

Reserved
(Court No 2)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 808 of 2023

Tuesday, this the 17th day of December, 2024

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

Ex Sgt/MTD Indresh Kumar, No. 629442A, S/o late Shri Devi Charan, Vill-Ghanshyampur, P.O. & P.S.-Kora Jahanabad, Tehsil-Bindki, District-Fatehpur (U.P.)-212659

..... Applicant

By Legal Practitioner – **Shri Vijay Kumar Pandey**, Advocate
for the applicant **Shri Girish Tiwari**, Advocate
Shri Dheerendra Kumar Agnihotri, Advocate
Shri Sandeep Tripathi, Advocate
Shri Vishnu Kant Awasthi, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, R.K. Puram, New Delhi-110011.
2. Dir-III (Appeal), Directorate of Air Veterans, Subroto Park, New Delhi-110010.
3. Air Headquarters, Directorate of Air Veterans, Subroto Park, New Delhi-110010.
4. Principal Controller of Defence Accounts (P), Draupadi Ghat, Allahabad (U.P.)-211014.

..... Respondents

By Legal Practitioner - **Shri Namit Sharma**, Advocate
for the respondents Central Govt Counsel

ORDER

1. Being aggrieved with impugned recovery of Rs 1,47,837/- which was made through PPO No. 601202204282; the applicant had submitted application dated 26.05.2023 for refund of Rs 1,47,837/- which being not responded, this O.A. has been filed in terms of Section 14 of the Armed Forces Tribunal Act, 2007 by which he has made following prayers:-

(i) That this Hon'ble Tribunal may kindly be pleased to quash the impugned PPO No 601202204282 by which the illegal and arbitrary recovery of Rs 1,47,837/- (Rs one lac forty seven thousand eight hundred thirty seven only) has been made, passed by opp party No 4 contained in annexure No 1 to this original application and, direct the opp parties to refund the aforesaid amount, and provide the interest on the aforesaid recovered amount of recovery @ 18% p.a. since the date of recovery to actual date of payment in the interest of justice.

(ii) That this Hon'ble Tribunal may kindly be awarded the cost Rs 30,000/- (Rupees thirty thousand only) to the applicant against the opp parties.

(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. Brief facts of the case are that the applicant was enrolled in the Indian Air Force (IAF) as an Airman on 09.10.1984 in group 'Z' and he was discharged from service w.e.f. 30.09.2022 (AN) after completion of more than 38 years service. At the time of retirement, he was granted service pension vide PPO No 601202204282 (Annexure 1) through which an amount of Rs 1,47,837/- was recovered from his pension amount on account of excess amount paid to him during the course of his service. The applicant has preferred application dated 26.05.2023 (Annexure 2) to respondents for refund of the amount but there was no communication from them. This O.A. has been filed for refund of Rs 1,47,837/-. Placing reliance of orders passed by

the Hon'ble Supreme Court in the cases of ***South Eastern Coalfields Limited vs State of MP & Others***, (2003) 8 SCC 648, ***Shyam Babu Verma vs Union of India & Ors***, (1995) Supp (1) SCC 18 and ***State of Punjab vs Rafiq Masih***, (2014) 8 SCC 883, learned counsel for the applicant pleaded for refund of aforesaid amount with interest @ 18% p.a.

3. Submission of learned counsel for the applicant is that the respondents have recovered Rs 1,47,837/- through applicant's final statement of account (FSA) at the time of retirement on account of excess payment made to him during the course of his service on the pretext that the applicant was paid excess amount due to wrong fixation. It was further submitted that this recovery has been made without giving any prior notice and without giving any opportunity of hearing, which has led to heavy financial loss to the applicant. Relying upon the Hon'ble Apex Court judgment in the case of ***South Eastern Coalfields Limited vs State of MP & Ors***, (2003) 8 SCC 648, ***Shyam Babu Verma vs Union of India & Ors***, 1995 Supp (1) SCC 18 and ***State of Punjab Vs Rafiq Masih***, (2014) 8 SCC 883, learned counsel for the applicant pleaded for refund of Rs 1,47,837/- with 18% interest.

4. On the other hand, learned counsel for the respondents submitted that recovery was initiated by AFCAO (Pre-NE) through PPO on account of excess payment of Rs 1,47,837/- as per objection raised by JCDA (AF). It was further submitted that due to wrong fixation of pay on the grant of MACP on 01.01.2006, JCDA (AF) raised objection regarding excess payment made to the applicant, hence recovery was effected.

5. Learned counsel for the respondents further submitted that mistakenly in the year 2006, applicant's basic pay was fixed in excess which being

observed at a late stage can be rectified and recovered in the interest of the department, since ultimately it is a burden on the Govt of India who is dispersing the amount in question. It was further submitted that in this regard clarification has been sought from MoD/DMA and on receipt of response further cases shall be dealt accordingly. He pleaded for dismissal of O.A. on the ground that the amount has been recovered on the ground that this was paid in excess to the applicant.

6. Heard learned counsel for the parties and perused the record.

7. The applicant was enrolled in the IAF on 09.10.1984 and discharged from service w.e.f. 30.09.2022 (AN) having rendered more than 38 years service. In the year 2006, the applicant was given excess monetary benefits consequent upon a mistake committed by the authority, in determining the emoluments payable to him, which the applicant was not entitled to, with the result an amount of Rs 1,47,837/- has been recovered from him at the time of retirement.

8. Applicant's contention that the recovery of excess amount has been made without serving any notice to the applicant in violation of principles of natural justice seems to be justified as perusal of record indicates that no notice was served upon the applicant prior to recovery. Further, the views expressed by the Hon'ble Apex Court judgment in the case of **State of Punjab Vs Rafiq Masih**, Civil Appeal No 11527 of 2014 decided on 18.12.2014 are in favour of the applicant. For convenience sake Para 12 of the aforesaid judgment is reproduced 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."*

9. 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."

10. The Case of ***Thomas Daniel*** (supra) is in favour the applicant in which the Hon'ble Apex Court in Para 9 has further held 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.”

11. Admittedly, the applicant is a retired soldier and his case is squarely covered by the decision of aforementioned the 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 and providing opportunity of hearing before making any recovery and only thereafter, recovery could be made. It is also pertinent to mention here that there was no fault on the part of applicant. In this case, since the applicant has been paid excess amount continuously since 01.02.2006, 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.”

12. The respondents vehemently argued and submitted that they have right to recover the amount which was paid in excess, but for the reasons stated above, the decision of the respondents seems to be not sustainable in the eyes of law and as such, Original Application deserves to be allowed.

13. Accordingly, the Original Application No 808 of 2023 is **partly allowed** directing the respondents to refund Rs 1,47,837/- to the applicant within a period of three months from today. Default will invite interest @ 8% p.a.

14. No order as to costs.

15. Miscellaneous application(s) pending, if any, shall stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 17.12.2024

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(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. 808 of 2023

Ex Sgt/MTD Indresh Kumar

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>17.12.2024</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.</p> <p>O. A. No. 808 of 2023 is Partly allowed.</p> <p>For orders, see our judgment and order passed on separate sheets.</p> <p>(Maj Gen Sanjay Singh) (Justice Anil Kumar) Member (A) Member (J)</p> <p><i>rathore</i></p>