

RESERVED
(Court No 2)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 517 of 2022

Monday, this the 15th day of January, 2024

“Hon’ble Mr. Justice Anil Kumar, Member (J)”

“Hon’ble Lt Gen Anil Puri, Member (A)”

IC-43533W Col Niraj Nayan Bajpayee (Retd), Son of Late Naveen Chandra Bajpayee, R/o 12/43 Yaman, Sahara State, Jankipuram District - Lucknow - 226021

..... Applicant

Ld. Counsel for the Applicant : **Shri Manoj Kumar Awasthi**, Advocate

Versus

1. Union of India, through its Secretary Ministry of Defence South Block, New Delhi - 110011.
2. The Chief of the Army Staff, Headquarters, New Delhi - 110011.
3. Additional Directorate General of Personnel Services/AG’s Branch IHQ of Ministry of Defence (Army) Room No. 11, Plot No. 108 (West), Brassey Avenue, Church Road, New Delhi - 110001.
4. Principal Controller of Defence Accounts (PCDA) (Pension), Draupadi Ghat, Allahabad (Prayagraj).
5. Chief Defence Account (O), Golibar Maidan, Pune - 411001.

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal**, Advocate
Central Govt. Standing Counsel.

ORDER

1. Applicant has filed this O.A. under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- “(a) To issue / pass an order to set-aside/quash the Letter No. FSR/FP/167353F dated 10.09.2018 and Order No. LW/11/73 167353F dated 27.03.2019, which are being annexed as Annexure No. A-1 and A-2 to this Original Application.*
- (b) To issue/pass an order or directions to the respondents to refund/credited the recovered amount of Rs. 4,52,000/- (Rupees Four Lakh Fifty Two Thousand) alongwith interest @ 18% on arrear.*
- (c) To issue/pass an order or directions to the respondents to restrained the respondent No. 5 from recovering any amount from the monthly pension payable to the applicant with immediate effect.*
- (d) To issue/pass an order or directions to the respondents to grant pension as per Old PPO No. MO55708 and New PPO be calculated from 01.01.2019 till date by PCDA, Allahabad and the amount be paid to the applicant.*
- (e) To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*
- (f) To allow this original application with costs.”*

2. Brief facts of the case are that applicant was commissioned in the Indian Army on 14.12.1985. He superannuated on 31.12.2018 (AN) having completed more than 33 years service. PPO No. M055702018 has been issued through which he is in receipt of his service pension.

3. Based on recommendation of AV Singh Committee, he was promoted to the rank of substantive Lt Col on 14.12.2004. Applicant has contended that prior to his promotion he was drawing pay @ Rs 14,200/- and as such upon his promotion he was entitled to an increment of Rs 400/- p.m. in accordance with Para 7 (a) (iii) of SAI 2/S/2008. In the year 2009, Govt of

India accepted recommendation of 6th CPC and issued amended SAI 2/S/2008 as per Para 4 (a) (Annexure-6).

4. Applicant's contention is that he was supposed to get service increment of Rs 400/- as he was promoted to substantive Lt Col on 14.12.2004 and had put in seven years of more service than newly promoted Lt Col of 13 yrs of service. His contention is that due to bunching, his four increments were denied at the end of his career without giving him an opportunity of hearing, which is against principle of natural justice.

5. His further contention is that in the rank of Major (14.12.2005), applicant had reached the scale of Rs 14,600/- p.m. whereas on his promotion to the rank of Lt Col w.e.f. 14.12.2004, he continued to draw pay at the scale of Major rank. It was further submitted that whole exercise of pay fixation was done in the year 2009-10 when amended SAI 2/S/2008 was issued putting Lt Col rank in pay band-4. In the month of September 2018, applicant was informed that his pay was fixed more which needed to be revised and recovery would be carried out. Accordingly, recovery of Rs 4,52,000/- was affected through IRLA of the applicant (provident fund account). Against the said recovery, applicant preferred a representation in the year 2019 but it was turned down stating that pay band as on 01.01.2006 under 6th CPC in the Lt Col rank @ Rs 39,690/- is correct, hence this O.A. has been filed.

6. Despite granting several opportunities, no counter affidavit has been filed on behalf of the respondents, therefore, opportunity to file counter affidavit was closed on 17.10.2023.

7. In support of his contention, learned counsel for the applicant has relied upon judgment dated 02.05.2022 passed by the Hon'ble Apex Court in Civil Appeal No 7115 of 2010, **Thomas Daniel vs State of Kerala**, judgment dated 16.12.2008 passed by the Hon'ble Apex Court in Civil Appeal Nos 3351-3354 of 2003, **Syed Abdul Qadir & Ors vs State of Bihar & Ors**, judgment dated 18.01.2017 passed by Hon'ble Kolkata High Court in WP-29979 (W) of 2016, **Shiba Rani Maity vs The State of West Bengal**.

8. It is trite law 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 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 employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. Further, 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.

9. In the case in hand, amount of Rs 4,52,000/- has been recovered from the applicant at the time of superannuation. It is alleged by the applicant that two PPOs have been issued from the office of PCDA (P),

Allahabad, old PPO No is No 55708 and new PPO No MO 55708 has been issued in mechanical manner. The respondents had illegally and arbitrarily recovered Rs 4,52,000/- from him. He was never afforded any opportunity of hearing which alone makes the entire exercise bad in law. Respondents' were granted several opportunities and last opportunity to file counter affidavit but counter affidavit against the averments made by the applicant in O.A. has not been filed and O.A. averments are uncontroverted.

10. In view of the above, the alleged recovery from the applicant is against the legal principles and natural justice and liable to be refundable to him.

11. Respondents are directed to refund the aforesaid amount of Rs 4,52,000/- to the applicant within a period of four months from today. Default will invite interest @ 8% p.a. After refund of the alleged amount, it will be open to the respondents to act according to law.

12. O.A. is **allowed**, accordingly. No order as to costs.

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

(Lt Gen Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated: 15.01.2024

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RESERVED

(Court No 2)

Form No. 4

{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH,

LUCKNOW

ORIGINAL APPLICATION NO 517 OF 2022

Col Niraj Nayan

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 data-bbox="451 1475 591 1507"><u>15.01.2024</u></p> <p data-bbox="451 1513 1062 1550"><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></p> <p data-bbox="451 1553 976 1591"><u>Hon'ble Lt Gen Anil Puri, Member (A)</u></p> <p data-bbox="548 1650 824 1682">Judgment pronounced.</p> <p data-bbox="548 1704 935 1736">O. A. No. 517 of 2022 is allowed.</p> <p data-bbox="548 1757 1344 1790">For orders, see our judgment and order passed on separate sheets.</p> <p data-bbox="467 1897 727 1967">(Lt Gen Anil Puri) Member (A)</p> <p data-bbox="451 1970 537 1997"><i>rathore</i></p> <p data-bbox="1133 1897 1435 1967">(Justice Anil Kumar) Member (J)</p>