
(2018) 09 CAT CK 0172

In the Central Administrative Tribunal

Case No : Original Application No. 4569 Of 2015

S.A. Khan

APPELLANT

Vs

Ministry Of Finance And Ors

RESPONDENT

Date of Decision : 06-09-2018

Acts Referred:

Citation : (2018) 09 CAT CK 0172

Hon'ble Judges : Nita Chowdhury, Member (A)

Bench : Single Bench

Advocate : Nilansh Gaur, M. Pandey, Gyanendra Singh

Final Decision : Dismissed

Judgement

1. By filing the instant OA, the applicant is seeking the following reliefs:-

"8.1 Set aside the recovery of Rs.2,65,773/- ordered against the applicant on account of wrong revision of pension and direct respondent No.1 to instruct respondent no.2 not to recover the amount and the already recovered amount be refunded in the pension account of the applicant with costs; and

8.2 Any other relief which this Hon"ble Tribunal may deem fit and appropriate, in the circumstances of the case."

2. Brief facts of the case are that the applicant retired on superannuation on 30.11.2005 as Librarian-cum-Assistant. The PPO of the applicant showed Basis Pension as Rs.5890/- as on 1.12.2015.

2.1 After revision of pension on the recommendation of 6th CPC, since the pension after commutation was not correctly revised and should have been Rs.13312/- instead of Rs.8874/-, the applicant made a representation to respondent no.1. The representation of the applicant was forwarded by Ministry of Finance to Chief Pension Accounting Officer on 4.10.2010 whereby requesting the PAO to advise the Bank to correct revision of pension to Rs.13312/- w.e.f. 1.1.2006 as respondent no.1 clarified on 1.12.2010 that pension of the applicant

should be Rs.13312/-w.e.f. 1.1.2006 and directed the Bank to take appropriate action by paying the enhanced revised pension and arrears which were accordingly disbursed to the applicant. The applicant received the arrears and revised pension of Rs.13312/- w.e.f. 1.1.2006 through the bank.

2.2 However, the PAO Finance (Revenue) reduced the pension of the applicant by taking a decision that revised pension of Rs.8874/- is correct instead of Rs.13312/- vide order dated 1.2.2012. The applicant represented against the said order vide his letter dated 3.5.2012 which was responded to by the respondents vide letter dated 4.5.2012 stating that the revised pension of Rs.8874/- is correct instead of Rs.13,312.

2.3 On 24.9.2015, the PA Revenue addressed a letter to PAO, i.e., respondent no.1 to reduce the pension of the applicant which was fixed at Rs.9737/- vide letter dated 17.9.2015 (Annexure A-8). Accordingly, CPAO Office as per revised PAO dated 10.10.2015 revised basic pension of the applicant and ordered a recovery of Rs.2,65,773/- by directing respondent no.2 - Bank to recover it in monthly instalments from the monthly pension of the applicant. Accordingly, from October 2015, the respondent no.2 started recovering the amount of Rs.2,65,773/- by deducting Rs.6483/-from the pension of the applicant.

2.4 Feeling aggrieved by the aforesaid action of the respondents, the applicant has filed this OA seeking the reliefs as quoted above.

2.5 Applicant stated that the case of the applicant is squarely covered by the decision of the Hon"ble Supreme Court in the case of State of Punjab and others etc. vs. Rafiq Masih (White washer) etc. in Civil Appeal No.11527/2014 decided on 18.12.2014. 3. Pursuant to notices issued to the respondents, only respondent nos.1 and 3 have filed their counter affidavits separately.

3.1 In the reply filed by respondent no.1, it is stated that role of respondent no.1 is very limited as it acts as intermediary link between the concerned Pay & Accounts Office of the Ministry/Deptt. where the Govt. servant had last served and the pension disbursing bank.

4. In the counter affidavit filed by respondent no.3, it is stated that the applicant was working as Library & Information Assistant in the Group "B"post with pay scale of Rs.5500-9000. On 9th August, 1999, the Department of Personnel and Training introduced a scheme viz. Assured Career Progression (ACP) Scheme for the Central Government Civilian Employees on the basis of recommendation of the 5th CPC. This Scheme provided for grant of financial upgradations to Group "B", "C"and "D"employees on completion of 12 years and 24 years of regular services respectively. Since the applicant joined as Assistant Librarian (subsequently re-designated as Library and Information Assistant) on 31.7.1980 and thus completed 24 years of service, he was granted the second financial upgradation in the scale of pay of Rs.10000-325-15200 w.e.f. 31.7.2004 in accordance with the ACP Scheme.

4.1 The applicant retired on superannuation on 30.11.2005 and he was sanctioned the basis pension of Rs.5890/- as per the PPO dated 2.12.2005. Since he opted for a commutation of a portion of pension, the amount of pension after commutation was Rs.3534/-.

4.2 Consequent upon implementation of the recommendations of 6th CPC, the pension of pre-2006 retirees were also to be revised.

