

RESERVED
Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 925 of 2023

Tuesday, this the 3rd day of December, 2024

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

742965-L Sgt Alok Mishra (Retd)
S/o Shri Subhash Chandra Mishra
R/o Flat No. 2A T-5 1003, Mandakini Enclave, Shaheed Path, Awadh
Vihar Yojna, Lucknow (UP) – 226002

..... Applicant

Ld. Counsel for the : **Shri Raj Kumar Mishra, Ms. Upasna Mishra**
Applicant **& Shri Kapil Sharma, Advocates**

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, DHQ PO, New Delhi-110011.
2. Chief of the Air Staff, Air Headquarters, Vayu Bhawan, Rafi Marg, New Delhi-110106.
3. The Principal Director, Directorate of Air Veterans, Air Headquarters (SP), Subroto Park, New Delhi – 110010.
4. The Joint Controller of Defence Accounts (Air Force), 2nd Floor, AFCAO Building, Subroto Park, New Delhi – 10.

..... Respondents

Ld. Counsel for the Respondents : **Shri J.N. Mishra,**
Central Govt. Standing 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 issue/pass an order or direction of appropriate nature to the respondents to direct the respondent to release the differences in amount of pension from July 2022, after re-

fixation of Basic Pay with consequential admissible arrears, along with applicable interest.

- (b) To pass an order to refund the amount of Rs. 1,76,750/- (Rs. One lakh seventy six thousand seven hundred fifty only) with 18% interest and also award cost for lack detail approach to respondent while fixing pension and/or.
- (c) Issue/pass any other order or direction which this Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.

2. The factual matrix on record is that the applicant was enrolled in the Indian Air Force on 19.06.1998 and he was discharged from service on 30.06.2022 (AN). The applicant has been issued PPO No. 601202201683. The pay matrix of the applicant was revised from Rs. 52000/- to Rs. 53600/- from Jan 2022 but at the time of discharge from service basic pay of the applicant was reduced from 53600/- to 52000/- and PPO was issued accordingly. A recovery of Rs. 1,76,750/- was also made in the PPO by the Air Force Pension office on account of wrong fixation of basic pay of the applicant. The applicant sent representations dated 20.07.2022 and 30.09.2022 to the respondents to incorporate the pay matrix of the applicant from Rs. 52000/- to Rs. 53600/- w.e.f. Jan 2022 but no satisfactory reply was received from the respondents. Being aggrieved, the applicant has filed the instant Original Application.

3. Submission of learned counsel for the applicant is that pay matrix of the applicant was revised from Rs. 52000/- to Rs. 53600/- w.e.f. Jan 2022 but the same was not incorporated at the time of issuance of PPO No. 601202201683. A recovery of Rs. 1,76,750/-

has been made from the applicant in the PPO decreasing the basic pay from Rs. 53600/- to Rs. 52000/- on account of over issue of pay and allowances without giving any breakup of over payment. In the clarification letter dated 13.09.2022 issued by the Directorate of Air Veterans, New Delhi, basic pay of the applicant is shown to be revised/fixed as Rs. 66,000/- but no corrigendum PPO on account of revised basic pay has been issued to the applicant. In this regard, applicant sent a representation dated 30.09.2022 for revision of pension and issuance of corrigendum PPO but no action was taken by the respondents.

4. Learned counsel for the applicant placed reliance on the judgment of the Hon'ble Apex Court in the case of **State of Punjab vs. Rafiq Masih** (2014) 8 SCC 883 & Civil Appeal No. 7115 of 2010 in the case of **Thomas Danial vs. State of Kerala & Ors**, decided on 20.05.2022, Hon'ble High Court of Bombay (Nagpur Bench) judgment in LD VC CW 665 of 2020, **Shri Naini Gopal vs. Union of India and Others** dated 20.08.2020, AFT (RB) Lucknow judgment in OA No. 266 of 2021, **Kashinath Tiwari vs. Union of India & Others** and TA No. 82/2013, **Subedar Prem Chand vs. Union of India & Ors**, decided on 20.02.2017 and pleaded that applicant's pension be revised from July 2022 after refixation of basic pay last drawn and also to refund Rs. 1,76,750/- to the applicant which were recovered in the PPO No. 601202201683 alongwith interest.

