

**(RESERVED)**  
**(Court No 2)**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**Original Application No. 703 of 2023**

Thursday, this the 03<sup>rd</sup> day of April, 2025

**Hon'ble Mr. Justice Anil Kumar, Member (J)**  
**Hon'ble Maj Gen Sanjay Singh, Member (A)**

Krishan Baldev Tiwari (JC-691338N Ex Sub Maj/RT), son of Khushi Ram Sharma, resident of Village-Rasiya, Post Office-Rasiya, Tehsil-Nagar, District-Bharatpur (Rajasthan)-321205.

..... Applicant

By Legal Practitioner - **Shri Yashpal Singh**, Advocate  
for the applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, Central Secretariat, New Delhi-110001.
2. Director General of Medical Services (Army), Integrated Headquarters of the Ministry of Defence (Army), Adjutant General's Branch, 'L' Block, New Delhi-110001.
3. Commandant and OIC Records, Army Medical Corps Centre and College, Lucknow, PIN-900450, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj-221014.
5. Joint Controller, Pay Accounts Office (Other Rank), Army Medical Corps, Sardar Patel Marg, Lucknow-226002.

..... Respondents

By Legal Practitioner - **Shri GS Sikarwar**, Advocate  
for the respondents      Central Govt Counsel

## **ORDER**

1. Being aggrieved with impugned recovery of Rs 10,49,258/- through FSA, deduction of field allowance Rs 1,16,087/-, recovery of Rs 2,700/- towards HAUCI and wrong fixation of band pay, the applicant has filed this O.A. in terms of Section 14 of the Armed Forces Tribunal Act, 2007 by which the following reliefs have been sought for:-

(i) *Issue/pass an order directing the respondents to consider and re-fix salary of the applicant in the band pay of Rs 87,700/- and pay arrears of difference in salary within stipulated time.*

(ii) *Issue/pass an order directing the respondents to consider and re-fix pension and other retiral dues of the applicant treating his salary in the band pay of Rs 87,700/- and pay arrears of difference in pension from 01.08.2022 to the date of re-fixation along with interest within a stipulated time.*

(iii) *Issue/pass an order directing the respondents to refund the recovered amount of Rs 10,49,258/- from credit balance Rs 1,16,087/- of field allowance and Rs 2,700/- of HAUCI along with interest within a stipulated time.*

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

(v) *Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*

(vi) *Allow the Original Application with cost.*

2. Brief facts of the case are that the applicant was enrolled in the Army Medical Corps (AMC) of the Indian Army as Religious Teacher (RT) on 06.03.1994. During the course of service, he was promoted to the rank of Subedar Major. He was discharged from service w.e.f. 31.07.2022 (AN) after completion of terms of engagement. Prior to date of retirement, his final statement of account (FSA) was issued through which an amount of Rs 10,49,258/- was recovered on account of excess payment made to him during the course of service. It is further alleged that his band pay has been

reduced from Rs 87,700/- to Rs 82,600/- at the time of discharge from service. In addition to above, applicant has also alleged that recovery of Rs 1,16,087/- on account of field allowance and Rs 2,700/- on account of HAUCL have also been made. Applicant has filed this O.A. for refund of recovered amount and fixation of his correct band pay.

3. Submission of learned counsel for the applicant is that the respondents have recovered Rs 10,49,258/- through FSA on account of excess payment made to him, Rs 1,16,087/- on account of field allowance and Rs 2,700/- on account of HAUCL. It is further submitted that prior to issuance of FSA, the applicant was being paid band pay of Rs 87,700/- whereas in FSA his band pay has been reduced to Rs 82,600/- which is in gross violation of principles of natural justice. It is further submitted that this recovery has been made without giving any prior notice and without giving an opportunity of hearing, which has led to heavy financial loss to the applicant. He pleaded for refund of the aforesaid amount and fixation of applicant's correct band pay.

4. In support of his contention, learned counsel for the applicant has relied upon case law of the Hon'ble Supreme Court in the case of **State of Kerala & Ors vs M Padmanabhan Nair**, AIR 1985 SC 356 and order dated 12.10.2010 passed by the Hon'ble High Court of Allahabad in the case of **Shripati Tripathi vs State of UP through Secretary & Ors**.

