

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 390 of 2018****Tuesday, this the 28th day of September, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Subedar Major Mangala Prasad Singh (JC-520386P)
 S/o Late Shreeram Singh
 R/o S-24/74-P Taktakpur, Po – Varanasi Cantt,
 District – Varanasi (UP)
 Presently posted at Dogra Regimental Centre, Faizabad (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri Om Prakash Kushwaha &**
Shri S.K. Singh, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, South Block, Raisina Hill, New Delhi.
3. Officer Incharge Records, Dogra Regiment, Faizabad (UP).
4. Commandant Dogra Regimental Centre, Faizabad (UP).
5. P.A.O. (OR) Dogra Regiment, Faizabad (UP).
6. Controller General of Defence Accounts, Ulan Batar Road, Palam, Delhi Cantt – 110010.

..... Respondents

Ld. Counsel for the Respondents : **Shri R.C. Shukla,**
 Central Govt 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 call for the records and set aside the recovery order passed by respondents whereby the recovery to an

amount of Rs. 12,09,382/- has been ordered and effected from the salary of June 2018.

- (B) To set aside the recovery proceedings in relation to the recovery amount of Rs. 12,09,382/- as reflected in the pay slip for the month of June 2018.
- (C) To issue any order or direction, which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.
- (D) To award cost to the applicant."

2. The brief facts of the case are that applicant was enrolled in the Indian Army on 15.12.1984 and was discharged from service on 31.08.2018 (AN) after rendering 33 years, 08 months and 15 days of service. The applicant is in receipt of service pension vide PPO dated 26.07.2018. The applicant was promoted as Naib Subedar w.e.f. 01.07.2006. The recommendations of 6th CPC and Special Army Instruction No. 1/S/2008 regarding revision of pay structure of JCOs, NCOs and ORs and fixation of pay in running band were to be implemented w.e.f. 01.01.2006 and therefore, while carrying out pay fixation of the applicant by PAO (OR) Dogra Regiment in Dec. 2008, the pay was erroneously fixed at Rs. 13,490/- instead of Rs. 9,700/- per month. However, during preparation of the Last Pay Certificate (LPC) by PAO (OR), it was noticed that his basic pay was wrongly fixed at 13,490/- instead of Rs. 9,700/-. Accordingly, his basis pay was re-fixed by PAO (OR) in the month of June 2018 and correct LPC was prepared showing debit balance of Rs. 12,09,382/- in monthly Pay Slip of June 2018. Being aggrieved, the applicant sent a letter to CGDA, Delhi Cantt vide his application dated 15.07.2018 to examine

his case and issue suitable directions to avoid financial hardships due to recovery of said heavy amount. The applicant made several correspondences with PAO (OR) Dogra Regiment from 13.06.2009 to 26.07.2010 by preparing observations on the Statement of Accounts in terms of Army Order 32/80 requesting PAO (OR) to carry out correct re-fixation of his pay being paid excess to him but no action was taken by PAO (OR). Being aggrieved the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 15.12.1984 and was granted various promotions in the intervening period and lastly promoted to the rank of Subedar Major. At the time of filing the case before this Tribunal, applicant was posted at Dogra Regimental Centre, Faizabad and was due to retire on 31.08.2018. After 6th CPC implemented w.e.f. 01.01.2006 vide Govt. Notification dated 11.11.2008, applicant's basic pay was to be fixed at Rs. 13,490/- whereas it was erroneously fixed as Rs. 21,170/- per month. The applicant after noticing excess fixation of basic pay submitted application to the respondent authorities in Jan. 2009 which was forwarded to PAO (OR) Dogra Regiment on 13.01.2009 alongwith Appendix A to AO 32/80 by Adjutant of the unit. Thereafter, applicant submitted another Appendix A to AO 32/80 on 28.05.2009 but no action was taken by PAO (OR) for decreasing/re-fixation of his basic pay. Since, no action was taken by PAO (OR) on the applications of applicant, the applicant once again submitted Appendix A to AO 32/80 on 16.07.2009 which was forwarded to PAO (OR) by unit vide letter dated 16.07.2009. In spite

of repeated requests/applications to correct and refix his pay, no remedial steps were taken, therefore, applicant forwarded another Appendix A to AO 32/80 on 05.11.2009 and 26.07.2010.

4. Learned counsel for the applicant further submitted that as a result of inaction on the part of respondents, pay of the applicant was once again fixed w.e.f. 01.01.2016 as per 7th CPC as Rs. 68,000/- per month instead of Rs. 55,200/- in the monthly pay slip of May 2017. At the end of service, when the applicant is to retire on 31.08.2018, respondents have directed for recovery of excess amount paid to the applicant due to inaction on their part to a tune of Rs. 12,09,382/- as per pay slip of June 2018. As a consequence of above, the applicant submitted an application dated 15.07.2018 to CGDA Delhi Cantt but no action has been taken.

