

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

Original Application No. 266 of 2021

Wednesday, this the 10th day of August, 2022

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

Kashinath Tiwari, S/o SL-2147P Ex Major Late Mahanth
Prasad Tiwari Presently Residing at 592/Ka/368, Subhani
Khera, Telibagh, Lucknow, Uttar Pradesh- 226002.

..... Applicant

Learned Counsel - **Shri Manoj Kumar Awasthi, Advocate**
for the Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence,
101 South Block, New Delhi- 110011.
2. Chief of Army Staff, Integrated Headquarters of the
Ministry of Defence (Army), South Block, New Delhi-
110011.
3. The Officer in Charge, Defence Security Corps Records,
Mill Road, Burnacherry Post Kannur, Kerala - 670013.
4. The Officer in Charge, Audit Section ORG 3 & (AG's
Branch Army headquarters, West Block- 3, RK Puram,
New Delhi – 110066.

5. Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad.
6. The Branch Manager, Central Bank of India, 2nd Floor, MMO Building, MG Road Fort Mumbai- 400023, Maharashtra.
7. The Chief Manager, Centralized Pension Processing Centre (CPPC), Central Bank of India, 2nd Floor, MMO Building, MG Road, Fort Mumbai- 400023, Maharashtra.

..... Respondents

Ld counsel for - **Shri Adesh Kumar Gupta,**
the respondents **Central Govt Counsel**

ORDER

“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)

1. Being aggrieved with the recovery of Rs. 1,28,485/- from family pension of mother of the applicant, the applicant has preferred this O.A. in terms of Section 14 of the Armed Forces Tribunal Act, 2007 with the prayer to quash the order dated 08.10.2018 and to refund the recovered amount to the applicant.
2. Learned counsel for the applicant submitted that applicant’s father was enrolled in the army and he served as

Other Rank (OR) from 05.01.1953 to 24.10.1969. He served as Junior Commissioned Officer (JCO) from 25.10.1969 to 15.02.1975. Thereafter, he was commissioned in the Army on 17.02.1975 and retired from service on 31.01.1988. After retirement he was granted service pension which was revised from time to time. He expired on 10.02.2004 subsequently applicant's mother was granted family pension. Applicant's mother was informed by the respondents vide letter dated 08.10.2018 that a sum of Rs. 1,28,485/- was overpaid to her while granting OROP and excess paid amount was recovered from the pension account of applicant's mother. Mother of the applicant expired in February 2020. Mother of the applicant represented her case for refund of recovered amount but of no use. Relying upon 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), learned counsel for the applicant pleaded that amount recovered from the pension account of the mother of applicant may be refunded.

3. On the other hand, submission of learned counsel for the respondents is that on retirement from service, father of the applicant was granted service pension vide PPO No M/000166/1988 which was amended from time to time. Father

of the applicant expired on 10.02.2004 and after his death mother of the applicant was granted family pension vide PPO No M/MODP/15061/2003. She was informed that Rs. 1,28,485/- was overpaid to her due to incorrect revision of OROP. Mother of the applicant was granted enhanced rate of family pension of Capt @ Rs. 17010/- per month whereas she was entitled ordinary rate of family pension of Major @ Rs. 14,289/- per month. Mother of the applicant for the period from 01.07.2014 to 01.04.2016 was paid Total Rs. 2,88,159/- whereas she was entitled total Rs 1,59,674/-. Thus, the mother of the applicant was extra paid Rs, 1,28,485/-. When this anomaly was noticed, excess paid amount paid to her was recovered.

4. Learned counsel for the respondents further submitted that now son of the deceased officer has filed instant O.A. to refund recovered amount. Mother of the applicant was erroneously paid excess amount and the respondents have right to recover the excess amount paid to her. His further submission is that applicant has no locus-standi to file the instant O.A. Learned counsel for the respondents contended that since the matter is related to overpayment of pension

which was wrongly paid to her, the applicant is not entitled refund of excess amount paid to her and this O.A. has no substance and is liable to be dismissed.

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

6. The question before us to decide is “whether excess payment of pension is recoverable”?

7. In the instant case, mother of the applicant was granted family pension after death of her husband. Mother of the applicant was informed by the respondents that Rs. 1,28,485/- were excess paid to her and the same was recovered from her pension.

8. A three Judge Bench of the Hon“ble Apex Court in ***State of Punjab v. Rafiq Masih*** (2014) 8 SCC 883, proceeded to explain that the observations made by the Court in the case of ***Shyam Babu Verma*** (1994) 2 SCC 521 and in ***Sahib Ram Verma*** (1995) Supp (1) SCC 18 not to recover the excess amount paid to the appellant therein, were in exercise of its extraordinary powers under Article 142 of the Constitution of India which vest

the power in the Court to pass equitable orders in the ends of justice. In **Shyam Babu Verma** (supra) case, the Court observed as under :-

“11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same.” (emphasis is ours) It is apparent, that in Shyam Babu Verma’s case (supra), the higher pay-scale commenced to be paid erroneously in 1973. The same was sought to be recovered in 1984, i.e., after a period of 11 years. In the aforesaid circumstances, this Court felt that the recovery after several years of the implementation of the pay-scale would not be just and proper. We therefore hereby hold, recovery of excess payments discovered after five years would be iniquitous and arbitrary, and as such, violative of Article 14 of the Constitution of India.

9. In **Sahib Ram Verma** (Supra), the Hon“ble Apex Court has concluded as under :-

“4. Mr. Prem Malhotra, learned counsel for the appellant, contended that the previous scale of Rs 220-550 to which the appellant was entitled became Rs 700-1600 since the appellant had been granted that scale of pay in relaxation of the educational qualification. The

High Court was, therefore, not right in dismissing the writ petition. We do not find any force in this contention. It is seen that the Government in consultation with the University Grants Commission had revised the pay scale of a Librarian working in the colleges to Rs 700-1600 but they insisted upon the minimum educational qualification of first or second class M.A., M.Sc., M.Com. plus a first or second class B.Lib. Science or a Diploma in Library Science. The relaxation given was only as regards obtaining first or second class in the prescribed educational qualification but not relaxation in the educational qualification itself.

5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant.”

10. The Hon“ble Apex Court in **Rafiq Masih** (supra) case has also held in its concluding para 12 that :-

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. The Hon"ble Apex Court in judgment dated 02 May 2022 passed in Civil Appeal No 7115 of 2010 in the case of **Thomas Danial Vs State of Kerala & Ors** has held that an attempt to recover excess payment of pension to employees after 10 years of retirement is unjustified.

12. 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 over payment made to mother of the applicant was not due to any fraud or misrepresentation on her

part. It was due to erroneous fixation of pension made by the respondents, therefore, in view of recent judgment dated 2nd May 2022, it cannot be recovered. For the aforesaid reasons, the decision of the respondents seems to be not sustainable in the eyes of law and as such, respondents cannot recover extra amount paid to mother of the applicant and Original Application deserves to be allowed.

13. Accordingly, the Original Application No 266 of 2021 is **allowed** and the impugned order of recovery of excess amount from the pensionary benefits of the mother of applicant is set aside. The respondents are directed to refund the amount which has been recovered from pension of the mother of the applicant 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.

14. No order as to costs.

15. Miscellaneous applications pending, if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 10 August, 2022

Ukt/-