
(2018) 01 CAT CK 0058
In the Central Administrative Tribunal
Case No : Original Application 3898 Of 2016

Jyoti Nathani

APPELLANT

Vs

Ministry Of Defence And Others

RESPONDENT

Date of Decision : 12-01-2018

Acts Referred:

Constitution Of India, 1950 — Article 14, 300A, 366(17)

Citation : (2018) 01 CAT CK 0058

Hon'ble Judges : Jasmine Ahmed, Member (J)

Bench : Single Bench

Advocate : M.S. Reen, Arshad Chaudhary, Brijesh Kumar Tamber

Final Decision : Allowed

Judgement

Jasmine Ahmed, Member (J)

1. The issue involved in this OA is that whether the impugned order dated 09.08.2016, which speaks about recovery of payment of pension amounting to Rs.8,54,791/- alleged to have been paid to the applicant in excess, is sustainable in the eyes of law or not?

2. The brief factual matrix of the case is that the applicant retired from the post of Section Officer on 31.01.2006 after attaining the age of superannuation from Ministry of Defence, Air Head Quarter, New Delhi and since then she has been getting her pension from Indian Bank, West Patel Nagar, New Delhi (respondent no.2) without any difficulty and variation till December, 2015. It is contented that on 23.01.2010, the respondent-bank itself sent an intimation letter to the applicant informing that arrears from February, 2006 to November, 2009 have been paid to her on the revised basic pay of Rs.13,696/-. It is further contended that the respondent-bank also sent an intimation vide letter dated 25.02.2010 in reference of TDS deductions against the pension paid to the applicant in her saving bank account, meaning thereby that the account of the applicant was being audited regularly by the bank and there was no dispute between the

applicant and the respondents. It was to the dismay of the applicant that suddenly the respondent-bank, without even issuing any show cause notice or giving her personal hearing, issued the impugned recovery order dated 09.08.2016, contents of which read as under:-

"According to the PPO order, you are eligible for Rs.9,935/- as basic to be paid. However, it is noticed that, you have been paid pension with Rs.13,696/-.

Hence, from commencement of your pension to 31/07/2016 there is an excess payment of pension. The difference in basic paid with the respective DA was arrived and found that Rs.8,54,791/- has been paid excessively to you. The worksheet is attached.

This will be recovered from your monthly pension @ Rs.6,427/- in 133 months i.e. from August, 2016 to August, 2027.

This is for your information. If you have any revision order for basic as Rs.13,696/-, kindly forward us for necessary actions."

3. From the impugned order it is revealed that according to the PPO order No.C/MISC/18357/2005, the applicant was eligible for Rs.9,935/- as basic to be paid from the beginning of her pension i.e. w.e.f. February, 2006 whereas she has been paid the pension at Rs.13,696/- as basic and resultantly the applicant has been paid the pension in excess from February, 2006 till 31st August, 2016 which comes to Rs.8,54,791/- and the same shall be recovered from her monthly pension @ Rs.6,427/- in 133 monthly installments from August, 2016 to August, 2027.

4. Learned counsel for the applicant submits that admittedly as the applicant was retired in the year 2006, the sudden deductions from the pension after a long period of ten years by way of impugned order dated 09.08.2016 will certainly put her to financial hardship. Aggrieved, the applicant made a complaint to the respondent-bank on 12.08.2016 stating that if on account of the mistake on the part of the bank in calculation/computation of pension by virtue of which any excess payment has been made to her, she cannot be put to hardship by deducting such an alleged excess amount from her future pension. It is submitted that the respondent-bank verbally assured the applicant that they will check and rectify the defect shortly. However, instead of rectifying their own error in computation, the respondent-bank arbitrarily and illegally deducted the entire arrears amounting to Rs.22,253/- of 7th Central Pay Commission on 26.08.2016 towards pension recovery without issuing any intimation and/or show cause notice to the applicant. Counsel for the applicant states that this action of the respondent is contrary to the bank's own averments made in the impugned order dated 09.08.2016 that the excess amount of pension will be recovered from the applicant in 133 monthly installments @ Rs.6,427/- per month. It is further submitted that the applicant, who is now 71 year old lady, is suffering from major and chronic depression leading to suicidal tendency, apart from heart ailment. Owing to these ailments, the applicant remains under constant heavy

