

E-Court
RESERVED

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

Original Application No 450 of 2020

Tuesday, this the 31st day of August, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt. Asha Shukla wife of Ex Nk Late Ram Milan Shukla, R/O
Village-Alpi Ka Pura, P.O. Atrampur (Serawan), Tehsil-Soraon,
District Prayagraj (Allahabad).

.....Applicant

Ld. Counsel for the: **Shri Vivek Kumar Pandey, Advocate**
Applicant

Versus

1. Union of India, Ministry of Defence, New Delhi through its Secretary.
2. Principal Controller of Defence Accounts (Pension), Allahabad.
3. Allahabad Bank Branch at Serawan, block Kaurihar, District-Prayagraj through its Bank Manager.

...Respondents

Ld. Counsel for the :**Shri Jai Narayan Mishra, Advocate**
Respondents. Central Govt Counsel.

ORDER

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

(i) To direct the respondents to stop the further deduction amount from family pension of applicant's Account No 2254330242 of Allahabad Bank and P.P.O. No. S/044564/2007 and also direct the respondents to refund the deducted amount i.e. Rs 96,000/- which was deducted from the month of March 2020 to October 2020.

(ii) To issue any order or direction which this Hon'ble Court deem fit and proper in view of the facts and circumstances of the case, may be granted in favour of the applicant.

(iii) To award cost of the Original Application in favour of the applicant.

2. Facts giving rise to present O.A. are that applicant Smt Asha Shukla was granted enhanced rate of family pension vide PPO No. S/044564 dated 10.10.2007 for a period of seven years from the date of death of her husband or till 02.02.2031 whichever is earlier. Applicant's husband died on 22.12.2010, therefore applicant should have been entitled to enhanced rate of family pension upto 22.12.2017 but due to oversight it was paid upto February 2020. As per applicant, the CPPC, Allahabad has recovered an amount of Rs 96,000/- (@ Rs 12,000/- p.m.) for the period March 2020 to October 2020. After the aforesaid recovery, applicant is stated to have approached bank concerned on 03.10.2020 for stoppage of recovery but

when no action was taken, applicant has filed this O.A. for stoppage of recovery and refund of amount already recovered.

3. Submission of learned counsel for the applicant is that the respondents bank has recovered an amount of Rs 96,000/- for the period March 2020 to October 2020 from applicant's meager pension amount without any notice thereby causing huge financial loss to her and family. His further submission is that applicant is finding it difficult to afford expenses on her old aged (more than 80 years) father and mother-in-law who are dependent on her in addition to her 25 years marriageable daughter. Learned counsel for the applicant further submitted that in the aforesaid circumstances recovering excess amount paid to her will lead to starvation. Relying upon the Hon'ble Supreme Court judgment dated 18.12.2014 passed in Civil Appeal No. 11527 of 2014, **State of Punjab & Others vs Rafiq Masih (White Washer)**, learned counsel for the applicant submitted that excess amount paid to pensioner may not be recovered keeping in view of the aforesaid Apex Court judgment.

4. Per contra, submission of learned counsel for the respondents is that applicant was receiving enhanced rate of family pension w.e.f. the date of death of her husband i.e. 22.12.2010. His further submission is that due to oversight it was not stopped by CPPC, Allahabad on completion of 07 years i.e. on 22.12.2017 but continued to be paid till February, 2020. However, when the error was detected, respondent bank started recovery of over payment amount @ Rs 12,000/- per month

from pensioner's account w.e.f. March 2020. His concluding averment is that banks are entitled to correct bona fide errors and recover excess amount paid to account holders/pensioners.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. Applicant Smt Asha Shukla was in receipt of enhanced rate of family pension w.e.f. 22.12.2010 after her husband's death for a period of 07 years. The aforesaid enhanced rate of family pension was required to be paid to her till 22.12.2017 but due to oversight the pension disbursing agency have paid enhanced rate of family pension till February, 2020. On finding error on their part, respondent bank has stopped paying enhanced rate of family pension w.e.f. March 2020 and started recovering excess amount paid to pensioner. In this case Allahabad Bank, Branch-Atrampur has recovered a sum of Rs 96,000/- from applicant's pension account for the period from March 2020 to October 2020. Applicant has forwarded letter dated 03.10.2020 to concerned bank for stopping recovery of excess amount but it seems to have not been replied as yet.

7. We have perused judgment cited by learned counsel for the applicant and we find that keeping in view of pronouncement of judgment in the case of ***State of Punjab & Others vs Rafiq Masih (White Washer)*** (supra) recovery being made against excess payment of pension is not justified as held vide para 12 of the aforesaid judgment, which for convenience sake is reproduced as under:-

“(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.”

8. In view of the above, we are of the view that excess amount paid to applicant is not recoverable.

9. In view of the above, O.A. is **allowed**. Respondents are directed not to recover excess amount paid to applicant towards payment of enhanced rate of family pension. The respondents are also directed to remit back amount to applicant already recovered w.e.f. March 2020.

10. No order as to costs.

11. Pending applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 31.08.2021
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