ARMED FORCES TRIBUNAL REGIONAL BENCH, KOCHI

O.A.NO.80 OF 2012
THURSDAY, THE 14TH DAY OF MARCH, 2013/23RD PHALGUNA, 1934
CORAM:
HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)
HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM,MEMBER (A)

APPLICANT:

LT.COL.(RTD)S.BALAKRISHNAN, AGED 64,
H/O.LATE INDIRA BALAKRISHNAN LT.COL(RETD.),
PPO.NO.M/003516/2006 A/C.NO.30041701404,
301 PRASANNA VIHAR, NEAR HIGH COURT,
MARINE DRIVE,ERNAKULAM, PIN – 682 031.

BY ADVS.M/S.AJITH NARAYANAN & S.S.HUSSAIN.

VERSUS

RESPONDENTS:

1. THE UNION OF INDIA,
REPRESENTED BY THE SECRETARY FOR DEFENCE,
MINISTRY OF DEFENCE , NEW DELHI.

2. THE PRINCIPAL CONTROLLER OF DEFENCE
ACCOUNTS (PENSIONS), DRAUPADI GHAT,
ALLAHABAD,UTTARPRADESH – 211 014.

3. THE CHIEF MANAGER, STATE BANK OF INDIA,
CENTRALIZED PENSION PROCESSING CENTRE (CPPC),
GANAPATHI COVIL ROAD, VAZHUTHACAUD,
THIRUVANANTHAPURAM, PIN – 695 014.

4. THE MANAGER, STATE BANK OF INDIA, ERNAKULAM BRANCH,
KTDC BUILDING, SHANMUGHA, ROAD, ERNAKULAM,
PIN – 682 011.

R1 & R2 - BY ADV.MR.S.KRISHNAMOORTHY, SENIOR PANEL COUSNEL

R3 & R4 – BY ADVS.M/S.R.S.KALKURA & ACHANKUNJU

O R D E R

Shrikant Tripathi, Member (J):

1. By the instant Original Application under section 14 of the Armed Forces Tribunal Act, the applicant has sought for a direction to the respondents to dispense with the recovery of the excess family pension credited in his account. He has further prayed for staying the operation of the letter dated 2nd of March 2012 issued by the respondent No.3 (Annexure A2), whereby the respondent No.3 required the respondent No.4 to recover the excess payment of Rs.2,72,643/- from the applicant and remit the same to the Government account.

2. The relevant facts are that the applicant Lt.Col.(Retd) S.Balakrishnan retired from the Indian Army on 31st October 2000 and is a pensioner. His wife late Indira Balakrishnan was also a Lieutenant Colonel in the Indian Army, Military Nursing Service, who retired on 31st of May, 2006. She was a pensioner with effect from 1st of

June 2006. It is also not in dispute that the applicant's wife was sanctioned also disability element of pension. She died on 1st of November 2008, but information with regard to her death was received in the State Bank of India, Ernakulam Branch, KTDC Building, Shanmugham Road, Ernakulam (respondent No.4) in February 2009. Due to the delayed information regarding the death of the applicant's wife, the regular pension payable to her upto February2009 amounting to Rs.51,181/- was credited in her account by the respondents No.3 and 4. The said excess amount related to her pension for the month of November, and December 2008 and January and February 2009. It is also significant to state that the applicant was sanctioned family pension on the death of his wife, consequently he was paid family pension also for the month of November and December 2008 and January, February and March 2009 on 3rd of April, 2009. In this way the sum of Rs.51,181/- was paid to the applicant in excess, therefore, the bank proceeded to make the recovery of the said amount. The

aforesaid bank recovered the amount by deducting Rs.5000.00 per month from the applicant's bank account. There does not appear to be any dispute to this extent.

3. Another development took place due to payment of arrears of pension relating to applicant's wife and family pension payable to the applicant after her death consequent upon implementation of the recommendations of the Central Pay Commission with effect from the 1st of January 2006. The Dearness Allowance on the pre-revised pension was payable at the rate of 87%, but on revision of the pension in pursuance of the recommendations of the Central Pay Commission, the Dearness Allowance on revised pension was reduced to 35% with effect from 1st of January 2010. But respondents No.3 and 4, inadvertently credited the D.A even on the revised family pension at the rate of 87% per annum with effect from January 2010 which resulted in paying excess amount every month to the applicant towards family pension. The enhanced rate of D.A continued to be credited in the applicant's account till February 2012. In

this way, the total excess sum paid to the applicant's account was Rs.3,16,550/-. After allowing the adjustment of the arrears of the disability pension payable to the applicant's wife till the date of her death and unpaid amount of the aforesaid excess amount of Rs.51,181/-, the respondents No.3 and 4 calculated the balance amount of Rs.2,72,643/- as excess amount which was liable to be recovered from the applicant. Accordingly, respondent No.3 sent the letter dated 2nd March 2012 (Annexure A2) to the pension paying Branch (respondent No.4) for the recovery which gave an occasion to the applicant to file the instant Original Application.