5. On the other hand, learned counsel for the respondents submitted that the applicant had submitted a dispute form dated 30.07.2022 for redressal of grievance in which he made request for clarification regarding recovery of Rs 10,49,258/- from credit balance, recovery of Rs 1,16,087/- of field allowance, recovery of Rs 2,700/- of HAUCL and non payment of HRA from

April to June 2002. On receipt of ibid grievance, it was forwarded to PAO (OR) for adjudication which was replied vide letter dated 02.09.2022 intimating that-“during FSA in the month of 07/2022 it was found that indl was drawing more basic pay than actual entitlement. After duly auditing the sheet roll, it was found that indl was promoted to SBSUB on 08.12.2004 vide ROG dated 12.01.2005 while in dolphin system indl was promoted to the same rank from 26.01.1998. A clarification was sought in this matter from Record Office (AMC). Record Office (AMC) clarified vide their letter dated 26.07.2022 that indl was promoted to the rank of SBSUB on 08.12.2004 vide ROG dated 12.01.2005. Hence basic pay was adjusted as the actual entitlement of indl, and basic pay decreased accordingly as indl was already drawing more pay than his entitlement. Owing to the adjustment in basic pay of indl, system recovered respective allowances which were given on a certain rate of basic pay of indl. Hence decreased basic pay resulted in the recovery of respective field allowances which were drawn by indl earlier. HRA adjusted in the month of July, 2022.”

5. Learned counsel for the respondents further submitted that after filing of present O.A., comments were asked from PAO (OR) AMC who vide letter dated 31.07.2023 submitted that the recovery has been made due to wrong fixation of band pay in the year 1998. It was further submitted that applicant's band pay was decreased at the time of FSA as he was drawing more pay owing to wrong fixation. He pleaded for dismissal of O.A. stating that the amount in question has rightly been deducted in accordance with rules on the subject.

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

7. JC-691338N Ex Sub Maj Krishan Baldev Tiwari was enrolled in the Army as Religious Teacher on 06.03.1994. During the course of his service, he was promoted to the rank of Subedar w.e.f. 08.12.2004 and thereafter, to the rank of Subedar Major w.e.f. 01.08.2018. He was discharged from service w.e.f. 31.07.2022 (AN) on completion of terms of engagement and paid pension vide PPO No 203202201069 dated 25.07.2022.

8. The applicant was promoted to the rank of Subedar w.e.f. 08.12.2004 and occurrence to this effect was published vide Part-II Order No 1/022/0002/2005 dated 12.01.2005. Due to error in dolphin system, the date of promotion to the rank of Subedar was entered as 26.01.1998 and therefore, he was paid excess amount from the year 1998 onwards till preparation of FSA. This error was noticed at the time of discharge and excess amount of Rs 10,49,258/- paid to the applicant was recovered through FSA.

9. 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."*

10. 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."*

11. 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.”*

12. In the instant case, the applicant was granted excess amount w.e.f. the year 1998 due to mistake on the part of the respondents, therefore, recovery made by them in the year 2022 i.e. after 24 years, that too without giving an opportunity of hearing, is not justified in the eyes of law.

13. Admittedly, the applicant is a retired soldier and his case is squarely covered by the decision of aforementioned the Hon'ble Apex Court judgments as per which 'recovery cannot be made from retired employees, or employees who are due to retire within one year of the order of recovery'. In the instant case, recovery has been made from pay and allowances of the applicant in the month in which he was discharged from service that too 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 continuously since 26.01.1998, action of the respondents in recovering the amount in the year 2022 seems to be unjustified, arbitrary and is hit by Article 14 of the Constitution of India.

14. The record shows that recovery with respect to field area allowance and HAUCL has been made through FSA. In regard to recovery with respect to field area allowance and HAUCL, respondents ought to issue notice to the applicant, which in this case has not been issued. After receipt of notice,

applicant shall submit representation for redressal of his grievance. Thereafter, being dissatisfied with reply of the respondents, liberty is granted to the applicant to approach the appropriate forum.

15. In sum and substance, we find that the amount of Rs 10,49,258/- has been recovered from pay and allowances of the applicant at the fag end of his service which is not permissible in views of para 12 (ii) of the Hon'ble Apex Court judgment in the case of ***State of Punjab vs Rafiq Masih*** (supra).

16. Accordingly, the Original Application No. 703 of 2023 is **partly allowed** directing the respondents to refund Rs 10,49,258/- to the applicant within a period of four months from today. Default will invite interest @ 8% p.a.

17. No order as to costs.

18. 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)**



RESERVED

(Court No 2)

Form No. 4

**{See rule 11(1)}**  
**ORDER SHEET**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

O.A. No. 703 of 2023

Krishan Baldev Tiwari

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<div><div><u>03.04.2025</u></div><div><u>Hon’ble Mr. Justice Anil Kumar, Member (J)</u></div><div><u>Hon’ble Maj Gen Sanjay Singh, Member (A)</u></div></div> <div><div>1. Order pronounced.</div><div>2. O.A. No. <b>703</b> of <b>2023</b> is partly allowed.</div><div>3. For orders, see our judgment and order passed on separate sheets.</div></div> <div><div>(Maj Gen Sanjay Singh)</div><div>(Justice Anil Kumar)</div><div>Member (A)</div><div>Member (J)</div><div>rathore</div></div>