pleased to direct the Respondents to pay to the Applicant arrears of pension arising out of restoration of her pension from 01.11.2016 along with interest @12% p.a.

8.d. This Hon'ble Tribunal may further be pleased to hold and declare that Respondents are not entitled to recover amount of Rs.8,87,077 or any other amount from the Applicant towards alleged overpayment of pension for the period from 01.06.2004 to 31.10.2016.

8.e. This Hon'ble Tribunal may further be pleased to direct the Respondents to refund the recovered amounts from the Applicant from 01.11.2016 onwards as well as lumpsum amount of Rs.88,158/- already recovered from her along with interest @ 12% p.a.

8.f. This Hon'ble Tribunal may further be pleased to direct the Respondents to pay exemplary costs to the Applicant.

8.g. Costs of the application be provided for.

8.h. Any other and further order ass this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

2. The facts of the case are that the applicant commenced service with the respondents on 26.05.1973 and voluntarily retired from service on 06.01.2004. The Pension Payment Order (PPO) in the customary book form was prepared and communicated on 08.01.2004 to the applicant indicating her last pay drawn as ₹7,900/- and her average pay for the previous prescribed period as ₹7,803.33/-. On this basis, her basic pension was fixed as ₹3,666/-. This became the basis for disbursement of pension by the PAO directly to her and amounted to Rs.2200/- in May 2004 after deducting commutation installment of ₹1,466/- per month. The applicant sought transfer of Drawing and Disbursing Authority to the State Bank of India, Dadar Branch, Mumbai from June 2004 and this finds record in the PPO book form issued to applicant. Part-VII of the PPO

records the disbursement made for the period from the date of retirement up to end of May, 2004 using these figures as the base and adopting the actual date of payment of commutation for effecting the monthly deduction. On this basis, a letter was sent by Respondent No.2 (PAO) to the CPAO, Respondent No.1, on 22.06.2004 (Annexure R2-A) stating these facts and a copy was also sent to the applicant. Thereafter, on the basis of these computations made by the PAO of the respondent No.2, the CPAO of respondent No.1 issued an order No.622010300808/423196 dated 12.07.2004 addressed to the State Bank of India, Respondent No.3, informing them to commence payment from June, 2004 of basic pension per month of ₹5,499/- and after deducting commutation installment, the residual pension of ₹4,033/-. These orders also have the following additional note recorded in the bottom which included in addition to standard notes 1-3 as below:

"Notes :-

1. *The Pensioner's portion of the P.P.O. may please be handed over to the pensioner after Identification.*

2. *If Pension Paper do not pertain to your branch, please redirect them to the concerned branch, under intimation to this office, to avoid delay.*

3. *Please see reverse for other guidelines for Banks and Pensioners.*

PEN+DR+DP HAS BEEN PAID FROM 06/01/2004 UP TO MAY 2004 BY PAO. BANK SHOULD START FROM JUNE 2004 ONWARDS. DA/DR IS ADMISSIBLE BEYOND 50% OF DA/DR AS APPLICABLE FROM TIME TO TIME. SEE NOTE 7 OVERLEAF FOR MORE DETAILS PL. SEE ENCLOSED PPO PART VII."

3. These orders were issued on the basis of instructions for implementing the V CPC recommendations, issued by the Department of Expenditure (Annexure R-2) in OM F.No.105/1/2004-IC dated 01.03.2004, which reads as follows with the parts relevant for the applicant exhibited herein in bold letters:

*"F.No.105/1/2004-IC
Government of India
Ministry of Finance
Department of Expenditure*

New Delhi, dated the 1 March, 2004.

OFFICE MEMORANDUM

Subject : Merger of 50% of Dearness Allowance

/Dearness Relief with basic pay/pension to Central Government employees/pensioners w.e.f. 1.4.2004.

The Fifth CPC in para 105.11 of their Report had recommended that 'DA should be converted into Deamess Pay each time the CPI increases by 50% over the base index used by the last Pay Commission.'

2. *This recommendation of Fifth CPC has been considered and the President is pleased to decide that, with effect from 1.4.2004, DA equal to 50% of the existing basic pay shall be merged with the basic pay and shown distinctly as Dearness Pay (DP) which would be counted for purposes like payment of allowances, transfer grant, retirement benefits, contribution to GPF, Licence Fee, monthly contribution for CGHS, various advances, etc. The entitlements for LTC, TA/DA while on tour and transfer and government accommodation shall, however, continue to be governed on the basis of the basic pay alone without taking into account Dearness Pay. In case of existing pensioners, Dearness Relief equal to 50% of the present pension will, w.e.f. 1.4.2004, be merged with pension and shown distinctly as Dearness Pension. Dearness Allowance/Dearness Relief converted into Dearness Pay/Dearness Pension respectively would be deducted from the existing rate of Dearness Allowance/Dearness Relief.*

3. *To ensure that pensioners retiring between 1.4.2004 to 31.1.2005 do not face any loss in fixation of pension, as a special dispensation in their case, DA equal to 50% of the basic pay would be treated as basic pay for purposes of computation of pension in respect of basic pay received by them prior to 1.4.2004. Consequently, element of dearness pension will exist only for pensioners retired/retiring from Government of India up to 31.3.2004.*

