
(2021) 12 CAT CK 0015

In the Central Administrative Tribunal

Case No : Original Application No. 060, 00250 Of 2019

Janinul Nishah

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 23-12-2021

Acts Referred:

Contract Act, 1872 — Section 72, 171
Central Civil Services (Pension) Rules, 1972 — Rule 70

Citation : (2021) 12 CAT CK 0015

Hon'ble Judges : Ajanta Dayalan, Member (A)

Bench : Single Bench

Advocate : Keshav Gupta, Sanjay Goyal, Mahesh Dheer

Final Decision : Dismissed

Judgement

Ajanta Dayalan, Member (A)

1. The present OA has been filed by the applicant Janinul Nishah seeking quashing of revised Pension Payment Order dated 31.10.2018 (Annexure A-2) reducing the family pension and other benefits of the applicant substantially. The applicant has also sought direction to the respondents not to make any further recovery and to refund the amount recovered from her as well as to restore family pension as per original Pension Payment order dated 28.1.2014 (Annexure A-1).

2. The facts of the case are largely undisputed. Applicant is the wife of Murtuja Ali, who was appointed as Tailor with the respondent department in 1982. He continued working as such and died while in service on 18.6.2013. Consequent to death of Murtuja Ali, the applicant was granted pensionary benefits vide Pension Payment Order dated 28.1.2014 (Annexure A-1). In this order, enhanced rate of family pension was Rs.9,635/- per month w.e.f. 19.6.2013 - that is the date following the date of death of Murtuja Ali. She was also shown entitled to normal rate of family pension at Rs.5,781/- per month w.e.f. 19.6.2023. Besides,

she was also shown entitled to Death-cum- Retirement Gratuity of Rs.10,00,000/- and fixed medical allowance of Rs.300/- per month.

3. The applicant continued to draw this family pension through her account in State Bank of India, branch at Bathinda. The applicant vide letter dated 22.12.2018 received a new Pension Payment Order dated 31.10.2018, both enclosed as Annexure A-2, whereby her family pension has been reduced substantially. As per the new Pension Payment Order, enhanced rate of family pension is Rs.6,550/- w.e.f. 19.6.2013 upto 31.12.2015. Thereafter and consequent to 7th Pay Commission, this pension is fixed at Rs.16,834/- per month payable upto 18.6.2023 or till death or re-marriage, whichever is earlier. Thereafter, normal rate of family pension is increased to Rs.10,100/- per month payable till death or re-marriage of the applicant, whichever is earlier. The Death-cum-Retirement Gratuity has been reduced from Rs.10,00,000/- earlier authorised to Rs.7,30,980/-. It is also ordered therein that the difference of gratuity of Rs.2,69,020/- be recovered from the applicant. There are other changes also in the pay scale and grade pay of the deceased Murtuja Ali.

4. On receipt of this new Pension Payment Order, the Bank has acted on the same and refused to honour her cheque vide memo dated 14.1.2019 (Annexure A-3). The account has also been made inoperative.

5. The case of the applicant is that the reduction in family pension and Death-cum-Retirement Gratuity payable to her has been made without any prior information or notice to her. She has also pleaded that the original Pension Payment Order dated 28.1.2014 was passed by the respondents after due consideration of her case. Also, there was no fraud or mis-representation on her part and as such, she cannot be held accountable for any mistake or erroneous interpretation or belief regarding any Rule, Regulation or Government instructions by the respondents. The Government is, therefore, not entitled to recover the amount of overpayment, if any.

6. The applicant has also pleaded that recovery cannot be made from her now especially as she is a poor lady without any source of income. Family pension is her only source of livelihood. She is also suffering from many health problems and is on continuous medication.

7. The applicant has also relied upon number of judgements including judgement of the Full Bench of Hon'ble Punjab and Haryana High Court in the case of Budh Ram & Ors. decided on 22.5.2009, reported as 2009 (3) SCT 333 P&H FB; Sahib Ram Vs. State of Haryana, 1995 (1) SCT 668, P.H. Reddy Vs. N.T.R.D. 2002 (2) SCT 987; and Sudarshan Kumar Sood & Others Vs. Bhakra Beas Management Board, Chandigarh & Others, 2006(1) RSJ 308. She has also relied upon judgement of Hon'ble Supreme Court in the case of State of Punjab & Others Vs. Rafiq Masih & Others, 2015 (1) SCT, 195.

8. Further, the applicant has also stated that the Government of India itself issued an O.M. dated 2.3.2016 (Annexure A-4) in pursuance of the judgement of

Hon'ble Apex Court in Rafiq Masih's case and the recovery order of the respondents is in clear violation of both this judgement and OM dated 2.3.2016.

