

**RESERVED**  
**Court No. 1**

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

**ORIGINAL APPLICATION NO 213 of 2017**

Tuesday, this the 08<sup>th</sup> day of May 2018

**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**  
**Hon'ble Air Marshal BBP Sinha, Member (A)**

IC-65102K Lieutenant Colonel Dheeraj Modgil, Sena Medal son of Dr. Jatinder Mohan Modgil resident of Bathinda Cantonment, post Bathinda, District Bathinda, Punjab-151004 now presently working as DJAG, HQ 10 Corps.

....Applicant

Ld. Counsel for the: **Shri Ram Kumar Verma, Advocate**  
Applicant

Versus

1. Union of India represented by Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. CGDA, Ulan Batar Road, Palam-110010.
3. Principal Controller, Office of the Principal CDA (O), Golibar Maidan, Pune-411011.
4. ACDA, Office of the Principal CDA (O), Golibar Maidan, Pune-411011.
5. Principal Control of Defence Account (PCDA) P, Allahabad (U.P.).

....Respondents

Ld. Counsel for the : **Shri Yogesh Kesarwani, Central**  
Respondents. Govt Counsel assisted by  
Maj Salen Xaxa, OIC Legal Cell.

**ORDER****“(Per Justice S.V.S. Rathore, Member (J))”**

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

2. By means of the present OA filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:-

*“(a) Issue/pass an order or direction to the respondents to refund the complete amount taken as penal interest from the applicant with the interest penalty of 10% per annum.*

*“(b) Issue/pass necessary directions to panalise the concerned PCDA (O) officials for not carrying out their assigned duties diligently and for not carrying out the audit within 12 months.”*

3. In brief, the facts of the case are that the applicant was posted at HQ Eastern Command. He sent a manual requisition dated 15.01.2010 for Rs.70,000/- to PCDA (O) Pune for LTC advance from Kolkata to Shimla. According to the applicant, to expedite the aforesaid claim, he also processed online requisition dated 20.01.2010 for the same amount of Rs.70,000/- for LTC advance for the same journey i.e. from Kolkata to Shimla. (The fact of online requisition from Kolkata to Shimla has wrongly been mentioned in the OA; in fact it was for the journey from Kolkata to Chandigarh.) On 27.01.2010, the

PCDA (O), Pune passed Rs 57,300/- against the online requisition. Against the claim through manual requisition dated 15.01.2010, a sum of Rs.70,000/- was also credited into the account of the applicant on 02.02.2010. The amount of Rs.57,300/- against the first claim was credited in the applicant's account, thus deducting 20% of the total amount claimed. The case of the applicant is that he was not aware of the second amount of Rs.70,000/- credited into his account against online requisition. The applicant proceeded on LTC on 01.02.2010 and after availing the same, he submitted consolidated LTC claim for journey from Kolkata to Shimla for Rs.71,596/-. Adjusting the amount of Rs. 70,000/- paid to the applicant as LTC advance by the PCDA (O), Pune against the said claim of the applicant, the balance of Rs.1,596/- only was to be paid to him. The PCDA (O), Pune, thus, admitted the claim for Rs.69,676/-. According to the applicant, while settling his claim, the PCDA (O) Pune did not raise any objection about Rs.57,300/- credited in the applicant's account by way of LTC advance against manual requisition. However, after a lapse of about four years, the PCDA (O), Pune deducted a huge amount of Rs.83,200/- as also Rs.27,065/-, total Rs. 1,17,682/- (which includes penal interest) from the IRLA of the applicant in the months of February and March, 2014. The applicant requested the PCDA (O), Pune to refund the amount taken as penal interest from his salary, because, according to him, it was not due to his fault but was on account of the negligence on the part of the PCDA (O)

Pune that the aforesaid amount of Rs.57,300/- taken as LTC advance could not be deposited.

4. Learned counsel for the applicant has argued that the applicant has no objection to the repayment of principal amount taken as LTC advance, but the penal interest levied against the applicant is absolutely unjustified, because the applicant was not at fault in receiving this amount or not in paying it back to the PCDA (O) Pune as no action was taken in the matter earlier nor such amount was claimed by the respondents at any early stage.

5. In the counter affidavit, the respondents have narrated the entire facts and have also stated that vide letter dated 03.10.2013, the applicant was requested to make payment of the outstanding dues against him, but the applicant himself had not taken care to make payment of outstanding advances against him. Thereafter again vide letter dated 12.09.2014 (Annexure No. R-5 to the counter affidavit) the applicant was informed that since no immediate action was taken by him for refunding the advance and the said amount was lying in his account from January, 2010 to February 2014, therefore, the question of refund of interest amount deducted from his salary does not arise.

6. Learned counsel for the respondents has vehemently argued that the act of the applicant, who was a senior Army officer, in withholding the Government money deliberately and

not refunding the same, falls within the purview of 'misconduct' under the Rules. It is further submitted that the respondents had made requests and had also asked the applicant to refund the money, but when the same was not refunded, then requisite deduction alongwith penal interest was made from his salary.

7. We refrain from expressing any opinion on the point whether it amounts to 'misconduct' or not, as it is for the respondents to take any action as they may deem fit in the matter.

8. So far as the reliefs prayed for by the applicant are concerned, it is an admitted fact that two requisitions for LTC advance, one online and the other manual, were filed by the applicant for different destinations, one for Kolkata to Shimla and the other for Kolkata to Chandigarh. As mentioned above, the applicant has given wrong facts while stating that both the requisitions were for the same destination. Apart from it, the amount of Rs.70,000/- was credited in the bank account of the applicant. As per practice prevalent in bank, it is the bank that gives information of withdrawal or credit of any amount to the account-holder through SMS. However, the amount credited in the applicant's account was a huge amount for a salaried person and it is not understandable that he could not notice it for a long period of about four years. He must have inquired about it from the bank himself. On being informed by the respondents to refund the said amount, he was under obligation to refund the same, but no such steps were taken by him. On the contrary, it

is evident that the respondents had asked the applicant to refund the amount vide their letter dated 03.10.2013 but he did not care to refund the same nor did he file any reply to the said letter. Obviously the applicant was getting interest on the aforesaid amount of advance credited to his account and in this view of the matter, he could not make a grievance if the respondents have recovered the outstanding amount with penal interest from him as per rules.

9. We also do not find any substance in the submission made by learned counsel for the applicant that the applicant was not at fault as he was not aware of the said amount credited in his account. We have already observed that the applicant did not even care to refund the amount when the respondents, through their letter aforesaid, asked him to refund the same. Even if by mistake the amount was credited in the account of the applicant, then he himself ought to have inquired from the bank as to from where the said amount has been credited in his account and if any amount had wrongly been credited in his account, he was obliged to refund it. It is unbelievable that the applicant was not aware about the amount credited in his own account.

10. Before parting with the judgment, we would like to mention that in the affidavit filed in support of the OA, the applicant has left the places blank in para 4, due to which it is not clear as to which part of the OA is true to his personal knowledge and

which part he believes to be true on the basis of records or legal advice.

11. In view of the discussion made above, we do not find any illegality or irregularity in the recovery of advance amount alongwith interest from the salary of the applicant. The OA lacking in merit deserves to be dismissed and is hereby dismissed.

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice S.V.S. Rathore)**  
**Member (J)**

Dated: 8<sup>th</sup> May, 2018  
LN/-