4. The applicant has challenged the aforesaid recovery mainly on the ground that there was no fault on the part of the applicant for receiving the excess payment. The mistake, if any, was of the respondents No.3 and 4, therefore, the recovery initiated against the applicant, in view of various judgments referred to in the Original Application, was uncalled for and as such was liable to be

struck off. In this connection the learned counsel for the applicant submitted that in view of various decisions of the Supreme Court and the High Courts, the excess payment of pensionary benefits could not be recovered as there was no fault of the applicant. In this connection learned counsel for the applicant placed reliance on the following decisions:

(1) Union of Indian and Others v. R.Vasudeva Murthy and Others ((2010) 9 SCC 30.

(2) Sahib Ram v. State of Haryana and Others (1995 Supp (1) SCC 18)

(3) Shyam Babu Varma and Others v. Union of Indian and Others ((1994) 2 SCC 521.

(4) Aleyamma Varghes v. Secretary6, General Education Department (2007 (3) KLT 700 (SC).

(5) Bhakra Beas Management Board v. Krishna Kumar Vij and Another ((2010) 8 SCC 701.

(6) Registrar of Co-operative Societies v. Israil Khan (2009 (4) KLT SN 61.

(7) Babul Jain v. State of Madhya Pradesh and Others (2007 (6) SCC 180.

(8) Narayanan v. State of Kewrala (2008 (3) KLT 1288 (DB).

(9) Sathyapalan v. Deputy Director of Education (1998 (1) KLT 399.

(10) Jayasree v. State of Kerala (2002 (3) KLT 803).

(11) Somukuttan Nair v. State of Kerala (1997 (1) KLT 601.

5. In **Union of India and Others v. R.Vasudeva Murthy and others** (supra), a question with regard to interpretation of an Office Memorandum was involved. The various High Courts had expressed divergent views. So the Apex Court gave proper interpretation of the Office Memorandum but did not disturb the benefit already granted due to wrong interpretation of the O.M. It seems that the benefit was protected by the Apex Court in terms of Article 152 of the Constitution of India.

6. In **Sahib Ram v. State of Haryana and Others** (supra), the Government had granted upgraded pay scale to Librarian of certain qualifications. The pay scale of the appellant therein was revised by the Principal accordingly, but the Government did not approve the revision as the appellant did not possess the requisite qualification. In this view of the matter, the Apex Court protected the salary already paid to the appellant due to wrong revision of his pay.

7. In **Shyam Babu Verma and Others v. Union of India and Others** (supra), two grades of Pharmacists, based on qualification, were brought into existence with effect from 1st of January 1973. The petitioner was granted higher scale wrongly with effect from the same date. His claim for equal pay for equal work was not allowed though he was held entitled to the higher grade from 1984. The Apex Court disposed of the matter accordingly but protected the excess payment already made due to wrong grant of higher scale.

8. In **Aleyamma Varghese v. Secretary, General Education Department** (supra), the Apex Court very clearly held that the mistake apparent on the face of the record may be rectified. It further held that there was no justification to make recovery after 17 years. It appears that in that case the petitioner had taken leave for ten days without pay and allowance, but that period was taken into account for fixation of her pay. The audit group raised objections due to which recovery was initiated. The Apex

Court held that the wrong fixation of pay was made by the authorities and the recovery was not proper after 17 years only on the basis of the audit objection.

9. **In Bhakra Beas Management Board vs. Krishnan Kumar Vij and Another** (supra) certain payments were made under the orders of the High Court which was held unwarranted but the Apex Court protected the payment already made.

10. In **Registrar of Co-operative Societies v. Israil Khan** (supra)) the Apex Court held that what is important is recovery of excess payments from the employees is refused only where the excess payment is made by the employer by applying a wrong method or principle for calculating the pay/allowance, or on a particular interpretation of the applicable rules which is subsequently found to be erroneous. But where the excess payment is made as a result of any misrepresentation, fraud or collusion, the Courts will not use their discretion to deny the right to recover the excess payment.

11. In **Babulal Jain v. State of M.P. And Others** (supra), the person who had proceeded on deputation on a post bearing higher responsibilities was granted higher scale. Though the Apex Court found him entitled to only deputation allowance and such higher scale was granted due to misconception of law, the Apex Court invoked Article 142 of the Constitution of India and held that recovery of excess amount without any show cause notice was not justified.