Based on this, the pension of the applicant was worked out to be Rs.8876/- w.e.f. 1.1.2006. Thereafter, he continued to request for re-fixation of his pension. On examination of the representation received from the applicant, the Department of Revenue vide letter dated 4.10.2010 conveyed to Pay and Accounts Officer that the revised pension of the applicant should be Rs.13312/- as compared to the basis pre-revised pension of Rs.5890/- and it was requested to advise the Bank for revision of pension w.e.f. 1.1.2006. Accordingly, the Bank started paying him revised pension @ Rs.13312/-. However, subsequently, it was noticed that the fixation of pension at Rs.13312/- was wrong keeping in view the instructions contained in the Department of Pension and Pensioners' Welfare OM No.38/37/08 & P&PW(A) dated 1.9.2008 wherein it was stipulated that in consolidating the pre 2006 pensions where the existing pension/family pension included the effect of merger of 50% of the Dearness Pay relief w.e.f. 1.4.2004, the exact pension for applicant was to be re-calculated after excluding the merger of dearness relief of 50% from the pension. Accordingly, the revised calculation of pension in respect of various pre 2006 pensioners including that of the applicant was conveyed to the Pay & Accounts Office on 11.1.2012. Accordingly, the pension of the applicant was re-fixed by the Pay & Accounts Office at Rs.8875/- vide order dated 1.2.2012. The representation of the applicant was duly considered and a detailed reply explaining the reason was sent to the applicant vide letter dated 13.6.2012. Thus, there is no merit in the application as the re-fixation of pension @ Rs.13312/- was incorrect which was rightly rectified.

4.3 Respondents have also stated that the applicant's case is not covered by the order of the Hon"ble Apex Court in Rafiq Masih's case (supra).

5. The applicant has also filed his rejoinder to the reply filed by respondent no.3 reiterating the averments made in the OA and denying the averments made by the respondent no.3 in their counter affidavit.

6. During the course of the hearing, counsel for the applicant submitted that impugned Annexure A/1 Revised PPO dated 10.10.2015 is violative of principle of natural justice as no show cause notice has been issued by the respondents before issuing the aforesaid order of recovery and revision of his pension. Counsel for the applicant further submitted that the case of the applicant is squarely covered by the decision of the Hon"ble Supreme Court in the case of Rafiq Masih's (supra).

7. Counsel for the respondents submitted that pursuant to representation made

by the applicant, the case of the applicant was examined by the Department of Revenue vide letter dated 4.10.2010 conveyed to Pay and Accounts Officer that the revised pension of the applicant should be Rs.13312/- as compared to the basis pre-revised pension of Rs.5890/- and it was requested to advise the Bank for revision of pension w.e.f. 1.1.2006. Accordingly, the Bank started paying him revised pension @ Rs.13312/-. However, subsequently, it was noticed that the fixation of pension at Rs.13312/- was wrong keeping in view the instructions contained in the Department of Pension and Pensioner's Welfare OM No.38/37/08 & P&PW(A) dated 1.9.2008 wherein it was stipulated that in consolidating the pre 2006 pensions where the existing pension/family pension included the effect of merger of 50% of the Dearness Pay relief w.e.f. 1.4.2004, the exact pension for applicant was to be re-calculated after excluding the merger of dearness relief of 50% from the pension. Accordingly, the revised calculation of pension in respect of various pre 2006 pensioners including that of the applicant was conveyed to the Pay & Accounts Office on 11.1.2012. Accordingly, the pension of the applicant was re-fixed by the Pay & Accounts Office at Rs.8875/- vide order dated 1.2.2012. The representation of the applicant was duly considered and a detailed reply explaining the reason was sent to the applicant vide letter dated 13.6.2012. Thus, there is no violation of principle of natural justice and the action of the respondents is justified and the instant OA is liable to be dismissed by this Tribunal.

8. Heard learned counsel for the parties and perused the material available on record.

9. After giving thoughtful consideration to the rival contentions of the parties, this Court is unable to accept the contentions of the learned counsel for the applicant as the respondents have themselves stated that on representation made by the applicant, the pension of the applicant was revised to Rs.13312/- but subsequently they found that the said revision was incorrect since at the time of superannuation, the applicant was drawing the basis pay of Rs.10,325/- and dearness Pay of Rs.5563/- and accordingly, the basis pension was Rs.5890/-. Therefore, the revised pension w.e.f. 1.1.2006 was Rs.8874/- taking into account the basis pay + Dearness Pay. The respondents further submitted that as per the Department of Pension and Pensioner's Welfare OM No.38/37/08 & P&PW(A) dated 1.9.2008 wherein it was stipulated that in consolidating the pre 2006 pensions where the existing pension/family pension included the effect of merger of 50% of the Dearness Pay relief w.e.f. 1.4.2004, the exact pension for applicant was to be re-calculated after excluding the merger of dearness relief of 50% from the pension. Accordingly, the revised calculation of pension in respect of various pre 2006 pensioners including that of the applicant was conveyed to the Pay & Accounts Office on 11.1.2012. Accordingly, the pension of the applicant was re-fixed by the Pay & Accounts Office at Rs.8875/- vide order dated 1.2.2012. The representation of the applicant was duly considered and a detailed reply explaining the reason was sent to the applicant vide letter dated 13.6.2012. Whereas the applicant is challenging the revised PPO issued by the

respondents vide Order dated 10.10.2015 and the recovery was effected from October onwards pursuant to the said order. As such there is no illegality in the impugned order.

10. So far as reliance placed by the applicant on the case of Rafiq Masih (supra) is concerned, the same is not helpful to the applicant as the same is distinguishable on facts and circumstances of the present case. It was the respondents who themselves admitted that on representation made by the applicant of this OA, the pension of the applicant was revised to Rs.13312/-but subsequently they found that the said revision was incorrect and it was not in accordance with the approved method for recalculation of pension. Hence, the pension had to be revised in view of the instructions issued by the Department of Pension and Pensioner's Welfare OM No.38/37/08 & P&PW(A) dated 1.9.2008 wherein it was stipulated that in consolidating the pre-2006 pensions the exact pension was to be calculated after excluding the merger of dearness relief of 50% from the pension. The said revised calculation of pension has been made with regard to all pre-2006 pensioners including the applicant.

11. In view of the above discussion, for the foregoing reasons, this Court do not find any illegality in the impugned order and as such the present OA being devoid of merit is liable to be dismissed. There shall be no order as to costs.