

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

ORIGINAL APPLICATION No. 543 of 2021

Tuesday, this the 12th day of July, 2022

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

No. 1468680-N, Hony Nb Sub Sachchida Nand Tiwari, S/o Late Badri Prasad Tiwari, Resident of House No 592 ka/668 Subhani Khera Teli Bagh, Lucknow, U.P.- 226001.

..... Applicant

Learned counsel for the : **Shri Parijaat Belaura, Advocate**
Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Head Quarters, Ministry of Defence, South Block, New Delhi.
3. Officer in Charge, Bengal Engineer Group, PIN- 908779, C/o 56 APO.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.) 211014.
5. The Manager, Punjab National Bank, Sadar Bazar Cantt, Lucknow.
6. The Manager, Central Pension Processing Cell (CPPC) Punjab National Bank, Allahabad.

.....Respondents

Learned counsel for the : **Dr. Shailendra Sharma Atal,**
Respondents. **Central Govt. Counsel**

ORDER

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

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

- (1) *To direct to OP No 6 to refund Rs. 94,354/- (Rupees ninety four thousand, three hundred fifty four only) in the A/C No 0295000100299391, Opened with OP No 5 i.e. Punjab National Bank, Sadar Bazar Cantt, Lucknow.*
- (2) *To direct to OP No 6 to pay interest @ 18% pa wef 23.06.2020 the date when amount of Rs. 94,354/- (Rupees Ninety four thousand, three hundred fifty four only) was deducted from the account No. 0295000100299391, opened with OP No 5 i.e. Punjab National Bank, Sadar Bazar, Cantt, Lucknow of applicant till it is actually refunded.*

2. Brief facts of the case are that the applicant was discharged from service on 31.12.2005 (AN) on completion of 24 years service in the rank of Havildar. After retirement, he was granted Hony rank of Nb Sub. He was granted service pension @ Rs. 3,561/- per month in the rank of Hony Nb Sub in Punjab National Bank, Sadar Bazar Cantt, Lucknow Account No 0295000100299391 and the same was revised from time to time. An amount of Rs. 94,354/- (Ninety four thousand three hundred fifty four only) was deducted as **“Excess pension Paid Recovered”** from the applicant. Applicant

submitted representation which was not considered by the respondents. Being aggrieved, applicant has filed this O.A. with a request to refund amount of Rs. 94,354/-.

3. Learned counsel for the applicant submitted that the applicant was discharged from service on 31.12.2005 and he was granted service pension @ Rs. 3,561/- per month to the rank of Hony Nb Sub which was amended time to time. On 23.06.2020, applicant received a message in his Mobile No 9794245944 about deduction of Rs. 94,354/- without any Show Cause or prior notice. Learned counsel for the applicant submitted that the Hon'ble Apex Court in the case ***State of Punjab and Others Vs Rafiq Masih Civil Appeal No 11527/2014*** has held that even if payment have mistakenly been made by employer in excess of their entitlement that cannot be recovered from class III and IV employees. In pursuance of law laid down by the Hon'ble Apex Court, Govt of India, Min of Personnel, Public Grievances and Pensions Department of Personnel and Training has also provided not to recover excess amount. High Court Allahabad in ***Writ Petition A No. 11179 of 2019 Umesh Chandra Pandey Vs State of U.P.*** vide its order dated 06.01.2020 has been pleased to not only quash the recovery but also directed to refund the amount

which has been already recovered. His further submission is that the applicant submitted a representation dated 20.08.2020 praying therein to cancel wrong recovery of Rs. 94,354/- but no action was taken by the respondents. His submission is that even after representation, amount recovered was not credited in the bank account of the applicant. Learned counsel for the applicant pleaded that direction be issued to respondents to refund Rs. 94,354/- along with interest in the bank account of the applicant.

4. On the other hand, learned counsel for the respondents submitted that the applicant was enrolled in the Army on 24.12.1981 and discharged from service w.e.f. 31.12.2005 (AN) on completion of terms of engagement. He was paid service pension @ Rs. 3,561/- per month in the rank of Hony Nb Sub as revised from time to time. An amount of Rs. 94,354/- was deducted on 23.06.2020 by Punjab Nation Bank, Sadar Bazar, Cantt, Lucknow against amount outstanding to the credit of applicant's account as per RBI Circular dated 17.03.2016 as **"To Excess Pension Paid Recovered"** from the bank account of the petitioner. Reserve Bank of India has issued Circular to recover the excess payments made to the recipients directing the concerned banks that as soon as the

wrong payment made to a pensioner comes to the notice of the paying branch, the branch should adjust the same against the amount standing to the credit of the pensioner's account to the extent possible including lump sum arrears payment.