12. In the matter of **Narayanan v. State of Kerala** (supra), the petitioner therein, before joining the Government school, was in a private aided school. While granting him the scale of the Head Master on completion of 15 years service, his service in the private aided school was also taken into account . The audit party found excess payment. The court held that aided school service could not be counted for granting the pay scale of Head Master on 15 years of service, but did not approve the recovery after a decade and quashed the same.

13. In the matter of **Satyapalan v. Deputy Director of Education** (supra)) the petitioners were granted increments on promotion as High School Assistant taking into account the temporary service which ought not to have been counted for increment, accordingly, excess payment was proceeded to be recovered. The court struck off the recovery.

14. In the matter of **Jayasree v. State of Kerala** (supra), application of the Kerala Service Rules to the members of the Kerala High Court service came into consideration before the Kerala High Court. The High Court held that in order to apply rule 37(a) and (b) of Part I of the Kerala Service Rules, the appointments contemplated therein must be from one post in the Government service to another post in the Government service. As such, the first respondent therein was held not justified in fixing the pay of the petitioners on their appointments as Assistant, Grade II in the Government Secretariat. The High Court, therefore, directed that the erroneous excess payment

made bonafidely but by wrong interpretation/understanding of statutory provisions of the Government order, to the concerned employee till the date of the rectification may not be recovered.

15. In the matter of **Somukuttan Nair v. State of Kerala** (supra), Kerala High Court held that retrospective promotions given to individuals may not carry with them the right to get arrears of salary. The court further laid down the principle that the Government is bound to implement the law declared by the court.

16. The aforesaid decisions do not appear to have laid down any proposition of law to provide universal protection to the recipients of the excess payment in every circumstances. The decisions for granting benefits to recipients of excess payment to retain the payment seem to have been rendered on the basis of the peculiar facts and circumstances of those cases. The recoveries, in the aforesaid matters, had been protected by way of concessions and as such the decisions cannot be applied as

judicial precedents in other cases. More so, if we deeply examine the aforesaid decisions it would transpire that the beneficiaries of the excess payment had been granted the benefit of retaining the payment on the basis of one way of interpretation/understanding of the rules/statute etc. which was subsequently modified due to correct understanding/interpretation of the rules/statutes etc. by the Courts.

17. In the recent case of **Chandi Prasad Uniyal v. State of Uttarakhand**, (2012) 8 SCC 417, the Apex Court again had an occasion to consider the question of right of recovery of the excess payment due to wrong and irregular fixation of pay and propounded certain principles. The observations of the Apex Court made in paragraphs 14 to 18, being relevant, are re-produced as follows:

> "14. We may point out that in Syed Abdul Qadir case such a direction was given keeping in view of the peculiar facts and circumstances of that case since the beneficiaries had either retired or were on the verge of retirement and so as to avoid any

hardship to them.

15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.

16. We are concerned with the excess payment of public money which is often described as “tax payers money” which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

> 17. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (supra) and in Col. B.J. Akkara (retd.) case (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered.
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> 18. Appellants in the appeal will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular/wrong pay fixation, the institution in which the appellants were working would be responsible for recovery of the amount received in excess from the salary/pension. In such circumstances, we find no reason to interfere with the judgment of the High Court. However, we order the excess payment made be recovered from the appellant's salary in twelve equal monthly installments starting from October 2012. The appeal stands dismissed with no order as to costs. IA Nos.2 and 3 are disposed of."

18. A perusal of the aforesaid observations clearly reveals that the Apex Court propounded the principle that the various judgments referred to in the matter of **C.P.Uniyal (supra)** had not laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess payment, then only the amount could be recovered. The Apex Court further held that most of the cases turned on the peculiar facts and circumstances of

those cases. The Apex Court next held that the excess payment of public money which is often described as 'tax payers money' belong neither to the officers who have effected over payment nor to the recipients, so why the concept of fraud or misrepresentation was being brought in such situations. The Apex Court further propounded that the question to be asked in such matters is whether excess money has been paid or not, may be due to various reasons like negligence, carelessness, collusion etc. because money in such situation does not belong to the payer or the payee. There may be cases where the mistake is mutual, that is, both of the payer and the payee. The Apex Court further held that the payment may be effected in such situations without any authority of law and payments have been received by the recipients also without any authority of law. On the basis of this observation, the Apex Court further held that any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right. In such

situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

19. The aforesaid principles laid down in C.P.Uniyal's case have much relevance in the instant case and as such the same is liable to be considered accordingly. Admittedly, the applicant was not entitled in any way to the excess payment made to him. The payment was made only on account of the fact that the old rate of Dearness Allowance payable on the unrevised pension was taken into account with effect from 1.1.2006 due to inadvertence by the banks (respondents No.3 and 4). The applicant, therefore, received the excess payment without any authority of law, so cannot be permitted to deny the repayment only on the ground of illness of his son or on the ground that various decisions relied upon by him had protected excess payments under the facts and circumstances of those cases.