5. Learned counsel for the respondents submitted that applicant's basic pay has been reduced to Rs. 52000/- from Rs. 53600/- due to Senior/Junior pay anomaly benefit granted to him which has been

reverted as objected by the Joint CDA (Air Force). It is further submitted that applicant's basic pay was stepped up at par with junior, who had been granted MACP benefit on 01.01.2006. The office of the JCDA (AF) has objected the cases in respect of Air Veterans imparted with the benefits of simultaneous applicability of MACP & 6th CPC from same date stating that grant of MACP as on 01.01.2006 is applicable only after migration to 6th CPC. Pay fixed as per option of migration to 6th CPC after grant of MACP has not been accepted by JCDA (AF) and recovery of excess payment as well as reducing the last basic pay drawn for calculation of non-effective benefits to all similar cases was done. Accordingly, an amount of Rs. 1,76,750/- was recovered from retiral benefits.

6. Learned counsel for the respondents further submitted that basic pay of the applicant was erroneously mentioned as Rs. 66,000/- instead of Rs. 52,000/- in the Directorate of Air Veterans letter dated 13.09.2022. He also submitted that subject matter has already been taken up with Ministry of Defence for further clarification and case will be dealt accordingly on receipt of any clarification from the Ministry of Defence/authority concerned.

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

8. In the present case, applicant's basic pay has been reduced from Rs. 53600/- to Rs. 52,000/- due to grant of benefit of MACP and 6th CPC simultaneously as on 01.01.2006 whereas, as per audit authority, MACP can only be granted after migration to 6th CPC being

MACP part of 6th CPC which resulted decreasing of basic pay from Rs. 53,600/- to Rs. 52,000/- and accordingly, recovery of Rs. 1,76,750/- was made in the PPO issued to the applicant on discharge from service and this resulted in getting less service pension by the applicant.

9. The Hon'ble Apex Court in the case of ***State of Punjab v. Rafiq Masih*** (2014) 8 SCC 883 has 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 applicant's service pension has been fixed taking into account his revised/reduced basic pay of Rs. 52000/- and not his last pay drawn as on 30.06.2022 (Rs. 53,600/-) as observed by the audit authority (Joint CDA (AF) stating that benefit of MACP can be granted only after migration to 6th CPC, MACP being part of 6th CPC. Since, JCDA (AF) has reduced basic

pay of the applicant as per observation made by the audit authority, seems to be logical as observed by them and also as per policy on the subject.

11. We have also observed that similar matter of pay fixation of 122 applicants (Bunch) of the Air Force personnel is pending decision with the AFT (PB) New Delhi in the case of O.A. No. 871 of 2021 **WO Mukti Pada Das (Retd) & Others vs. Union of India & Others.**

12. It is emerged from the above that the applicant's basic pay has been revised as per observation made by the audit authority (Joint CDA - AF) that benefit of MACP can be granted only after migration to 6th CPC, since MACP is part of 6th CPC and accordingly, basic pay has been reduced from Rs. 53,600/- to 52,000/- which resulted in recovery of Rs. 1,76,750/- which is reflected in the PPO, annexed as Annexure No. A1 of the Original Application but there seems no fault on the part of the applicant with regard to receipt of excess amount due to difference in fixation of basic pay without migrating to 6th CPC, hence, in view of aforesaid judgment of the Hon'ble Apex Court in the case of **Rafiq Masih** (supra), an amount of Rs. 1,76,750/- recovered from the applicant in the PPO on account of difference in fixation of basic pay without migrating to 6th CPC is liable to be refunded to the applicant with interest.

13. With regard to applicant's prayer for re-fixation of basic pay of last drawn, i.e. Rs. 53,600/- and issuance of Corrigendum PPO and to release differences in amount of the pension from July 2022 onwards is inadequate as basic pay of the applicant has been reduced from

Rs. 53,600/- to Rs. 52,000/- as objected by JCDA (Air Force) and any anomaly in fixation of pay can be rectified/corrected by the accounting/paying authority as and when it comes to the notice of the department/authorities.

14. In view of above, Original Application is **partly allowed**. The respondents are hereby directed to refund Rs. 1,76,750/- to the applicant which was recovered from the applicant as reflected in the PPO with a simple interest @ 8% per annum. The respondents are further directed to issue Corrigendum PPO taking his last pay drawn Rs. 53,600/- only on receipt of any positive decision from AFT (PB) New Delhi in the bunch case of **WO Mukti Pada Das** (supra) or on receipt of clarification from Ministry of Defence, only if it goes in favour of the applicant otherwise the present PPO issued on basic pay of Rs. 52,000/- will suffice. The Respondents are directed to comply with the order accordingly. Default will invite interest @ 8% per annum.

15. No order as to costs.

16. Pending Misc. Application(s), if any, shall stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated: December, 2024
SB

(Justice Anil Kumar)
Member (J)