5. Learned counsel for the respondents further submitted that Govt of India, Min of Def (Finance), C/o Principal Controller of Defence Accounts (Pensions), Allahabad issued a Circular dated 05.03.2020 under the subject 'Revision of Pension of Pre-01.01.2006 retiree Hav granted Hony Rank of Nb Sub. The action was to be taken by the bank keeping in view the letter dated 21.02.2020 issued by Min of Def, Govt of India, Department of Ex Servicemen Welfare, New Delhi, New Delhi by means of which it was prescribed that the revised pension of an Hony rank Nb Sub who retired before 01.01.2006 shall not exceed that of an Hony rank Nb Sub who retired on or after 01.01.2006 as well as shall not exceed that of a regular Nb Sub who retired either before or after 01.01.2006. As per this letter a chart prescribing the revised pension of Hony Nb sub was prepared. In view of above said directions of the authorities of Reserve Bank of India as well as Ministry of Defence, in case of any excess/ wrong payment made to any pensioner, the bank/paying branch is duty bound

to adjust the same against the amount outstanding to the credit of the pensioner's account to the extent possible including lump sum arrears payment as per RBI Circular dated 17.03.2018.

6. After receiving PCDA Circular dated 05.03.2020, Respondents No 5 and 6 prepared due and drawn statement of the applicant having account No 0295000100299391 for the period from Jan 2002 to May 2020. It was revealed that a sum of Rs, 94,354/- was paid in excess to the applicant. The bank sent a written letter dated 15.06.2020 along with due and drawn statement to the applicant which was returned to the bank with remarks 'door locked'. In the circumstances, respondent No 5 is bound to adjust the same against the amount outstanding to the credit of the applicant including lump sum arrears payment. As per RBI Circular dated 17.03.2016 bank had deducted a sum of Rs. 94,354/- from the account of the applicant. The said amount pertains to PCDA, (P), Allahabad, Govt of India, hence Respondent No 5 refunded the same to PCDA (P), Allahabad immediately after deduction.

7. Learned counsel for the respondents submitted that while opening the Account in the branch of Respondent No 5 & 6, the applicant had submitted a undertaking in which it is categorically mentioned that ***“I, the undersigned, agreed and undertake to refund or make good any amount to which I am not entitled or any amount which may be credited to my account in excess of the amount to which I am or would be entitled”.***

8. Learned counsel for the respondents pleaded that judgment and order passed by the Hon’ble Apex Court in the case of ***State of Punjab & Others Vs Rafiq Masih passed in Civil Appeal No 11527/2014*** is not applicable in this case as facts and circumstances in this case are different. In the case in hand, the applicant was paid excess pension and he has already submitted an undertaking for its deduction in case excess amount is paid to him. He pleaded that amount excess paid to the applicant towards pension can always be deducted from his account as per rule and accordingly, the same was deducted after giving him proper information.

9. Learned counsel for the respondents cited the judgment passed by the Hon’ble Apex Court in the case of ***High Court of***

Punjab & Haryana and Ors vs Jagdev Singh, Civil Appeal No 3500 of 2006, decided on 29.07.2016 wherein the Hon'ble Apex Court has held that the amount paid in excess is recoverable. Learned counsel for the respondents prayed that in this case grounds for relief claimed by the applicant are incorrect, wrong and not tenable in the eye of law and O.A. is liable to be dismissed.

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

11. The question before us to decide is 'whether relief should be granted to the applicant against the recovery of the excess payment made from the pension of the applicant?'

12. It is not disputed that the applicant was discharged from service on 31.12.2005 (AN) and he was paid pension of the rank of Hony Nb Sub which was revised from time to time. While preparing due and drawn statement of account, a sum of Rs 94.354/- paid as excess amount was recovered from the applicant which has been conceded by the respondent No 5 and 6 in their counter affidavit.

13. 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."*

14. Hence, in view of aforesaid judgments of the Hon^{ble} Apex Court, an amount of Rs. 94,354/- recovered from the applicant on account of excess payment of pension is liable to be refunded to the applicant there being no fault on the part of the applicant in terms of the aforesaid judgment of the Hon^{ble} Apex Court.

15. 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 respondents 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 applicant was being paid pension continuously since January 2002 and respondents have recovered the same in the year 2020 i.e. after 18 years of payment.

16. Various High Courts in catena of decisions have consistently held that a Govt servant, particularly one in the lower rungs of service would spend whatever emoluments he

receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery.

17. Courts have also observed that if the excess amount was paid on account of any misrepresentation or fraud of 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 recoverable. The relief against the recovery is not granted 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. Courts have also held that if 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. 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.

18. Various Courts have held that if following conditions are fulfilled relief against recovery of excess wrong payment of emoluments/allowances from an employee can be recovered.

(a) The excess payment was made on account of any misrepresentation/ misinterpretation or fraud on the part of the employee.

(b) 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.

(c) 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.

19. Additionally, in a very recent judgment passed by the Hon'ble Apex Court on 02 May 2022 in **Civil Appeal No 7115 of 2010** in the case of **Thomas Daniel vs State of Kerala & Ors** the Hon'ble Apex Court has expressed the same view 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"

20. 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 since payment made was not due to fraud or misinterpretation of rule by the applicant and in view of judgment of the Hon'ble Apex Court, the decision of the respondents seems to be not sustainable in the eyes of law and as such, Original Application deserves to be allowed.

21. In view of above, Original Application is partly **allowed**.
The respondents are hereby directed to refund Rs. 94,354/-
deducted from the pension of the applicant. The Respondents
are directed to comply with the order within a period of four
months from the date of receipt of certified copy of the order.
Default will invite interest @ 8% per annum till actual payment.

22. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 12.07.2022
Ukt/-