HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 6423/2019

CNR: RJHC020310502019 | URN: CW / 11452U / 2019

Smt. Suman Sharma Wife Of Late Shri Satya Prakash Sharma, Aged About 81 Years, Resident Of House No. A-31, Satyam, Subhash Nagar, Jaipur

----Petitioner

Versus

1. Union Of India, Through The Principal Controller Of Defence Accounts (Pension) Office At Draupadighat, Allahabad
2. Punjab National Bank, Through Chief Manager, CPPC, 2 Nehru Palace, Tonk Road, Jaipur (Raj.)

----Respondents

For Petitioner(s)	:	Mr. Sandeep Singh Shekhawat with Ms. Priyanshi Jaiswal
For Respondent(s)	:	Mr. C. P. Sharma for Mr. Devesh Kumar Bansal Mr. Aditya Sharma with Mr. Ajay Khedar and Ms. Shreya Khandal for Mr. Satish Kumar Khandal

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HON'BLE MR. JUSTICE SANDEEP TANEJA

Order

27/10/2026

1. The petitioner is the widow of Late Shri Satya Prakash Sharma, who joined the Central Government service at the Office of the Accountant General, Jaipur, as a Lower Division Clerk (LDC) in the year 1956. In 1962, owing to the aggression by China, an urgent need arose for officers in the Indian Army, and the petitioner's husband volunteered to join the Army in December 1962. After undergoing six months of training, he was commissioned in the Army in 1963 and continued to serve in different ranks. In 1987, he suffered from an ailment that

rendered him unable to continue his service and, accordingly, took voluntary retirement with effect from 06.01.1988.

2. The pensionary benefits of the petitioner’s husband were fixed on the basis of his last drawn salary, after counting his entire length of service from 1956 to 1988. He was paid regular pension through his pension account maintained with respondent No. 2-Punjab National Bank. He died on 25.09.2010, whereafter the petitioner, being his widow and official nominee, continued to receive the pension.

3. Subsequently, the respondents found that the pay of the petitioner's husband had been erroneously fixed at an excessive amount under the Sixth and Seventh Central Pay Commissions. Accordingly, recovery of Rs.1,91,192/- under the Sixth Central Pay Commission and Rs.2,29,846/- under the Seventh Central Pay Commission was sought on account of the alleged excess payment of pension.

4. Thereafter, respondent No. 1, vide letter dated 13.08.2018, directed respondent No. 2 to recover the aforesaid amounts, pursuant to which the petitioner’s pension account was frozen. Subsequently, respondent No. 2, vide letter dated 13.03.2019, informed the petitioner about the freezing of her pension account and called upon her to assist in the recovery of the said amounts.

5. Aggrieved by the aforesaid orders seeking recovery of the amounts in question, the petitioner has filed the present writ petition.

6. Learned counsel for the petitioner submits that the recovery of the alleged excess amount is impermissible in law. He further submits that the impugned action of the respondents is in

violation of the principles of natural justice, as no show-cause notice was issued to the petitioner. He also submits that excess payment, if any, made by the respondents, was not attributable to any fault on the part of the petitioner or her husband. In support of his submissions, learned counsel relies upon the judgment passed by the Hon'ble Supreme Court in the case of **State of Punjab & Ors. Vs. Rafiq Masih**, reported in **(2015) 4 SCC 334**.

7. *Per contra*, learned counsel for the respondents submits that the excess payment was inadvertently made to the petitioner and, therefore, the respondents have rightly initiated recovery proceedings against her.

8. Upon hearing learned counsel for the parties and upon perusal of the material available on record, this Court finds that the recovery has been sought from the petitioner on account of excess payment made to the petitioner while fixing salary of the petitioner's husband under the Sixth and Seventh Central Pay Commissions.

9. The Hon'ble Supreme Court, in the case of **Rafiq Masih** (supra), examined the validity of orders passed by the State for recovery of excess payments made to employees beyond their entitlement, where such payments were not attributable to any fault or misrepresentation on the part of the employees. The Hon'ble Supreme Court considered the hardship that may be caused to employees by such recovery and identified certain situations in which recovery of excess payments by the employer would be impermissible.

10. Similarly, in the case of **Jogeshwar Sahoo & Ors. Vs. District Judge, Cuttack & Ors.**, reported in **2025 SCC OnLine**

SC 724, the Hon'ble Supreme Court, while referring to various earlier judgments, has observed as under:

> "9. This Court has consistently taken the view that if the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of /order, which is subsequently found to be erroneous, such excess payments of emoluments or allowances are not recoverable. It is held that such relief against the recovery is not because of any right of the employee but in equity, exercising judicial discretion to provide relief to the employee from the hardship that will be caused if the recovery is ordered."

11. In the instant case, the excess payment, if any, made to the petitioner is also not attributable to any false representation or misrepresentation on part of the petitioner or her husband. Therefore, applying the ratio laid down in the above judicial pronouncements, the action of the respondents cannot be sustained.

12. Moreover, it is a settled principle of service jurisprudence that before passing any adverse order against an employee, the affected person must ordinarily be issued a show-cause notice and afforded an opportunity of hearing, failing which the order would be in violation of the principles of natural justice. Admittedly, in the present case, no show-cause notice was issued to the petitioner before initiating the recovery proceedings, hence, the action of the respondents seeking to recover the alleged excess is in clear violation of the principles of natural justice.

13. In view of the above discussion, the impugned orders dated 13.08.2018 and 13.03.2019 are quashed and set aside, and the present writ petition is, accordingly, allowed.

14. Pending application(s), if any, stand disposed of.

(SANDEEP TANEJA),J

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