5. Learned counsel for the applicant further submitted that para 186 of Financial Regulation Part-1 provide that "*when the erroneous payment have been left unchallenged owing to oversight, the audit officer should not on its own initiate, undertake a re-audited of bills paid more than 12 months previously, but should report the facts of the case to the competent financial authority for orders and a re-audit should be undertaken only if the competent financial authority so desires.*" Hence, PAO (OR) is not competent to undertaken a re-audit of bills paid more than 12 months previously. The recovery of Rs. 12,09,382/- is not only beyond jurisdiction of PAO but also a very harsh step taken by the respondents at the end of service without any fault on the part of the applicant.

6. Learned counsel for the applicant placed reliance on the judgment of a three Judge Bench in ***State of Punjab v. Rafiq Masih*** (2014) 8 SCC 883 and pleaded that applicant's case is squarely covered with this judgment and therefore, amount recovered by the respondents be refunded to the applicant.

7. Learned counsel for the applicant also submitted that this Tribunal vide its order dated 24.08.2018 has stayed recovery of Rs. 12,09,382/- effected from the salary of June 2018/post retiral dues of the applicant.

8. Learned Counsel for the respondents submitted that applicant was promoted as Naib Subedar w.e.f. 01.07.2006. The recommendations of 6th CPC and Special Army Instruction No. 1/S/2008 regarding revision of pay structure of JCOs, NCOs and ORs and fixation of pay in running band were to be implemented w.e.f. 01.01.2006. While carrying out pay fixation of the applicant by PAO (OR) Dogra Regiment in Dec. 2008, the pay was erroneously fixed at Rs. 13,490/- instead of Rs. 9,700/- per month. However, during preparation of the Last Pay Certificate (LPC) by PAO (OR), it was noticed that his basic pay was wrongly fixed at 13,490/- instead of Rs. 9,700/-. Accordingly, his basis pay was re-fixed by PAO (OR) in the month of June 2018 and correct LPC was prepared showing debit balance of Rs. 12,09,382/- in monthly Pay Slip of June 2018. Being aggrieved, the applicant sent a letter to CGDA, Delhi Cantt vide his application dated 15.07.2018 to examine his case and issue suitable directions to avoid financial hardships due to recovery of said heavy amount. The applicant made several correspondences with PAO

(OR) Dogra Regiment from 13.06.2009 to 26.07.2010 by preparing observations on the Statement of Accounts in terms of Army order 32/80 requesting PAO (OR) to carry out correct re-fixation of his pay being paid excess to him but no action was taken by PAO (OR).

9. The respondents in their counter affidavit denied receipt of letters of observations (Appendix A to AO 32/80) made by the applicant to PAO (OR), hence no action was taken by Pay Account Office for re-fixation of excess basic pay being granted to the applicant. He pleaded for dismissal of O.A.

10. Heard learned counsel for the parties and perused the relevant documents available on record.

11. A three Judge Bench of the Hon'ble Apex Court in **State of Punjab v. Rafiq Masih** (2014) 8 SCC 883, proceeded to explain that the observations made by the Court in the case of **Shyam Babu Verma** (1994) 2 SCC 521 and in **Sahib Ram Verma** (1995) Supp (1) SCC 18 not to recover the excess amount paid to the appellant therein, were in exercise of its extraordinary powers under Article 142 of the Constitution of India which vest the power in the Court to pass equitable orders in the ends of justice. In **Shyam Babu Verma** (supra) case, the Court observed 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 but as they have received the 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.” (emphasis is ours) 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.

In **Sahib Ram Verma** (Supra), the Hon'ble Apex Court has 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."

12. The Hon'ble Apex Court in **Rafiq Masih** (supra) case has also

held in its concluding para 12 that :-

"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."

13. It is emerged from the above that the applicant has been paid excess amount due to wrong fixation of basic pay as per recommendations of 6th CPC and 7th CPC by PAO (OR) Dogra Regiment and there seems no fault on the part of the applicant with regard to receipt of excess amount due to re-fixation of pay. The applicant himself submitted so many applications through his unit as per Appendix A to 32/80 for correct fixation of his basic pay but no action was taken by Pay Account Office which resulted heavy debit balance and recovery of Rs. 12,09,382/- in the monthly Pay Slip of June 2018 of the applicant. Hence, in view of aforesaid judgments of the Hon'ble Apex Court, an amount of Rs. 12,09,382/- recovered from the applicant on account of difference of pay in re-fixation of his basic pay is liable to be refunded to the applicant.

14. In view of above, Original Application is allowed. The respondents are hereby directed to refund Rs. 12,09,382/- to the applicant which were recovered from his pay in Pay Slip of June 2018. The Respondents are 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% per annum till actual payment.

15. No order as to costs.

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

Dated: Sept., 2021
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