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(2023) 02 CAT CK 0032

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00684 Of 2021

J. Sivasankara Pillai APPELLANT

Vs

Assistant General Manager, Central Bank Of India, (Central Pension Processing Centre), Central Bank Building, M.G. Road, Fort, Mumbai-400001 & Ors RESPONDENT

Date of Decision : 14-02-2023

Acts Referred:

Citation : (2023) 02 CAT CK 0032

Hon'ble Judges : K. Haripal, Member (J)

Bench : Single Bench

Advocate : C.S. Gopalakrishnan Nair, M/s Mathew B. Kurian, Sunil N & Neethu Lishba Alexander, O.M. Shalina, Thomas Mathew Nellimoottil

Final Decision : Allowed

Judgement

K. Haripal, Member J

1. The applicant has retired as Telecom Technical Assistant from the office of the 5th Respondent on 30.06.2005. He had put in more than 32 years of service, in recognition of the same by Annexure A1 pension payment order, he was granted a monthly pension of Rs.4739/-. Later, it was revised to Rs.10,643/- and than to Rs.11,236/-. The pension is being disbursed through the 3rd respondent, Central Bank of India, Maruthady Branch. When he noticed an anomaly in revised pension he made Annexure A4 representation to the Banking Ombudsman. But in reply the Ombudsman informed that, on inquiry it came out that he had drawn an excess payment of Rs.2,25,602/-. The applicant also received Annexure A6 communication stating that he has already drawn an excess amount of Rs.2,25,602/-, which was started recovering in monthly instalment. Annexure A7 is the details of that excess, communicated to him. Even though he made a representation it did not work. Therefore, he has approached this Tribunal for a declaration that no amount is due to be recovered from the applicant towards the alleged excess payment and to direct Respondents 1 and 3 to refund Rs.30,390/-

already recovered as per Annexures A9, A11 and A13 with interest at the rate of 12% and quash Annexures A6 and A7.

2. According to the applicant the action of the Respondents 1 and 3 in recovering the alleged excess payment is illegal and arbitrary, under Annexure A14 of OM, the 6th Respondent has prohibited recovery from pensioners, based on the judgement of the Hon'ble Supreme Court, that recovery of the alleged excess payment is bad as per the decision of the Hon'ble Supreme Court in State of Punjab and Others v. Rafiq Masih (White Washer) reported in AIR 2015 SC 696. Moreover, referring to the decision of the Nagpur Bench of the Bombay High Court in Naini Gopal v. Union of India, Ministry of Defence, he said that recovery was unsustainable and the case was disposed of by the Bombay High Court awarding a compensatory cost of Rs.50,000/- against the bank and in favour of the pensioner. So the applicant wants to state that the said dictum is to be applied to the facts of the case.

3. On behalf of Respondents 1 to 3 the Regional Head of the Central Bank of India filed counter affidavit denying the contentions of the applicant. According to her, the applicant had approached this Tribunal with unclean hands. Even though he was aware that he was paid excess amount as pension he never did point it out, but enjoyed the same and now his intention is dishonest. He wants to prevent the recovery of the amount being done as per Annexure R1(c) circular issued by the Reserve Bank of India. According to the respondents the applicant was entitled to draw Industrial Dearness Allowance (IDA), but was drawing pension with Central Dearness Allowance (CDA), which was wrong. By the time the mistake was noticed, an amount of Rs.2,25,602/- was drawn in excess between May 2012 and October 2020. That was sought to be recovered from the pension at monthly rate of Rs.10,130/- which cannot be called in question by the applicant. Therefore the application is sought to be dismissed.

4. On behalf of Respondents 4 and 6 also a reply was filed, which goes in conformity with the reply of the 3rd Respondent. In the reply statement of Respondents 4 & 6 it is stated that there was calculation mistake in granting pension to the applicant. Instead of granting pension at IDA rate he was granted pension in the category of CDA employees and that resulted in payment of excess pension. On realizing the mistake, the excess payment was sought to be recovered and that alone is done, there is nothing to quash Annexures A6 and A7. According to the Respondents the decision of the Bombay High Court is not applicable to the facts of the case.

