

Court No.1, (List –B)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred Application No. 82 of 2013Monday this the 20th day of February, 2017**Hon'ble Mr. Justice D.P. Singh, Member (J)****Hon'ble Lt Gen Gyan Bhushan, Member (A)**Subedar Prem Chand, Son of late Shri Shiv Charan Das
R/O -126/6 Ansari Road, Muzaffernager.

..... Petitioner

By Legal Practitioner - Shri S.S. Imam Rizvi, Advocate

Versus

1. Union of India through Deputy Secretary, Pension, Ministry of Defence, Sena Bhawan, New Delhi.
2. Chief Controller of Defence Accounts, C.D.A., (Pension), Allahabad.
3. Senior Treasury Officer, Treasury Office, Muzaffarnagar.
4. Army Ordnance Corps Records, Post Box No. 3, Trimulgherry, PO – Secunderabad.

..... Respondents

By Legal Practitioner – Shri Sidharth Dhaon,
Central Government Counsel,
Assisted by Maj Salen Xaxa,
Departmental Representative.

ORDER

1. Being aggrieved by the recovery from pension, the petitioner preferred Civil Writ Petition No 30150 of 1996 in the High Court of Judicature at Allahabad which has been transferred to this Tribunal in pursuance to provisions contained under Section 34 of the Armed Forces Tribunal Act 2007 which has now been registered as T.A. No 82 of 2013.
2. We have heard learned counsel for the parties and perused the record.
3. The controversy involved is that the petitioner was discharged from service in the rank of Subedar on 30.06.1978 (After noon). His pension was fixed @ Rs. 1060/- per months but Treasury Office has incorrectly fixed his pension @ Rs. 1215/- per month. However, later on by an audit team of PCDA (P), Allahabad, it was found that petitioner's entitlement of pension was Rs. 1060/- per month and Treasury Office was paying Rs. 1215/- per month, in consequence thereof, the Bank concerned to recover the excess amount paid to the petitioner.
4. Submission of learned counsel for the petitioner is that, recovery of pension paid to the petitioner is not sustainable in the eye of law, as held by Hon'ble The Apex Court judgments in the cases of **Syed Abdul Qadir and Others vs. State of Bihar and Others**, reported in (2009) 3 Supreme Court Cases 475 and **State of Punjab vs. Rafiq Masih**, reported in AIR 2015 SC 696.
5. Learned counsel for the respondents, while defending the action of the respondents, asserted that pension of the petitioner was incorrectly fixed by Treasury Office to the tune of Rs. 1215/- per month instead of

Rs. 1060/-, hence additional amount paid had to be recovered. The petitioner is entitled only Rs. 1060/- per month as pension, subject to revision of pension by various Pay Commissions from time to time.

6. Shri R.K. Tiwari, a representative of the PCDA (P), Allahabad present in Court states that incorrect pension of the petitioner was fixed by Treasury Office to the tune of Rs. 1215/- per month instead of Rs. 1060/- per month. Learned counsel for the respondents relied upon paras 6 and 7 of the counter affidavit, which for convenience, are reproduced as under:-

“6. That the ex JCO (being pre 31 March 1979 pensioner) was also entitled to revision of pension with effect from 1 April, 1979 in the rank of Subedar under liberalized pension formula introduced vide Govt. of India letter No. 1(4)/82/D(Pension/services) dated 22 Nov. 83. Accordingly, his service pension of Rs 382/- per month was revised to Rs. 464/- per month with effect from 1 April 1979.

7. That consequent on implementation of IV Pay Commission Recommendations vide Govt. of India, Ministry of defence letter No. 1 (4)/87-D(Pen/Services) dated 12 May 87 (Paras 3.2 (b) and 4.1 (b) (Extract attached as Annexure CA-2) the above ex JCO is entitled to revised consolidated pension @ Rs 1060/- per month with effect from 1 Jan. 1986 and not Rs 1215/- per month as claimed by him. However, for payment of OTI in pension his original pension is Rs 382/- per month shall be taken into account in terms of paras 8.1 and 8.2 of the Govt. of India letter No 1 (2)92/D(Pension/Services) dated 16 Mar. 92 and not the revised pension i.e. Rs 464/- per month granted to him w.e.f. 01 Apr. 79 in terms of Govt. of India letter No 1 (4)/82/D(Pension/Services) dated 22 Nov. 83.”

7. In reply to the averments of paras 6 and 7 of the counter affidavit, the petitioner has not denied the factual averments except that the pleadings are vague. We do not find any vagueness in paras 6 and 7 of the counter affidavit, which at the face of record, establishes the petitioner's entitlement of pension of Rs.1060/- per month only. Accordingly, the submission made by the respondents that petitioner's pension has been fixed as revised from time to time by the various Pay Commissions to the extent of Rs.1060/- per month seems to be correct and the petitioner shall be entitled to receive pension to the extent of Rs. 1060/- per month only.

8. So far as recovery of pensionary benefits from the petitioner is concerned, the averment made by learned counsel for the petitioner seems to be correct, while relying upon the aforesaid cases.

9. In the case of **State of Punjab vs. Rafiq Masih** (supra), Hon'ble The Apex Court summarized the right to recovery in para 12 of the judgment, which 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) Recover 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 for outweigh the equitable balance of the employer's right to recover."

10. The petitioner's case is squarely covered by the decision rendered in the case of **State of Punjab vs. Rafiq Masih** (supra). Admittedly, the petitioner was discharged in the rank of Subedar. Accordingly, in view of the law laid down by Hon'ble The Apex Court, which is binding under Article 141 of the Constitution of India, the respondents have no right to recover the excess amount of pension paid to the petitioner, who has already been retired as Subedar of the Indian Army.

11. Since the respondents have proceeded to recover the excess amount of pension alongwith arrears after lapse of about eight years, the Transferred Application No. 82 of 2013 succeeds and is allowed. So far as the other relief regarding quashing of the impugned order dated 08.06.1995 and grant pension @ Rs. 1215/- per month is concerned, it does not make out a case for interference.

12. In view of the above, the Transferred Application No.82 of 2013 is **partly allowed** and order for recovery of pension is set aside. The respondents shall fix the petitioner's pension keeping in view the pension

assessed to the tune of Rs.1060/- per month payable to the petitioner at the time of retirement with all consequential benefits and revision of pension by the different Pay Commissions from time to time.

13. Since the petitioner is aged about 90 years, respondents are directed to implement this order expeditiously say within four months from today. The respondents shall ensure to pay the petitioner revised pension and outstanding dues, keeping in view the revised pension by the different Pay Commissions from time to time.

14. No order as to costs.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated : February, 2017
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