4. *Insofar as the persons serving in the Indian Audit & Accounts Department are concerned, these orders issue after consultation with the . Comptroller & Auditor General of India."*

4. The respondent No.1, while

communicating his orders dated 12.07.2004 to the respondent No.3 at its Main Branch, also enclosed, as mentioned in the notes, the pensioner's portion of the PPO which was to be handed over to the Pensioner after identification. The State Bank of India then passed the papers to the SBI Branch at Dadar which had been nominated by the pensioner by opening a Pension Account with them. This appointment of SBI for disbursing pension is in the nature of a contractual arrangement between the Government as Principal and the Banker acting as Agent to abide by the instructions contained in the letter or orders issued by the former, the official respondents, and in accordance with guidelines of the RBI. The respondent No.3 is the Central Pension Processing Centre of the State Bank of India which now handles all such pension transactions for pensioners who have nominated SBI as pension disbursing branch and issues instructions to the

Disbursing Branches. It appears that at that point of time in 2004, the concerned branch or centre of the respondent No.3 commenced disbursement of pension adopting the basic pension and residual pension mentioned in the letter of respondent No.1 dated 12.07.2004. They did not take into consideration, the additional note which had been typed at the bottom and which mentioned that the Dearness Allowance and Dearness Relief as admissible, was to be paid over the pension only beyond the 50% level. As a result, the Bank paid not only the amount in excess of 50% of DA/DR but also the amount of 50% of DA on the basic pension but which had already been incorporated in the basic pension of ₹5,499/- communicated by the respondent No.1. They also did not take into account the disparity between the basic pension showed in this letter and the basic pension and computation of DA/DR/DP contained in the PPO Book which had been

given for making entries and then for handing over to the pensioner.

5. Following the VI Central Pay Commission recommendations, orders were issued for modifying the pension due for pensioners and others in an OM dated 01.09.2008. However, following receipt of several representations on the delay in payment of pension to pre-2006 pensioners, the respondent No.2 along with their Ministry, revised the process in consultation with the Pension Disbursing Banks and formulated a scheme for rapid implementation for which instructions were contained in OM No.38/37/08-P&PW(A).pt.1 dated 14.10.2008 issued by the Department of Pension and Pensioners' Welfare. These orders required Banks to disburse the pension and arrears using the ready reckoner within a week. The Banks were also required to revise and disburse the enhanced pension (with Dearness Relief) and arrears in terms of para 4.2 of the

OM dated 01.09.2008 within one month.

They were further required to make suitable entries regarding their revised pension in both halves of the PPO - Pensioner half and Disbursing Authority (Bank) half. Intimation regarding disbursement of pension was also required to be sent to the respondent No.1 and also to respondent No.2 who had issued the PPO in a prescribed form (Annexure III) so that the respondent No.2 could verify the pension so revised and update the PPO Register etc. The Bank, which is Pension Disbursing Authority, was also required to obtain the acknowledgment from the respondent No.1 and respondent No.2 for this purpose. The report in Annexure III to be sent to the respondent No.1 and respondent No.2 for verification contained the following instructions for computation of pension in Par A at serial No.10 (underlying added) :-

"Annexure III

Form of intimation by the Pension Disbursing Authority to the Central Pension Accounting

Office/Pay and Accounts Office regarding consolidation of pension/family pension in terms of Department of Pension and Pensioners Welfare Office Memorandum No. No.38/37/08- P&PW(A).

Computation of Pension

Part A

10. Computation of consolidated pension/family pension

*Pension / *Family Pension / *Family Pension (At enhanced rate)

Pension -

(A) Existing basic pension (inclusive of commuted portion) (excluding the effect of merger of 50% of dearness relief).

(B) Dearness Pension.

(C) Dearness Relief upto AICPI (IW) Average index 536 (Base year 1982=100) i.e. 24% of (A) +(B) above.

(D) 40% of the Basic Pension as at (A) above.

(E) Consolidated Pension (A+B+C+D). ”

6. In the initial pleadings and final hearing, no information had been provided in the course of these proceedings on whether such intimation was sent, facts of acknowledgment receipt, whether respondent No.2 carried out such verification and proposed any correction or communicated their agreement. No reply had been furnished

by the respondent No.3 in response to the specific mention of this aspect at para 6 of the rejoinder of the applicant. The respondent No.2 had stated nothing in response in the two additional affidavits later filed by them. Later, in OM F.No.38/37/08-P&PW(A) dated 13.02.2013 (Annexure R-4) filed by the respondent No.1, the essential aspect of the need for revision of pension to be effected at the level of PAO has been emphasised even in the cases where Heads of the Department are responsible for sanctioning pension and the copy of the revised authority was required to be sent to the Heads of Department or Drawing and Disbursing Officer (HOD/DDO) for record. None of these papers have been commented on by the respondents. However, these orders required the PAO/CPAO to communicate 'No change' in an Special Seal Authority and this had been issued in May 23, 2012 in respect of the applicant and records 'No change' against

pension, Commutation deduction, etc.

