HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 19370/2025

CNR: RJHC010866342025 | URN: CW / 34696U / 2025

Smt. Keku Devi W/o Late Shri Harlal, Aged About 70 Years, R/o Plot No. 210, Indira Colony, Ratanada, Jodhpur, Rajasthan.

----Petitioner

Versus

1. Union Of India, Through The Secretary, Ministry Of Defence, Government Of India, New Delhi.
2. Director, Defence Laboratory, Ratanada Palace, Jodhpur, Rajasthan.
3. Assistant General Manager, Centralized Pension Processing Centre, State Bank Of India, 2nd Floor, Chandni Chowk, New Delhi.
4. Assistant General Manager, Centralized Pension Processing Centre, State Bank Of India, Choda Rasta, Jaipur, Rajasthan.
5. State Bank Of India, Defence Laboratory Branch, Jodhpur, Rajasthan.

----Respondents

For Petitioner(s)	:	Mr. Manvendra Singh Rathore Mr. Himanshu Kachhawaha Mr. Yashveer Singh
For Respondent(s)	:	Mr. Pooshan Mr. Dixit Panwar Ms. Lata Sarada, through VC

HON'BLE MR. JUSTICE MUNNURI LAXMAN

HON'BLE MR. JUSTICE ANUROOP SINGHI

Order

15/07/2026

1. The present writ petition has been filed by the petitioner challenging the order dated 03.07.2025 passed by the Central Administrative Tribunal, Jodhpur Bench, Jodhpur (**CAT**) in Original Application (**OA**) No. 334/2018, whereby the OA filed by the petitioner challenging the recovery of Rs.4,70,882/- being made by the respondents vide communications dated 17.11.2015 and 15.03.2018 on account of excess amount of pension being paid to the petitioner, has been dismissed.

2. The case of the petitioner is that recovery proceedings were initiated against her deceased husband/pensioner by respondents No.3 to 5 - Bank on the ground that excess pension has been paid by it by applying the old rate of dearness allowance instead of the revised rate. Following the death of the husband/pensioner, the petitioner i.e. wife of the pensioner was asked to deposit the remaining excess/over paid amount from the family pension.

3. Assailing the recovery proceedings, the petitioner filed an OA before the CAT, wherein the respondent – Bank contended that the excess/over payment had been made pursuant to the instructions issued to it by employer/respondents No.1 and 2 – Union of India and was not attributable to any mistake on the part of the Bank. The respondent – Bank further contended that the Bank was entitled to initiate recovery proceedings and the same were commenced in terms of the Master Circular dated 02.07.2018 issued by the Reserve Bank of India (**RBI**), which refers to the relevant circulars issued from time to time, more particularly as mentioned at serial Nos.57 and 59:

57.	***Ref.DGBA.GAD.No.H4054/ 45.03.001/2014-15***	13.03.2015	Recovery/Refund of overpayment of pension to the Government Account.

59.	***Ref.RBI/2015-16/340:DGBA.GAD.No.2960/45.01.001/2015-16***	17.03.2016	Recovery of excess payments made to pensioners

4. However, respondents No.1 and 2 contended that the excess/over payment of pension was made by the respondent – Bank and was not attributable to any instructions issued by them.

5. The CAT vide its impugned order dated 03.07.2025, declined to interfere in the recovery proceedings and dismissed the OA filed by the petitioner, aggrieved by which the present writ petition has been filed.

6. Learned counsel appearing for the petitioner submits that the recovery proceedings initiated by the respondents for recovering the alleged excess/over payment of pension were due to the re-fixation of the rate of dearness allowance by respondents No.1 and 2, and thus, the respondent – Bank had no authority to recover any such amount on behalf of respondents No.1 and 2 who are the employer of the deceased husband of the petitioner. Learned counsel submits that the respondent – Bank, without any authority, proceeded to recover the excess/overpaid amount, ignoring its own pleading wherein it has been stated by the respondent – Bank that it was only during the audit conducted by the respondents No.1 and 2 when it was revealed that an excess amount has been paid to the deceased husband of the petitioner and thus, no such recovery could be made in light of the law laid down by the Hon’ble Supreme Court in the case of ***State of Punjab & Ors. v. Rafiq Masih (White washer) & Ors.*** reported in ***(2015) 4 SCC 334.***

7. Learned counsel further submits that while the respondents No.1 and 2 did submit before the CAT that the excess payment has been made on account of the mistake committed by the respondent – Bank itself, the burden of such conflict amongst the respondents cannot be shifted upon the petitioner to initiate the illegal recovery being made from her pension amount.

8. Learned counsel further submits that the deceased husband of the petitioner retired way back on 30.04.2009 and he passed away on 02.02.2017 and thus, making such recovery from the family pension is grossly illegal, contrary to the law laid down by the Hon'ble Supreme Court and would cause grave hardship to the petitioner.

