

RESERVED
(Court No 1)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 847 of 2022

Wednesday, this the 16th day of April, 2025

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

JC No 236502-X Rank-Subedar (Ris/Clk) Sheo Pratap Singh, R/o House No-592-JHA/531, Rathindra Nagar, Kharika, Teli Bagh, Lucknow, UP-226029, Presently residing at Vill & PO-Sarai Ganai Distt-Pratapgarh (UP).

..... Applicant

By Legal Practitioner - **Shri Parijaat Belaura**, Advocate
for the applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Addl Dte Gen of Personnel Services, Adjutant General's Branch, Integrated Headquarters, Ministry of Defence (Army), L-1 Block, Church Road, New Delhi-01.
3. Officer-in-Charge, Armoured Corps Records, Ahmednagar, Maharashtra-414002.
4. The Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad (UP).
5. The Branch Manager, Bank of Baroda, Branch-Mahuli, Distt-Pratapgarh.
6. The Manager, Central Pension Processing Centre (CPPC), Bank of Baroda, Global Shared Services, RLBO, 21 Floor Gift One Tower, Gift City, Gandhi Nagar, Gujrat-382355.

..... Respondents

By Legal Practitioner - **Shri Sunil Sharma**, Advocate
for the respondents Ld. Counsel for respondent No 1 to 4
Shri Prashant Kumar Srivastava, Advocate
Ld. Counsel for respondent No 5 and 6

ORDER

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 set aside rejection letter dated 04.02.2022 (Anx-1).*
- (ii) *To order or direction to Op No 5 and 6 to stop illegal recovery with immediate effect.*
- (iii) *To fix the correct disability element of applicant @ 50% of Subedar rank.*
- (v) *To transmit back the amount which has been recovered illegally @ 18% interest.*
- (v) *Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.*
- (vi) *Cost of the appeal be awarded to the applicant.*

2. Brief facts of the case as emanated from the record are that the applicant was enrolled in the Indian Army on 13.08.1976 and promoted to the rank of Subedar. During the course of service, he was placed in low medical category for disability 'Primary Hypertension (401) & (V-67)'. Being placed in low medical category his Release Medical Board (RMB) was conducted on 10.07.2002 at Military Hospital, Gwalior, which assessed his medical disability @ 20% for life aggravated by military service. He was invalided out of service w.e.f. 30.11.2002 (AN) in terms of Rule 13 (3) I (iii) (b) of Army Rules, 1954 having rendered 26 years and 03 months service.

3. After discharge from service, applicant's disability element claim was processed by Armoured Corps Records vide letter dated 06.01.2003 which was rejected by PCDA (P), Prayagraj (Allahabad) vide letter dated 03.07.2003

with an advice to prefer appeal within six months against rejection of disability element of pension claim. Accordingly, on submitting first appeal dated 09.09.2003, ADGPS/PS-4 accorded sanction for conducting Appeal Medical Board of the applicant. Thereafter, applicant's medical board was carried out at Base Hospital, Delhi Cantt on 09.01.2006 which assessed his medical disability to be 30% for life and aggravated by military service. Disability element of pension claim was processed vide letter dated 24.10.2006 and subsequently PPO No. D/E/141/2007 dated 20.02.2007 was issued by PCDA (P), Prayagraj (Allahabad) granting disability element of pension to the applicant w.e.f. 09.01.2006.

4. In the year 2021, when pension of the applicant was reduced, he submitted application dated 21.12.2021, which was replied by respondent No. 3 vide letter dated 31.12.2021. Feeling aggrieved and dissatisfied with the reply of respondent No. 3, he filed the present O.A. for reliefs mentioned in para 1 above.

5. Learned counsel for the applicant submitted that the applicant has been receiving his service pension w.e.f. 01.12.2002 and disability element of pension w.e.f. 09.01.2006 which was revised from time to time. It was further submitted that on sudden reduction in pension in the month of September 2021, applicant approached respondent No. 5 where it was known that owing to excess payment made to him, recovery @ Rs 16,360/- p.m. has started and that was the reason of reduction in pension amount. On further query

regarding period from which excess payment was made, there was no satisfactory response.