9. The applicant has further pleaded that the recovery is also in violation of Rule 70 of CCS (Pension) Rules, 1972.

10. In view of all above, the applicant has contended that she is entitled for relief sought in the O.A. and the revised Pension Payment Order reducing her family pension and Death-cum-Retirement Gratuity needs to be quashed.

11. The respondent department - that is Respondents No.1 to 4 have strongly contested the claim of the applicant. They have stated that the applicant was appointed as a Tailor in 1982. Tailor is an industrial personnel, locally controlled. But this is feeder cadre for Chargeman Grade B' which is a selection post and is centrally controlled on all India basis of Army Ordnance Corps.

12. They have further stated that the Central Government announced Assured Career Progression Scheme in August 1999. At that time, Murtuja Ali demanded to place him in the pay scale of Chargeman which was Rs.4500-7000. This was later revised to Rs.5000-8000. The request of Murtuja Ali was on the plea that next promotion from Tailor was to Chargeman Grade B'. However, the fact is that Chargeman Grade B' is not a promotional post in normal hierarchy of the cadre of Tailor, but is a selection post. As such, the screening committee recommended pay scale of Rs.2750-4400 as directed by IHQ of MoD (Army) vide their letter dated 10.7.2000. However, this was not accepted by Murtuja Ali, husband of the applicant. He, therefore, approached this Tribunal in O.A.No.744-HR-2004 for grant of benefit of judgement dated 10.10.2002 of this Tribunal in the case of Roopa Singh & Others. This Tribunal vide judgement dated 1.2.2006 awarded financial upgradation to him in the scale of Chargeman Grade B'. This was, however, made subject to the decision of CWP No. 15739 of 2003 which was then pending before the Punjab and Haryana High Court against order of this Tribunal dated 10.10.2002. In this CWP, the High Court set aside this Tribunal's order dated 10.10.2002. SLP No.4903/2012 was filed by Murtuja Ali and others in the Hon'ble Supreme Court. This was also dismissed by the Hon'ble Apex Court on 10.7.2017.

13. The respondents have, therefore, averred that family pension of the applicant was reduced vide new Pension Payment Order dated 31.10.2018 consequent to this decision of the Hon'ble Supreme Court and excess payment was ordered to be recovered vide instructions dated 5.2.2018 received from HQ of MoD.

14. Respondent No.5 (State Bank of India) have also contested the claim of the applicant. Firstly, the Bank has stated that the applicant has concealed material fact from this Tribunal that Murtuja Ali had signed a letter of undertaking for refund of excess pension paid. They have stated that in view of this undertaking, the applicant has no right to question the recovery of excess payment made to the pensioner. The Bank has contended that the O.A. deserves to be dismissed

on the ground of non-disclosure of this material document in the O.A. filed before this Tribunal.

15. Further, the respondent No.5 has contended that the Central Pension Processing Centre, Chandigarh, which looks after the issue of the pension of the customers has not been impleaded as a party in the O.A. and as such, the O.A. deserves to be dismissed for non-joinder of necessary party.

16. Also, respondent No.5 has stated that the applicant received the amount over and above his entitlement. Recovery was effected by the Bank since excess amount was credited in the account of the applicant. As per Reserve Bank of India instructions, recovery of excess pension paid to the pensioners is permissible under the guidelines issued by it. These guidelines provide as under:

-(a) As soon as the excess / wrong payment made to a pensioner comes to the notice of the paying branch, the branch should adjust the same against the amount standing to the credit of the pensioner's account to the extent possible including lumpsum arrears payment. It is pleaded that the respondent Bank is bound to follow the instructions issued by the Reserve Bank of India as these have been issued under the Banking Regulation Act.

Thus, it is argued that the O.A. deserves to be dismissed on this ground as well.

17. Besides above, the Bank has contended that it has statutory right under Section 72 of the Indian Contract Act. Under this Section, a person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return the same. Section 72 relied upon by the respondent-Bank reads as follows :-

Section 72: Liability of person to whom money is paid, or thing delivered, by mistake or under coercion - A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. In terms of this Section, the applicant is liable to pay back the amount in question to the Bank as the money admittedly does not belong to her. If the payment is received by a pensioner/his family without authority of law, there is an obligation on the payee to repay the money. Otherwise it amounts to unjust enrichment.

18. The respondent-Bank has also relied upon Section 171 of the Indian Contract Act, which reads as follows :- 171. General lien of bankers, factors, wharfingers, attorneys and policy-brokers.--

Bankers, factors, wharfingers, attorneys of a High Court and policy brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect. The Bank has contended that the provisions of the Act are clear and categorical and unless the contract to the contrary is established by the applicant, the Bank's right of lien will have to be accepted. Hence, no relief can be granted to the applicant.

