CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 180/00678/2017

Friday, this the 12th day of October, 2018.

CORAM:

HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER

P. Ramachandran Nair, 73 years
S/o. Parameswaran Nair (late),
Income Tax Officer (Retd.),
(Retired from Mumbai Income Tax Department),
Residing at : 'Arya Bhangi, Palliyil House,
Perinjanam P.O, Thrissur District – 680 686. - Applicant

[By Advocate Mr. C.S.G. Nair]

Versus

1. Zonal Accounts Officer,
Central Board of Direct Taxes,
Aayankar Bhavan, M.K. Road,
Mumbai – 400 020.

2. Chief Controller of Accounts,
Central Pension Accounting Office,
Trikoot II Complex, Bhikajicama Place,
R.K. Puram, New Delhi – 110 066.

3. Chief Commissioner of Income Tax,
Aayakar Bhavan, M.K. Road,
Mumbai – 400 020.

4. Union of India,
Represented by its Secretary,
Department of Pension & Pensioners' Welfare,
South Block, New Delhi – 110 001.

5. Chief Manager,
Centralised Pension Processing Centre,
Syndicate Bank, Head Office, Operations Department,
Manipal – 576 104.

6. Branch Manager,
Syndicate Bank, Kodungallur Branch,
Kodungallur, Thrissur District – 680 664. - Respondents

[By Advocates : Mr. S.R.K. Prathap, ACGSC for R-1
Ms. Rosy P.F for R-5 & 6]

The application having been heard on 12.10.2018, the Tribunal on the same delivered the following:

O R D E R (Oral):-
Per: Ashish Kalia, Judicial Member

The applicant filed this O.A seeking the following reliefs:-

"(i) To call for the records leading upto the issue of Annexure A-8 and A-11 and quash the same.
(ii) To declare that no amount is to be recovered from the applicant towards the alleged excess payment.
(iii) To direct the 5th and 6th respondents to refund the amount of Rs. 8,639/- with interest @12% p.a. within stipulated period.
(iv) To direct the respondents to issue a Revised Seal Authority (PPO) specifying the grade pay of the applicant as Rs. 4800/- in the pay band Rs. 9300-34000, being the grade pay of Income Tax Officer, within a time frame.
(v) To grant such other relief or reliefs that may be prayed for or that are found to be just and proper in the nature and circumstances of the case.
(vi) To grant cost of this O.A"

2. The applicant was working as Income Tax Officer under the 3rd respondent. He joined service on 18.10.1968 and retired on superannuation on 31.05.2004, after completion of 35 years, 7 months and 14 days. As per CCS (Revised Pay) Rules, 2008 the pay scale of Income Tax Officer was revised from 7500-15000 to the Pay Band of Rs. 9300-34800 with Grade Pay of Rs. 4800/-. Thus, minimum pay works out to Rs. 18750/- as per the fitment table annexed to the

CCS(RP) Rules, 2008. On implementation of the 6th CPC, pension of the applicant was fixed at Rs. 10765/- in Pay Band 9300-34800 with Grade Pay of Rs. 4800 as evidenced from Annexure A-5 issued on 09.11.2011. On 29.10.2013, a revised PPO was issued in which there was no change of pension amount but the Grade Pay was reduced to Rs. 4200/- as per Annexure A-6 annexed with the O.A. While so, the 3rd respondent issued Annexure A-8 letter stating that excess pension was paid since 01.01.2006 and the alleged excess amount would be recovered from pension. It is further submitted that an amount of Rs. 8639/- was recovered from the pension for the month of July, 2017. Recovery is made from the pension of the applicant on the ground of alleged excess payment. Thus, the applicant approached this Tribunal for redressal of his grievance. This Tribunal on 14.08.2017, the recovery was stayed by way of interim order.

3. Notices were issued and both official respondents and party respondent (Bank) put appearance; official respondents filed a counsel statement and respondent Bank filed reply statement also. Para 6 & 7 of the reply by respondent Bank (R-6) is quoted below:

> *"6. With regard to the averments and allegations contained para 4(3) and (4) of the Original Application it is respectfully submitted that at the request of the applicant in letter dated 10-10-2016, the pension account was transferred from this respondent's Vasal Road Branch to this Kodungallore branch. After transferring the account*

the applicant used to draw his pension from the respondent's branch at Kodungallore. On 17-05-2017, this respondent received a copy of the letter bearing no. 1812/0098/REC/HO/570500401060/CPPC/ 2017 addressed to the applicant by HO CPPC. By the said letter, this respondent was informed that as per the Central Pension Accounting Office Audit Report it is noticed that the applicant was receiving excess pension from 1-11-2008 to 31-12-2015 and an amount of Rs. 1,39,297/- has been paid in excess of the eligibility and asked the pensioner to repay the same within 15 days of receipt of the above mentioned letter. This respondent also issued a copy of the letter from HO OPPC this respondent informed the applicant and pursued to repay the amount immediately. But the applicant instead of repaying the excess paid amount issued a letter dated 12-06-2017 to HO CPPC, quoting G.O. F. No. 18/03/2015-Estt (Pay-1) dated 2nd March, 2016.

