

(RESERVED)
(Court No. 2)

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

Original Application No. 1389 of 2023

Thursday, this the 16th day of January, 2025

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)

Army No. 13995703-A Ex Hav Sanjay Kumar Singh Vill-Randouli &
Post-Ugharpur, Tehsil-Sultanpur, Distt-Sultanpur, State-U.P. Pin-
228119.

..... Applicant

By Legal Practitioner – **Shri Rahul Pal**, Advocate

Versus

1. Union of India and others through The Secretary Ministry of
Defense South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of MoD (Army), DHQ
PO, New Delhi-110011.
3. Officer-in-Charge, AMC Record Lucknow, Pin-900450,
C/o 56 APO.
4. PAO (OR) AMC NE Cell Lucknow-2.
5. The Principal Controller of Defence Accounts (Pension),
Draupadi Ghat, Prayagraj, Uttar Pradesh-211014.

..... Respondents

By Legal Practitioner – **Shri Rajesh Shukla**, Advocate
Central Government Counsel

ORDER

1. Being aggrieved with impugned recovery of Rs 1,71,888/- which was made through FSA; the applicant had submitted application dated 12.11.2022 for refund of Rs 1,71,888/- which being not received, this O.A. has been filed in terms of Section 14 of the Armed Forces Tribunal Act, 2007 by which he has made following prayers:-

- (i) To set aside and quash the impugned orders attached as Annexure-1 passed by the respondents.*
- (ii) To direct the respondent to refund the recovered from FSA amount Rs. 1,71,888/- made/likely to made from the retiral benefits alongwith 8% interest.*
- (iii) To award the cost of the case in favor of the applicant from the opposite parties."*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 28.06.1996 and discharged on 30.06.2022 (AN) on completion of terms of engagement under the provisions of Rule 13 (3) III (i) of the Army Rules 1954. He was granted service pension vide PPO No. 203202200923. At the time of discharge from service, a sum of Rs 1,71,888/- was deducted through FSA against which applicant submitted letter dated 12.11.2022 to respondent No. 3 who vide communication dated 16.11.2022 approached respondent No. 4 for early settlement of the case. When no settlement was made, applicant again approached respondent No. 3 vide communication dated 27.01.2023. In response, respondent No. 3 submitted copy of

letter dated 28.07.2022 issued by respondent No. 4 as per which it was known that the amount in question was deducted through FSA on the ground that the applicant was getting excess pay w.e.f. 1998. This O.A. has been filed for refund of Rs 1,71,888/-.

3. Submission of learned counsel for the applicant is that the respondents have recovered Rs 1,71,888/- through applicant's final statement of account (FSA) at the time of retirement on account of excess payment made to him during the course of his service from the year 1998. It was further submitted that this recovery has been made without giving any prior notice and without giving any opportunity of hearing, which has led to heavy financial loss to the applicant. Relying upon the Hon'ble Apex Court judgment passed in the case of **Rafiq Masih**, (AIR 2015 SC 696), the Hon'ble Apex Court judgment passed in the case of **Syed Abdul Qadir & Ors vs State of Bihar** reported in (2009) 3 SEC 475, the Hon'ble Apex Court judgment passed in the case of **Ranbir Singh vs Union of India**, AIR 1982 SC 879, the Hon'ble Apex Court judgment passed in the case of **Nehru Yuva Kendra Sangathan vs Rajesh Mohan**, AIR 2007 SC 2509, this Tribunal's order dated 09.09.2022 passed in O.A. No. 337 of 2022, **Ex JWO Santosh Sharma vs UOI & Ors** and the Hon'ble Apex Court judgment dated 02.05.2022 passed in Civil Appeal No 7115/2010, **Thomas Daniel vs State of Kerala &**

Ors, learned counsel for the applicant pleaded for refund of Rs 1,71,888/- with 8% interest.