7. Thereafter, the Department granted four advance increments to UDC's (Auditors) who had passed the Departmental Confirmatory Test between 01.01.1973 to 31.05.1981 in compliance with the orders of the Tribunal and based on her entitlement, the applicant's pay was reviewed and regulated in an office order No. Admn-II/Pay fixation/4 Advance Increment/Charge-IV/60 dated 16.05.2014 mentioning the various details of her pay at the time of retirement. This was followed by an order revising pension at Rs.3731/- and was issued by the respondent No.2 (HOD) addressed to the CPAO (respondent No.1) and under copy to the respondent No.2 (PAO) and the applicant in letter No. PAO (AG) - 2/Pension/6thPC/62201//03/0080/8 dated 02.02.2015 which specified the applicant's revised pension and net pension after deduction of commuted value and a separate order was then issued

paying her balance of revised gratuity and of commutation amount consequent on increase in her last pay arising from the revised pay fixation.

8. After receiving a reply from the respondent No.1, the respondent No.2 modified this order in their letter No. PAO (AG)-2/Pension/6th PC/62201//03/0080/8 dated 05.05.2016 addressed similarly to CPAO and copy to the HOD and the applicant. Thereafter, on receipt of advice of the respondent No.1, this order was modified and finally issued by the respondent No.2 in the impugned order No. PAO (AG)-2/Pension/6thPC/62201//03/0080/8 dated 16.09.2016, which set out in very clear terms, the entitlement to pension of the applicant from the date of retirement onwards. On this basis, the respondent No.1 issued a revised SSA dated 19.10.2016 which is cited by the respondent No.3 in their letter of notice for recovery of pension issued by them on 04.11.2016 (Annexure A-13). Their action

is based on the fact that they have obtained an undertaking from the applicant at the time of sanction and disbursement and in conformance with the extant circular instructions (Guidelines) of the Reserve Bank of India on recovery in the cases of excess payment of pension.

9. Subsequent to this and following the recommendation of the VII Central Pay Commission, a further order revising pension was issued by the respondent No.2 on 10.11.2017.

10. The CPPC of the Bank (SBI), thereafter, issued an intimation dated 04.11.2016 (Annexure A-13) to the Disbursing Branch under copy to the applicant on the recovery of ₹8,87,077/- from 06.01.2004 to 31.10.2016 and commencement of monthly recovery of ₹6,500/- from 01.11.2016 to 31.03.2028 along with due and drawn statements of pension. The Bank Manager was also given the alternative for recovery of the

entire amount in one lump sum. The applicant then represented to the respondent No.1 on 23.01.2017 questioning this reduction in pension to which the respondent No.2 on 01.03.2017 (Annexure A-15), addressed Dadar Branch of respondent No.3 and stated that they had not issued any order reducing the applicant's pension and only done periodic refixation from time to time. A copy of this letter was sent to the respondent No.1 and also to the applicant.

11. The respondent No.1 replied to applicant's letter in their letter dated 10.04.2017 (Annexure A-17) stating that her pension had been revised by their SSA No.1995590/A2 dated 19.10.2016. They also advised her that if she had any grievance regarding revision of pension, she should contact the concerned PAO (the respondent No.2) since the respondent No.1 has no mandate to sanction or amend the rate of pension without sanction by

the PAO. She was also advised to contact her Bank CPPC. The Respondent No.1 also addressed Respondent No.2 in their letter dated 19.12.2017 (Annexure A-18) enclosing a letter from the State Bank CPPC on the overpayment of pension amounting to ₹8,87,077/- and asked them to take immediate action to examine the matter.

12. The applicant then addressed the Bank CPPC on 13.01.2018 (Annexure A-19) questioning their unilateral action and referring to her right to pension and law in regard to recoveries. Following further letters dated 19.02.2018, 28.08.2018, 26.03.2018 and 01.04.2018, an explanatory letter was received from the respondent No.3 on what had transpired, the legality of the recovery and the action taken by the Bank which, they stated, was in conformance to extant RBI guidelines.

13. The applicant then wrote to the respondent No.2 in letter dated

31.07.2018 enclosing a copy of the DOP&T
OM F.No.18/03/2015-Estt.(Pay-I) dated
02.03.2016 which followed the rulings of
the Apex Court in the case of **State of
Punjab & Others Vs. Rafiq Masih (White
Washer) in Civil Appeal No.11527 of 2014
arising out of SLP (C) No.11684 of 2012.**
She also relies on Section 70(1) of the
CCS (Pension) Rules, 1972 barring adverse
reductions in pension. She has further
raised certain issues regarding her
medical condition by which she had argued
for receiving sympathetic consideration.

14. The applicant's main argument is
that the action of the respondents was
illegal especially since it was taken
after expiry of 12 years and that the
decisions communicated in various letters
of the respondents were arbitrary,
illegal and void. She represents that no
show cause notice has been issued to her
prior to the reduction and recovery of
pension. She reiterates her reliance on
the rulings of the Hon'ble Apex Court in

Rafiq Masih supra. She further states that the action of the respondents violates Rule 70 of the CCS (Pension) Rules and that Rule 70(1) holds that pension cannot be revised to the disadvantage of a Government Servant and under Rule 70(2), it is mandatory to issue notice to the pensioners. She has also submitted that she was diagnosed with Deep Vein Thrombosis and has spent considerable sums on medical treatment including for a cancer diagnosis made in 2012.