9. Learned counsel finally submits that such excess/over payment can only be recovered in terms of the aforementioned circulars issued by the RBI when such excess/over payment has been made on account of a mistake committed by the Bank. However, in the present case, the said payment was made pursuant to the directions received by the respondent – Bank from respondents No.1 and 2 and, therefore, the same cannot be recovered in light of the above mentioned Master Circular issued by the RBI.

10. In repudiation, learned counsel for respondents No.1 and 2 submit that no specific instructions were issued by them to the respondent – Bank to make any such excess/over payment and as the said payment was a consequence of mistake committed by the Bank, the law laid down by the Hon'ble Supreme Court in the case of ***Rafiq Masih (supra)*** will not apply and the Bank is very much within its authority to recover the amount paid in excess to the petitioner.

11. Learned counsel appearing for the respondent – Bank submits that the recovery proceedings were initiated by it in terms of the instructions received from respondents No.1 and 2 and thus, taking guidance from the circulars issued by the RBI, the recovery proceedings were rightly initiated and the petitioner cannot be permitted to take benefit of an amount which otherwise she is not entitled to.

12. Learned counsel for the respondents thus, while justifying the order passed by the CAT prays for dismissal of the present writ petition.

13. We have gone through pleadings and contentions of learned counsel for the parties.

14. The pleadings of the respondent – Bank before the CAT make it manifest that the alleged excess/over payment was made by it to the petitioner under the instructions received from respondents No.1 and 2 and it was only on account of an audit subsequently conducted by the respondents No.1 and 2 when it was revealed that excess payment was made to the deceased husband of the petitioner. In light of such specific averment being made by the respondent – Bank, it is beyond the realm of doubt that the recovery proceedings have been initiated by the respondent – Bank on the behest of respondent No.1 and 2.

15. In view of such a specific pleading, the respondent – Bank cannot rely upon the above mentioned Master Circular issued by the RBI, which provides that in cases where excess/over payment is made on account of a mistake committed by the Bank, it is entitled to recover such excess/over payment. However, where the amount is paid by the Bank pursuant to the instructions of the Government, the same cannot be treated as an excess/over payment attributable to the Bank. Therefore, the condition provided in the circular cannot be relied upon, hence, the circular issued by the RBI does not help the case of the respondent – Bank.

16. The learned counsel for the respondents placed reliance upon the order dated 07.01.2025 passed by a Co-ordinate Division Bench of this Court in ***D.B. Civil Writ Petition No.18546/2018*** titled as ***State Bank of India & Anr. Vs. Tulsi Devi & Ors.,*** the relevant para of which reads as under:

> *"6. This Court after hearing the submissions, finds that the respondent No.1 was paid excess amount by the bank even when she was entitled for a particular amount as pension in lieu of her husband's death who was an employee of All India Radio. The pension amount was Rs.11,218/- which was to be paid till 21.05.2012 whereas it continued to be paid till the month of April, 2015. In the opinion of this Court, the mistake of a bank who is not an employer cannot be said to be covered by the law laid down in the case of Rafiq Masih (Supra). In fact, the bank is merely an agent and the agent as a disbursing authority, if commits any mistake while disbursing any payment, is liable to be recovered. The recovery thus does not fall within the purview of law laid down in the case of Rafiq Masih (Supra) and cannot be protected. The law laid down in the case of Rafiq Masih (Supra)shall operate only when excess payment and its receipt is a transfer between employer and employee and not when an intermediary or a payment facilitator disburses the same, on its own, by mistake."*

17. A reading of the aforesaid order makes it manifest that the order therein was passed considering the factual backdrop of that case wherein the excess payment was attributable to a mistake committed by the intermediary or payment facilitator, i.e., the Bank, and it is only in such circumstances that the Bank would be entitled to recover the excess/over payment.

18. The pleadings of the respondent – Bank clearly demonstrate that the amount was paid by it to the petitioner pursuant to the directions issued by respondents No.1 and 2 and, therefore, the excess payment cannot be attributed to any mistake on the part of the respondent – Bank, but to the employer. Therefore, the said judgment relied upon by the learned counsel for the respondents renders no assistance to them.

19. In the backdrop of similar set of facts and circumstances, this Court in ***D.B. Civil Writ Petition No.16178/2025*** titled as ***Smt. Sayar Kanwar Vs. Union of India & Ors.***, has held that where the excess/over payment made by the Bank is not attributable to any mistake on its part, but to a mistake on the part of the employer, the Bank is not entitled to recover such excess/overpaid amount, which is also the case herein and thus the said judgment squarely covers the present case.