medication and the sudden deductions from her pension has further agonized and deteriorated her health and mental condition. It is further submitted that pension is the only source of income of the applicant at this stage of her life, hence, deductions/recoveries from her pension is completely an illegal action on part of the respondent-bank as well as the employer where she had served for a long period. Counsel for the applicant also states that the action of the respondent-bank is completely in the teeth of the decision of the Hon'ble Apex Court in the case of State of Punjab & Ors. Etc. vs. Rafiq Masih (White Washer) Etc.[2015 (4) SCC 334] and the respondents, after such a long period of retirement of the applicant, are not entitled to any deductions/recoveries from the pension of the applicant.

5. Counsel for the applicant vehemently argued that pension, which is paid to an employee after his/her retirement, is not a bounty but is a recognition of his/her hard work rendered throughout the entire service career. In support of his argument, counsel for the applicant relied upon various judicial pronouncements of this Tribunal and

6. The respondent-bank (respondent no.2) has filed their counter affidavit and contested the OA. The respondent-bank has questioned the legality of filing the instant OA before the Tribunal. Learned counsel for the respondent-bank argued that the applicant should have filed it before another forum and not before this Tribunal. He further argued that the bank is bound by the RBI instructions/guidelines and is fully authorized for making recoveries of excess amount if wrongly paid to the pensioner, like the applicant. The argument of the counsel for the respondent-bank was that the applicant had given an undertaking to the effect that in case any overpayment is made, the bank has a right to recover the same. He also argued that in banking system, it is not the natural justice which is paramount to be taken into account. At this stage, to controvert the argument of the respondent-bank, learned counsel for the applicant relied upon the decision of the Ernakulam Bench of this Tribunal in the matter of A.C. Joseph vs. Principal Controller of Defence Accounts (Pension) & Ors.[OA No.180/00859/2016 decided on 14.03.2017] wherein the Tribunal in equivocal term decided that the Tribunal has jurisdiction to entertain the cases pertaining to recoveries/deductions from pension. It is undisputed that the subject matter involved in this OA pertains to excess payment which has been made on account of some errors committed by the respondent-bank, which is nothing but an Agent of the Pension Sanctioning Authority for disbursement of pension amount to the pensioners being the statutory duty entrusted to the respondent-bank under the Government of India Scheme regulated by the Reserve Bank of India. Therefore, the argument of the counsel for the respondent-bank that the applicant should have filed this case before another forum cannot be accepted being misplaced as the bank is only a mechanism for disbursing the pension to the applicant on behalf of the employer to whom she has given her services throughout the service career.

7. The second limb of the argument of learned counsel for the respondent-bank was about the undertaking given by the applicant on 04.10.2005 for refund of any amount to which she was not entitled, if credited to her account in excess of the amount to which she is entitled, which undertaking binds the applicant for recovery/deduction from her pension account and for which no permission or show cause notice is required. Counsel for the respondent-bank also argues that the instructions of the RBI issued vide notification dated 17.03.2016 are binding on the pension disbursing banks but these instructions do not mention anything about issuing show cause notice to the pensioners before unilateral action of recovery of over payment is taken. These instructions simply authorize to adjust the excess payment from future pension amount of the pensioners.

8. The argument of the learned counsel for the respondent-bank that the instructions of the RBI dated 17.03.2016 need to be taken into account is certainly in the direct teeth of principles of natural justice which give right to the other party before any adverse decision is taken against pensioners as the regulatory instructions are devoid of providing any personal hearing to them before adjustment from their future pension payments. Such an action is certainly arbitrary and illegal which leads to violation of principles of natural justice enshrined under Article 14 of the Constitution of India. It is also settled proposition of law that whenever any adverse action of the employer/government attracts civil consequences, issuance of show cause notice is necessarily required to be issued to the pensioner, as the applicant in this case.

