IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.3731 of 2016 (O&M)

Date of decision : 25.02.2016

Sudhir Kumar

...Petitioner

Versus

Council of Scientific and Industrial Research and others

...Respondents

CORAM: HON'BLE MR. JUSTICE M.JEYAPAUL.
HON'BLE MR. JUSTICE RAJ MOHAN SINGH.

Present: Mr. P.S.Khurana, Advocate
for the petitioner.

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RAJ MOHAN SINGH, J.

1. Petitioner has assailed order dated 15.1.2016 (Annexure P-2) passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal), wherein action of the respondents in deducting/ recovering the excess amount of pension paid to the petitioner, per month, from his pension w.e.f. April 2014 was held to be proper.

2. Petitioner was appointed on the post of Junior Scale Stenographer on 16.11.1971 at Central Scientific Instrument Organisation (CSIO) at Chandigarh i.e. the services of the Council of Scientific and Industrial Research (CSIR). In due

course, he was promoted to the post of Senior Scale Stenographer in the year 1983-84 and then to the post of Personal Secretary and was ultimately transferred to the Institution of Microbial Technology, Sector 39, Chandigarh. On attaining the age of superannuation, petitioner was retired from service on 31.7.2007.

3. Petitioner was drawing pension @ ₹ 19,706/- per month through State Bank of India. He found that his pension was credited in his account after making deduction of ₹ 5,946/- for the month of April 2014. Petitioner filed representation dated 12.5.2014 to respondent No.4, but no action was taken and deduction kept going on every month. Petitioner alleged that the action of the respondents in effecting the recovery from his pension is patently illegal. He served a legal notice dated 6.8.2014. Seeing the pathetic attitude of the respondents, petitioner ventured to file O.A. No. 060/00188/2015 before the learned Tribunal for the redressal of his grievance.

4. Claim of the petitioner was contested by the respondents. On the implementation of recommendations of 6th Central Pay Commission and after the retirement of the petitioner (though w.e.f 1.1.2006) the difference of revised gratuity and commutation of pension to the tune of ₹ 1,15,137/- and ₹ 1,86,396/- respectively were paid to the petitioner by the respondent organisation with a clear stipulation that he would

be entitled to draw basic pension @ ₹ 11,840/- less (minus) commutation of pension of ₹ 4,736/- which included ₹ 2,790/- as commutation of un-revised pension and ₹ 1,946/- as further commutation after revision of pay and pension.

5. Respondents further alleged that the petitioner continued to draw excess pension of ₹ 1,946/- per month since 1.8.2007 onwards despite the fact that letter dated 22.4.2009 was sent to respondent No.4 as well as to the petitioner in this regard. Respondent No.4 kept on paying the excess pension to the petitioner till March 2014 without deducting the additional commuted amount of pension to the tune of ₹ 1,946/- per month.

6. Thereafter, bank started making recovery of the excess amount of pension in instalments to the tune of ₹ 4,000/- per month besides carrying out reduction in pension by additional commuted amount of ₹ 1,946/- per month. In this way total deduction was assessed to be ₹ 5,946/- per month on the ground that petitioner was not entitled for the additional amount of commuted pension. Respondent No.4 asserted that the excess amount to the tune of ₹ 1,56,000/- was paid to the petitioner from 1.8.2007 till 31.3.2014.

7. Learned Tribunal, vide order dated 15.1.2016, dismissed the Original Application on the ground that prior to revision of pay scales, basic pension of the petitioner was ₹ 6,975/- per month on which ₹ 2,790/- was commuted amount

being 40% of the pension. After revision of pay, the basic pay was escalated to ₹ 11,840/- per month from which an amount of ₹ 4,736/- was commuted being 40% of the pension. For the additional commuted amount of ₹ 1,946/- per month, the petitioner was paid additional commuted pension to the tune of ₹ 1,86,396/-. Therefore, the petitioner was entitled to revised basic pension of @ ₹ 11,840 – 4,736 = 7,104/- per month. Petitioner was wrongly paid basic pension of ₹ 9,050/- i.e. ₹ 1,946/- per month as an excess amount for the period from 1.8.2007 to 31.3.2014 amounting to total ₹ 1,55,680/-.

8. The tribunal has further observed that the aforesaid amount is recoverable from the petitioner and the same is being recovered in instalments. The pension of the petitioner was accordingly decreased to ₹ 5,946/- which included the reduction of ₹ 1,946/- per month on account of additional amount of the commuted pension for which there was no dispute prospectively from 1.4.2014. The remaining amount of ₹ 4,000/- per month was towards arrears of excess amount which was paid to the petitioner.

