

AFR  
Court No.1 (List B)

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW

Transferred Application No. 686 of 2010

Thursday, this the 27<sup>th</sup> day of April, 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)  
Hon'ble Lt Gen Gyan Bhushan, Member (A)

No. 13659465 Sep Ex Gdsm Jagdish Prasad  
S/o Late Ram Padarath Sukla  
Village : Chand Khamaria  
PO : Khunta, Tehsil : Meja  
District : Allahabad (UP)

..... Petitioner

By Legal Practitioner - Shri Rohit Kumar,  
Learned Counsel for the Petitioner

Versus

1. Chief of the Army Staff, New Delhi - 110011.
2. General Officer Commanding-in-Chief, Southern Command,  
Pune.
3. General Officer Commanding-in-Chief, Central Command,  
Lucknow.
4. Principal Controller of Defence Accounts (Pension),  
Draupadighat, Allahabad.
5. Defence Pension Disbursing Officer, New Cantt, Allahabad.
6. Officer in Charge Brigade of the Guards, Kamptee.
7. Union of India, Through Secretary, Ministry of Defence, New  
Delhi-110011.

..... Respondents

By Legal Practitioner - Shri D.K. Pandey,  
Learned Counsel for the Respondents





**ORDER (ORAL)**

1. Affidavit filed by learned counsel for the respondents is taken on record. Order dated 22.03.2017 is clarified to the effect that the affidavit has been verified by Shri Ghanshyam Pathak, Advocate and not by Shri D.K. Pandey, Advocate.
2. Being aggrieved by the impugned order dated 25.07.2008 for recovery of certain amounts, the petitioner has preferred Civil Misc Writ Petition No 19810 of 2009 before the High Court of Judicature at Allahabad which has been transferred to this Tribunal in pursuance of power conferred under Section 34 of Armed Forces Tribunal Act 2007 and renumbered as T.A. No. 686 of 2010.
3. We have heard Shri Rohit Kumar, learned counsel for the petitioner and Shri D.K.Pandey, learned counsel for the respondents and perused the record.
4. Petitioner was enrolled in the Army in the year 1963. He suffered injury in the year 1971 and he was medically boarded out on 30.06.1973 with 100% disability. The petitioner was granted disability pension from 01.07.1973. However, PCDA (Pension), Allahabad has issued an order for revision of pension based on the recommendation of pay commission and has issued corrected PPO No D/BC/IP/10029/2007 dated 02.04.2007 indicating that excess amount of Rs.3,84,000/- has been over paid to the petitioner till then and accordingly took a decision to recover the excess amount paid

to the petitioner @ Rs.2100/- per month w.e.f. 01.01.2008. The submission of learned counsel for the petitioner is that the order of recovery of excess amount has been passed without serving any notice to the petitioner and in violation of principle of natural justice. Further learned counsel for the petitioner has relied upon the decision of Hon'ble The Apex Court in the case of **State of Punjab Vs Rafiq Masih** (Civil Appeal No 11527 of 2014) decided on 18.12.2014. Learned counsel for the petitioner has invited our attention to the findings recorded by Hon'ble The Apex Court in the aforesaid case which has been summed up in para 12 of the judgment, which is reproduced as under:-

*"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*

*Bees*

*Bees*



5. Admittedly, the petitioner is a soldier and his case is squarely covered by the decision of **Rafiq Masih's** case (supra) and no recovery from pensionary benefits of the petitioner could be made which according to respondents was paid in excess. Apart from aforesaid judgment of Hon'ble The Apex Court, it is well settled law that no order could be passed by appropriate authority in contravention of principle of natural justice. It was incumbent on the PCDA (Pension), Allahabad to serve a notice calling response from the petitioner before making any recovery and only thereafter recovery could be made, more so in this case since the petitioner has been paid continuously since 1973. Such action by the PCDA (Pension), Allahabad seems to be unjustified and is hit by Article 14 of the Constitution of India and also against the observations made by the Hon'ble The Apex Court in the case of **Maneka Gandhi v. Union of India**, [1978] 2 S.C.R. 621, which is reproduced as under:-

*“ .....what is the content and reach of the great equalizing principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits.....Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence.”*



6. In view of the above, though learned counsel for the respondents vehemently argued and submitted that respondents have got right to recover the amount which was paid in excess, but for the aforesaid two reasons, the decision of the respondents seems to be not sustainable in the eyes of law and as such, Transferred Application deserves to be allowed.

7. Accordingly, the Transferred Application is allowed and the impugned orders dated 25.07.2008 directing recovery of excess amount from the pensionary benefits of the petitioner is set aside with all consequential benefits. The respondents are directed to stop the recovery of the amount from the petitioner's pension with immediate effect and refund the amount which has been recovered from the petitioner's pension in pursuance to impugned order expeditiously say within a period of four months from the date of production of a certified copy of the order.

8. No order as to costs.

*Bhushan*  
27.4.17

(Lt Gen Gyan Bhushan)  
Member (A)

Dated : 27<sup>th</sup> April, 2017  
UKT/SB

*Uc*  
*27.4.17*

(Justice D.P. Singh)  
Member (J)