

**Reserved**  
**(Ser No 19)**  
**(Court No 2)**

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

**Original Application No 593 of 2022**

Friday, this the 24<sup>th</sup> day of March, 2023

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

Ex JWO Rakesh Kumar Sachdeva (627622-R) S/o Brij Lal, R/o B IV 322/2 Ahuja Coloney, Abor, Fazilka Punjab – 152116 presently residing at 21A/6A, Chak Mundera, Dhoomanganj, Allahabad, Uttar Pradesh, PIN -211012.

..... Applicant

Ld. Counsel for the Applicant: **Shri Rang Nath Pandey**, Advocate

Versus

1. The Union of India, through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Director of Air Veterans (III), Air Headquarters, Air Force Record Office Building, Subroto Park, New Delh – 110010.
3. Principal Controller of Defence Account (Pension), Draupadi Ghat, Prayagraj – 211014.

..... Respondents

Ld. Counsel for the Respondents : **Ms. Appoli Srivastava**,  
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 quash the impugned Pension Pay Order No. 349202012188 dated 13.10.2020 issued by Respondent No. 2 (Annexure No. A-1).

(b) To direct the respondents concerned to issue a new Pension Pay Order and fix pension of the applicant on the basis of last basic pay of Rs. 60,400/- which was drawn by applicant at the time of Retirement from service.

(c) To direct the respondent concerned to pay the arrears of difference of monthly pension, gratuity as well as Leave encashment which is applicable to the applicant as per law/entitlement in accordance with law.

(d) To issue any suitable order or direction which this Hon“ble Tribunal may deem fit and proper under the present facts and circumstances of the case.

(e) To award the cost of the proceeding to the applicant.”

2. The factual matrix on record is that the applicant was enrolled in the Indian Air Force on 08.05.1982. During the course of his service he was promoted to the rank of Junior Warrant Officer (JWO) and was discharged from service on 31.08.2020. The basic

pay of the applicant was fixed at Rs. 60,400/- at the time of discharge from service but he has been issued PPO No 349202012188 dated 13.10.2020 by respondent No. 2 showing basic pay of Rs. 56,900/- instead of his last basic pay of Rs. 60,400/-. Aggrieved the applicant preferred an application dated 02.11.2020, but there being no response this O.A. has been filed.

3. Learned counsel for the applicant submitted that the applicant was enrolled in the Indian Air Force on 08.05.1982. The applicant was promoted to the rank of JWO and was discharged from service on 31.08.2020 after rendering more than 38 years of service. The basic pay of the applicant was fixed at Rs. 60,400/- at the time of discharge from service which is evident from the last e-Pay Slip of Jul/Aug 2020. The applicant has been issued PPO No 349202012188 dated 13.10.2020 by respondent No. 2 showing basic pay of Rs. 56,900/- instead of his last basic pay of Rs. 60,400/- which is incorrect. The applicant submitted an application to the Grievance Cell before respondent No. 2 on 02.11.2020 but the grievance of the applicant has not been redressed till date.

4. Learned counsel for the applicant placed reliance on the judgment of the Hon'ble Apex Court in SLP No. 4722 of 2021, **Union of India vs. M Siddaraj** decided on 05.04.2021 directing that pension shall be granted to the applicant on the basis of last pay drawn and apart

from this various Tribunals as well as Hon'ble High Courts are also of the similar view and supporting the case of the applicant. Hence, applicant is also entitled pension in accordance with his last pay drawn. It has also been contended that applicant is entitled to arrears of monthly pension, gratuity and leave encashment based on his last pay drawn. He pleaded for issue of fresh PPO granting revised pension.

5. On the other hand learned counsel for the respondents submitted that applicant was discharged from service on 31.08.2020 and his basic pay was reduced from Rs. 60,400/- to 56,900/- due to wrong fixation of pay on grant of MACP as on 01.01.2006 as objected by JCDA (AF). The audit authority has insisted to grant MACP on 01.01.2006 only after migration to 6<sup>th</sup> CPC as MACP is the part of 6<sup>th</sup> CPC.

6. Learned counsel for the respondents further submitted that in the present case, basic pay of the applicant has been reverted from Rs. 60,400/- to 56,900/- for calculation of pension however, no recovery has been initiated from applicant's PPO. He pleaded for dismissal of Original Application being devoid of merit and lack of substance.

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

8. In the present case, applicant's basic pay has been reduced from Rs. 60,400/- to Rs. 56,900/- due to grant of benefit of MACP and 6<sup>th</sup> CPC simultaneously as on 01.01.2006 whereas, as per audit authority,

MACP can only be granted after migrating to 6<sup>th</sup> CPC being MACP part of 6<sup>th</sup> CPC which resulted in decrease in his basic pay from Rs. 60,400/- to Rs. 56,900/- and this also resulted in getting less service pension by the applicant. In regard to this 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."*

9. It is emerged from the above that applicant's service pension has been fixed taking into account of his basic pay at Rs. 56,900/- and not his last pay drawn as on 31.08.2020 (Rs. 60,400/-) as observed by the audit authority (Joint CDA (AF) stating that benefit of MACP can be granted only after migration to 6<sup>th</sup> CPC being MACP part of 6<sup>th</sup> CPC. The JCDA (AF) has reduced basic pay of the applicant as per observation made by the audit authority, which seems to be logical as observed by them and also as per policy on the subject.

10. As conceded by the respondents in their counter affidavit, no recovery has been initiated from the applicant. Hence, in view of judgment of the Hon'ble Apex Court in **Rafiq Masih** (supra), there being no fault on the part of the applicant, no recovery will be made from the applicant on account of grant of benefit of MACP and fixation of basic pay as per 6<sup>th</sup> CPC, and in the meantime, if any recovery has been initiated by reducing basic pay from Rs. 60,400/- to Rs. 56,900/-, the same will be refunded back to the applicant.

11. In view of aforesaid, Original Application is **disposed off**. The respondents are directed not to make any recovery arising due to difference in fixation of basic pay by granting benefit of MACP/6<sup>th</sup> CPC as on 01.01.2006. The respondents are further directed to issue fresh PPO taking his last pay drawn @ Rs 60,400/- in case any clarification received in favour of the applicant on this issue from the competent authority, otherwise the present PPO issued on basic pay of Rs 56,000/- will suffice. The respondents are directed to comply with the order accordingly.

12. No order as to cost.

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

**(Maj Gen Sanjay Singh)**  
**Member (A)**

Dated : 24.03.2023

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

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