7. With regard to the averments and allegations contained in para 4(5) of the Original petition it is respectfully to submitted that the cited case of the Hon'ble Supreme Court is not at all relevant in the case at hand. The facts and circumstances are entirely different. It is pertinent to submit that through the letter issued by the HO Centralised Pension Processing Centre; letter No. 2557/ 0098/ HO:CPPC/2017/ABN/570 500401060 dated 17-7-2017 informed the applicant that this respondent bank as pension disbursing authority does not qualify under the term "employers" as mentioned in the Govt Order F.No. 18/03/2015-Estt (Pay-1) dated 2-03-2016 in terms of RBI guidelines circular No. RBI/2015-16/340. DGBA.GAD No. 2960/45-01-001/2015-2016 dated 17-03-2016. In the above mentioned RBI circular it is specifically noted that " in case of pensioner expresses inability to pay the excess payment amount, the same can be adjusted from the future pension payments to be made to the pensioners. For recovering the over payment made to the pensioner from his future payments in installment 1/3rd of the net (Net pension + Relief) payable each month may be recovered unless the pensioner concerned gives consent in writing to pay a high installment amount." As part of recovering the excesses paid pension amount, this respondent bank recovered Rs. 8639/- from the pension amount of the applicant in the month of July 2017 and Rs. 8639/- in the month of August 2017."

4. It is submitted at the Bar that the reply statement filed by respondent No. 6 is adopted by respondent No. 5 also.

5. On perusal of the reply statement filed by respondent No. 6, it

is found that there was a recovery order issued by Annexure A-8 dated 17.05.2017, which is addressed to the applicant herein by Chief Manager pursuance to alleged direction by respondent No.3.

6. Heard Mr. C.S.G. Nair, learned counsel for the applicant, Mr. S.R.K Prathap, learned ACGC for respondent No. 1 and Ms. Rosy P.F for respondent No. 5 and 6 and perused the records.

7. Learned counsel for the applicant, during the course of argument, drew my attention to ***State of Punjab & Others etc. v. Rafiq Masih (Whitewasher) in Civil Appeal No. 11527 of 2014 dated 18.12.2014.*** Para 12 is extracted below:-

> *"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 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."*

Applicant also relied upon judgment of ***Hon'ble High Court of***

Madhya Pradesh in Writ Petition No. 5937/2016 Rajendra Prasad Pandey v. The State of M.P & Others.

> *"8. In the case in hand, it is not disputed that the fixation impugned were made atleast 10 years earlier i.e. from the date the respondent University pass an order to effect recovery. It is also the position admitted that the appellants prior to their retirement were in employment of the University on the post of Technician/Junior Mechanic, the posts is Group C cadre and the applicants stood retired from service much back in the year 2002. So far as the issue with regard to undertaking given by them is concerned, that cannot be equated with the undertaking given by the Officer whose case was dealt with by the Hon'ble Apex Court in the State of Punjab & Haryana & Ors. (supra). In the case aforesaid, the person concerned was a Civil Judge (Junior Division) and further the undertaking given by him was in quite specific terms that any payment found to have been made in excess would be liable to be adjusted and further that fixation of the refund made was to be used for adjustment of excess payment, if any given. In the instant matter, the undertaking said to be given is in a proforma that simply mentions for refund of over payments, if any made, on account of incorrect fixation. The undertaking is a part of proforma and it is well known that the persons belonging to lower posts put signatures on such undertaking without application of mind.*
>
> *In these circumstances, we are of the considered opinion that cases of the present appellants are required to be dealt with in accordance with law laid down by the Apex Court in the case of Rafiq Masih (supra)."*

Further, he relied upon the judgment in the ***High Court of Punjab and Haryana in S.S. Guraya v. Union of India & Ors. CWP No. 23915 of 2015 dated 17.03.2017***. The relevant portion of the judgment is quoted here:

> *"In any case, it is far too long a time to lay a surprise on the 3 of 5 complacent petitioner who retired 33 years ago for sustaining recovery from pension. Even the State cannot recover money after 30 years in view of Article 112 of the Schedule to the Limitation Act, 1963 which bars State to recover the money after 30 years. Direction (v) in Rafiq Masih's case (supra) clearly comes to the*

aid of the petitioner when their Lordships of the Supreme Court carved exception (other than directions (i) to (iv)] holding that 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 then even the thought of recovery is ruled out. I think it would be wholly inequitable an extremely harsh to sustain the recovery by the Bank.

