



**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 441 of 2021**Thursday, this the 03<sup>rd</sup> day of March, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)****Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

No. 6597676 Ex Sepoy Ram Milan Sharma, S/o Sampat Kumar, permanent resident of village & Post-Laxmanpur (Gaddi Road), Tehsil-Huzoor, District-Rewa, Madhya Pradesh-486005, presently residing at 592/Ka/146, Defence Colony, Telibagh, Lucknow-226012.

..... Applicant

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

Versus

1. Union of India, through Secretary, Ministry of Defence, 101 South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. The Officer-in-Charge, ASC Records (South), Bangalore-560007.
4. PCDA (Pension), Draupadi Ghat, Allahabad.
5. The Branch Manager, State Bank of India, Rewa Main Branch, Old Khanna, Collectorate Road, Rewa, District-Rewa, Madhya Pradesh.
6. The Chief Manager, Central Pension Processing Cell, Behind Working Women Hostel, Govindpura, Bhopal, Madhya Pradesh, PIN-462023.

..... Respondents

Ld. Counsel for : **Shri Rajesh Shukla**, Advocate  
 the Respondents (for respondents 1-4)  
**Mohd Zafar Khan**, Advocate  
 (for respondents 5-6)

**ORDER (Oral)**

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:-

(i) To issue/pass an order or direction to set aside/quash the letter/order dated 29.05.2020 passed by respondent No 6 and order/letter dated 25.06.2020 passed by respondent No 6, which are being annexed as Annexure No A-1 and A-2 to this Original Application.

(ii) To issue/pass an order or direction to the respondents to refund/credit the recovered amount of Rs, 1,30,000/- (Rupees One Lakh Thirty Thousand) and monthly recovery amount which has been started from the month of June 2020 alongwith @ 18% interest on arrear.

(iii) To issue/pass an order or direction to the respondents to restrained the respondent No 5 from recovering any amount from the monthly pension payable to the applicant with immediate effect.

(iv) 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.

(v) To allow this original application with costs.

2. Brief facts of the case are that the applicant was enrolled in the Army on 24.11.1958 and he was discharged from service w.e.f. 30.11.1978 in the rank of Sepoy/Reservist. Accordingly, he was granted reservist pension w.e.f. 01.12.1978 vide PPO No. S/52510/1979. His pension was revised from time to time in accordance with Govt orders on the subject and Circulars issued by PCDA (P), Allahabad. The PDA i.e. respondent No 5 and 6 has paid excess amount to the pensioner at the time of revision of pension w.e.f. 01.01.2006 thereby causing a heavy recovery of Rs 10,12,055/- (Rupees Ten Lakh Twelve Thousand and Fifty Five Only) between the period 01.01.2006 to 30.04.2020 and they started recovery of Rs 3,500/- per month w.e.f. 01.06.2020 as per directions of Reserve Bank of India letter dated 01.07.2020. The recovery was subsequently increased to Rs 4,500/- w.e.f. 01.07.2021. In this regard the respondent No. 5 and 6 informed the pensioner vide letters dated 29.05.2020 and 25.06.2020 in

compliance of PCDA (P), Allahabad letter dated 30.04.2020 (Annexure CA-2). Applicant vide para 4.6 of the O.A. has stated that an amount of Rs 1,30,000/- (Rupees One Lakh and Thirty Thousand Only) has been deducted from his account on 03.06.2020 in pursuance to letter dated 29.05.2020 (Annexure A-1 of O.A.) and a sum of Rs 8,82,055/- (Rupees Eight Lakh Eighty Two Thousand and Fifty Five Only) is yet to be recovered from the applicant. Respondent No. 4 has issued letter dated 25.06.2020 (Annexure A-2) to the applicant to deposit a sum of Rs 8,82,055/- (Rupees Eight Lakh Eighty Two Thousand and Fifty Five Only) in his pension account so that full recovery may be affected. Applicant has filed this O.A. to stop recovery of excess amount paid to the applicant and issue directions to respondents to refund Rs 1,30,000/- (Rupees One Lakh and Thirty Thousand Only) recovered from his pension account.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 24.11.1958 and he was discharged from service on 30.11.1978 and granted pension vide PPO No S/52510/1979. His further submission is that in the year 2020 the applicant received letter dated 25.06.2020 from State Bank of India, Main Branch, Rewa (Madhya Pradesh) informing him that an amount of Rs 1,30,000/- (Rupees One Lakh and Thirty Thousand Only) has been deducted from his pension account on 03.06.2020 towards excess payment of pension on the authority of letter dated 29.05.2020 (Annexure A-1) and an amount of Rs 8,82,055/- (Rupees Eight Lakh Eighty Two Thousand and Fifty Five Only) is still due to be recovered. He further submitted that applicant has crossed the age of 85 years and being a heart patient he requires regular treatment and if the recovery is affected he would suffer tremendously on the financial front. The learned counsel further submitted that keeping in view decision of the Hon'ble Apex Court dated 16.12.2008 in Civil Appeal No 3351-3354

of 2003, **Syed Abdul Qadir & Ors vs State of Bihar & Ors**, order dated 18.12.2014 in Civil Appeal No 11527 of 2014, **State of Punjab & Ors vs Rafiq Masih (White Washer)**, Hon'ble Calcutta High Court order dated 18.01.2017 passed in WP 29979 (W) of 2016, **Shiba Rani Maity vs The State of West Bengal**, Hon'ble High Court of Mumbai order dated 20.08.2020 passed in LD-VC-CW-665 of 2020, **Shri Naini Gopal vs The Union of India & Ors**, directions be issued to the respondents to refund the amount recovered as excess amount paid towards pension and also stop recovery of the excess amount.

