

**Reserved**  
**Court No. 2**

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

**Original Application No 165 of 2023**

Friday, this the 03<sup>rd</sup> day of November, 2023

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

JC-380337M Ex Sub Ravi Sharan Singh (Retd) S/o Shri Chandra Shekhar Singh, R/o Gali No.4, Hanuman Puri, PO-Sarojini Nagar, District-Lucknow, UP -226008.

..... Applicant

Ld. Counsel for the: **Shri Ravi Kumar Yadav**, Advocate  
Applicant

Versus

1. The Union of India Rep by the Secretary, Govt of India, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), Post-DHQ, New Delhi - 110011.
3. OIC Records, The Records Signals, PIN-908770, C/o 56 APO.
4. OIC PAO (OR), Corps of Signal, PDC Cell, Jabalpur (MP)-408201.
5. PCDA (P) Army, Draupadi Ghat, Allahabad (UP) - 211014.

..... Respondents

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

## **ORDER**

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

“(a) to quash and set aside the Respondent No. 4 FSA for Jun 2022 to the extent of reduction of Band Pay from Rs. 55,200/- to 53,600/- and recovery of Rs 1,37,449/- made thereon (Annexure A-1) of OA & impugned Order.

(b) to issue/pass an order or direction of appropriate nature to the respondents to restore Band Pay of Rs. 55,200/- and amount Rs. 1,37,449/- recovered from applicant in FSA Jun 2022.

(c) to issue/pass an order or directions of appropriate nature to the respondents to grant notional increment to the applicant on 30 Jun 2022 for the period 01.07.2021 to 30.06.2022.

(d) to issue/pass an order or directions of appropriate nature to the respondents to grant all pensionary/retiral benefits due on 30.06.2022 after computing Band Pay Rs. 55,200/- and increment which was due on 30 Jun in last pay drawn and to pay the arrears along with suitable rate of interest as deemed fit by this Hon’ble Tribunal.

(e) to issue/pass an order or direction of appropriate nature to the respondents to revise the pension with effect from 01.07.2022 after computing said Band Pay of Rs 55,200/- and increment in last pay drawn and to pay the arrears alongwith suitable rate of interest as deemed fit by the Hon’ble Tribunal.

(f) Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.

2. Brief facts of the case are that applicant was enrolled in the Indian Army on 06.11.1995 and he was discharged from service on 30.06.2022 (AN) after completion of terms of engagement. After discharge from service, he was granted service pension vide PPO No. 205202203440 w.e.f. 01.07.2020. Applicant’s next increment was due on

01.07.2022 which was not granted to him. As per Sixth Central Pay Commission the Central Government fixed 1<sup>st</sup> July as the date of increment for all Government Employees but the respondents have not taken any action in this regard. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that after the Sixth Central Pay Commission, the Central Government fixed 1<sup>st</sup> July, as the date of increment for all Government Employees, therefore, the applicant is entitled for grant of last increment due on 01.07.2022. He relied upon the law laid down by the Hon'ble High Court of Judicature Allahabad Bench at Lucknow in WP (C) No. 484 of 2010 titled **Union of India and others V. Sri Sakha Ram Tripathi and others**, Hon'ble Madras High Court in the case of **P. Ayamperumal Versus the Registrar, Central Administrative Tribunal, Madras Bench and Others** (W.P. No. 15732 of 2017, decided on 15.09.2017) and AFT (RB), Lucknow judgment in O.A. No. 366 of 2020 titled as **Ex HFL Sarvesh Kumar, vs. Union of India and Others**, decided on 12.08.2021.

4. On the other hand, Ld. Counsel for the respondents contended that the applicant had served for complete one year from the date of his last annual increment, but he had

not been granted annual increment as on the date of his discharge i.e. 30.06.2022, since the date of annual increment fell on the following day i.e. on 01.07.2022. Since the applicant was not on the effective strength of Indian Army on 01.07.2022, therefore, he has not been granted annual increment on 01.07.2022 as per policy in vogue. Although, he conceded that against the Judgment dated 15.09.2017 passed by the Hon'ble Madras High Court in Writ Petition No.15753 of 2017 an Special Leave Petition (Civil) Diary No. 22282 of 2018 was filed by the Union of India before the Hon'ble Supreme Court which was dismissed vide order dated 23.07.2018. He also submitted that the notional increment could not be granted to the retirees of 30 June in terms of DoPT, Government of India letter No. 19/2/2018-Estt (Pay-1) dated 03.02.2021.

