

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LCKNOW
(CIRCUIT BENCH, NAINITAL)**

Original Application No. 770 of 2022

Thursday, this the 6th day of March, 2025

Hon'ble Mr. Justice Anil Kumar Srivastava, Member (J)
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

No.12898370Y Naik Ganesh Singh (Retd), S/o Late Shri Madan Singh,
R/o Village-Lelu, Post Office-Badda, Tehsil and District- Pithoragarh Pin-
262501 (UK).

..... Applicant

By Legal Practitioner – **Lt Col Nidhikant Dhyani (Retd)**, Advocate

Versus

1. The Union of India Through The Secretary, Ministry of Defense South Block, New Delhi-110011.
2. The Chief of the Army Staff, IHQ of MoD (Army) South Block New Delhi-110011.
3. The Senior Records Officer Kumaon Regimental Center, Ranikhet (UK)-263645.
4. The Pay and Accounts Officer, Kumaon Regimental Center Ranikhet (UK)-263645.
5. The Commanding officer 130 Infantry Battalion Territorial Army Ecological Kumaon, Pithoragarh Cantt 262501 (UK).

..... Respondents

By Legal Practitioner – **Shri Rajesh Sharma**, Advocate
Central Government Counsel

ORDER (Oral)

1. Being aggrieved with alleged illegal recovery of Rs 1,14,961/- in March, 2021 i.e. few months prior to the date of discharge from service, the applicant had submitted RTI application dated 21.09.2021 (Annexure A-3 to O.A.) for refund of the said amount followed by legal notice dated 03.01.2022. In response to above, the respondents submitted reply dated 07.02.2022 (Annexure A-6 to O.A.) mentioning therein that recovery has been affected under the provisions of Govt of India, Min of Def policy letter dated 30.10.2018 which is under challenge. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by which he has made following prayers:-

- (i) To set aside the impugned orders dated 07 Feb 2022 and Govt of India letter No. 68640/Eco/Gen/TA-2/513/US/D(GS- III)/2018 dt 30 Oct 2018.*
- (ii) Issue directions and orders to respondents to credit/release the amount Rs. 1,14,961/- (Rs. One Lac, fourteen thousand nine Hundred and sixty one only) with 12% interest per annum to the applicant and credit the amount to bank account of the applicant.*
- (iii) Issue directions to respondents to allow and entitle the applicant, the grant of annual increment on completion of 365 days of service, as mandated vide policy/guidelines and directives issued on the subject matter by the competent authorities.*
- iv) Issue/pass of any other order or directions as this Hon'ble Tribunal may deem fit in the circumstance of the case.*
- (v) Allow this application with cost."*

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 14.03.1985 and he was discharged from service w.e.f. 30.04.2004 (AN). After discharge from service, he was re-enrolled into 130 Infantry Battalion Territorial Army Ecological Kumaon (130 Inf Bn TA) on 01.10.2004 as Sepoy and discharged from service w.e.f. 31.12.2021 (AN) having

rendered more than 16 years embodied service. Few months from the date of discharge from service, respondents recovered Rs 1,14,961/- from his account due to excess increment granted to him stating that this excess amount was paid to him in excess during the course of his service. The applicant preferred RTI application dated 21.09.2021 (Annexure A-3) to the respondents for refund of the amount but there was no communication from them. Thereafter, in response to legal notice dated 03.01.2022, respondent No 4 submitted reply dated 07.02.2022 stating that the aforesaid amount has been recovered on account of excess amount paid to the applicant on account of excess increment granted to him. This O.A. has been filed for refund of Rs 1,14,961/-. Placing reliance on order passed by the Hon'ble Supreme Court in the cases of **State of Punjab vs Rafiq Masih**, (2014) 8 SCC 883, learned counsel for the applicant pleaded for refund of the aforesaid amount with interest @ 12% p.a.

3. Submission of learned counsel for the applicant is that the respondents have recovered Rs 1,14,961/- through applicant's account few months from the date of his retirement on account of excess payment made to him during the course of his service on the pretext that the applicant was paid excess amount due to wrong fixation of increment. It was further submitted that this recovery has been made without giving any prior notice and without giving any opportunity of hearing, which has led to heavy financial loss to the applicant. Relying upon the Hon'ble Apex Court judgment in the case **State of Punjab Vs Rafiq Masih**, (2014) 8 SCC 883, learned counsel for the applicant pleaded for refund of Rs 1,14,961/- with 12% interest.

4. On the other hand, learned counsel for the respondents submitted that 130 Infantry Battalion (Territorial Army) Ecological Task Force was established as a rehabilitation measure for the ex-servicemen with the conditions that they would not be treated at par with a regular soldier in the Indian Army. It was further submitted that Infantry Battalion (TA) Eco is meant to provide an avenue of re-employment for ex-servicemen and ex-women employees who have already been retired from their respective organizations with normal category of Regular Army or Territorial Army personnel. It was further submitted that due to wrong fixation of increment and grant of other emoluments, the respondents have every right to recover the said amount from the applicant.