6. Learned counsel for the applicant further submitted that respondent No. 5 has started recovery @ Rs 16,360/- from his pension w.e.f. September, 2021 arbitrarily without giving any prior notice which is against the order passed by the Hon'ble Supreme Court in the case of **State of Punjab vs Rafiq Masih**, (2014) 8 SCC 833. He pleaded for refund of amount, which has been illegally recovered alongwith 18% interest. In support of his contention, learned counsel for the applicant has relied upon order dated 07.01.2021 passed by the Hon'ble High Court of Judicature at Allahabad in the case of **Saroj Bala Pandey vs State of UP & Ors** and order dated 20.08.2020 passed by the Hon'ble High Court of Judicature at Bombay, Nagpur Bench in the case of **Sri Naini Gopal vs Union of India & Ors**.

7. Respondent No. 1 to 4 have filed counter affidavit in which it is stated that the applicant is in receipt of service pension w.e.f. 01.12.2002 and disability element of pension @ 50% for life w.e.f. 09.01.2006 which was revised from time to time. It was further submitted that respondent No 5 and 6 are answerable in regard to recovery being made from pension of the applicant. He, however, submitted that on query, respondent No. 6 issued letter dated 15.12.2022 (Annexure R-7) intimating that the recovery is being made against excess payment made to the applicant erroneously to the tune of Rs 16,82,688/-. It was submitted that by order dated 08.12.2022 passed by this Tribunal, recovery has been stayed by the bank concerned but still there

is remaining amount of Rs 14,49,046/- which is to be recovered from the applicant. He pleaded for dismissal of O.A. stating that respondent Nos. 5 and 6 are solely responsible for disbursement of pension and recovery, if any.

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

9. Notices were issued to respondent Nos. 5 and 6. Despite service of notice, none appeared on behalf of respondent Nos. 5 and 6, therefore, vide order dated 08.05.2024 the case proceeded ex-parte against respondent Nos. 5 and 6. On 02.09.2024, Vakalatnama was filed by Shri Prashant Kumar Srivastava, Advocate on behalf of respondent Nos. 5 and 6 and time was granted to file recall application against ex-parte order. On 05.11.2024, neither learned counsel for the respondent Nos. 5 and 6 appeared nor did he file application for recall of ex-parte order.

10. 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."*

11. Additionally, the Case of **Thomas Daniel** (supra) is also in favour of 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 has been receiving his due pension with effect from the year 2002. Respondent Nos. 5 i.e. the Branch Manager, Bank of Baroda, Branch-Mahuli, District-Pratapgarh had made excess payment to the applicant by applying wrong principle/rule and the excess amount is being recovered from the applicant's pension account w.e.f. September, 2021 i.e. after 19 years. It is not in dispute that the excess payment has been made from the year 2002 whereas the recovery was directed in the year 2021. 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 from a retired employee is impermissible in law after five years from the date excess payment was made to the employee.

13. Admittedly, the applicant is a retired soldier belonging to class III, 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 5, recovery at this stage is unjustified, arbitrary and is hit by Article 14 of the Constitution of India.

14. In sum and substance, we find that total amount to be recovered from the applicant is Rs 16,82,688/- out of which Rs 14,49,046/- has already been recovered by respondent No. 5 from pension of the applicant which is impermissible in law by applying principle enunciated in ***State of Punjab vs Rafiq Masih*** (supra).

15. Accordingly, the Original Application No. 847 of 2022 is **partly allowed**. The respondents are directed to refund the amount to the applicant which has been recovered from the applicant within a period of four months on receipt of certified copy of this order. Respondents are also directed not to initiate any further recovery from the applicant. Impugned order, if any, is quashed. Default will invite interest @ 8% p.a.

16. No order as to costs.

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

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated : 16.04.2025
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(Justice Anil Kumar)
Member (J)

RESERVED
(Court No 1)

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

O.A. No. 847 of 2022

Ex Ris/Clk Sheo Pratap Singh
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Ors
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>16.04.2025</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Vice Admiral Atul Kumar Jain, Member (A)</u></p> <ol style="list-style-type: none"> 1. Order pronounced. 2. O.A. No. 847 of 2022 is partly allowed. 3. For orders, see our judgment and order passed on separate sheets. <p>(Vice Admiral Atul Kumar Jain) Member (A) <i>rathore</i></p> <p>(Justice Anil Kumar) Member (J)</p>