15. The respondent No.1 has explained their role in this process. They state that the office was established on 01.01.1980 to centralise Pension Data and forward an authority to the Centralized Pension Processing Centre (CPPC) of the paying bank authorized for this purpose. They cannot sanction or amend the pension values and have to await the pension sanction order from the last office of the pensioner over which

they have no administrative jurisdiction.

The pension and family pension are determined by the Administrative Authority (Heads of the Department) and then checked and verified by the concerned Pay and Accounts Officer (PAO).

In this case, the respondent No.1 authorized SBI Mumbai to pay ₹5,499/- per month instead of ₹3,666/- per month in SSA dated 12.07.2004 and sent a copy to the concerned PAO as well as to the applicant. Neither PAO nor the applicant has pointed out the excess authorization.

According to them, the applicant was morally obliged to bring this fact to the notice of the concerned authorities because she was well aware and had earlier been part of the accounting and payment set-up of respondents. They have relied on the instructions issued by the Department of Expenditure in OM dated 01.03.2004 cited supra, merging 50% of DA with basic pay. They acknowledge that their SSA orders mentioning pension as

₹5,499/- per month was technically not in order as the applicant had retired prior to 01.04.2004 and as such 50% of the Dearness Allowance (DA) should have been shown separately as Dearness Pension (DP). However, they had made a specific mention in the footnote of their SSA requiring the Bank to pay Dearness Relief (DR) only beyond the 50% admissible DA/DR. While acknowledging this technical error, they attributed the error to the Bank who had not taken appropriate notice of the footnote and, therefore, the applicant continued to draw the excess payment of pension until October, 2016. They also referred to the instructions received following the VI Central Pay Commission on 14.10.2008 cited supra and their clarificatory reiteration of the instructions issued on 13.02.2013 whereby the PAO (respondent No.2) was made squarely responsible for verifying the pension revised from time to time. Therefore, the Bank continued

to pay excess pension and they attributed this error primarily to respondent No.2 who should have verified and revised the pension. They state that the instruction given to the Banks required them to obtain an undertaking to refund any excess payment of pension and that the RBI has issued instructions on the modalities of recovery of over-paid amounts.

16. Respondent No.2, through Senior DAG (Pensions), has filed a reply on 19.11.2018 mentioning the various facts as above and state that the respondent No.1 had inadvertently mentioned the higher pension amount for the applicant by including 50% basic pension which should have been shown as Dearness Pension (DP). They also state that the Bank had neglected reference to the details of the last pension paid in May, 2004 by the PAO and which are noted in both halves of the PPO, one retained by the Disbursing Bank and one handed over

to the pensioner. They assert that the Government of India instructions dated 01.09.2008 do not require any authorization from the PAO. They also state that their office did not issue any authority in regard to the revision of pension following the VT Central Pay Commission. They also affirm that the respondent No.2 had not issued any order for reducing pension of the applicant nor had it communicated any details of the recovery of over-paid amounts made by the Bank. They also state that following the grant of four advance increments, they had issued a letter in SSA No.249 dated 02.02.2015 to the respondent No.1 under copy to the Pensioner and therefore, the applicant was wrong in alleging the delay of 12 years in revising the pension. They also point out that in May, 2004 which was the last pension made directly by the PAO, the applicant was paid basic pension of ₹2,200/- (₹3,666-1,466/- commutation), 50% DP ₹1,833/-, 11% DR

₹605/-, arrears of DP ₹201/- totaling ₹4,839/-. Due to the mistake in interpretation, the applicant started receiving ₹7,691/- from June, 2004 which was a sudden, unexplained increase of as much as ₹2,852/- and could have been noticed easily. They also suggest that the applicant was fully aware of the excess payment being paid and she could have reported the errors. On the aspect of the violation of Rule 70(1) of the CCS (Pension) Rules, 1972, they state that they have not made any clerical error since their sanction of ₹3,666/- as basic pension was correct and the mistake was made by the Disbursing Authority namely, the Bankers. The respondent No.2 had never issued any authorization for payment of basic pension of ₹5,499/- to the applicant and therefore, there is no question of any reduction.

17. The applicant has filed a rejoinder asserting that the respondent No.1 cannot claim that they had made a

technical error. It was actually a mistake made by the respondent No.1 by merging 50% of the DA into the basic pension and sanctioning ₹5,499/-. She denies the contention that since she was working as Senior Accountant, she has a moral duty to bring the mistake to the notice of the concerned authorities.

After having retired from service in January, 2004, she was not expected to keep track of every circular and orders governing pay and pension. She claims that no pension slip was provided to her to know the break up of the amounts paid. She points out that the Respondent No.1 has admitted that the 50% of the Dearness Relief should have been shown separately as Dearness Pension. She further refers to the instructions of Government on 14.10.2008 and 13.02.2013 whereby the PAO and CPAO had a responsibility for verification of the correctness of the pension paid. She denies any recollection of having executed an

undertaking on the over-paid amounts.

With regard to the suggestion that she should have noticed the sudden and large increase of her pension from May 2004 to June 2004, she states that she was under the impression that the enhancement was on account of merger granted by the respondents.