20. Apart from the aforesaid, there is another important aspect of the matter and that is the applicant had furnished a written undertaking (Annexure R4) on 2nd of

February 2009 to reimburse the excess payment, if any, made to him towards pension. The undertaking, being relevant, is being reproduced as follows"

> " In consideration of your having at my request, agreed to make payment of pension due to me every month by credit to my account with you, I, the undersigned agree and undertake to refund or make good any amount to which I am not entitled or any amount which may be I am or would be entitled. I further hereby undertake and agree to bind myself and my heirs, successors, executors and administrators to indemnify the bank from and against any loss, suffered or incurred by the bank in so crediting my pension to my account under the Scheme and to forthwith pay to the bank also irrevocably authorize the bank to recover the amount due by debit to my side account or any other account deposits belonging to me in the possession of the bank."

21. Besides the aforesaid undertaking, the applicant executed another undertaking on 8th of March, 2012 by which he undertook to refund the excess amount in

installments at the rate of Rs.10,000/- per month. The undertaking dated 08.03.2012, being relevant, is also re-produced as follows:

> "1. I request your goodself, to effect recovery only from the month of Apr '12 and that too at the rate of Rs.10000/- per month. This request I have made to the officer at the CPPC and the offr who spoke to me (Mr.Hari) has agreed to it.
>
> 2. Moreover, the amt kept in the a/c is for procuring costly medicine for the treatment of my son.
>
> A favourable and sympathetic action is solicited, please.
>
> Thanking you,
>
> Yours faithfully,
> Sd/-"

22. It is thus obvious that the undertaking dated 2nd of February 2009(Annexure R4) was furnished when the applicant was to be paid the family pension for the first time in February 2009. By that undertaking, he had not only agreed but had also undertaken to refund, or make good,

any amount to which he was not entitled or any amount which could be credited to his account in excess of the amount to which he was already entitled. He had further agreed to bind himself to indemnify the bank from and against any loss suffered or incurred by the bank in so crediting his pension to his account under the scheme and to forthwith pay to the bank. More so, he authorized the bank to recover the amount due by debit to his side account or any other account deposits belonging to him in the possession of the bank. The undertaking was made before two witnesses who had also signed the undertaking. The other undertaking dated 8th March 2012 (Annexure R3), whereby the applicant requested the respondent No.4 to recover the excess amount in installment of Rs.10,000/- per month, was given after the factum of excess payment had come to the notice of the bank authorities.

23. The learned counsel for the applicant tried to submit that the undertaking dated 8th march 2012 (Annexure R3) was given without proper legal advice under

duress, therefore, it was not a voluntary act of the applicant. This submission has no merit. The applicant has not stated in the original application that the letter dated 8th March 2012 (Annexure R3) was obtained under duress. In our view, the letter dated 8th March 2012 (Annexure R3) was given voluntarily by the applicant in order to have an easy way of recovery in place of recovery of the entire amount in lump sum.

24. In view of the undertakings referred to herein before, the applicant cannot be permitted to take shelter of the aforesaid decisions and to contend that the recovery is unwarranted in law, especially when he was not entitled to the excess payment of Rs.2,72,643/- in any way. The error on the part of the respondents No.3 and 4 in crediting excess amount was not due to any wrong interpretation or understanding of the Government order. They seem to have acted under the bonafide belief that the old rate of the Dearness Allowance was applicable and accordingly the amount was credited in the applicant's bank account. In this

view of the matter, the applicant cannot be permitted, in the garb of the aforesaid decisions, to take advantage of the aforesaid bonafide mistake of the bank and to deny the repayment of the excess amount, especially in view of the fact that he is bound by the undertakings he furnished to the bank. In our view, the undertakings operate as estoppal against him, so, he cannot be permitted to set up a case contrary to the terms and conditions of the undertakings. It is also significant to state that the applicant's undertakings were almost in the same sense as the stipulation made in the sanction order of revision of pay in C.P.Uniyal's case (supra).

25. Before concluding the matter, we would like to add that the applicant who had been a quite senior officer in the Army, was not expected to set up a case to grab the public money to which he was not entitled in any way. We hope and trust that a good sense would prevail upon him to refund the excess amount without any further litigation and delay.

26. For the reasons stated above, the Original Application has no merit and is accordingly dismissed.

27. Interim stay, if any, stands vacated.

28. There will be no order as to costs.

29. Issue copy of the order to both side.

Sd/-

LT.GEN.THOMAS MATHEW
MEMBER (A)

Sd/-

JUSTICE SHRIKANT TRIPATHI
MEMBER (J)

an. (true copy)

Prl.Pvt.Secretary