

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 542 of 2018**Monday, this the 8th day of August, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Pinku Kumar No. 15589614K Rect.
S/o Shiv Bachan Singh
R/o Village – Saravakagi Kasiya Purab Murataganj,
Tehsil – Chail, District – Kaushambi (UP)**.... Applicant**Ld. Counsel for the Applicant : **Shri Ajay Kishor Pandey**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, Govt. of India, New Delhi.
2. Chief of Army Staff, Integrated HQ of MoD (Army), New Delhi.
3. Commanding Officer, The Commanding Officer Training Battalion-II, BEG & Centre Kirkee, Pune-3.
4. Company Commander, Bombay Engineering Group, Digi Camp, Pune-411015.

... RespondentsLd. Counsel for the Respondents : **Shri R.K.S. Chauhan**,
Central Govt Counsel**ORDER (Oral)**

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:-

- “1. The recovery notice dated 09/07/2018 for recovery of excessive payment may set-aside.
2. Any other suitable order which may be deemed necessary to be passed by the military authorities.”

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 06.01.2014. During the Basic Military Training, applicant absented himself from training centre on 28.04.2014 and declared deserter w.e.f. 28.04.2014. The applicant voluntarily rejoined the duty on 16.03.2015 after an absence period of 323 days. The applicant was awarded 21 days RI by Commanding Officer of Training Battalion No. 2. The discharge order of the applicant was approved by Commandant, BEG & Centre on 25.04.2015 and accordingly, applicant was discharged from service on 16.05.2015 under Rules 13 (3) IV. The applicant received a letter dated 09.07.2018 from the respondents in which it was requested to deposit Rs. 3,25,704/- in Government treasury, paid to the applicant on account of pay and allowance for the period from 16.05.2015 to 01.11.2017. Being aggrieved, applicant has filed this Original Application for not making any recovery from the applicant being no misrepresentation or fraud on the part of the applicant.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army from Amethi B.R.O. in Sept. 2013 and applicant reported at BEG & Centre, Kirkee on 6/7 Jan. 2014. During training period, applicant was bullied, beaten and harassed physically and mentally by some of the seniors. After some days, the same incident was repeated by that group and so applicant left the training centre. Thereafter applicant was dismissed from service by the respective Battalion. The applicant earlier challenged his dismissal order by filing O.A. No. 176 of 2018 and the entire new problem stated after filing of

O.A. The applicant received a letter dated 09.07.2018 from the respondents in which it was requested to deposit Rs. 3,25,704/- in Government treasury, paid to the applicant. The applicant after getting the recovery order filed an application for amendment with an application for interim relief on 16.08.2018.

4. Learned counsel for the applicant further submitted that excess amount was not paid on account of any misrepresentation or fraud on the part of the applicant. The applicant has no knowledge that amount which was being paid to him was more than what he was entitled. Since the applicant is a dismissed person and he is nowhere engaged so this Hon'ble Tribunal may relieve the applicant from the hardship. The excess payment made was the result of wrong interpretation for which the applicant cannot be held responsible because of negligence and carelessness of the official concerned. He pleaded for not making any recovery from the applicant being no misrepresentation or fraud on the part of the applicant.

5. On the other hand, Ld. Counsel for the respondents submitted that applicant was enrolled in the Indian Army on 06.01.2014. On 05.04.2014, applicant was found absent from unit lines and rejoined voluntarily on 09.04.2014. On 28.04.2014, applicant again absented himself from training centre and hence, he was declared deserter vide Part II Order No. 3/0232/08/2014. The applicant voluntarily rejoined duty on 16.03.2015 after an absence period of 323 days and a Part II Order to this effect was published vide 3/0045/14/2015. Therefore, as per IHQ of MoD (Army) letter dated 28.02.1986 and Directive for

Relegation of Recruits and Soldier trainees issued by BEG Centre vide letter dated 30.10.2002, "A recruit who has been absented without leave for a period of 30 consecutive days during pre-attestation period will not be allowed to rejoin his training again and such recruits will be discharged from service after necessary disciplinary action". Accordingly, after rejoining on 16.03.2015, applicant was awarded 21 days RI w.e.f. 24.04.2015 to 14.05.2015 by Commanding Officer of Training Battalion No. 2. The discharge order of the applicant was approved by Commandant, BEG & Centre on 25.04.2015 and accordingly, applicant was discharged from service on 16.05.2015 under Rules 13 (3) IV as "**unlikely to become an efficient soldier**". The applicant vide his petition dated 01.07.2015 asked for certain information under RTI which were provided to him by Record Office vide letter dated 06.10.2015. The applicant submitted a statutory complaint dated 26.10.2015 which was also replied by Record Office vide letter dated 08.01.2016.

6. Learned counsel for the respondents further submitted that there is no provision to reinstate recruits after being discharged under Rule 13 (3) IV of Army Rules, 1954 and principle of work 'there is no payment for no work'. However, the applicant was erroneously paid pay and allowances after his discharge from service w.e.f. 16.03.2015 to 01.11.2017. The applicant filed OA No. Nil of 2018 before this Tribunal for setting aside the Training Battalion No. 2 letter dated 09.07.2018 vide which a recovery notice amounting to Rs. 3,25,704/- was served to the applicant. The authorities were unaware of the fact

that applicant was being paid salary and the applicant also not intimated the authorities that he was getting pay and allowances after being discharged from service for which he was not authorised. The respondents issued a letter dated 09.07.2018 to the applicant for depositing money erroneously paid to him from 16.03.2015 to 01.11.2017 but the same has not been paid back to the Government.

7. Learned counsel for the respondents pleaded that complete amount paid erroneously on account of monthly pay and allowances to the applicant is required to be repaid to the Government treasury as the applicant is not authorised for the same. He pleaded for dismissal of O.A.

8. We have heard learned counsel for both sides and perused the material placed on record.

9. The Hon'ble Apex Court in **Rafiq Masih** (supra) case has 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."

10. It is emerged from the above that applicant was discharged from service on 16.05.2015 but the respondents continued paying monthly pay and allowances to the applicant from 16.05.2015 to 01.11.2017. Since the applicant has been paid Rs. 3,25,704/- by the respondents due to their negligence and there seems no fault on the part of the applicant with regard to receipt of monthly pay and allowances which were credited in his account, hence, in view of judgment of the Hon'ble Apex Court in **Rafiq Masih** (supra), Rs. 3,25,704/- paid to the applicant on account of pay and allowances cannot be recovered from the applicant.

11. Resultantly, Original Application is disposed off. The impugned order/notice of recovery sent by the respondents is hereby set aside. The respondents are hereby directed not to make any recovery against the amount of Rs. 3,25,704/- paid to the applicant on account of monthly pay and allowances. The Respondents are directed to comply with the order within a period of three months from the date of receipt of certified copy of the order.

12. No order as to costs.

13. Pending Misc. Applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve) **(Justice Umesh Chandra Srivastava)**

Member (A)

Member (J)

Dated: August, 2022

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