

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH, NAINITAL)

Original Application No. 417 of 2019

Monday, this the 15^h day of November, 2021

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

47719 Sepoy Daan Singh S/o Sri Bhawan Singh, R/o West Rajiv
Nagar, Ghoranal, Lalkuan, District-Nainital.

..... Applicant

By Legal Practitioner - **Shri Hemant Singh Mahara**, Advocate
for the applicant Learned Counsel for the Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence Central Civil Secretariat, New Delhi.
2. State Bank of India through its GM CPPC, 3rd floor, Chandni Chowk, New Delhi.
3. PCDA (Pension), Allahabad.
4. SBI through its manager, Shakti Farm, Udham Singh Nagar, Uttarakhand-263151.
5. Officer-in-Charge Records, Kumaon Ranikhet-263645.

..... Respondents

By Legal Practitioner - **Shri Rajesh Sharma**, Advocate
for the respondents Learned counsel for the Respondents

ORDER (ORAL)

1. Being aggrieved by the impugned order dated 25.08.2017 for recovery of certain amounts, the applicant has preferred this O.A. in terms of Section 14 of the Armed Forces Tribunal Act, 2007 to quash the order dated 25.08.2017.

2. Submission of learned counsel for the applicant is that applicant has been asked to deposit Rs 1,48,254/- on account of excess payment made to applicant on account of OROP. His further submission is that respondents are recovering an amount of Rs 3,100/-p.m. from the meager pension being paid to applicant which is facing great financial hardships to him and the entire family. Relying upon 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), learned counsel for the applicant pleaded that amount being recovered from the applicant may not be recovered.

3. On the other hand, submission of learned counsel for the respondents is that Govt of India, Ministry of Defence has not framed rule position for extending the benefits of OROP to reservist pensioner, which has been erroneously paid to him and they have every right to recover the excess amount paid to applicant. His further submission is that applicant has no locus-standi to file the instant O.A. Learned counsel for the respondents has further

contended that the since the matter is related to overpayment of pension which was wrongly paid to applicant due to issuing incorrect PPOs by PCDA (P), Allahabad, this O.A. deserves to be dismissed.

4. We have heard Shri Hemant Singh Mahara, learned counsel for the applicant and Shri Rajesh Kumar, learned counsel for the respondents and perused the record.

5. Applicant was enrolled in the Army as reservist on 27.12.1961. He was discharged from service on 27.12.1976 and was granted reservist pension vide PPO No. S/50308/1979. The aforesaid PPO was revised by issuing further corrigendum PPOs after 06th and 7th pay commissions. However, PCDA (Pension), Allahabad has issued an order for revision of pension based on the recommendation of pay commissions and has issued corrected PPO No S/CORR/6th CPC/227451/2014 dated 11.07.2014. The aforesaid PPO was cancelled vide PPO No S/CORR/6thCPC/074147/2015 dated 09.04.2016 reflecting therein that an amount of Rs 3,100/- per month shall be recovered from applicant towards excess amount paid to applicant. The submission of learned counsel for the applicant is that the order of recovery of excess amount has been passed without serving any notice to the applicant and in violation of principle of natural justice. Further, learned counsel for the applicant has relied upon the decision of 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."*

6. 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 PCDA (Pension), Allahabad 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 since the applicant has been paid continuously since 2014. Such action by the PCDA (Pension), Allahabad seems to be unjustified and is hit by Article 14 of the Constitution of India and also against the observations made by the Hon'ble Apex Court in the case of **Maneka Gandhi v. Union of India**, [1978] 2 S.C.R. 621, which is reproduced as under:-

".....what is the content and reach of the great equalizing principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits.....Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence."

7. 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 for the aforesaid two reasons, the decision of the respondents seems to be not sustainable in the eyes of law and as such, Original Application deserves to be allowed.

8. Accordingly, the Original Application No 417 of 2019 is **allowed** and the impugned order dated 25.08.2017 directing recovery of excess amount from the pensionary benefits of the petitioner is set aside with all consequential benefits. The respondents are directed to stop the recovery of the amount from the applicant's pension with immediate effect and refund the amount which has been recovered from his pension in pursuance to impugned order, expeditiously say within a period of four months from the date of production of a certified copy of the order.

9. No order as to costs.

10 Miscellaneous applications pending, if any, shall stand disposed off.

(Vide Admiral Abhay Raghunath Karve)
Member (A)

Dated : 15.11.2021

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(Justice Umesh Chandra Srivastava)
Member (J)

