

(Court No 2)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 1491 of 2023

Thursday, this the 03rd day of April, 2025

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Maj Gen Sanjay Singh, Member (A)

No. 7232268 Rank-Ex Sep Name-Kedar Singh, S/o late Jiwan Singh, R/o-
Village-Chittarpur, Post Office-Angautha, District-Mainpuri (U.P.).

..... Applicant

By Legal Practitioner - **Shri Virendra Kumar Gupta**, Advocate
for the applicant

Versus

1. Union of India, through Secretary Ministry of Defence, Govt of India, South Block, New Delhi-110011.
2. The Officer-in-Charge, RVC Centre and School, Meerut Cantt.
3. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (Prayagraj), PIN-211014.
4. Senior Treasury Officer, Mainpuri, UP, PIN-205001.

..... Respondents

By Legal Practitioner - **Shri Amit Jaiswal**, Advocate
for the respondents Ld. Counsel for respondent No 1 to 3
 Shri DK Pandey, Advocate
 Ld. Counsel for respondent No 4

ORDER (Oral)

1. This Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 by which he has sought the following reliefs:-

(i) To pass an order or direction to quash the letter No 956/Kosha/RTI/2023-2024 dated 28.10.2023 annexed as Annexure No A-1 with this Original Application.

(ii) To pass an order or direction to the respondents to stop the further deduction of amount from pension of the applicant and also direct to the respondents to refund the deducted amount Rs 1,58,388/- which is deducted from June, 2018 to January, 2023.

(iii) An interest at the rate of 12% p.a. on the deducted amount till the actual realization may kindly be awarded to the applicant.

(iv) Issue/pass an order directing the respondents to make payment of HRA for months of April to June 2022 within stipulated time.

(v) Any other relief which this Hon'ble Tribunal may deem just and proper in the circumstances of the case, may be awarded in favour of the applicant.

2. Brief facts of the case are that the applicant was enrolled in the Remount Veterinary Corps (RVC) of the Indian Army on 14.01.1963 and he was discharged from service w.e.f. 13.01.1983 (AN) in terms of Rule 13 (3) III (i) of Army Rules, 1954 on completion of colour and reserve service. After discharge from service, he was granted reservist pension w.e.f. 14.01.1983 vide PPO No. S/5816/83 dated 06.07.1983. Due to recovery being made from pension of the applicant the applicant approached Treasury Office, Mainpuri through letter dated 25.09.2023 to which reply was received vide letter dated 28.10.2023 in which it is stated that total amount to be recovered from the applicant's pension is Rs 2,45,282/-. It is also mentioned in the letter that recovery of Rs 1,58,388/- has already been made from his pension account for the period 01.06.2018 to 31.01.2023. This O.A. has been filed for issuing directions to the respondents for refund of Rs 1,58,388/- and restraining respondent No. 4 for further recovery.

3. Submission of learned counsel for the applicant is that the applicant was enrolled in the Indian Army on 14.01.1963 and transferred to the reserve w.e.f.

08.04.1975 after rendering 12 years, 02 months and 24 days qualifying service. He was discharged from service w.e.f. 13.01.1983 and reservist pension was granted vide PPO No. S/5816/83, which he has been drawing since 14.01.1983 through Treasury Office, Mainpuri (UP).

4. Further submission of learned counsel for the applicant is that in the month of September, 2023, while interaction with other veterans, applicant came to know that he was receiving incorrect pension. He submitted application dated 25.09.2023 to which reply was received from Treasury Office, Mainpuri vide letter dated 28.10.2023 intimating that total amount of Rs 2,45,282/- is to be recovered out of which Rs 1,58,388/- has already been recovered during the period June, 2018 to January, 2023. His other version is that respondent No. 4 has stopped recovery and now he is receiving his full pension w.e.f. 05.04.2023. He pleaded for refund of Rs 1,58,388/- which the respondent No. 4 has illegally recovered without any notice.

5. Respondent No. 4 has filed counter affidavit in which it is stated that Senior Accounts Officer (Pension), PCDA (P) Allahabad vide letter dated 15.04.2024 (Annexure CA-1) has apprised the Treasury Office, Mainpuri (U.P.)-205001 that benefit of PCDA Circular No. 568 dated 13.10.2016, Circular No. 430 dated 10.03.2010, OROP-I and Circular No. 666 dated 20.01.2023, OROP-II has been given to regular Army pensioner only and these circulars are not applicable to reservist pensioner.

6. Respondent No 1 to 3 has filed counter affidavit in which it is stated that recovery being pertaining to excess payment made to the applicant by Treasury Office, Mainpuri (UP), comments may be offered from them.

