(2019) 08 AFT CK 0040

In the Armed Forces Tribunal

Case No : Original Application No. 1951 Of 2017

BB Ahluwalia APPELLANT

Vs

Union Of India And Others RESPONDENT

Date of Decision : 21-08-2019

Acts Referred:

Citation : (2019) 08 AFT CK 0040

Hon'ble Judges : Sunita Gupta, J;Philip Campose, Member (A)

Bench : Division Bench

Advocate : Rajiv Manglik, Jitendra Kumar, SP Sharma, Alok Kumar, Abhijeet Kumar

Final Decision : Disposed Of

Judgement

1. Feeling aggrieved by the order of Respondent No.4 (State Bank of India) dated 30.08.2017, vide which the recovery of Rs. 6.70,614/-for purported

excess payment of pension has been ordered to be made from the pension of the applicant for the period from July 2014 to June 2017 by way of

deduction @ 20,000/- pm w.e.f. 01.09.2017, the present OA has been filed.

2. The facts germane to the filing of the present OA are that the applicant was commissioned as a Military Nursing Officer on 20 January 1976. She

superannuated from service on 31 May 2012 after completing 36 years 4 months and 12 days service and was sanctioned service pension @ Rs.

28610/- pm.

3. The respondents implemented the One Rank One Pension (OROP)"" scheme w.e.f. 01 July 2014 and the pension of all ranks including the MNS

was revised. Accordingly, the applicant's pension was raised from Rs. 28610/- to Rs. 37570/- per month and the applicant was paid the arrears on account of OROP for the first, second and third instalments but the fourth instalment was not paid. A new pension order was also issued in respect of

the applicant upto the pension of June 2017 wherein suddenly the pension of the applicant was reduced to Rs. 28610/-. which pension amount was the

same as prior to implementation of OROP. She was served with a letter dated 30 Aug 2017. issued by respondent No 4. directing the respondent

No.5 to reduce the pension of the applicant to Rs. 28610/- and effect the recovery of Rs. 7,66,308/- (amount reduced to Rs. 6.70,614/- after adjusting

41' instalment) from the pension of the applicant, in instalments of Rs. 20,000/- pm till realisation.

4. It is claimed on behalf of the applicant that if an order is visited with civil consequences, the concerned person is required to be put to notice and

heard before any penal action is taken against him/her but in this case no such procedure was adopted. Moreover, once the pension has been

sanctioned by the President of India, it is not within the competence of the respondents to withhold, reduce or recover the same until and unless a case

of fraud upon the incumbent is established by the Govt. It is thus contended that as the applicant was not instrumental in getting the pension re-fixed in

terms of OROP nor did she play a fraud upon the Govt., the respondents cannot recover the amount that has already been paid to her.

5. The present OA has been filed with a prayer to quash and set aside the order dated 30.08.2017 and to direct the respondents to grant the pension to

the applicant as was paid before the date of issue of letter dated 31 Aug 2017 Further, to refund the amount already recovered and grant an interest of

18% on such amount.

6. The claim of the applicant has been refuted by the respondents inter-alia on the ground that her pension was incorrectly revised by the PDA @ Rs.

37,570/- PM under OROP as per Circular No. 555 dated 04 Feb 2016, as the said circular is applicable to Brigadiers who are regular commissioned

officers, and not to the Brigadiers of MNS. The correct revised pension of the applicant is Rs.27,095/- PM and the same is not beneficial to her as the

pension already sanctioned vide PPO No. M/003124/2012 is Rs. 28610/- PM w.e.f. 01.06.2012 for life. After the mistake came to light, the recovery

of excess pension was ordered. Such recovery can be made by the PDA as per office circular No.141 dated 07 December 2009. That being so.

respondents contended that there is no merit in the OA and the same is liable to be dismissed.

7. We have heard Mr Rajiv Manglik Proxy counsel for the applicant, Dr. SP Sharma, counsel for respondents 1 to 3 and Mr. Alok Kumar Proxy

counsel for Respondents No. 4 & 5, and have also carefully perused the record.

8. Learned proxy counsel for the applicant has relied upon the order passed by Horrble Supreme Court in State of Punjab & Ors etc. Vs. Rafiq

Masih, AIR 2015 Supreme Court 696 and submitted that no recovery from employee is permissible if the employee played no role in wrong payment

made by the employer. It is further submitted that following this judgment. Govt. of India, Ministry of Personnel, Public Grievances & Pensions.

Department of Personnel and Training had issued Office Memorandum dated 2nd March, 2016 for implementing the judgment as laid down in Rafiq

Masih's case to deal with the issue of recovery of wrong and excess payment made to Government Servants.

9. It is further submitted that it is apparent from the counter affidavit filed by the respondent that the applicant is satisfied that the pension, which was

revised to Rs. 28610/- PM. was the correct pension.

10. Learned counsel for the respondents, on the other hand, submitted that the recovery has been made pursuant to the guidelines given by RBI and,

therefore, no interference is called for.

11. The submissions of the parties make it clear that it is not now in dispute that the applicant was not entitled to revision of pension from Rs. 28610/-

to Rs. 37570/- PM which was effected on implementation of One Rank One Pension Scheme w.e.f. 01 July 2014. It is also not in dispute that the

applicant was not instrumental in getting the pension revised in terms of OROP nor did she play any fraud upon the Govt. Therefore, the only question

for consideration is that, having paid the excess amount, whether the respondents can recover the same. In Rafiq Masih's case, Hon'ble Supreme

Court dealt with a bunch of cases in which monetary benefits were given to employees in excess of their entitlement due to a mistake committed by

the concerned competent authorities in determining the emoluments payable to them.

12. Hon'ble Supreme Court in its judgment dated 18 Dec 2014 inter- alia observed as under:

7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery

of monetary benefits wrongly extended to employees, can only be interfered with. in cases where such recovery would result in a hardship

of a nature, which would for outweigh, the equitable balance of the employer's right to recover. In other words, interference would be

called, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above

considerations, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery,

even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, ""for doing complete

justice in any cause"" would establish that the recovery being effected was iniquitous, and therefore, arbitrary. And accordingly, the

interference at the hands of this Court.

10. In view of the afore-stated constitutional mandate. equity and good conscience, in the matter of livelihood of the people of this country,

has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as

it is not rendered iniquitous to the extent, that the action of recovery would be more unfair, more wrongful. More improper, and more

unwarrantedâ?? than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery

would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even

in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an

action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country,

and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.

13. Hon'ble Supreme Court while observing that 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, has summarized the following few situations.

wherein recoveries by the employers would be impermissible in law

(i) Recovery from employees belonging to Class HI 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.

14. Following this judgment. Govt of India issued OM dated 2nd March, 2016 advising Ministries and Departments to deal with the issue of

wrongful/excess payments made to the Govt. servants in accordance with this judgment

15. It is an undisputed case of the parties that the applicant was not entitled for revision of the pension. Further. the upward revision of pension which

was incorrectly done by the competent authority of the respondents which resulted in excess payment of pension to the applicant, did not occur due to

any fault/act of the applicant. Thus, since she was not responsible for the competent authority revising her pension and in view of the fact that

recovery of such a huge amount would result in undue hardship to a retired person in a nature which would far outweigh the equitable balance of the

respondent's right to recover, the order of the respondents dated 30 August 2017 seeking recovery of the amount from the pension of the applicant is

liable to be modified to the extent that no further recovery will be made from the applicant. However, whatever has already been recovered from the

pension of the applicant will not be refunded.

16. OA stands partly allowed in aforesaid terms. MA. if any. also stands disposed of

Pronounced in open court on 21st day of August, 2019.