5. Learned counsel for the respondents further submitted that as per para 4 (b) of Additional Directorate General of Territorial Army letter dated 06.05.1994, para 1 (d) (ii) of Govt of India, Min of Def letter dated 31.03.2008 and para 4 (c) of Govt of India, Min of Def letter dated 30.10.2018, no increment is admissible to ex-servicemen employed in the Ecological Task Force irrespective of their length of service. It was further submitted that the amount paid in excess to the applicant has rightly been recovered from the applicant in terms of policy letter referred to hereinabove.

6. Learned counsel for the respondents further submitted that the fact that no increment was admissible to the applicant was fully known to the applicant at the time of enrolment and he had signed a certificate to this effect that he would be entitled for fixed pay of the rank in which he was engaged. He pleaded for dismissal of O.A. on the ground that the amount has been recovered on the ground that this was paid in excess to the applicant.

7. Heard learned counsel for the parties and perused the record.
8. A short question involved in this case is whether amount paid in excess during service period to the applicant can be recovered at the time of retirement/discharge from service?
9. The applicant was re-enrolled into the 130 Infantry Battalion (Territorial Army) Ecological Task Force of Kumaon on 01.10.2004 as an ex-serviceman. He was discharged from service on 31.12.2021 (AN) having rendered more than 16 years embodied service under Rule 14 (a) of Territorial Army Regulations 1948 (Revised-1976) on completion of terms of engagement. As per the respondents, the applicant was erroneously granted annual increment due to wrong publication of Part-II orders by the unit and the said increment was received by the applicant during the course of his service meaning thereby that from the year 2004, the applicant was given excess monetary benefits consequent upon a mistake committed by the authority.
10. Applicant's contention that the recovery of excess amount has been made without serving any notice to the applicant in violation of principles of natural justice seems to be justified as perusal of record indicates that no notice was served upon the applicant prior to recovery. Further, the views expressed by the Hon'ble Apex Court in the case of ***State of Punjab Vs Rafiq Masih***, Civil Appeal No 11527 of 2014 decided on 18.12.2014 are in favour of the applicant. For convenience sake, Para 12 of the aforesaid judgment 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) *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."*

11. Additionally, the Hon'ble Apex Court in ***Thomas Daniel vs State of Kerala & Ors***, Civil Appeal No 7115 of 2010 decided on 02.05.2022 has also expressed the same views again. In this case the appellant was granted excess payment due to mistake on the part of the respondents and recovery was made effective after 10 years from the date of his discharge which the Hon'ble Apex Court refuted observing as under:-

"We are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified."

12. The Case of ***Thomas Daniel*** (supra) is in favour the applicant in which the Hon'ble Apex Court in Para 9 has further held as under:-

"9. This Court in a catena of decisions has consistently held 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 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 employee but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that 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.”

13. Admittedly, the applicant is a lower rung retired soldier of the Indian Army and his case is squarely covered by the decision of aforementioned Hon'ble Apex Court judgments. It is well settled law that no order could be passed by appropriate authority in contravention to principles of natural justice. It was incumbent upon the respondents to serve a notice calling upon response from the applicant before making any recovery and only thereafter, recovery could be made. In this case, since the applicant has been paid excess amount continuously since the year 2004, such action of the respondents recovering the amount in the year 2021 i.e. after more than 17 years seems to be unjustified and is hit by Article 14 of the Constitution of India.

14. Further, respondents' contention on grant of annual increment is that no increment is applicable to the Territorial Army personnel in view of policy letters dated 06.05.1994, 31.03.2008 and 30.10.2018. In regard to this applicant has contended that at the time of enrolment into the Territorial Army there was no such terms and conditions, hence the orders/policy letters cited by the respondents for recovery on annual increment granted to the applicant cannot be effective retrospectively. Learned counsel for the applicant has produced policy letter dated 11.12.2009 (Annexure A-9 to O.A.) as per which

personnel of Territorial Army are entitled for annual increment on completion of 365 days of physical service. For convenience sake, extract of policy letter dated 11.12.2009 is reproduced as under:-

"1. As per para 7 of Pay & Allces Regs 1979 for JCOs & Or, the financial effect of annual increment will be allowed from the first of the months in which they fall due (copy enclosed).

2. TA service being on part time concept, pers of TA are entitled for annual increment on completion of 365 days of physical service vide Para 172 (f) of TA Regs 1948. As disembodiment period in TA is not counted towards grant of increment, thus the increment dates keeps changing.

3. In view of above it is requested that the annual increment to TA pers be awarded on the day they complete 365 days of physical service (embodied) service.

4. This Dte letter No 47562/GS/TA-3 (Policy) dated 18 May 2009 may please be treated as cancelled.

5. This has the approval of the ADGTA."

15. The respondents vehemently argued and submitted that they have every right to recover the amount which was paid in excess, but for the reasons stated above, the decision of the respondents seems to be not sustainable in the eyes of law and as such, Original Application deserves to be allowed.

16. Accordingly, the Original Application No 770 of 2022 is **partly allowed** directing the respondents to refund Rs 1,14,961/- to the applicant within a period of three months on receipt of certified copy of this order. Default will invite interest @ 8% p.a.

17. No order as to costs.

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

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated : 06.03.2025

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(Justice Anil Kumar)
Member (J)