9. Factual position was not in dispute. Learned tribunal took notice of the precedents in case of **State of Punjab and others v. Rafiq Masih (White Washer) etc. Civil Appeal No.11527 of 2014 (arising out of SLP (C) No. 11684 of 2012)** decided on 18.12.2014 and **Smt.Shashi Gupta vs. Govt. of**

<u>NCT of Delhi and others</u>, 2015 SCC On Line CAT 543 and distinguished them on the ground that in the cited cases there was wrong fixation of pay of the employees, whereas, there was no such controversy in the present case. In wrong fixation of pay, the employee had no role to play, therefore, in the absence of any role having been played by the employee, where he was having no knowledge about the wrong committed, the Court in the aforesaid cases took a view that excess amount may not be recovered.

10. In the instant case, the pension was rightly fixed. It was due to the fault of the bank that the excess payment for 80 months was made by ignoring the additional commuted pension amount of ₹ 1,946/- per month. The factual position was known to the petitioner. Even though, the petitioner had no active role to play in the payment of excess amount to him, yet he was a passive beneficiary and kept mum for seven years despite the fact that he was getting undue excess amount.

11. The petitioner was retired from such a post i.e. Personal Secretary and was not expected to keep mum despite knowing that he was receiving excess amount than his entitlement. Petitioner was also receiving additional commuted pension amount and was not supposed to be ignorant of the excess amount being paid to him. Petitioner was already informed about the correct amount vide letter dated 22.4.2009,

therefore, the tribunal held that there was no reason to deny the respondents their right to recover the excess amount, which was erroneously paid to the petitioner. By relying upon the undertaking dated 7.11.2007 given by the petitioner to pay the excess amount, if any, learned tribunal discarded the claim of the petitioner and dismissed the Original Application vide order dated 15.1.2016.

12. We have considered the submissions made at the bar and are totally in agreement with the observations made by the learned tribunal. Admittedly, pre revised basic pension of the petitioner was ₹ 6,975/- and commutation was done to the extent of ₹ 2,790/- being 40% of the pension. After revision of pay scales, the basic pension was enhanced to ₹ 11,840/- and commuted pension was ₹ 4,736/- being 40% of the pension. For the additional commuted amount of ₹ 1,946/- per month, the petitioner was admittedly paid commuted pension amount of ₹ 1,86,346/-. Accordingly revised basic pension of ₹ 7,104/- per month was fixed. However, the petitioner was paid basic pension of ₹ 9,050/- per month i.e. excess amount of ₹ 1,946/- per month for which commutation had already been done and the said amount was paid for 80 months ranging from 1.8.2007 to 31.3.2014 and the total amount came out to be ₹ 1,55,680/-.

13. The department has devised means to recover the amount by decreasing the pension of the petitioner by ₹ 5,946/-

i.e. ₹ 4,000/- per month towards arrears of excess amount paid to the petitioner and ₹ 1,946/- per months towards reduction of additional amount of commuted pension for which there was no dispute prospectively from 1.4.2014. On this aspect, we are of the considered view that there is no anomaly in calculating an amount of ₹ 1,86,346/- and ₹ 1,55,680/- under both the heads.

14. Petitioner was in knowledge of payment of said excess amount to him, yet he remained as a silent spectator being passive beneficiary of the amount. He was holding a post of Personal Secretary and was very much familiar with his dues which were to be paid after retirement. Even though, he has not played any active role in payment of the excess amount, yet he cannot be absolved from his responsibility to inform the department in the event of paying excess amount by respondent No.4.

15. Petitioner was already intimated about the correct amount vide letter dated 22.4.2009, therefore, we have also taken notice of the fact that an excess payment has been made to the petitioner under mis-conception by respondent No.4 and the petitioner was well aware of the said fact and had also undertaken before the authorities on 7.11.2007 to pay the excess amount, if any, which may be paid to him.

16. Even if, the said undertaking was a normal undertaking, which was part of pension papers, still the same

undertaking can be invoked to recover the excess amount paid to the petitioner from the State exchequer. Public money cannot be allowed to be swallowed and such undue enrichment cannot be allowed.

17. In our view, the precedents cited by the petitioner have been correctly distinguished by the learned tribunal by giving proper reasons.

18. Having given due deliberations, we are of the considered view that no illegality can be pointed out in the order passed by the learned tribunal. Accordingly, this writ petition is dismissed.

(RAJ MOHAN SINGH)
JUDGE

(M. JEYAPAUL)
JUDGE

February 25, 2016
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