

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

**Original Application No. 456 of 2021**

Friday, this the 20<sup>th</sup> day of May, 2022

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Ex No. 14825932P Rect Satyendra Kumar Dwivedi son of Shri Maya Ram Dwivedi, resident of village-Ghazipur Dubaan, Post-Antu, District-Pratapgarh-230501.

..... Applicant

By Legal Practitioner - **Shri Vinay Pandey**, Advocate  
for the applicant

Versus

1. Union of India, through Secretary, Ministry of Defence (Army), DHQ, PO-New Delhi-11.
2. The Chief of the Army Staff, Army Headquarters, Sena Bhawan, New Delhi.
3. The PCDA (P), Allahabad.
4. The Chief Manager, Bank of Baroda, CPPC, Baroda Global Shared Services (BGSS), RLBO, 21<sup>st</sup> Floor, Gift One Tower, Gift City, Gandhinagar, Gujrat-382355.
5. The Branch Manager, Bank of Baroda, Branch-Antu, District-Pratapgarh.

..... Respondents

By Legal Practitioner - **Shri Arun Kumar Sahu**, Advocate  
for the respondents      Central Govt Counsel for respondent No 1-3  
**Shri Hari Prasad Srivastava**, Advocate  
Central Govt Counsel for respondent No 4 & 5

**ORDER**

1. Being aggrieved with impugned order dated 03.07.2021 with regard to recovery of certain amount; the applicant has preferred this O.A. in terms of Section 14 of the Armed Forces Tribunal Act, 2007. The applicant has made following prayers:-

(i) Issue/pass an order and/or direction of appropriate nature to respondent No 4 and 5 by quashing the letter dated 03.07.2021 issued by Branch Manager Bank of Baroda without any authority of respondent No 3 and direct the respondent No 5 to transfer the Bank Account of applicant to any other PDA as per his choice.

(ii) Issue any such other order or direction which this Hon'ble Tribunal may deem fit and just in the facts and circumstances of the case in favour of the applicant.

(iii) Allow the Original Application with cost in favour of the applicant.

2. Brief facts of the case are that the applicant is in receipt of disability pension vide PPO No D/47/2000 (Annexure A-2). The applicant submitted an application dated 27.11.2020 (Annexure A-3) to respondent No 5 (Bank of Baroda) for transfer of his pension account No 00650100001474 to HDFC Bank, Phaphamau. When after lapse of considerable period the account was not transferred to his desired branch, he submitted a representation dated 22.06.2021 to PCDA (P) Allahabad for change of his PDA from Bank of Baroda to HDFC Bank. On receipt of his representation, PCDA (P), Allahabad wrote letter dated 22.06.2021 (Annexure A-4) to CPPC Cell of Bank

of Baroda for taking necessary steps to transfer his pension account. After receipt of application from the applicant the PDA made due and drawn statement from the date disability pension was credited in his account and in this process it came to their notice that a sum of Rs 7,31,831/- was paid in excess to applicant due to wrong fixation of pension. The PDA issued letter to the applicant to deposit the aforesaid amount in bank. Thereafter, the respondent No 5 started recovery of Rs 8,172/- per month from his pension account without giving any reason or without any direction from respondent No 3. This O.A. has been filed to stop recovery of Rs 8,172/- effected vide letter dated 03.07.2021 as also issuing directions for change of his PDA.

3. Submission of learned counsel for the applicant is that vide letter dated 03.07.2021 respondent No 4 has started recovery of Rs 8,172/- from his pension account, without referring the matter to PCDA (P), Allahabad, on the ground that due to wrong fixation of pension some excess amount has been paid to the applicant. His further submission is that applicant has been asked to deposit Rs 7,31,831/- on account of excess payment made to applicant on account of excess amount paid towards wrong fixation of pension. His further submission is that respondents are regularly recovering an amount of Rs 8,172/-p.m. from the meagre pension being paid to applicant for which he and his family are facing huge financial

hardships. Relying upon the Hon'ble Apex Court judgment in the case of ***State of Punjab Vs Rafiq Masih***, (Civil Appeal No 11527 of 2014 decided on 18.12.2014), learned counsel for the applicant pleaded that excess amount paid to him due to wrong fixation of pension may not be recovered.

