

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 676 of 2020**Monday, this the 20th day of September, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Dhan Pal Singh No. 14811254P, Ex. Nk
S/o Shri Ram Singh
R/o Village – Osar, PO – Nawadabilasandi,
PS & Tehsil – Faridpur
District – Bareilly (UP)

..... Applicant

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

Versus

1. The Union of India, through Secretary to the Government of India, Ministry of Defence, South Block, R.K. Puram, New Delhi-110011.
2. OIC Records, Records ASC (MT), Bangalore.
3. I.G.S.F.F., Est. Block-V, Level-IV, R.K. Puram, New Delhi – 110066.
4. PCDA (P), Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Dr. Gyan Singh**,
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:-

- “(i) That this Hon'ble Tribunal may kindly be pleased to quash the impugned para-06 of the IAFF-1118, contains as annexure no. 1 to the original application, passed by opposite party no. 2, and direct the opposite parties to refund a sum of Rs. 2,36,815/- (Rs. Two Lac Thirty Six

Thousand Eight Hundred and Fifteen) 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 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. The factual matrix on record is that the applicant was enrolled in the Army on 27.04.1994 and was discharged from service on 29.02.2012 (AN) under Rule 13 (3) III (iv) of Army Rules, 1954 on compassionate ground. He was granted service pension w.e.f. 01.03.2012 vide PPO dated 14.12.2011. During the service period, applicant was posted with HQ Establishment No. 22 w.e.f. 14.07.2009 to 31.01.2012. For this period, he was granted Deputation Special Para Forces Allowance (DEPSPF) @ 10% of basic pay by publishing Part II Order vide SFF Records letter dated 09.10.2019. During final settlement of Accounts of the applicant PAO (OR) ASC (South), Bangalore has recovered Rs. 2,36,815/- from pay account of the applicant against description DEPSPF allowance. In this regard applicant submitted several applications and representations to the opposite parties from time to time and ultimately on 23.09.2019 but the recovered amount of Rs. 2,36,815/- has not been refunded to the

applicant which was deducted from his Pension Fund. Being aggrieved, the applicant has filed the present O.A.

3. Learned counsel for the applicant submitted that opposite party No. 2 had made a heavy recovery of Rs. 2,36,815/- in Final Settlement of Account which was paid to the applicant for the period from 14.07.2009 to 31.01.2012 towards DEPSPF, in very illegal and arbitrary manner, without providing any opportunity to the applicant. The respondents have not communicated any document/letter to the applicant prior to recovery of amount. In this regard applicant submitted several applications and representations to the opposite parties from time to time with last one on 23.09.2019, but there was no fruitful result for refund of the recovered amount of Rs. 2,36,815/- to the applicant which was deducted from his Pension Fund. He further submitted that initiation of recovery against the applicant is violative of the mandate contained in Article 14 of the Constitution of India and there are several pronouncements of the Hon'ble Apex Court on this point. It is well settled position of law that if the mistake of making a wrongful payment is made by the authorities, it cannot be deducted from the individual in any manner. Therefore, respondents are liable to refund the recovered amount of Rs. 2,36,815/- to the applicant with interest.

4. Learned counsel for the respondents submitted that after discharge from service applicant was granted service pension w.e.f. 01.03.2012 vide PPO dated 14.12.2011. During the service period, applicant was posted with HQ Establishment No. 22 w.e.f. 14.07.2009 to 31.01.2012. For this period, he was granted Deputation Special

Para Forces Allowance @ 10% of basic pay by publishing Part II Order vide SFF Records letter dated 09.10.2019. During Final Settlement of Accounts of the applicant, PAO (OR) ASC (South), Bangalore has recovered Rs. 2,36,815/- from pay account of the applicant against description "DEPSPF allowance".

5. Learned counsel for the respondents further submitted that in a similar case of ***Ex Nk Sahi Ram Mahala vs. Union of India***, PAO (OR) ASC (South) Bangalore vide their letter dated 17.01.2014 intimated that as per Government of India, Ministry of External Affairs letter dated 13.01.2005, personnel posted in Establishment No. 22 are eligible for Deputation Allowance (DEPA) and not DEPSPF, hence, the amount has been recovered on the basis of instructions issued by HQ CGDA, New Delhi letter dated 16.12.2012 and 27.05.2011 in consonance with Cabinet Secretariat order dated 08.07.1993. It is also mentioned that HQ CGDA has issued instructions to PAO (OR) to recover DEPSPF allowance granted to individuals while serving with HQ 22 Establishment based on the Cabinet Secretariat order dated 08.07.1993.