5. We have heard Ld. Counsel for the applicant as also Ld. Counsel for the respondents and gone through the records and we find that there are two questions which require to be answered/adjudicated, firstly whether applicant's band pay could be reduced prior to date of retirement and whether the applicant is entitled for one notional increment?

6. The law on notional increment has already been settled by the Hon'ble Madra High Court in the case of ***P. Ayamperumal Versus the Registrar, Central***

***Administrative Tribunal, Madras Bench and Others***

(Supra). Against the said Judgment the Union of India had preferred Special Leave Petition (Civil) Diary No.22282 of 2018 which was dismissed by the Hon'ble Supreme Court vide order dated 23.07.2018. The relevant portion of the Judgment passed by the Hon'ble Madras Court is excerpted below:-

*"5. The petitioner retired as Additional Director General, Chennai on 30.06.2013 on attaining the age of superannuation. After the Sixth Pay Commission, the Central Government fixed 1st July as the date of increment for all employees by amending Rule 10 of the Central Civil Services (Revised Pay) Rules, 2008. In view of the said amendment, the petitioner was denied the last increment, though he completed a full one year in service, ie., from 01.07.2012 to 30.06.2013. Hence, the petitioner filed the original application in O.A.No.310/00917/2015 before the Central Administrative Tribunal, Madras Bench, and the same was rejected on the ground that an incumbent is only entitled to increment on 1st July if he continued in service on that day.*

*6. In the case on hand, the petitioner got retired on 30.06.2013. As per the Central Civil Services (Revised Pay) Rules, 2008, the increment has to be given only on 01.07.2013, but he had been superannuated on 30.06.2013 itself. The judgment referred to by the petitioner in State of Tamil Nadu, rep.by its Secretary to Government, Finance Department and others v. M.Balasubramaniam, reported in CDJ 2012 MHC 6525, was passed under similar circumstances on 20.09.2012, wherein this Court confirmed the order passed in W.P.No.8440 of 2011 allowing the writ petition filed by the employee, by observing that the employee had completed one full year of service from 01.04.2002 to 31.03.2003, which entitled him to the benefit of increment which accrued to him during that period.*

*7. The petitioner herein had completed one full year service as on 30.06.2013, but the increment fell due on 01.07.2013, on which date he was not in service. In view of the above judgment of this Court, naturally he has to be treated as having completed one full year of*

*service, though the date of increment falls on the next day of his retirement. Applying the said judgment to the present case, the writ petition is allowed and the impugned order passed by the first respondent-Tribunal dated 21.03.2017 is quashed. The petitioner shall be given one notional increment for the period from 01.07.2012 to 30.06.2013, as he has completed one full year of service, though his increment fell on 01.07.2013, for the purpose of pensionary benefits and not for any other purpose. No costs."*

7. The Civil Appeal No. 4339 of 2023, Arising out of Diary No. 16764 of 2013, ***Union of India & Others vs. Anand Kumar Singh*** has been dismissed by the Hon'ble Supreme Court vide order dated 10.07.2023 in terms of earlier judgment passed by the Hon'ble Supreme Court in Civil Appeal No. 2471 of 2023, ***The Director (Admn. and HR) KPTCL & Ors vs. C.P. Mundinamani & Ors*** dated 11.04.2023 in which the Hon'ble Supreme Court has held that an employee who has served for a complete year in an organisation is entitled to annual increment on the last day of service for rendering one full year service.

8. In view of law laid down by the Hon'ble Madras High Court and other courts, upheld by the Hon'ble Supreme Court, we are of the view that applicant has to be treated as having completed one full year of service as on 30.06.2022, though the date of increment falls on the next day of his retirement, i.e. on 01.07.2022 on which date he was not in service, is entitled to annual service increment.

9. Applicant's other contention is that on 01.07.2022 when his Final Settlement of Account was received, it was noticed that his band pay was reduced from Rs 55,200/- to Rs 53,600/- and consequently, recovery of Rs 1,37,449/- was effected on 30.06.2022 and his pension and other retiral benefits were computed based on reduced band pay. His further submission is that due to reduction of band pay, recovery of Rs 1,37,449/- and non grant of notional increment, he has suffered huge financial loss. He pleaded for refund of recovered amount of Rs 1,37,449/-, fixing of his band pay to Rs 55,200/- and grant of one notional increment w.e.f. 01.07.2022.