5. Similarly the 5th Respondent also filed reply stating that the recovery of excess amount necessitated owing to the mistake in the calculation of pension. He also canvassed for dismissal of the original application.

6. The facts of the case are not in dispute. The applicant had retired from service of the 5th respondent as Telecom Technical Assistant on 30.06.2005. From 01.07.2005 onwards he was granted pension. Pointing out some anomaly in the

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amount, he approached Respondents 1 to 3 seeking to rectify the same. Thereafter, he approached the Banking Ombudsman. At this stage only it was realised that he was drawing excess pension. According to the respondents this mistake was known to the applicant from the very beginning, but he never pointed it out to the respondents and thus between May 2012 and October 2020 an amount of Rs.2,25,602/- was paid in excess. Thus from September 2021 onwards that amount was sought to be recovered in monthly instalments at Rs.10,130/-. The respondents say that they are going in accordance with the circulars and standing instructions issued by the Reserve Bank of India and are entitled to recover the excess amount already paid to the applicant.

7. All the respondents in different reply statements or counter affidavit have stated in uniform terms that the applicant had been drawing excess payment due to the wrong application of the principle for drawing D.A. He was paid pension granting CDA instead of IDA, which was wrong. Thus the quantified excess amount is Rs.2,25,602/- for the period from May 2012 and October 2020. The statement of the 5th Respondent further indicates that steps are being taken for quantifying the excess pension paid prior to May 2012 and that also requires to be recoved from the pension of the applicant. Thus there is consistency in the version of respondents that there was calculation mistake in the estimation of pension. In fact this contention is not disputed by the applicant. He did not file any rejoinder nor has disputed the said contention that he was granted pension awarding CDA, which he was not entitled , that he was entitled to get only IDA.

8. That means the question confines to whether the steps initiated for recovery of Rs.2,25,602/- is liable to be interdicted.

9. It is the clear case of the applicant that he had retired from service as a Class-III employee. This aspect is not disputed by the respondents. Any how, huge amount has been paid to him in excess of what was actually due to him. Similarly the respondents submitted that he had drawn excess amount consciously that he was aware of this calculation mistake, it was not pointed out and now he wants to take advantage of the mistake committed by the respondents. In fact, there is no material to say that there was any role on the part of the applicant in the mistake in estimation of the pension. There is nothing on record to say that he had committed any mis-representation or act of fraud, which permitted the respondents to pay excess payment. Therefore, the contention that he had acted dishonestly drawn excess fully conscious of the fact, does not stand to reason.

10. In the decision quoted above, the Hon'ble Supreme Court after making detailed evaluation of the circumstances of similar cases has laid down as follows:-

"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

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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."

The applicant's case comes within first three categories. He was a Class-III employee, retired from service and that from the very inception of grant of pension he has been paid excess pension on wrong assumption. He was paid pension with CDA instead of IDA. That means, recovery is sought for the excess payment made for a period exceeding five years. So the case of the applicant falls within the first three categories; as laid down by the Apex Court, such a recovery is impermissible.

11. After going through the decision in Naini Gopal case, I have no doubt that the facts are dissimilar, as pointed out by the learned counsel for the respondents. There the pension of the petitioner was unilaterally slashed by the pension payment agency without any signal from the pension sanctioning authority. It is evident that pension sanctioning authority had disowned any role and submitted before the High Court that they were not aware of the slashing of the pension. Here all the respondents uniformally have stated that the applicant was given pension in excess of what was due to him and that recovery is warranted as per the standing instructions. Therefore, the decision of Naini Gopal case cannot be applied to the facts of the case.

12. After considering the records and hearing counsel on both sides, I hold that any attempt to recover excess pension granted to the applicant is illegal and against the dictum of the decision of the Hon'ble Supreme Court and therefore, Annexure A6 & A7 are liable to be interfered with. Therefore the respondents are restrained from proceeding with the recovery of excess pension paid to the applicant. Moreover, amount already recovered will be refunded, within three months, without any interest. It goes without saying that any attempt to quantify and recover portion of the pension drawn by the applicant prior to May 2012 also

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would be idle.

13. The OA is allowed as above. No costs.

(Dated this the 14th day of February, 2023)

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