18. A further affidavit in reply to the rejoinder has been filed by the DAG (Pension) of respondent No.2 refuting the contention of the applicant that she thought that the increase in the pension is due to the merger of 50% DA. The break-up of the pension was clearly mentioned in the pensioner's copy of the PPO which was available with the applicant. They have also generally reiterated their affidavit in reply. The respondent No.2 has filed further additional affidavit enclosing various documents and which have been utilized in the relation of facts in this case as above.

19. The applicant has filed an MA No.512/2018 for condonation of delay in the event that the date of intimation by the respondent No.3 on 04.11.2016 that her pension had been reduced and ₹8,87,077/- would be recovered, was the basic cause of action. The applicant contends that she was informed by the respondent No.2, in letter dated 23.08.2018 (Annex A-3) for the first time that there was a mistake made in the year 2004 in mentioning the pension amount. She states that she was detected with Cancer in 2012 and in March, 2018 she suffered from 'Deep Vein Thrombosis' and because of her health condition, she could not approach this Tribunal immediately and finally did so on 07.09.2018 as mentioned above. She seeks condonation of delay in the event that cause of action is determined as 04.11.2016. The respondent No.2 has filed reply opposing petition for the condonation of delay stating that delay

has not been explained on a day-to-day basis. They state that there was no error in their fixation of basic pension and the error arose because of the way in which the respondent No.1 had mentioned the basic pension by including 50% DA and that the Pension Disbursing Authority, State Bank of India, had neglected the details of the order and instructions in notes therein and the details of the last pension paid in May, 2004 as mentioned in the PPO available with them. They assert that the commencement of recovery was started in November, 2016 following the letter of respondent No.3 issued on 04.11.2016 and therefore, the delay has to be explained from November, 2016 onwards which has not been done by the applicant. They emphasize that the applicant was aware about the reduction in her pension even in November, 2016 itself.

20. Considering the critical need to ascertain action taken by respondents and

the Bank on instructions dated 14.10.2008 at para 5 above, the parties were also invited to file further affidavits and were heard on the specific aspect of whether there was any obligation on the part of the PAO at Mumbai to verify the action taken by the Pension Disbursing Authority (State Bank of India).

Respondent No.2 has filed an additional affidavit on their correspondence with the bankers and on which, their views were sought during the hearing held on 10.06.2019 with reference to the orders of the Government dated 14.10.2008 (Annexure R-3) designing an expeditious disbursement scheme for the Disbursing Authority (Banks) to directly use the ready reckoner to calculate pension and then to make entries in both halves of the PPO, one half lying with the pensioners and the other with the Bankers ^{were} themselves. They also asked to send an ^h intimation to the respondents Nos.1 and 2 and keep for their record, the

acknowledgment from these offices. In OM dated 13.02.2013 (Annexure R-4), further instructions have been given and which build on previous instructions of 28.01.2013 on fitment computation and in cases where there was no change in pension as a result of this aforesaid OM, authority for no change was required to be issued by the PPO. The respondent No.2 state in their additional affidavit, that they have received soft copies (CD) of Annexure III including for applicant from September 2011, issued by various banks through CPAO and this CD was containing 4572 pensioners with most not pertaining to the IA&AD Department. Therefore, it was difficult to sort out Annexure III relating to the pensioners on the basis of the PPO number since the Annexure III sent by the bank was created on the basis of Bank Account number. Moreover, the applicant's bank account number had been previously altered without their knowledge and in the same

branch and without intimation to the Respondents Nos.1 and 2. Therefore, the respondent No.2 could not issue the required acknowledgment after verification of Annexure III and after payment of revised pension in September 2011. In her reply, the applicant has urged that the change of Bank Account number was done at the instance of the banker.

21. We have gone through the OA and rejoinder along with Annexures filed on behalf of the applicant. We have also gone through the reply and sur-rejoinder along with Annexures filed on behalf of the respondents and have examined the files and cognized all relevant facts of the case.

22. Heard arguments of the learned counsel for both the parties. The learned counsel for the applicant reiterates the arguments set out in pleadings and relies on the rulings of the Hon'ble Apex Court in Rafiq Masih

(supra) on the aspect of the recovery proposed by the respondents. He also relies on the provision of Section 70(1) of the Pension Rules by which pension cannot be revised to the disadvantage of the pensioner by the respondents and Section 70(2) for issue of show cause notice. Respective learned counsel for the respondents Nos.1 and 2 reiterate the arguments as in pleadings. We have carefully considered the arguments of the learned counsels for parties and have taken all facts and pleadings in the matter for examination in relation to the rules and applicable law.

23. This applicant took voluntary retirement on 06.01.2004 and as recorded in her copy of the PPO, her average emoluments for pension purpose were Rs.7803.33 and qualifying service was 62 six months periods out of a maximum of 66 such periods to be eligible for the full 50% level of basic pension. On this basis, she was allowed a pension of

Rs.3,666/- commencing from 06.01.2004 and was permitted commutation on pension of 40% of Rs.1,466/- which, over the prescribed 144 months period, came to Rs.2,11,984/- and was paid on 15.03.2004. Accordingly, reduced monthly pension due to her was fixed at Rs.2200.00 payable from 15.03.2004 following disbursement of commutation amount. These amounts were paid to the applicant by PAO, the respondent No.2, every month until May 2004 and based on her request, SBI bank, whom she had nominated with branch at Dadar, was asked to pay pension from June 2004 onwards. A Special Seal Authority (SSA) was accordingly issued by the CPAO, Respondent No.1, on 12.07.2004 indicating her basic pension at Rs.5,499/- effective from 01.06.2004 but with the footnote as mentioned earlier as "PEN+DR+DP HAS BEEN PAID FROM 06/01/2004 UP TO MAY 2004 BY PAO. BANK SHOULD START FROM JUNE 2004 ONWARDS. DA/DR IS ADMISSIBLE BEYOND 50% OF DA/DR AS APPLICABLE FROM TIME TO TIME.