10. Per contra, learned counsel for the respondents submitted that the applicant was drawing more pay than his entitlement from 01.01.2011. The basic pay entitled to the applicant was Rs 9,810/- w.e.f. 01.01.2011 whereas he was drawing basic pay of Rs 9,850/-. The same was reviewed at the time of FSA due to which the last basic pay of the applicant was reduced from Rs 55,200/- to Rs 53,600/- which resulted in recovery of Rs 1,37,449/-.

11. Learned counsel for the respondents further submitted that applicant has tried to co-relate the issue with final statement of account but the issue is that he was drawing more pay w.e.f. 01.01.2011 which on detection was reduced

as per his entitlements. He pleaded for dismissal of O.A. on the ground that since the amount in question was paid in excess, it was rightly recovered.

12. While going through the record it is seen that applicant drew band pay of Rs 55,200/- in the month of May, 2022 but his band pay was reduced Rs 53,600/- while preparing FSA on 30.06.2022, which resulted in recovery of Rs 1,37,449/- from the applicant. We find that prior to reduction of his band pay and recovery, no notice was issued to the applicant.

13. With regard to recovery without issuing notice the Hon'ble Supreme Court in the case of **State of Punjab vs Rafiq Masih (White Washer)**, Civil Appeal No. 11527 of 2014 decided on 18.12.2014 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."*

14. 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 made 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."*

15. The Case of **Thomas Daniel** (supra) is in favour the applicant in which the Hon'ble Apex Court has held in para 9 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."*

16. Admittedly, the applicant is a retired soldier, whose band pay was reduced at the time of retirement resulting into recovery of Rs 1,37,449/-. Therefore, his case is squarely covered by the decision of aforementioned 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 serve a notice calling response from the applicant before reducing his band pay and making any recovery and only thereafter, recovery could be made. In this case since the applicant has been paid excess amount continuously since 01.01.2011, such action of the respondents 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."*

17. In view of the above, respondents' action to reduce his band pay at the verge of retirement and making recovery without prior notice seems to be unjustified. The respondents are directed as under:-

- (i) to refund Rs 1,37,449/- to the applicant.
- (ii) to re-fix his band pay at Rs 55,200/- which was being paid to him regularly prior to issue of FSA.
- (iii) grant him notional increment w.e.f. 01.07.2022, and;
- (iv) grant him terminal benefits w.e.f. 01.07.2022 as per his new entitlements.

18. In view of the above, the Original Application is **allowed**. The impugned orders passed by the respondents are set aside. Applicant's band pay being reduced at the time of retirement is not justified. The applicant's band pay should be fixed @ Rs 55,200/- and thereafter, notional increment to be granted w.e.f. 01.07.2022, as he has

completed one full year of service, though his increment fell due on 01.07.2022, for the purpose of pensionary benefits and not for any other purpose. The respondents are directed to issue fresh Corrigendum P.P.O. fixing his band pay to Rs 55,200/- and granting one notional increment to the applicant accordingly. Respondents are further directed to grant one notional increment w.e.f. 01.07.2022 and pay entitled dues to the applicant within a period of four months after receipt of a certified copy of this order. Default will invite interest @ 8% p.a.

19. No order as to costs.

20. Miscellaneous application (s), pending if any, stand disposed of.

21. Departmental Representative for the respondents orally submitted to grant leave to appeal against the above order, which we have considered and no point of law of general public importance being involved in this case, the plea is rejected.

**(Maj Gen Sanjay Singh)**  
**Member (A)**

Dated: 03.11.2023  
*rathore*

**(Justice Anil Kumar)**  
**Member (J)**

RESERVEDCourt No 2

Form No. 4

**{See rule 11(1)}**  
**ORDER SHEET**

ARMED FORCES TRIBUNAL, REGIONAL BENCH,

LUCKNOW

O.A. No. 165 of 2023

Sub Ravi Sharan Singh (Retd)

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India &amp; Ors

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>03.11.2023</u>  <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u>  <u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p>Judgment pronounced.  O. A. No. <b>165</b> of <b>2023</b> is allowed.  For orders, see our judgment and order passed on separate sheets.</p> <p>(Maj Gen Sanjay Singh)  Member (A)  <i>rathore</i></p> <p>(Justice Anil Kumr)  Member (J)</p>