6. Learned counsel for the respondents further submitted that in reply to a legal notice submitted by Sri Hansh Mann, Advocate, Rajasthan High Court, office of the CGDA, West Block, RK Puram, New Delhi vide letter dated 19.08.2011 has intimated that "as per Central Secretariat letter dated 03.06.2002 and 20.07.2010, Hazard Pay (Special Force Allowance) is admissible to PBORs of Special Group only. As the PBORs of HQ No. 22 Establishment do not belong

to Special Group, recovery of over payment on account of Hazard Pay (Special Force Allowance) wrongly paid to them is in order”.

7. Learned counsel for the respondents further submitted that in a similar case in OA No. 286 of 2014, ***Ex Hav Balbir vs. Union of India and Ors***, AFT (PB), New Delhi had dismissed the case vide its order dated 15.12.2015 relying on the decision of the Hon’ble Apex Court in the case of ***Chandi Prasad Uniyal vs. State of Uttarakhand***, (2012) 8 SCC 417 in which the Hon’ble Apex Court in para 15 & 16 had observed as under :-

“15. We are not convinced that this Court in various judgments referred to hereinbefore has laid down any proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. On the other hand, most of the cases referred to hereinbefore turned on the peculiar facts and circumstances of those cases either because the recipients had retired or on the verge of retirement or were occupying lower posts in the administrative hierarchy.

16. We are concerned with the excess payment of public money which is often described as “tax payers money” which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

In view of above, there is no illegality in recovery of the Govt. money paid to the applicant which was not entitled to him, hence, he pleaded for dismissal of O.A.

8. We have heard learned counsel for the parties and have perused the record.

9. We find that during Final Settlement of Accounts of the applicant PAO (OR) ASC (South), Bangalore has recovered Rs. 2,36,815/- from pay account of the applicant against DEPSPF allowance which was erroneously granted on the basis of Publication of part II Order. We also find that applicant was not entitled for DEPSPF allowance. Rather he was entitled to DEPA allowance, hence, the amount has been recovered on the basis of instructions issued by HQ CGDA, New Delhi vide their letters dated 16.12.2012 and 27.05.2011 in consonance with Cabinet Secretariat order dated 08.07.1993. Therefore, we find no illegality in recovery of the Govt. money paid to the applicant erroneously which was actually not entitled as per orders and instructions on the subject.

10. A three Judge Bench 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** (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 whereas in **Chandi Prasad Uniyal** (supra) case, a specific issue was raised and canvassed. The issue was whether the appellant therein can retain the amount received on the basis of irregular/wrong pay fixation in the absence of any misrepresentation or fraud on his part. The Court after taking into consideration the various decisions of this Court had come to the conclusion that even if by mistake of the employer the amount is paid to the employee and

on a later date if the employer after proper determination of the same discovers that the excess payment is made by mistake or negligence, the excess payment so made could be recovered. Thus, laying down the law, under Article 136 of the Constitution of the India, the court had dismissed the petition of the employee.

11. In view of the above, we do not find any irregularity or illegality in recovery of Rs. 2,36,815/- from the applicant which has been erroneously paid to him. DEPSPF allowance is entitled to Indian Army deputationists who are posted to Special Group by virtue of hazardous jobs performed by them, therefore, there is no illegality in the recovery of DEPSPF allowance from the applicant being not entitled. The applicant's case does not fall in any exceptional categories, enumerated in **Chandi Prasad Uniyal's** case (supra) and therefore, respondents cannot be directed to refund the amount recovered from the applicant as overpaid simply because it forms part of the public money.

12. In the result, the O.A. deserves to be dismissed. It is accordingly **dismissed**.

13. No order as to costs.

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| | (Vice Admiral Abhay Raghunath Karve) | (Justice Umesh Chandra Srivastava) |
| | Member (A) | Member (J) |
| Dated: | Sept., 2021 | |
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