

**RESERVED**  
**Court No. 2**

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**Original Application No 844 of 2022**

**Monday, this the 15<sup>th</sup> day of January, 2024**

**Hon'ble Mr. Justice Anil Kumar, Member (J)**  
**Hon'ble Lt Gen Anil Puri, Member (A)**

No. JC-761082W Ex Sub M/Tech (Hony Lt) Santosh Kumar  
S/o Sri Mahavir Singh  
R/o Vill – Nagla Chittar, PO – Pepal Khedia  
Dist – Etah – 207121 (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri K.P. Datta**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of Army Staff, IHQ of MoD (Army), South Block, New Delhi-110011.
3. Officer in Charge, EME Records, Secunderabad, PIN-900453.
4. O/o PAO (OR) EME, Secunderabad, Pin – 900453, C/o 56 APO.
5. O/o PCDA (Pension), Draupadighat, Allahabad – 211104.

..... Respondents

Ld. Counsel for the Respondents : **Shri Kaushik Chatterjee**,  
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:-

- “A. To issue/pass an order or directions to refix/revise his pay in pay matrix under 6<sup>th</sup> CPC recommendations and

thereafter re-fix his pay in all subsequent ranks on transitions to 7<sup>th</sup> CPC as per policy issued by Govt of India and relevant order passed in similar cases by the Hon'ble AFT.

- B. To issue/pass an order or directions to re-fix his pensionary and post-retiral benefits after correct fixation of pay matrix.
- C. To issue/pass an order or directions to grant him arrears accrued after revision of his pay in pay matrix and enhanced service pension with interest @ 18% on arrears w.e.f. 30.11.2018 alongwith due drawn audit report.
- D. To issue/pass an order to refund Rs. 4,51,229/- wrongly deducted in FSA due to incorrect fixation of pay matrix alongwith interest @ 18% p.a. w.e.f. 30.11.2018 and issue fresh PPO duly rectified his pay in pay matrix and re-fix his pensionary and post-retiral benefits accordingly.
- E. To issue/pass any other order or directions as may deem just, fit and proper under the circumstances of the case in his favour.
- F. To allow this application with cost."

2. The brief facts of the case are that applicant was enrolled in the Indian Army on 17.11.1988 and discharged from service on 30.11.2018 (AN) under Rule 13 (3) I (i) (a) of Army Rules, 1954 on completion of his terms of engagement. The applicant was promoted to the rank of HMT w.e.f. 28.09.2003, Naib Subedar w.e.f. 22.01.2007 and Subedar w.e.f. 01.01.2013. The applicant failed to exercise option as per Para 8 of SAI 1/S/2008 to switch over from 5<sup>th</sup> CPC to 6<sup>th</sup> CPC from the date of his promotion to the rank of Naib Subedar by publishing Part II Order which resulted reduction of his basic pay from

Rs. 61,300/- to Rs. 56,100/- and thus an amount of Rs. 4,51,229/- has been recovered from the FSA of the applicant at the time of discharge from service on 30.11.2018. The applicant submitted his Final Quarries Form to Records EME but his band pay as per pay matrix has not been revised and he is getting less pension due to reduction of band pay. Being aggrieved, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that applicant was promoted to the rank of Subedar on 01.01.2013 and granted honorary rank of Lt. on 15.08.2018. The applicant had exercised option for revising his pay on the basis of 6<sup>th</sup> CPC within due date but Band Pay of the applicant has not been revised correctly and as a result, his batch-mates and juniors are getting more band pay than the applicant since 01.01.1996 which continued in 6<sup>th</sup> CPC and 7<sup>th</sup> CPC w.e.f. 01.01.2006 and 01.01.2016 respectively till date of his discharge from service. The applicant exercised FORM OF OPTION on 07.05.2011 for revision of his basic pay for which a Part II Order dated 11.10.2011 was published.

4. Learned counsel for the applicant further submitted that as per AFT (PB), New Delhi judgment in OA No. 113 of 2014, **Sub Chittar Singh vs. Union of India & Others**, decided on 10.12.2014 in which it is held that persons who had exercised OPTION till 12.12.2013 would be entitled to the benefits of the 6<sup>th</sup> CPC but applicant's basic pay has been reduced from Rs. 61,300/- to Rs. 56,100/- in Final Settlement of Account (FSA) in November, 2018 which resulted illegal

recovery of Rs. 4,51,229/- from FSA of the applicant. He 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 and fresh PPO be issued showing band pay of Rs. 61,300/- at the time of discharge from service.

5. Learned Counsel for the respondents submitted that applicant failed to exercise option as per Para 8 of SAI 1/S/2008 to switch over from 5<sup>th</sup> CPC to 6<sup>th</sup> CPC from the date of his promotion to the rank of Naib Subedar by publishing Part II Order which resulted reduction of his basic pay from Rs. 61,300/- to Rs. 56,100/- and thus an amount of Rs. 4,51,229/- has been recovered from the FSA of the applicant at the time of discharge from service on 30.11.2018.

6. Learned counsel for the respondents further submitted that as per intimation sent to EME Records vide DG EME letter dated 15.11.2021, based on AFT (PB) New Delhi judgment in OA No. 1182/2018, **Ex Sub Mahendra Lal Shrivastava** dated 03.09.2021, directions have been issued to all paying authority for fixation of pay of JCOs/OR in the most beneficial manner who promoted during 01.01.2006 till 11.10.2008 in case they failed to submit their option/submitted option beyond stipulated time. In the instant case, PAO(OR) EME intimated that the same is being implemented and pay will be re-fixed in due course of time but yet to be executed. Hence, 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 basic pay duly revised/giving the benefit of 6<sup>th</sup> CPC and 7<sup>th</sup> CPC but the basic has been reduced from Rs. 61,300/- to 56,100/- in Final Settlement of Account (FSA) in November, 2018 which resulted recovery of Rs. 4,51,229/- from FSA of the applicant 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 as per 6<sup>th</sup> CPC and 7<sup>th</sup> CPC due to late exercise of OPTION, hence, in view of aforesaid judgments of the Hon'ble Apex Court, an amount of Rs. 4,51,229/- recovered from the applicant in FSA on account of difference in fixation of basic pay in 6<sup>th</sup> and 7<sup>th</sup> CPC is liable to be refunded to the applicant with interest.

11. In view of above, Original Application is **allowed**. The respondents are hereby directed to refund Rs. 4,51,229/- to the applicant which was recovered from his Pay Slip of November 2018/FSA with a simple interest @ 8% per annum. The Respondents are further directed to issue fresh PPO to the applicant showing his basic pay @ Rs. 61,300/- as on 30.11.2018 and pay arrears of pension accordingly. 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.

13. Misc. Application(s), pending if any, shall stand disposed off.

**(Lt Gen Anil Puri)**  
**Member (A)**

Dated: January, 2024

SB

**(Justice Anil Kumar)**  
**Member (J)**