9. Respondent no.1 has also filed the counter affidavit stating that the department has no role to play in this case as whatever wrong calculation pertaining to excess payment of pension has been done that has been done due to the error in calculation by the respondent-bank and, moreover, the impugned order qua recovery of excess payment of pension has been issued by the respondent-bank itself.

10. I have carefully perused the pleadings and documents available on record; gone through the judgments relied upon by the learned counsel for the applicant and have heard the arguments on either side.

11. It is seen that the order dated 09.08.2016 issued by the respondent-bank mentions about the excess payment of pension from the commencement of the pension accrued to the applicant. They have stated that the difference in basic pay with the respective DA arrived at Rs.8,54,791/-was erroneously paid to the applicant, which will be recovered from her monthly pension @ Rs.6,427/- in 133 months from August, 2016 to August, 2027, which order has been impugned by the applicant in this OA. It is also seen that whatever fixation has been done, the same has been done by the respondents themselves, as it is their own calculation. The applicant, who has no role in the aforesaid calculation, has neither given any wrong or false information nor had she misrepresented anything to the respondents. Hence, there is no fault on the part of the applicant for which recovery proceedings of the alleged excess payment of pension can be

legally initiated that too without issuing any show cause notice or affording any personal hearing. It is also well settled position that pension is not a bounty but a right of a government servant and it is in a character of property as envisaged in Article 300A of the Constitution of India. Time and again through various judicial pronouncements of Hon'ble Apex Court, the pension has been given constitutional recognition by including the term 'pension' in the definition clause under Article 366 (17) of the Constitution of India and it has been held by the Apex Court that the pension is a constitutional right of the pensioner and it cannot be lightly interfered with and cannot be dealt with in a casual manner or in a manner not in accordance with the provisions of the Constitution of India. No doubt that the respondent-bank is working as an Agent or a middleman of the pension sanctioning authority for disbursement of pension to its employees and the said service of the respondent-bank is a statutory duty of the pension granting authority entrusted to the respondent-bank under the Government of India Scheme regulated by the Reserve Bank of India. Though it was argued that the regulatory instructions do not require any permission or mandate any notice to be issued before effecting the recovery but these instructions of the RBI for recovery of excess payment qua the matters of pension cannot be decided by adjustment as it will directly in the teeth of the decision of the Hon'ble Apex Court in *State of Punjab & Ors. vs. Rafiq Masih (White Washer) etc.*(supra) whereby recovery of excess payment from the pension of applicant by the respondent-bank is impermissible in law. Relevant portion of the decision is reproduced hereunder:-

"18. 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, summaries 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."

12. Clause (ii) of para 18 of the above decision categorically held that recovery from retired employees, or employees who are due to retire within one year, of the order of recovery is completely impermissible in law. Hence, that being the decision and observation of the Hon'ble Apex Court, it is the force of law in Article 14 of the Constitution of India and no authority has any power to ignore the law laid down by the Apex Court. Even the undertaking will not be of any help to the respondent-bank as it clearly mentions that the letter of undertaking is pertaining to the payment of pension under PPO.

13. In the light of the above discussion, the error which has been committed by the respondent-bank i.e. respondent no.2 cannot be shifted to the shoulders of the applicant, and being a mechanism of disbursing of pension, the respondent-bank is to disburse the pension strictly in accordance with the direction of the pension sanctioning authority by way of PPO. Here, no fault is made out on part of the respondent no.1 as the entire fault of paying the alleged excess payment is obviously on part of the respondent-bank. In view of the law laid down by the Apex Court in the case of *State of Punjab & Ors. vs. Rafiq Masih (White Washer)* etc. (supra), the respondent-bank, only acting as an Agent or middleman or a mechanism between the pension sanctioning authority and the pensioner, does not have any right to recover any excess payment from the pensioner.

14. Accordingly, in view of the above discussion, the OA is allowed and the impugned order dated 09.08.2016 is set aside. The excess amount of pension, which has already been recovered from the pension of the applicant by the respondent-bank, will be refunded to the applicant within a period of three months from the date of receipt of certified copy of this order, and no further recovery will be made from her pension. However, the applicant will be entitled for future payment of pension as per the correct calculation of her basic pay in accordance with the PPO.