4. On the other hand, learned counsel for the respondents submitted that the applicant had submitted representation on 12.11.2022 and 27.01.2023 to the Army Medical Corps Records Office against his non-adjustment of post discharge claims (for revision of his basic pay and recovery of Rs 1,71,888/- debited through FSA) which responsibility rests with PAO (OR) AMC, Lucknow. He further submitted that as per records maintained by Army Medical Corps Record Office, it has been found that the applicant has submitted his first application/dispute form on the same subject while proceeding on pension on 30.06.2022 (Annexure R-2).

5. Learned counsel for the respondents further submitted that at the time of making FSA, after scrutiny it was found that the applicant was paid two increments as against one in the year 1998 which caused excess payment from 01.06.1998 onwards and thus accumulated amount from the year 1998 to 30.06.2022 has been debited through FSA. It was submitted that the excess amount of Rs 1,71,888/- paid from the year 1998 has rightly been recovered. He pleaded for dismissal of O.A.

6. Heard learned counsel for the parties and perused the record.

7. The applicant was enrolled in the Army on 28.06.1996 and discharged from service w.e.f. 30.06.2022 (AN) having rendered more than 26 years and 02 days service. In the year 1998, the respondents erroneously granted two increments in the same year i.e. on 31.05.1998 and 01.06.1998 and payment of this excess amount continued till his date of discharge i.e. 30.06.2022. While making FSA the error was noticed and excess amount paid to the applicant was recovered at the time of retirement through FSA.

8. Applicant's contention that the recovery of excess amount has been made without serving any notice to the applicant in violation of principles of natural justice seems to be justified as perusal of record indicates that no notice was served upon the applicant prior to recovery. Further, the views expressed by 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 are in favour of the applicant. For convenience sake Para 12 of the aforesaid judgment is reproduced as under:-

^{1.}
 "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).*

^{2.}

- (ii) *Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
- ³(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."*

9. Additionally, the Hon'ble Apex Court in ***Thomas Daniel vs State of Kerala & Ors***, Civil Appeal No. 7115 of 2010 decided on 02.05.2022 has also expressed the same views again. In this case the appellant was granted excess payment due to mistake on the part of the respondents and recovery was 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."

10. The Case of ***Thomas Daniel*** (supra) is also in favour the applicant in which the Hon'ble Apex Court in Para 9 has further held as under:-

“9. This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by 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 not recoverable. This relief against the recovery is granted not 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. This Court has further held that if in a given case, 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.”

11. Admittedly, the applicant is a retired soldier and his case is squarely covered by the decision of aforementioned the Hon'ble Apex Court judgments. It is well settled law that no order could be passed by appropriate authority in contravention to principles of natural justice. It was incumbent upon the respondents to provide opportunity of hearing to the applicant before passing the order which has not been done by the respondents. In this case, since the applicant has been paid excess amount continuously since the year 1998, such action of the respondents seems to be unjustified and is hit by Article 14 of the Constitution of India.

4.

12. The respondents vehemently argued and submitted that they have right to recover the amount which was paid in excess, but for

the reasons stated above, the decision of the respondents seems to be not sustainable in the eyes of law and as such, Original Application deserves to be allowed.

13. Accordingly, the Original Application No 1389 of 2023 is **partially allowed** directing the respondents to refund Rs 1,71,888/- to the applicant within a period of three months from today. Default will invite interest @ 8% p.a.

14. No order as to costs.

15. Miscellaneous application(s) pending, if any, shall stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated: 16.01.2025
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(Justice Anil Kumar)
Member (J)

RESERVED

Court No 2

Form No. 4

{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

O.A. No. 1389 of 2023

Ex Hav Sanjay Kumar Singh

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<div><div><u>15.01.2025</u> <u>Hon’ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon’ble Maj Gen Sanjay Singh, Member (A)</u></div><div><div>1. Judgment pronounced.</div><div>2. O. A. No. 1389 of 2023 is Partially allowed.</div><div>3. For orders, see our judgment and order passed on separate sheets.</div></div><div><div>(Maj Gen Sanjay Singh) Member (A)</div><div>(Justice Anil Kumar) Member (J)</div></div><div>rathore</div></div>