7. Heard learned counsel for the parties and perused the record.

8. No. 7232268 Ex Swr (reservist) Kedar Singh was enrolled in the Remount Veterinary Corps (RVC) of the Indian Army on 14.01.1963 and transferred to reserve w.e.f. 08.04.1975 after rendering 12 years, 02 months and 24 days qualifying service. He was discharged from service w.e.f. 13.01.1983 (AN) and reservist pension was granted vide PPO No. S/5816/83 w.e.f. 14.01.1983 which was revised from time to time. The applicant has been drawing his pension through Treasury Office, Mainpuri (UP) which was being credited to his account No. 10693227597 held at State Bank of India, Mainpuri (UP).

9. In the year 2023, while interaction with other veterans, applicant came to know that he was receiving less pension than his entitlement. He submitted RTI application dated 25.09.2023 to which reply dated 28.10.2023 was received from Treasury Office, Mainpuri intimating that total amount to be recovered from the applicant's pension is Rs 2,45,282/-. It is also mentioned in the letter that recovery of Rs 1,58,388/- has already been made from his pension account for the period 01.06.2018 to 31.01.2023.

10. From counter affidavit filed on behalf of the respondent No 4, it is revealed that due to revision of pension by the Treasury Office, Mainpuri, excess payment has been made to the applicant as the Treasury Office has revised pension of the applicant erroneously in view of circulars related to one rank and one pension (OROP), which the applicant being a reservist pensioner is not entitled.

11. During the course of hearing, reliance has been placed by learned counsel for the applicant on order passed by the Hon'ble Supreme Court in

Civil Appeal No. 11527 of 2014 decided on 18.12.2014, **State of Punjab Vs Rafiq Masih**.

12. Applicant's contention, that the recovery of excess amount has been made without serving any notice to the applicant in violation of principles of natural justice, seems to be justified as perusal of record indicates that no notice was served upon the applicant prior to recovery. Further, the views expressed by the Hon'ble Apex Court judgment in the case of **State of Punjab Vs Rafiq Masih**, Civil Appeal No 11527 of 2014 decided on 18.12.2014 are in favour of the applicant. For convenience sake, Para 12 of the aforesaid judgment 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 would far outweigh the equitable balance of the employer's right to recover."*

13. Additionally, the Hon'ble Apex Court in **Thomas Daniel vs State of Kerala & Ors**, Civil Appeal No. 7115 of 2010 decided on 02.05.2022 has also expressed the same views again. In this case the appellant was granted

excess payment due to mistake on the part of the respondents and recovery was made effective after 10 years from the date of his discharge which the Hon'ble Apex Court refuted observing as under:-

"We are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified."

14. Additionally, the Case of **Thomas Daniel** (supra) is in favour the applicant in which the Hon'ble Apex Court in Para 9 has further held as under:-

"9. This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by 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 payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employee but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess."

15. In the instant case, the applicant has been receiving his due pension from the last forty years. Respondent No. 4 i.e. Treasury Office, Mainpuri has made excess payment to the applicant by applying wrong principle/rule which amount has been recovered from the applicant's pension account. We find that prior to recovery no notice was served upon the applicant, therefore, in view of ruling passed by the Hon'ble Apex Court recovery of excess payment cannot be made.

16. Admittedly, the applicant is a retired soldier and his case is squarely covered by the decision of the Hon'ble Apex Court judgment in the case of

State of Punjab Vs Rafiq Masih (supra). In the instant case, recovery has been made from pension of the applicant without serving any notice. It is well settled law that no order could be passed by appropriate authority in contravention to principles of natural justice. It was incumbent upon the respondents to serve a notice calling response from the applicant before making any recovery and only thereafter, recovery could be initiated. In this case, since the applicant has been paid excess amount owing to miscalculation by the respondent No 4, recovery at this stage is unjustified, arbitrary and is hit by Article 14 of the Constitution of India.

17. In sum and substance, we find that the amount of Rs 1,58,388/- has been recovered by respondent No 4 from pension of the applicant which is impermissible in view of ***State of Punjab vs Rafiq Masih*** (supra).

18. Accordingly, the Original Application No. 1491 of 2023 is **partly allowed** directing the respondents to refund Rs 1,58,388/- to the applicant within a period of four months from today. Respondents are also directed not to initiate any further recovery from the applicant. Default will invite interest @ 8% p.a.

19. No order as to costs.

20. Miscellaneous application(s) pending, if any, shall stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)
 Dated : 03.04.2025
rathore

(Justice Anil Kumar)
Member (J)