SEE NOTE 7 OVERLEAF FOR MORE DETAILS PL.

SEE ENCLOSED PPO PART VII".

24. This reference to part VII of the PPO is critical because it indicates how the total amount has been built up from the basic pension of Rs.2,200/- by including dearness pay and dearness allowance as also difference of dearness pay. However, upon receipt of PPO dated 12.07.2004 (Annexure A-5), the bank did not read the footnote which is partly typed and partly in hand and proceeded to make payment of pension at the rate of Rs.5,499/- besides pay, dearness pay and dearness allowance. In addition, they separately paid dearness pay of 50% to the applicant which was already included in this amount. There is no evidence to show that the Bank made suitable entries in the PPO halves including the one handed over to the pensioner. This position continued after 01.01.2006 when VI Central Pay Commission introduced changes with effect from that date and

orders were issued in September 2008.

All the actions were done by the Bank who is the Drawing and Disbursing Authority.

The amounts due under VI Central Pay Commission were then calculated based on the previous pension level of Rs.5,499/- already determined by the Bank and, as a result, the pension granted to the applicant increased substantially. The respondents have urged that the applicant was aware of the method of pension calculation since she had been a Senior Accountant, Group 'B' Non-Gazetted Officer of the office of the Accountant General. Therefore, they would impute expert knowledge to her to determine the error that has been committed in her case. While this argument could at best be supplemental and needs to be supported with some more evidence of such knowledge on her part, what is evident on the face of the record is that the applicant was drawing about Rs.1,866/- less for the first two months of her retirement and

this suddenly accelerated after the Bank started paying her from May 2004 with no evident reason. Further, she has also received her half of the PPO including the details in part VII and therefore, when she got the order in the form of SSA (Special Seal Authority) from the CPAO in July 2004, she was clearly informed and cannot deny her knowledge that there was an unaccountably increased pension payment made to her. It is true that she had no part to play in the nature of the communication sent by the CPAO at New Delhi to the bank and therefore, there cannot be any allegation of *mala fide* against her by way of any incorrect information that she may have provided although it is clear that there was unjust enrichment that was well within her competence and knowledge at that moment of time, to realize immediately on receiving the payments and the PPO. Further, if she had believed that her pension was actually higher, she would

have claimed higher gratuity but at the least, she could have claimed substantially higher level of commutation which is computed at 40% of the actual basic pension drawn and disbursed to her.

The applicant made no such demand and commuted value of pension remained at the same level and its monthly recovery had been deducted at the rate of Rs.1,466/- every month since then. It is also apparent that when a person receives unjust enrichment, there is a moral obligation on the person to report and at the very least, this is a moral obligation which will fructify into a legal requirement when the demand for repayment is made. In any case, for all pensioners, the Bank (DDO) obtains an undertaking in the form and according to instructions circulated by the RBI.

25. Following the VI Central Pay Commission, the respondent No.2 seems to have issued "No Change" PPO in accordance with the orders of the Government dated

13.02.2013 (Annexure R-4) in their PPO dated 23.05.2012 (Annexure R-6) in which, under each category of the revised pension details, only the words 'No Change' are recorded. As a result of this instruction, the Drawing and Disbursing Authority (Bank) continued to make the payments that they had already computed alongwith whatever increases in DA etc that were extended from time to time. During this period, the applicant and her departmental cohort also succeeded in obtaining sanction for their claims for having passed a departmental examination held in May 1974 and therefore, received four advance increments with effect from 31.05.1975. As a result, her qualifying pay increased by Rs.15/- and her DCRG and commutation pay also increased by small amounts. Based on these instructions, covered under circular dated 10.02.2011, and which were issued in office order dated 16.05.2014 (Annexure A-7), a revised PPO

was proposed by Respondent No.2 (PAO) to the CPAO (Respondent No.3) on 02.02.2015 [Annexure R-5(a)] (page 214) and upon a query dated 17.02.2015 [Annexure A-6 (a)], further proposals were sent on 05.05.2016 [Annexure A-7(a)] and after further correspondence, a full and proper proposal was sent on 16.09.2016 indicating the differential commuted value of the pension payable by the Bankers of Rs.3760 apart from indicating various pay elements [Annexure R-8(a)]. The revised PPO was then sent to the Bank on 19.10.2016 based on the additional income of the applicant which was received by the State Bank of India, Dadar and in their letter dated 04.11.2016 (Annexure A-13), they have conveyed to the applicant, their plans for recovery of estimated arrears of Rs.8,87,077/- from the applicant.

26. Subsequently, a further proposal based on VII Pay Commission recommendation has been sent by the

respondent No.2 on 10.11.2017 [Annexure A-9(a)], on which basis, the respondent No.1 has issued an SSA authority letter dated 19.12.2017 [Annexure A-10(a)] to the Bankers, the Drawing and Disbursing Authority, under copy to the applicant.