19. Further, it is averred by the Bank that the public money is often described as taxpayers' money' and it belongs neither to the officers who have effected over-payment nor to the recipients and as such, it needs to be recovered.

20. Further, it is stated that the pensioners are not the employees of Bank and there is no employer-employee relationship between the Bank and the pensioners. The relationship is contractual and commercial. The Bank only calculates the pension as per the table given by the employer and, therefore, the same is governed by the contract which clearly gives authority to the Bank to recover the amount of over payment.

21. In view of all above, the Bank has concluded that there is no case for grant of any relief to the applicant as sought by her in the O.A.

22. I have heard the counsel of opposing sides and have also gone through the pleadings. I have also given my thoughtful consideration to the entire matter.

23. First of all, I observe that facts of the case are not disputed. The averments made by both the applicant and the respondents are not disputed by opposing parties. Hence, the fact of issue of fresh Pension Payment Order reducing family pension and Death-cum-Retirement Gratuity is not denied. The other facts relating to the quantum of reduction and fresh entitlement are also not disputed.

24. Next, I observe that the reduction in family pension and Death-cum-Retirement Gratuity of the applicant is on account of finalisation of the case filed by Murtuja Ali, husband of the applicant where the deceased sought financial upgradation in the pay scale of Chargeman. This was initially granted to him by this Tribunal at par with some other similar persons. However, this upgradation was made subject to outcome of CWP pending in the High Court at that point of time. In the High Court, this Tribunal's order of grant of financial upgradation was set aside by the High Court. Thereafter, the husband of applicant alongwith others approached the Hon'ble Apex Court. The Apex Court upheld the decision of the High Court. Thus, the decision of High Court in setting aside benefit of financial upgradation granted by this Tribunal to Murtuja Ali attained finality. This was in 2017. Thereafter, the family pension and Death-cum-Retirement Gratuity of the applicant were revised in view of the decision of the Hon'ble Apex Court.

25. It is clear from the above, that the case of the applicant is quite different from the normal cases where recoveries from employees are involved. In the instant case, there was no mistake on the part of the respondent department at all. Rather, the husband of the applicant sought financial upgradation and approached this Tribunal for the benefit which was obviously not granted to him by the respondent department. Having succeeded in getting financial upgradation in this Tribunal, the pay and pension of Murtuja Ali was fixed accordingly. However, when High Court and the Supreme Court both set aside the order of this Tribunal, the pay, pension and family pension in case of Murtuja Ali and the applicant had to be revised necessitating issue of fresh Pension Payment Order. Thus, it was not as a result of an act of the respondent department. Rather, it

was as a result of an act of the husband of the applicant himself who, on the plea that he is entitled for higher pay than fixed by the respondents, approached this Tribunal, and got the relief which was later set aside by the Hon'ble High Court and upheld by Hon'ble Supreme Court. Hence, the respondents cannot be held accountable for the over-payment made to the applicant or her husband.

26. In view of the above, the case of the applicant or her husband is also clearly not covered under the case of Rafiq Masih (supra) or the O.M. of Government of India issued in pursuance thereof. In fact, Murtuja Ali, husband of the applicant had approached the highest court of justice in this country - that is the Hon'ble Supreme Court of India, and the matter regarding his entitlement stands settled at that level.

27. Regarding authority of the Bank to recover the over payment, I find that the respondent no.5 - that is State Bank of India has already placed its position very succinctly in their reply to the O.A., highlights whereof are already discussed in this order in earlier paragraphs. I do not wish to reproduce the same as these are based on clear provisions of the Acts governing the functioning of the Reserve Bank of India and the State Bank of India. These provisions have also been reproduced in the preceding paragraphs. In view of these clear provisions, there is no doubt or dispute about the inherent authority of the Bank in recovering the amounts over-paid by them to their clients.

28. The applicant has also claimed that the recovery has been made without any notice and without giving any opportunity of hearing to her. Even this argument is not true as the husband of the applicant himself had moved the Courts right from this Tribunal to the Hon'ble High Court and then even to the Hon'ble Apex Court. As such, he is expected to be aware at every stage about the orders passed by the Courts in his case. Once the case had attained finality at the level of Hon'ble Supreme Court, no further notice was required to be issued to the applicant. Consequential action after the order of the Hon'ble Supreme Court needed to be taken by the respondents without needing to go any further into the process of ensuring natural justice. This process has already been exhausted by the husband of the applicant.

29. Rule 70 of the CCS (Pension) Rules, 1972, is not applicable in the instant case as the pension has not been revised by the respondent department at its own initiative. Rather, the revision has taken place consequent to the judgment of the Hon'ble Apex Court and in implementation of that judgement.

30. In view of all above, I do not find any merit in the claim of the applicant. The O.A. is, therefore, dismissed.

31. There shall be no order as to costs.