

Court No.2
(Sl. No.27)
Reserved

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 165 of 2020

Friday, this the 19th day of May, 2023

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

Smt Suman Shahi W/o HFO (Late) Ram Adhar Shahi, R/o House No. 30, SIGNATURE GREEN, IIM Road Allunagar Digirua, Lucknow (UP)-226013.

Applicant No.1

Miss Swati Shahi D/o HFO (Late) Ram Adhar Shahi, R/o. House No. 30, SIGNATURE GREEN, IIM Road Allunagar Digirua, Lucknow (UP)-226013.

Applicant No.2

Ld. Counsel for : **Shri Shailendra Kumar Singh**, Advocate
 Applicant **Shri Ravi Kumar Yadav**, Advocate

Versus

1. The Union of India, through the Secretary, IHQ of MOD (IAF), South block, New Delhi-110066.
2. Chief of Air Staff, Air Hqrs, Vayu Bhawan, New Delhi-110011.
3. Director-III, Dte of Air Veteran, Subroto Park, New Delhi-110010.
4. AOC, AFCAO, Subroto Park New Delhi-110010.
5. Jt CDA C/O AFCAO, Subroto Park New Delhi-110010.

.....Respondents

Ld. Counsel for the : **Shri Namit Sharma**, Advocate
 Respondents Central Govt Counsel

ORDER

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed the following reliefs:-

(a) To summon the order of recovery and quash the same with all consequential benefits.

(b) To refund the recovered amount of Rs 2, 14,120/- from the Salary of Nov 2019 and Dec 2019 alongwith suitable rate of interest as deemed fit and proper by this Hon'ble Tribunal.

(c) Any other relief which this Hon'ble Tribunal may deem, fit, just and proper under the circumstances of the case may also be passed in favour of the applicant.

(d) Cost of the present case as the deceased applicant has unnecessarily been dragged in litigation.

(e) That the present Applicant No. 1 be paid family pension from the date of death of deceased applicant after proper fixation of basic pension with all consequential benefits.

2. The factual matrix on record is that the husband of the applicant was enrolled in the Indian Air Force on 03.10.1980. During the course of his service he was promoted to the rank of MWO w.e.f. 01.04.2013 and prior to discharge from service he was conferred with Honorary rank of Flying Officer on 15.08.2019 and was granted service pension in the Honorary rank of Flying Officer w.e.f. 01.01.2020. After discharge from service he submitted a representation dated

04.12.2019 but it was given no heed and he died on 04.05.2021. While posted with Advance HQ CAC, IAF, Lucknow as per e-Pay Slip for the month of November 2019 Rs 1,09,288 was debited from his IRLA and an amount of Rs 1,04,832/- was recovered from the entitlements for the month of Dec 2019 (i.e. total recovery for the month of Nov & Dec 1,09,288 +1,04,832= 2,14,120/-) due to wrong fixation of pay with effect from 01.04.2006 while implementing the recommendations of VIth CPC. During his life time the deceased applicant had submitted representation on 04.12.2019 but there being no response, this O.A. has been filed.

3. Learned counsel for the applicant submitted that the deceased applicant was enrolled in the Indian Air Force on 03.10.1980. The deceased applicant was promoted to the rank of MWO w.e.f. 01.04.2013 and being on active service he was granted the coveted rank of Honorary Flying Officer w.e.f. 15.08.2019 and was discharged from service on 31.12.2019 after rendering 39 years, 02 months and 29 days of service. It was further submitted that while posted with Advance HQ CAC, IAF, Lucknow Rs 2,14,120/- (Rs 1,09,288 +1,04,832 as per e-Pay Slip for the month of November and December 2019) were debited from his IRLA without prior notice on 31.12.2019 i.e. on the date of superannuation.

