

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

ORIGINAL APPLICATION No. 438 of 2019

Friday, this the 26th day of November, 2021

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

Kamal Dev Yadav, No. 5248088L, Ex Hav son of Late Sri Babu Lal Yadav, R/O Village & Post Office-Bargadawa Haraiya, P/S/-Puranderpur, Tehsil-Anand Nagar, District-Maharajganju (UP).

..... Applicant

Ld. Counsel for the : **Shri Vijay Kumar Pandey**, Advocate.
Applicant **Shri Girish Tiwari**, Advocate.

Versus

1. Union of India through Secretary to the Government of India, Ministry of Defence, South Block, RK Puram, New Delhi-110011.
2. OIC Records, Records 39 GTC, Varanasi Cantt-221002.
3. The CRO, Records 3 & 9 GR, PIN-900445, C/o 56 APO.
4. ACDA, PAO (Ors), 39 GTC, Varanasi Cantt-221002.

.....Respondents

Ld. Counsel for the : **Dr. Chet Narayan Singh**, Advocate.
Respondents. Central Govt. Counsel

ORDER (Oral)

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

(i) That this Hon'ble Tribunal may kindly be pleased to quash the impugned PPO contains as annexure No I to the original application, passed by opposite part No 4, and direct the opposite parties to refund a sum of Rs 3,96,151/- (Rupees three lac ninety six thousand one hundred and fifty one only) to the applicant, with compound interest @ 18% p.a. from the date of recovery till the date of actual and final payment of the amount in the interest of justice.

(ii) That this Hon'ble Tribunal may kindly be pleased to award the cost of Rs 20,20,000/- (Rs Twenty Lac and Twenty Thousand only) to the applicant against the opposite parties and allow the same.

(iii) That this Hon'ble Tribunal may be pleased to pass any other order or direction which this Hon'ble Court may deem just and proper be passed in favour of the applicant.

2. Brief facts of the case are that the applicant was enrolled in the Army on 01.10.1995 and was discharged from service on 31.07.2019 (AN) under Rule 13 (3) III (i) of Army Rules 1954 after rendering more than 23 years of service. The applicant is in receipt of service pension vide PPO No. 178201900270. The applicant was due to be discharged from service w.e.f. 01.08.2019 and during discharge drill, it came to his knowledge that an amount of Rs 3,96,151/- has been deducted from his pay and allowances for the month of April, 2019. The matter was reported to higher authorities but the same was not refunded to him and he was discharged from service w.e.f. 01.08.2019. This O.A. has been filed for refund of excess recovery of amount of Rs 3,96,151/- which was erroneously

granted to him by the respondents on account of omissions on their part.

3. Submission of learned counsel for the applicant is that applicant was enrolled in group 'Z' category and he was paid salary in a higher group 'Y' category which applicant was not aware. His further submission is that since the amount in question was paid to applicant during his service span of about 24 years and recovery being made in the month of April 2019 is not justified on the ground that the error has occurred on the part of respondents and applicant should not have been penalised for the lapses done by the respondents. He pleaded for refund of recovery of amount along with interest.

4. On the other hand submission of learned counsel for the respondents is that applicant was enrolled in group 'Z' category but erroneously he was paid pay and allowances for group 'Y' category. While applicant's discharge drill was in progress, the mistake came to the knowledge of Pay Accounts Officer and therefore, the recovery was effected in the month of April 2019 prior to his discharge from service. His further submission is that after rectification Rs 1,26,735/- was refunded in the month of May, 2019 but a net amount of Rs 2,69,266/- was debited in applicant's IRLA. He further submitted that since applicant was required to be paid pay and allowances for group 'Z' category and he was paid pay and allowances equivalent to Infantry

soldier belonging to group 'Y' category, this deduction was mandatory and therefore, the amount has rightly been recovered. He pleaded for dismissal of O.A.

5. We have gone through the submissions made by both the parties and perused the material placed on record.

6. The crux of this case is that applicant was enrolled in group 'Z' category and he was paid pay and allowances for group 'Y' category due to fault on the part of the respondents. The fact came to the knowledge of the respondents in the month of April 2019 i.e. at the time of scrutiny of applicant's IRLA prior to proceeding on discharge from service.

7. While filing counter affidavit the respondents have admitted in para 22 that the applicant has been penalised on the part of omission and commission done by the Pay and Accts Office, 39 GTC which for convenience sake is delineated as under:-

"As per para 186 (b) of Financial Regulations Part-I (Vol-I) when erroneous payments have been left unchallenged owing to oversight, the audit office should not, on its own initiative, undertake a re-audit of bills paid more than twelve months previously, but should report the matter to the Competent Financial Authority. It seems that matter was not reported to the competent authority. However, a huge amount of Rs 3,96,151/- has been deducted by Pay Accounts Office (Other Ranks), 39 Gorkha Training Centre in Apr 2019. However, no advance intimation/notice regarding deduction of above mentioned amount has been issued by Pay Accounts Office (Other Ranks), 39 Gorkha Training Centre to the Records 39 Gorkha Rifles, the parent unit or the petitioner before the amount was deducted. Recovery of nominal amount by Pay Accounts

Office (Other Ranks), 39 Gorkha Training Centre during service period of a soldier if any discrepancy is noted during audit is well understood and carries rationale as such amount may not impact the individual much in terms of finances. However, in the instant case, Rs 3,96,151/- was deducted, which is a very huge amount for a personnel who is on the verge of retirement and may adversely affect him and his family mentally, physically and most important financially causing despair for personnel who has put in such a long service for the nation.

(underlines by us)

8. The aforesaid submission made by the respondents clearly indicates that there was omission on the part of the respondents while calculating and paying pay and allowances to applicant during the entire duration of his service. Applicant was enrolled in group 'Z' category and he was paid pay and allowances belonging to group 'Y' category purely on the fault made by the respondents resulting in excess payment of Rs 3,96,151/- during the period of his service span of more than 23 years.

9. In regard to recovery in respect of group 'D' employees the Hon'ble Apex Court in the case of **Shyam Babu Verma vs Union of India & Ors**, 1995 Supp (1) SCC 18 has held as under:-

"11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps

should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same. It is apparent, that in Shyam Babu Verma's case (supra) the higher pay scale commenced to be paid erroneously in 1973. The same was sought to be recovered in 1984, i.e. after a period of 11 years. In the aforesaid circumstances, this court felt that the recovery after several years of the implementation of the pay-scale would not be just and proper. We therefore hereby hold, recovery of excess payments discovered after five years would be iniquitous and arbitrary, and as such, violative of Article 14 of the Constitution of India."

10. In another case reported in (2014) 8 SCC 883, **State of Punjab vs Rafiq Masih**, their Lordships of the Hon'ble Apex Court in para 12 has held 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."

11. Thus, we are clear that applicant has been paid excess amount of basic pay and DA by the respondents and there seems to be no fault on the part of the applicant with regard to receipt of excess amount due to difference in basic pay and group 'Z' and 'Y' category, hence, in view of the aforesaid judgments of the Hon'ble Apex Court, an amount of Rs 3,96,151/- recovered from the applicant on account of difference of basic pay and DA is liable to be refunded to the applicant with interest.

12. In view of the above, respondents are directed to refund Rs 3,96,151/- to applicant which was recovered from his pay slip for the month of April 2019 onwards with a simple interest @ 8% p.a. The respondents are further 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% p.a. till actual payment.

19. No order as to costs.

20. Pending miscellaneous applications, if any, shall stand disposed off.

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

Dated:26.11.2021
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