27. When the applicant received the aforesaid letter of the Bankers on 04.11.2016 which had been sent to her for information along with the Due and Drawn statement for the period from 2004 to October 2016, she commenced correspondence with her letter dated 23.01.2017 to the CPAO, New Delhi (respondent No.1) seeking to quash their SSA under which the revised pension was notified and reduced as an act in violation of Section 70(1) of the CCS (Pension) Rules, 1972 and she asserted that she had not made any error on her part and nothing could be attributed to her. Therefore, she argued, the error made by the Bankers could not be held against her especially after 12 years of

her retirement. She also referred to the decisions of this Tribunal in several cases that recovery from a pensioner is impermissible in law and she refers to DOPT OM F.No.1/03/2015-Estt. (Pay-I) dated 02.03.2016 which circulated the rulings of the Hon'ble Apex Court in **State of Punjab & Others Vs. Rafiq Masih (White Washer)** in Civil Appeal No.11527 of 2014 arising out of SLP (C) No.11684 of 2012. The respondents have replied by stating that there has been no revision of pension and denied her interpretation of the use of the word 'revision' in their letters and that it did not refer to revision contemplated under Section 70(1) of the CCS (Pension) Rules, 1972.

28. During the arguments centering around the additional affidavits directed to be filed by parties referred in para No.20 above, the learned counsel for respondent No.1 has submitted that no reference seems to have been received from the State Bank of India CPC, Mumbai

by CPAO and states that it may have been sent to the respondent No.2 instead.

They have also filed a letter dated 26.07.2019 addressed to them by SBI, Dadar which reads as under:

“In this connection, we have to advise as under:

1. The date of retirement of the pensioner is 05/01/2004 and basic pension of Rs.5499/- as per 5th CPC sanctioned vide original PPO No.622010300808 received from CPAO New Delhi.

2. Basic Pension was revised to Rs.12429/- on the basis of Office Memorandum No.38/37/08-P&P(A) dated 1st September 2008 of Government of India applicable for revision of pension as per 6th CPC. A copy of the relevant page of the Office Memorandum is enclosed.

3. This basic pension is regularly being reported against the above PPO number in Monthly Pension scroll from September 2008 onwards, which is the standard accepted method in practice of reporting of pension payment to all Pension Sanctioning Authorities.

4. Further, basic pension was revised to Rs.31943/- on the basis of Government of India Office Memorandum No.38/37/2016-P&PW(A)(i) dated 4th August 2016 applicable to revision of pension as per 7th CPC.

6. Further, PPO No.622010300808/1995590/A2 dated 19.10.2016 was received from Central Pension Accounting Office, New Delhi reducing the basic pension to Rs.3731/- with effect from 06/01/2004 and Rs.8434/- with effect from 01/01/2006. This resulted in recovery of excess pension paid from 06/01/2004 as earlier sanctioned by the Pension Sanctioning Authority. Please note that this revision of pension with effect from

06/01/2004 was issued on 19.10.2016 i.e. after more than 12 years.

7. As the reduction in pension was on the basis of PPO issued by the Pension Sanctioning Authority, no separate intimation was sent to CPAO.

8. As such, it is evident that there is no error on the part of the Pension Disbursing Authority in payment / reporting of revision of pension."

29. What is evident from the above letter of the Bank is that, contrary to the statement of the respondent No.2, a monthly pension scroll was being sent on the basis of PPO number to all pension sanctioning authorities from September, 2008. Therefore, they would suggest that when they revised the pension to Rs.12,429/- based on the VII CPC, a duty was cast on the respondent No.2 to make the necessary verification. However, even if PPO number is available, it is not been clarified as to how the respondent No.2 could have detected any incorrect calculation when the only reference point was the previous month's disbursement.

30. Although it is quite clear that

the administration and audit of the pension scroll referred by the Bank (DDO) lies with the local PAO who is respondent No.2, the audit of the pension scroll might only look into issues of whether the Bank has made any deviation from the regular payment which was with reference to the initial PPO and does not involve audit of the PPO and SSA itself and action of the Bank itself thereon. The other relevant details of the scroll will need to be read with the averments in the Additional Affidavit dated 06.07.2019 of the respondent No.2 and the Annexures III sent by the Bankers to the PAO on 14.10.2011. The Annexure contains one sheet out of an entire list of soft copies of Annexure III forms sent by the Disbursing Bank to the PAO in accordance with the instructions dated 14.10.008 (Annexure R-3) that proposed expeditious implementation of grant of benefits under the VI Central Pay Commission. This list has been communicated by soft copy and in

the text documents provided therein by the SBI to the PAO, it mentions the following detail:

“4464_0353_10715997359_54 14-10-2011 13:07 Text Document 4KB”