4. On the other hand, learned Counsel for the respondent No. 1-4 submitted that applicant was discharged from service w.e.f. 30.11.1978 in the rank of Sep/Reservist Group 'D' and he was granted pension accordingly w.e.f. 01.12.1978 vide PPO No. S/52510/1979 and his pension was revised from time to time. His further submission is that in the year 2006 when applicant's pension was revised, the concerned pension disbursing authority i.e. bank has erroneously made the payment of service pension for the rank of regular Sepoy instead of rank of reservist sepoy and when it came to the notice, the PDA has recovered an amount of Rs 1,30,000/- (Rupees One Lakh and Thirty Thousand Only) in the month of June 2020 vide letter dated 29.05.2020 and has also started recovery of Rs 3500/- per month thereafter. He further submitted that the PDA i.e. State Bank of India, CPPC, Bhopal has recovered the amount on the basis of the instructions issued by Reserve Bank of India Circular dated 01.07.2015 and undertaking dated 11.03.2004 signed by the applicant for recovery of amount with regard to excess payment of pension. He further submitted that as per para 9.2 (II) of the scheme for the

payment of pension of defence pensioners effective from 01.01.1987, it has been clearly mentioned that before starting payment of pension, the paying branch will obtain an undertaking in the form of 'Annexure K' from the pensioner that any excess payment credited to his/her account can be recovered by the bank. Relying upon the Hon'ble Apex Court decision dated 29.07.2016 rendered in CA No 3500/2006 titled **High Court of Punjab & Haryana & Ors vs Jagdev Singh** and Hon'ble High Court of Punjab and Haryana at Chandigarh order dated 20.05.2019 passed in CWP No 3159/2016 titled **Smt Sunita Mahajan vs UOI & Ors**, learned counsel for the respondents submitted that recovery made and amount ordered to be recovered from the applicant is as per guidelines of RBI and undertaking given by the applicant.

5. Respondents No 5-6 have also filed counter affidavit stating that the applicant was granted pension vide PPO No S/52510/79 in which his rank was mentioned as Sepoy/Reservist and while issuing revised PPO his rank was mentioned as Sepoy. Accordingly the PDA fed the rank Sepoy in pension software and revised his pension as per circulars received, thereby an excess amount of Rs 10,12,055/- was paid between the period 01.01.2006 to 30.04.2020 and as per RBI guidelines and undertaking given by the pensioner on 11.03.2004 (Annexure No-5 to counter affidavit) this amount is recoverable. He further submitted that in view of the RBI guidelines and undertaking given by the applicant an amount of Rs 1,30,000/- has been recovered and process to recover the balance amount of Rs 8,57,485/- is in progress. He pleaded for dismissal of O.A. on the ground that the recovery affected is as per rules.

6. Heard learned counsel for the parties and perused the relevant documents available on record.

7. Perusal of records indicates that due to wrong feeding of applicant's rank in software he was paid excess amount resulting in extra payment of Rs 10,12,055/- to the applicant between the period 01.01.2006 to 30.04.2022 which as per respondents' contention is required to be refunded to the paying agency in terms of undertaking dated 11.03.2004 given by the applicant and Reserve Bank of India Circular dated 01.07.2015. We have perused undertaking dated 11.03.2004 given by the applicant which for convenience sake is reproduced as under:-

*"In consideration of your having at my request agreed to make payment of pension due to me every month by credit to my A/c. with you the undersigned agree and undertake to refund or make good any amount to which I am not entitled of any amount which may be credited to my account is excess of the amount to which I am or would be entitled. I further hereby undertake and agree to bind myself any my successors executors and administrators to indemnify the bank from and against any loss suffered or incurred by the bank in so or crediting my pension to my account under the scheme and to forthwith pay the same to the bank and also irrevocable authorize the bank to recover the amount due by credit to my said account or any other account deposits belonging to me in the possession of the bank."*

8. In support of their submission citing the Hon'ble Apex Court judgment dated 29.07.2016 rendered in the case of **High Court of Punjab & Haryana and Ors vs Jagdev Singh**, Civil Appeal No 3500 of 2006, respondents have contended that the amount paid in excess is recoverable. We have perused the aforesaid judgment and we find that recovery made/being made from the applicant is justified in view of para 11 and 12 of the aforesaid judgment which for convenience is reproduced as under:-

*“11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.*

*12. For these reasons, the judgment of the High Court of which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable installments. We direct that the recovery be made in equated monthly installments spread over a period of two years.”*

9. In view of the above, we are of the view that the amount excess paid to the applicant is recoverable which respondents should recover in easy equated monthly installments spread over a period of two years from today. We also direct the respondents not to force the applicant to deposit the excess paid money in lump-sum as the applicant is not at fault in this case.

10. Thus, we are of the view that excess amount paid to the applicant is recoverable keeping in view of his undertaking dated 11.03.2004. In view of above, Original Application is devoid of merit and is, accordingly **dismissed**.

11. No order as to costs.

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

**(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)**  
**Member (A) Member (J)**

Dated: 03.03.2022

rathore