

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 89 of 2019****Monday, this the 27<sup>th</sup> day of September, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Narayan Bahadur Khattri Chhetri, No. 05847529F  
 Ex MACP Nb Sub  
 S/o Shri Krishna Bahadur Khattri Chhetri  
 R/o Village – Youppy Samdhi, PO – Besisahar,  
 Distt - Lamung, Nepal

..... Applicant

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

Versus

1. Union of India, through Secretary to the Government of India, Ministry of Defence, South Block, RK Puram, New Delhi-110011.
2. OIC Records, Records 39 GTC, Varanasi Cantt-221002.
3. The CRO, Records 3&9 GR, PIN – 900445, C/o 56 APO.
4. ACDA, PAO (ORs) 39 GTC, Varanasi Cantt – 221002.

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal**,  
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 letter dated 16.02.2018, contains as annexure no. 1 to the original application, passed by opposite party no. 4, and direct the opposite parties to refund a sum of Rs. 4,97,750/- ((Rupees “Four Lakh

Ninety Seven Thousand Seven Hundred Fifty only) was deducted from the monthly salary of the month of December, 2017 on account of ATCORR for the period from 01.09.1998, in two parts Rs. 2,32,342/- (Two Lakh Thirty Two Thousand Three Hundred Forty Two only) is on account of DA difference and Rs. 2,25,408/- (Two Lakh Twenty Five Thousand Four Hundred Eight only) is on account of Basic Pay difference in monthly Pay Slip for the month of Dec 2017 & Rs. 40,000/- (Forty Thousand only) for final FS of 31.05.2018 in the monthly pay slip for the year 2018, 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/- (Rupees 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 brief facts of the case are that applicant was enrolled in the Indian Army on 24.05.1992 and was discharged from service on 31.05.2018 (AN) under Rule 13 (3) III (i) of Army Rules, 1954 after rendering 26 years of qualifying service. The applicant is in receipt of service pension w.e.f. 01.06.2018 vide PPO No. 178201800277. The applicant submitted an application to Records through his unit that an amount of Rs. 4,57,750/- has been deducted by PAO (OR) 39 Gorkha Training Centre on account of ATCORR in the monthly pay slip of Dec. 2017 and a prior notice for deduction of this heavy amount of Rs. 4,57,750/- has not been served to the applicant by ACDA i/c PAO

(OR) 39 Gorkha Training Centre (GTC). The matter of this heavy recovery was also not reported to the Record Office. The applicant asked the information from PAO (OR) 39 GTC through RTI for heavy recovery which was replied stating difference of group basic pay and DA. During the time of discharge drill in the month of May 2018, the applicant reported the matter to representative of PAO (OR) in Sainik Sammelan of Chief Record Officer (CRO) and Commandant 39 GTC for refund of Rs. 4,57,750/- deducted in monthly pay slip of Dec. 2017 but nothing materialised. Finally, the applicant was discharged from service on 30.05.2018 (AN) but the amount deducted by PAO (OR) has not been refunded to the applicant justifying correct deduction under various rules and policies. Being aggrieved the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that vide impugned letter dated 16.02.2018, opposite party no. 4 has made heavy recovery of Rs. 4,57,750/- from the monthly Pay Slip of December, 2017 on account of ATCORR in two parts i.e. Rs. 2,32,342/- on account of DA difference and Rs. 2,25,408/- on account of Basic Pay difference in month pay Slip of Dec. 2017 in very illegal and arbitrary manner without providing any opportunity to the applicant. When it came to the notice of the applicant that heavy recovery has been made from his account, he sent an application dated 19.03.2018 under RTI which was replied by the respondents stating correct recovery.

4. 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 with interest.

5. Learned Counsel for the respondents submitted that applicant submitted an application to Records through his unit that an amount of Rs. 4,57,750/- has been deducted by PAO (OR) 39 Gorkha Training Centre on account of ATCORR in the monthly pay slip of Dec. 2017 and prior notice for deduction of this heavy amount of Rs. 4,57,750/- has not been served to the applicant by PAO (OR) 39 Gorkha Training Centre (GTC). The applicant asked the information from PAO (OR) 39 GTC through RTI for heavy recovery which was replied by PAO (OR) stating correct recovery being difference of group basic pay and DA. During the time of discharge drill in the month of May 2018, the applicant reported the matter to representative of PAO (OR) in Sainik Sammelan of Chief Record Officer (CRO) and Commandant 39 GTC for refund of Rs. 4,57,750/- deducted in monthly pay slip of Dec. 2017. Finally, the applicant was discharged from service on 30.05.2018 (AN) but the amount deducted by PAO (OR) has not been refunded to the applicant. He pleaded that original application be dismissed as there is no involvement of stepping up in this case.

6. Learned counsel for the respondents further submitted that comments with regard to recovery of amount was asked from PAO (OR) 39 GTC by Record Office vide letter dated 30.08.2018 stating that "*Since the applicant i.e. No. 5847529F Ex Hav (Chef Mess) Narayan Bahadur Khattri Chhetri was recruited as Ck/M vide TCO-II*

No 48/9GR/8/1992 dt 24 Aug 1992, please clarify as to why your office was continuously granting him the pay scale of Infantry Soldier (Gp-Y)". However, no clarification has been provided by PAO (OR) 39 GTC. Later it came to notice while scrutinising Sheet Roll for preparation of LPC that the applicant was enrolled as Cook in Group 'E' whereas he was being paid for Infantry Soldier in Group 'Y' which resulted difference in basic pay as well as DA and thus, applicant has been paid more than his authorised basic pay of Group 'E'. Therefore, he pleaded for dismissal of O.A.

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

8. 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 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 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.”

9. The Hon'ble 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."

10. It is emerged from the above that the applicant has been paid increased amount of basic pay and DA by the respondents and there seems no fault on the part of the applicant with regard to receipt of excess amount due to difference in basic pay of Group 'Y' and 'E' soldier, hence, in view of aforesaid judgments of the Hon'ble Apex Court, an amount of Rs, 4,57,750/- recovered from the applicant on account of difference of basic pay and DA is liable to be refunded to the applicant with interest.

11. In view of above, the respondents are hereby directed to refund Rs. 4,57,750/- to the applicant which was recovered from his Pay Slip of December 2017 with a simple interest @ 8% per annum. 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.

12. 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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