31. At the top of this document, is the code relevant to the PAO namely, 062201. This list does not contain the PPO number but only contains the current Savings Bank Account number. As stated by the respondent No.2, there is no evident indication in the list that this reference relates to the applicant particularly since the saving bank account number had been altered and Respondent No.2 did not have the referred account number in their records and the change was never communicated to them. We have also noted in passing, that the applicant has objected to the imputation that she changed the account number in the same branch without their knowledge and which is for the Bank themselves to determine. The fact remains that only by opening each individual's text documents,

it would have been possible for the respondent No.2 to find out which entry referred to cases under their jurisdiction and of these, which was for the applicant. The contents of the text documents of Annexure III relating to the applicant which has also been supplied along with the affidavit also reveals that the Bank noted the basic existing pension excluding the effect of 50% of merger of Dearness Relief as Rs.5499 and then separately indicated below, the dearness pension at 50% namely Rs.2750. Therefore, this form would not also have enabled any independent examination unless it was compared with the two halves of the PPO lying with the pensioner and the Bank (DDO). At this stage, moreover, the respondent No.2 was only required to provide the additional benefit due on account of the VI Central Pay Commission. In these circumstances, no responsibility can reasonably be attached to the respondent No.2 and the

cause of action for error squarely lies with the Bankers even on this date of 14.10.2011 (soft copy date) and beyond.

32. As this had happened in this case, the over-payment could have been detected if, in consequence of the further instructions following the VI CPC and which are also referred in the OM dated 13.02.2013 (Annexure R-4), a full-scale PPO had been issued rather than simply indicating "no change". However, those were the instructions which followed the expeditious explanation set out in 2008 and they was clearly an opportunity not available to Respondent No.2.

33. Thereafter, only at the stage when additional increments were granted to the applicant and after correspondence between the respondent No.1 and respondent No.2, that the error in payment and disbursement by the Bankers was detected and a proper SSA was issued by the respondent No.1. However, even

this order only carries out a revision on account of the additional increments and not in respect of the first SSA issued in the year 2004. The adjustments are entirely between columns and bring out in plain terms, the error in interpretation and in execution of the instructions of the respondents by the Disbursing Bank.

34. On the issue of whether the Bank could have avoided their error and followed the footnote instruction cum clarification in SSA of 2004, we may only observe that what is sauce for the goose is also sauce for the gander. The Bank is obligated to look at the entire document including the footnotes and fine print which, in this case, were actually typed with some small portion handwritten and in view of the contents of the PPO halves in part VII. The Bank cannot adopt a layman's excuse that they had not read the fine print or footnotes which govern their work. Therefore, it is plainly in evidence that the error in

this case as between Pension Sanctioning Authority and by the Bank was committed by the Bank itself and there was evident failure of their internal audit system in the case.

35. In terms of the above discussion, we have arrived at the conclusion that the error of over-payment in the present case was entirely on account of misinterpretation and misreading of the SSA of 2004 issued by the CPAO, the respondent No.1, and negligence thereof because the Bankers failed to note the disparity between the contents of the PPO Book, what was paid in the immediate previous month of May 2004, and what they themselves disbursed for the next month and thereafter. The reference point for all future modification such as for the VI Central Pay Commission was also the PPO which consists of two halves. The Bank was expected to summon this PPO from the pensioner and record facts therein of the

increase granted including in its own but it appears that no such efforts was made.

36. In the present case, although the applicant had originally impleaded the Bankers as respondent No.3, this respondent had been deleted during the hearing held on 22.11.2018 on the grounds that Bankers are bound by the direction of the respondents Nos.1 and 2 and in case of any errors attributable to respondents Nos.1 and 2, the Bank cannot be held responsible. Further, in case the error had remained with the Bank itself, then respondents Nos.1 and 2 cannot have any liability in view of the principal-agent relationship they have with the Bank as Disbursing Authority. As discussed above, the Bank has been held completely at fault in the present matter and, therefore, the respondents Nos.1 and 2 are attached with no liability or responsibility in this matter except in terms of their financial dealings with the Bank who may now be

obliged to recover the excess payment made by them to the pensioner.

37. The applicant has submitted that Section 70(1) of the CCS (Pension) Rules, 1972 bars any revision. However, in this case, the revision arose on account of additional payment to the applicant arising from passing of an examination in 1974 and there is clearly no revised PPO seeking reduction of pension. What has transpired is that proper SSA was first issued after 2004 only in the year 2016 and at this time, the error was detected and no adverse revision of pension has been done by Respondents Nos.1 and 2. Therefore, the Section 70(1) of the CCS (Pension) Rules, 1972 cannot apply in this case and Section 70(2) consequently, does not arise.

38. The applicant has also referred to the provisions of the Rafiq Masih supra which are the rulings of the Hon'ble Apex Court. For the same reason, the reliance on **Rafiq Masih** supra by the applicant for grant of relief against recovery of over-

payments is only applicable to the respondents Nos.1 and 2 who have neither issued any amendment orders nor have they ordered recovery directly against the pensioner. In these circumstances, the pensioner can have no recourse through the medium of this OA in terms of the stoppage of recovery sought to be made by the Bank from her and for any such relief, she will have to approach an appropriate forum and this Tribunal lacks jurisdiction on that aspect.

39. In the above circumstances, this OA is dismissed as lacking in merits in respect of matters falling within the jurisdiction of this Tribunal and is dismissed on grounds of lack of jurisdiction in respect of any claim that the applicant may prefer against the disbursing bank. In consequence, all interlocutory orders are hereby withdrawn with immediate effect. There shall be no order as to costs.

(R. Vijaykumar)
Member (Administrative)

*kmg**