20. It is also necessary to bear in mind the underlying object and purpose for which family pension is granted to the family of a deceased pensioner. Family pension is intended to provide financial security and sustenance to the dependents of the deceased pensioner after the cessation of the source of income available to the family during his lifetime. Therefore, while considering the permissibility of recovery from a family pensioner, the Courts are also required to remain mindful of the very object sought to be achieved by the grant of such pension and the hardship that such recovery may cause to the beneficiary.

21. It is also pertinent to note that, as per the submissions of the respondent – Bank, the payment of dearness allowance at the old rate came to light only upon an audit conducted by the respondent-employer. Merely because the alleged excess payment was subsequently detected in the course of such audit would not, by itself, entitle the respondent – Bank to invoke the aforesaid Master Circular for effecting recovery from the petitioner, particularly when, as per its own stand, the excess payment was not attributable to any mistake on its part. Further, in the absence of any fraud or misrepresentation attributable to the petitioner, the permissibility of such recovery would necessarily have to be examined in light of the principles laid down by the Hon'ble Supreme Court governing recovery of excess payments from retired employees/family pensioners.

22. With respect to the permissibility of recovery of the excess/overpaid amount by an employer from the pensioner, the Hon'ble Supreme Court in ***Rafiq Masih (supra)*** has categorically held as under :

> *"8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of*

the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

9. The doctrine of equality is a dynamic and evolving concept having many dimensions. The embodiment of the doctrine of equality can be found in Articles 14 to 18 contained in Part III of the Constitution of India, dealing with "fundamental rights". These articles of the Constitution, besides assuring equality before the law and equal protection of the laws, also disallow discrimination with the object of achieving equality, in matters of employment; abolish untouchability, to upgrade the social status of an ostracised section of the society; and extinguish titles, to scale down the status of a section of the society, with such appellations. The embodiment of the doctrine of equality, can also be found in Articles 38, 39, 39-A, 43 and 46 contained in Part IV of the Constitution of India, dealing with the "directive principles of State policy". These articles of the Constitution of India contain a mandate to the State requiring it to assure a social order providing justice—social, economic and political, by inter alia minimising monetary inequalities, and by securing the right to adequate means of livelihood, and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections.

10. In view of the aforestated constitutional mandate, equity and good conscience in the matter of livelihood of the people of this country has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the

State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.

…

18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the 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."

23. The Hon'ble Supreme Court in the case of ***Thomas Daniel Vs. State of Kerala & Ors.***, reported in ***2022 SCC OnLine SC 536***, has further held that where excess payment has not been made on account of any misrepresentation or fraud attributable to the employee, but has resulted from the employer applying a wrong principle for calculation of pay or allowances, or from an interpretation of a rule or order which is subsequently found to be erroneous, such excess payment is not recoverable from the employee. In the present case as well, there is no allegation of any fraud or misrepresentation on the part of the petitioner resulting in the excess payment.

24. This position of law was further reiterated by the Hon'ble Supreme Court in the case of ***Jogeswar Sahoo & Ors. v. District Judge, Cuttack & Ors.***, reported in ***2025 SCC OnLine SC 724***, wherein while applying the equitable principles summarised in ***Thomas Daniel (supra)***, the Hon'ble Supreme Court held that the recovery of excess payments from a retired employee without granting any opportunity of hearing, solely on the ground of erroneous interpretation of service rules and in absence of any fraud or misrepresentation on behalf of such employee is impermissible. Relevant para of ***Jogeswar Sahoo (supra)*** reads 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 rule/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."*

25. Thus, taking guidance from the law laid down by the Hon'ble Supreme Court and the facts obtained, more particularly the fact that the respondent – Bank has made a categorical averment that recovery proceedings have been initiated in pursuance to an audit conducted by the respondents No.1 and 2, the impugned action of recovery by the respondent – Bank is solely at the behest of the respondents No.1 and 2 who is the employer of the deceased husband of the petitioner and thus, the recovery proceedings from the family pension of the petitioner cannot be sustained.

26. For the above reasons, the writ petition stands allowed and consequently, the impugned order dated 03.07.2025 passed by the CAT is set aside and the impugned recovery notices dated 17.11.2015 and 15.03.2018 are quashed with the following directions:

(i) The respondents are restrained from making any recovery from the family pension of the petitioner;

(ii) The amount already recovered/ deducted, from the pension/family pension, in consequence of impugned demand notices shall be refunded back to the petitioner within a period of two months from the date of passing of this order; and

(ii) The respondent – Bank would be at liberty to initiate appropriate proceedings against the respondents No.1 and 2, if so advised, with respect to the amount allegedly paid in excess by it to the petitioner or her deceased husband, if entitled and permissible under law.

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

(ANUROOP SINGHI),J **(MUNNURI LAXMAN),J**

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