4. On the other hand, learned counsel for the respondent No 1-3 submitted that the applicant is in receipt of disability pension w.e.f. 28.05.1997 vide PPO No D/000047/2000. His further submission is that it is for the PDA to revise service pension/disability pension as per instructions received from Govt/PCDA (P), Allahabad and pay the pension accordingly. He, however, submitted that as per Govt Orders/RBI Instructions any over payment made to the pensioner should be recovered from the pensioner's account. Respondent No 4 and 5 has also filed counter affidavit and it was submitted that a request was received from the pensioner for transfer of his PDA from Bank of Baroda to HDFC Bank, which was forwarded to respondent No 4 for issuing directions to do the needful. It was further submitted that due to wrong fixation of disability pension w.e.f. 01.01.2006 it was noticed that an amount of Rs 7,31,831/- has been paid in excess to the applicant. Pursuant to this respondent No 5 issued letter dated 03.07.2021 to the applicant intimating him to deposit the aforesaid amount in his account to enable the PDA to return the same to respondent No 4. The

respondents pleaded for dismissal of O.A. on the ground that the amount paid in excess is recoverable as per RBI instructions.

4. We have heard Shri Vinay Pandey, learned counsel for the applicant and Shri Arun Kumar Sahu, and Shri Hari Prasad Srivastava, learned counsel for the respondent No 4 & 5 and perused the record.

5. Applicant is receiving disability pension w.e.f. 27.05.1997 vide PPO No D/47/2000 which was revised from time to time. The disability pension was being paid to the applicant through Bank of Baroda, Branch-Antu, Pratapgarh. In the year 2020, a request was made by the applicant for change of PDA from Bank of Baroda to HDFC Bank vide his application dated 27.11.2020. On 03.07.2021 applicant received a letter from respondent No 5 with an advice to deposit a sum of Rs 7,31,831/- which was paid to him in excess due to wrong fixation of his pension w.e.f. 01.01.2006. Later, Bank of Baroda has started recovery of excess amount @ 8,172/- per month regularly.

6. Applicant's contention that the order of recovery of excess amount has been passed without serving any notice to the applicant in violation of principles of natural justice seems to be justified. Further, the views expressed by the Hon'ble Apex Court judgment 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."*

7. Additionally, very recently 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."*

8. The Case of **Thomas Daniel** (supra) is in favour the applicant in which the Hon'ble Apex Court Further, the Hon'ble Apex Court in **Thomas Daniel** (supra) has held in para 9 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."*

9. Admittedly, the applicant is a retired soldier 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 PCDA (Pension), Allahabad to serve a notice calling 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 01.02.2006, such action by the PDA seems to be unjustified and is hit by Article 14 of the Constitution of India and also against the observations made by the Hon'ble Apex Court in the case of **Maneka Gandhi v. Union of India**, [1978] 2 S.C.R. 621, which is reproduced as under:-

*".....what is the content and reach of the great equalizing principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits.....Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence."*

10. The respondents vehemently argued and submitted that they have 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.

11. Accordingly, the Original Application No 456 of 2021 is **allowed** and the impugned order dated 03.07.2021 is set aside with all consequential benefits. The respondent no 4 and 5 are directed to stop recovery of the amount from the applicant's pension with immediate effect and refund the amount which has already been recovered from his pension in pursuance to impugned order, expeditiously say within a period of four months from the date of production of a certified copy of the order.

12. No order as to costs.

13. Miscellaneous applications pending, if any, shall stand disposed off.

**(Vide Admiral Abhay Raghunath Karve)**  
**Member (A)**

Dated : 20.05.2022

rathore

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**