

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

Original Application No. 432 of 2018

Monday, this the 1st day of August, 2022

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

No. 13933529W Ex Hav (Hony Nb Sub) Bharat Singh, Son of
Shri Mauji Ram, R/o Vill- Nagladalap, Post- Chavraipur, Tehsil-
Bhogaon, District- Mainpuri, U.P.

..... Applicant

By Legal Practitioner - **Shri J.N. Mishra, Advocate**

Learned Counsel for the Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence
South Block, New Delhi.
2. Chief of Army Staff, Army headquarters, South Block,
New Delhi.
3. The OIC Records, Army Medical Corps Record Office,
PIN- 900450, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pensions),
Draupadi Ghat, Allahabad.
5. The Branch Manager, State Bank of India, Fatehgarh,
Farrukhabad, (U.P.).

..... Respondents

By Legal Practitioner - **Shri Adesh Kumar Gupta,**

Ld counsel for the Respondents

ORDER

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

1. Being aggrieved with the order to recover amount of Rs. 83,802/- which is being deducted monthly in the instalment of Rs. 7,000/- per month from applicant’s pension, the applicant has preferred this O.A. in terms of Section 14 of the Armed Forces Tribunal Act, 2007 with the prayer to stop recovery of the said amount.

2. Learned counsel for the applicant submitted that applicant was enrolled in the army on 25.08.1971 and discharged from service on 01.09.1995. He was granted service pension vide PPO No S/021649/1995. A Corrigendum PPO dated 08.03.2016 was issued to the applicant for revised pension from 01.01.2006. On 08.03.2016 applicant came to know that total Rs. 83,802/- has to be recovered in monthly instalment of Rs. 7,000/- per month for 12 months (01.01.2018 to 31.12.2018) in lieu of excess payment made on account of wrong payment of pension through Corrigendum PPO dated

08.03.2016. On 01.01.2018 recovery was initiated without giving show cause notice to the applicant. On 01.07.2018, applicant sent representation to stop recovery from the meagre pension being paid to applicant which is causing great financial hardships to him and the entire family. 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 applicant may be refunded.

3. On the other hand, submission of learned counsel for the respondents is that on retirement from service, applicant was granted service pension @ Rs. 629/- per month with effect from 01.09.1995 in the rank of Havildar vide PPO dated 06.06.1995 which was revised from time to time. The applicant filed O.A. No 359 of 2011 praying for grant of service pension in the rank of Nb Sub wef 01.01.2006. The case was allowed with directions that **'implement the Govt instructions and release the entitled pension with arrears wef 01.01.2006 to Hony Nb Subs within three months of the receipt of the order'**. In compliance of judgment of this Tribunal dated 17.11.2011, PCDA (Pension) Allahabad revised the service

pension of the applicant @ Rs. 7,750/- per month vide PPO dated 06.03.2016 with following notes that:-

(a) *No consolidation is applicable wef 01.07.2009 under this office circular No 430, dt 10.03.2010 and wef 24.09.2012 under this office circular No 501 dated 17.01.2013.*

(b) *Sanction of pension will, however, be subject to the final outcome of appeal, if any filed before the Hon'ble Supreme Court of India. In the event, the appeal is decided in favour of UOI, the applicant shall be liable to refund the entire amount paid to him under the *ibid* sanction.*

(c) *No additional element of pension @ Rs. 100/- pm/ Rs 226/- pm for Hony Rank of Nb Sub wef 01.01.2016 be paid. (d)*

Payment already made wef 01.01.2006 may please be adjusted.

(e) *'Arrears of pension' may be paid to the pensioner on this authority and forward calculation sheet of arrear of payment to this office (Grants- Section) for obtaining ex post facto sanction for 'charged Expenditure'.*

(f) *This PPO is issued in compliance of order dated 17.11.2011 passed by Hon'ble AFT.*

4. Learned counsel for the respondents further submitted that now the applicant has filed instant O.A. to refund recovered amount. The applicant was erroneously paid excess amount and the respondents have right to recover the excess amount paid to him. 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 him, the

applicant is not entitled refund of excess amount paid to him 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. Applicant was enrolled in the Army on 25.08.1971. He was discharged from service on 01.09.1995 and was granted service pension of Havildar rank which was revised from time to time. The aforesaid PPO was revised by issuing further corrigendum PPOs after 06th and 7th pay commissions. However, PCDA (Pension), Allahabad in compliance of order of this Tribunal dated 17.11.2011 revised the pension of the applicant @ Rs. 7,750/- per month for life vide Corrigendum PPO dated 08.03.2016. The applicant was informed that Rs. 83,802/- has been excess paid to him and the same shall be recovered in instalments @ Rs. 7,000/- per month from applicant towards excess amount paid to him. The submission of learned counsel for the applicant is that the order of recovery of excess amount has been passed without serving any notice to the applicant and in violation of principle of natural justice. Further, learned counsel for the applicant has relied upon the decision of the Hon'ble Apex Court in the case

of ***State of Punjab Vs Rafiq Masih*** (supra) inviting our attention to the findings recorded by the Hon'ble Apex Court in the aforesaid case which has been summed up in para 12 of the judgment, which for convenience sake 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."

7. Admittedly, the applicant is a soldier and his case is squarely covered by the decision of **Rafiq Masih's** case (supra) and no recovery from pensionary benefits of the applicant could be made which according to respondents was paid in excess. Apart from aforesaid judgment of the Hon'ble Apex Court, it is well settled law that no order could be passed by appropriate authority in contravention of principle of natural justice. It was incumbent upon the PCDA (Pension), Allahabad to serve a notice calling response from the applicant before making any recovery and only thereafter recovery could be made, more so in this case since the applicant has been paid continuously since 2016. Such action by the PCDA (Pension), Allahabad seems to be unjustified and is hit by Article 14 of the Constitution of India and also against the observations made by the Hon'ble Apex Court in the case of **Maneka Gandhi v. Union of India**, [1978] 2 S.C.R. 621, which is reproduced as under:-

".....what is the content and reach of the great equalizing principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it

must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits.....Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence.”

8. 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 for the aforesaid two reasons, the decision of the respondents seems to be not sustainable in the eyes of law and as such, Original Application deserves to be allowed.

9. Accordingly, the Original Application No 432 of 2018 is **allowed** and the impugned order directing recovery of excess amount from the pensionary benefits of the petitioner is set aside. The respondents are directed to refund the amount which has been recovered from his pension 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.

10. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 01 August, 2022

Ukt/-