

Court No. 2**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****TRANSFERRED APPLICATION NO 36 OF 2010**Monday, this the 04th day of October 2016**Hon'ble Mr. Justice Devi Prasad Singh, Member (J)****Hon'ble Air Marshal Anil Chopra, Member (A)**

No 13952876 Ex Hav Ashok Kumar resident of village Mohri Bagh (Rathore Bhawan) Post office Kharika, Telibagh, Lucknow.

.....Petitioner

Ld. Counsel for the: **Shri R.P. Saxena, Advocate**
Petitioner

Versus

1. Union of India through Secretary Defence, Ministry of Defence, New Delhi.
2. The Director General of Medical Services (Army) DGMS-3D, Adjutant General Branch, Army Headquarters 'L' Block, New Delhi.
3. Controller General of Defence Account West Block, RK Puram, New Delhi.
4. Principal Controller Defence Account (Pensions), Allahabad.
5. The Account Officer, P.A.O. (O.R.) A.M.C. Lucknow.

.....Respondents

Ld. Counsel for the: **Shri D.K. Pandey,**
Respondents **Central Govt Counsel assisted by**
Col Kamal Singh, OIC Legal Cell.

ORDER (ORAL)

1. We have heard Ld. Counsel for the parties and perused the records.
2. Being aggrieved with the purported recovery from his pension the petitioner preferred Writ Petition No 5042 (SS) of 2008 in the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow which was transferred to this Tribunal in pursuance to provisions of Section 34 of the Armed Forces Tribunal Act, 2007 and re-numbered as T.A. No 36 of 2010.
3. Admittedly the petitioner was enrolled in the Army Medical Corps (AMC) on 19.06.1981. He reached the age of superannuation on 01.07.2005. Just before a week of retirement, during final settlement vide letter dated 24.06.2005 the applicant was informed that certain excess amount has been paid to him as part of his salary right from 1987, hence he was directed to refund the same. Final statement was prepared on 24.06.2005 with debit balance of Rs 3,50,215.00 followed by petitioner's discharge on 01.07.2005. The initial P.P.O. of Rs 1,65,941.00 was issued on 10.08.2005. Being aggrieved with the aforesaid action on the part of the respondents the petitioner represented his cause before the appropriate authority with regard to wrong deduction on 09.04.2007. The petitioner received Rupees 18,191/- towards post discharge claim on 09.04.2007 and again received Rs

25,257/- towards post discharge claim on 12.06.2007. The petitioner filed zerox copy of full service book which shows that no excess amount has been paid to the petitioner. It is pleaded that along with letter dated 05.06.2008 full copy of the service book was annexed but the respondents did not give any reply.

4. Ld. Counsel for the petitioner submitted that the amount paid to the petitioner as part of service from 1987, that too without any entry in the pay book of service record shall not be recoverable from the petitioner's pension who is a class three employee. By the impugned letter dated 24.06.2005 followed by letter dated 10.08.2005 the petitioner was informed with regard to additional amount paid to him during his employment. Attention of the Tribunal has not been invited by Ld. Counsel for the respondents to any entry in the service book of the petitioner whereby alleged excess amount was paid to the petitioner. However it is submitted that due to corruption of the file in the computer, the department could not notice excess amount paid to the petitioner. Pleading on record show that corruption of the file in the computer was only from Jun 1993 to Feb 1998 i.e. for a period of five years. How and under what circumstances alleged excess amount was paid from 1987 is not understandable.

5. In a recent judgment reported in (2015) 4 SCC 334 ***State of Punjab and Others vs. Rafiq Masih White Washer & Ors.*** their

Lordships of Supreme Court had dealt with identical matter and held as under :-

"17. Last of all, reference may be made to the decision in Sahib Ram Verma v. Union of India, (1995) Supp. 1 SCC 18, wherein it was concluded as under:

"4. Mr. Prem Malhotra, learned counsel for the appellant, contended that the previous scale of Rs 220-550 to which the appellant was entitled became Rs 700-1600 since the appellant had been granted that scale of pay in relaxation of the educational qualification. The High Court was, therefore, not right in dismissing the writ petition. We do not find any force in this contention. It is seen that the Government in consultation with the University Grants Commission had revised the pay scale of a Librarian working in the colleges to Rs 700-1600 but they insisted upon the minimum educational qualification of first or second class M.A., M.Sc., M.Com. plus a first or second class B.Lib. Science or a Diploma in Library Science. The relaxation given was only as regards obtaining first or second class in the prescribed educational qualification but not relaxation in the educational qualification itself.

5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs."

(emphasis supplied)

It would be pertinent to mention, that Librarians were equated with Lecturers, for the grant of the pay scale of

Rs.700-1600. The above pay parity would extend to Librarians, subject to the condition that they possessed the prescribed minimum educational qualification (first or second class M.A., M.Sc., M. Com. plus a first or second class B. Lib. Science or a Diploma in Library Science, the degree of M. Lib. Science being a preferential qualification). For those Librarians appointed prior to 3.12.1972, the educational qualifications were relaxed. In Sahib Ram Verma's case (supra), a mistake was committed by wrongly extending to the appellants the revised pay scale, by relaxing the prescribed educational qualifications, even though the concerned appellants were ineligible for the same. The concerned appellants were held not eligible for the higher scale, by applying the principle of "equal pay for equal work". This Court, in the above circumstances, did not allow the recovery of the excess payment. This was apparently done because this Court felt that the employees were entitled to wages, for the post against which they had discharged their duties. In the above view of the matter, we are of the opinion, that it would be iniquitous and arbitrary for an employer to require an employee to refund the wages of a higher post, against which he had wrongfully been permitted to work, though he should have rightfully been required to work against an inferior post.

18. 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. In case petitioner's case is considered keeping in view the aforesaid binding opinion of Hon'ble Supreme Court, it appears that the amount paid in excess to the petitioner right from 1987 may not be recovered at this belated stage, more so when he is a Group-C employee (Class –III employee).

7. According to Apex Court judgment (supra) recovery from the employees belonging to Class-III is impermissible. It may be noted that in case any amount has been paid from 1987 in excess on account of incorrect fixation of pay/salary, by no stretch of imagination it may be presumed that it was on account of any fault of the petitioner or he committed some fraud or payment of alleged higher amount was in collusion with some employee of the department. Otherwise also once computer was held to be corrupt

for about 6-7 years, then the correction of the decision taken by the respondents holding the petitioner liable to receive excess amount may go on both sides. How and under what manner the respondents had calculated additional amount paid to the petitioner in spite of corruption of file in the computer for about 6-7 years is not understandable. But the fact remains that in view of decision of Hon'ble Supreme Court in the case of **Rafiq Masih** (supra) no amount can be recovered from the petitioner's pension which in any case seems to be a bonafide mistake without involvement of the petitioner.

6. Accordingly the T.A. deserves to be allowed, hence **allowed**. Impugned notice/order dated 10.8.2005 is hereby set aside. The respondents are restrained to recover any amount from the pension of the petitioner in pursuance of impugned notice. In case any amount has been recovered from the petitioner, it shall be refunded to him expeditiously, say, within four months from the date of production of a certified copy of this order.

7. T. A. is **allowed** accordingly.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

anb

(Justice Devi Prasad Singh)
Member (J)