It may be pointed out that in Jagdev Singh's case (supra) the High Court employees retired in 2003 and recovery was effected early from 2004 onwards and that is how the employee was pinned down to his undertaking given in the pension papers duly signed.

In view of the above, the letter dated 15.03.2017 retained on record as Mark 'A' is quashed to the extent it adverse to the interest of the petitioner. It is declared not binding on him.

The writ petition is allowed and the respondent-bank will return the money recovered by it so far within a period of one week from the date of receipt of certified copy of this order. The future monthly entitlements to pension will remain in original petition. The action of Union of India and the Bank in reducing the pension of the petitioner and effecting recovery is held illegal, arbitrary and unconstitutional and violative of petitioner's rights inter alia under Article 300A of the Constitution of India. The petitioner 4 of 5 will have costs of this petition assessed at 50,000/- to be paid by the respondent Punjab National Bank for not even raising plausible defence in the reply. The costs be deposited together with the recovered amount within same time frame with interest @ 18% per annum from the date of illegal ex-parte deduction till deposit."

8. The grievance raised before this Tribunal by the applicant herein is that the Department has wrongly fixed his Grade Pay Rs. 4200/-, whereas after the 6th CPC, the pay scale is 9300-34800 with Grade Pay of Rs. 4800/-. To that extent, the Department has illegally recovered this amount. On going through the reply statement and learned ACGSC for respondent No. 1 submits that they have not given instructions to the Bank for recovery of the payment from pension of the applicant herein. They have submitted in para 5 and 6 of the reply

statement that no monetary loss has been occurred even his pension calculation recovered Grade Pay of Rs. 4800/-. Be that as it may, respondent No. 1 has not directed the Bank to recover the amount. During the course of arguments, this Tribunal had put forward a straight forward question to the counsel for Bank whether an undertaking had been given by the applicant as envisaged in Rafiqu Masih supra, the answer was negative from the respondent Bank.

9. This is final disposal of the matter and no further pleadings can be entertained. This Tribunal hereby hold that the Department has never directed the respondent Bank (R-5&6) to recover payment from the applicant. Thus, I hereby direct the Bank to refund Rs. 8639/- with interest @ 8% to the applicant. This exercise shall be completed within 30 days from the date of receipt of a copy of this order. Relief No. 4 need not be considered in view of the reply statement that they have submitted Rs. 4200/- was a mistake and the correct Grade Pay the applicant has drawn at the time of retirement is Rs. 4800/-. That that issue is redundant.

10. The Original Application is allowed as above. No order as to costs.

(Dated, 12th October, 2018.)

(ASHISH KALIA)
JUDICIAL MEMBER

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Applicant's Annexures

Annexure A1	-	True copy of the PPO No. 570500401060
Annexure A2	-	True copy of the Pensioner's Identity Card issued by the 3rd respondent.
Annexure A3	-	True copy of the OM F.No. 6/37/98-IC dt: 21.4.2004 issued by the Ministry of Finance
Annexure A4	-	True copy of the letter No. F.No. A-41015/ 59/2004/Ad-VII dt: 22.4.2004 issued by the Central Board of Direct Taxes.
Annexure A5	-	True copy of the revised PPO No. 570500401060/808431/A2 dt: 9.11.2011.
Annexure A6	-	True copy of the PPO No. 570500401060/ 1415566/A3 dt: 29.10.2013.
Annexure A7	-	True copy of the fitment table annexed to CCS(RP) Rules, 2008
Annexure A8	-	True copy of the letter No. 1812/0098/REC/ HO/570500401060/CPPC/2017 dt. 17.5.2017 issued by the 5th respondent.
Annexure A9	-	True copy of the Pass Book issued by 6th respondent.
Annexure A10	-	True copy of the letter dt. 12.6.2017 issued to the 5th respondent.
Annexure A11	-	True copy of the letter No. 2557/0098/HO/ CPPC/2017/ABN/570500401060 dt. 17.7.2017 issued by the 5th respondent.
Annexure A12	-	True copy of the Pensioner Report 2017 Month-wise issued by the 6th respondent.
Annexure A13	-	True copy of the O.M. F.No. 18/03/2015-Estt.(Pay-1) dt: 2.3.2016

Annexures of Respondents

Annexure R1	-	True copy of the revised PPO corresponding with 7th pay commission.

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