4. Further submission of learned counsel for the applicant is that the deceased soldier was promoted to the rank of Warrant officer on 01.04.2006 and his basic pay was fixed to Rs 12,910/- p.m.

accordingly which being objected by the respondents after elapse of 13 years is not tenable. It was further submitted that the respondents have fixed his basic pay @ Rs 12,280/- w.e.f. 01.04.2006 which resulted into recovery of Rs 2,14,120/- in the month of November and December 2019. Further submission of learned counsel for the applicant is that it was not a case where the said fixation was done at the behest of the deceased soldier; rather it is an admitted position that no role of deceased soldier is alleged in fixation of his pay. Since the deceased soldier was enrolled in Group II (now Group Y), therefore his case is squarely covered by the Hon'ble Supreme Court judgment in the case of **State of Punjab Vs Rafiq Masih**, (2015) (4) SCC 334. For convenience sake, Para 12 of the aforesaid judgment is excerpted below:-

“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. State of Punjab & Ors Vs Rafiq Masih (White Washer) on 18 December, 2014 Indian Kanoon - <http://indiankanoon.org/doc/142554368/> 16.

(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”.

5. Learned counsel for the applicant has further relied upon the Madurai Bench of Hon'ble High Court in the case of ***A Karuppiah vs The Principal Accountant General & Ors***, Writ Petition No 23115 of 2015 decided on 19.06.2019. In the aforesaid judgment the Hon'ble High Court has observed in Para 17 as under:-

“17. This being the factum, in respect of the excess payment made to the employees/pensioners, wherever it is legally permissible, in those cases, the recovery of excess payment is to be made from the employee/pensioner concerned. In respect of the exempted employees, namely, Group-III and Group IV as well as the retired employees, the excess payment made is to be recovered from the officials, who all are responsible and accountable for such excess payments”.

6. Learned counsel for the applicant has further placed reliance on order dated 26.04.2018 passed by the Hon'ble CAT Lucknow Bench in O.A. No. 332/00245/2017, ***Gopal Narain Mishra Vs. Uoi & Ors***

vide which similar case has been dealt with and the Hon'ble court has granted relief directing the respondents to make payment of withheld and recovered amount within two months with statutory interest or with simple interest @ 8% whichever is less. Therefore, in the case of deceased applicant the amount recovered against his salary on re-fixation of Pay @ Rs 12,280/-, which led to recovery of Rs 2,14,120/- in the month of November and December 2019 due to wrong fixation of pay by respondents concerned, with effect from 01.09.2008 shall be granted to the applicant on the basis of last pay drawn prior to deduction. It was further submitted that apart from this, various Tribunals as well as Hon'ble High Courts and the Hon'ble Apex Court are also of the similar view and supporting the case of the applicant, hence applicant is also entitled to refund of recovered amount of Rs 2,14,120/- during the month of Nov & Dec 2019 at the time of retirement.

6. On the other hand, learned counsel for the respondents submitted that the deceased soldier was enrolled in the Indian Air Force on 03.10.1982. During the course of his service he was promoted to the rank of Cpl, Sgt in time and Junior Warrant Officer (JWO) w.e.f. 01.08.2003, Warrant Officer (WO) w.e.f. 01.04.2006 and MWO w.e.f. 01.04.2013. It was further submitted that prior to discharge from service he was granted Honorary rank of Flying Officer on 15.08.2019 and thereafter, he was discharged from service on 31.12.2019. It was further submitted that basic pay of the applicant @

Rs 6,940/- was erroneously taken into account for fixation on 01.04.2006 instead of Rs 6,600/- after implementation of VIth CPC which resulted in fixation of his basic pay to Rs 12,910/- instead of Rs 12,280/-. He submitted that this resulted in recovery of Rs 2,14,120/- at the time of retirement which was also objected by JCDA (AF) vide letter dated 09.04.2019.

8. Learned counsel for the respondents further submitted that in the present case, basic pay of the deceased soldier was reverted from Rs. 12,910/- to Rs 12,280/- for fixation of basic pay w.e.f. 01.04.2006 and that is the reason an amount of Rs 2,14,120/- is due to be recovered. He, however submitted that till date no recovery has been initiated from the PPO.

9. Heard Shri Shailendra Kumar Singh, learned counsel for the applicant and Shri Namit Sharma, learned counsel for the respondents and perused the record.

10. In the present case, the deceased soldier's basic pay was wrongly fixed @ Rs 12,910/- in place of Rs 12,280/- on implementation of the VIth CPC recommendations w.e.f. 01.04.2006. We find that there is no fault on the part of the deceased soldier. The respondents had erroneously taken into wrong figure while fixing his basic pay w.e.f. 01.04.2006 and this fact has also been conceded by the respondents in Para 5 of the counter affidavit. We also find that since the deceased soldier belonged to Group-II the amount recovered is required to be refunded in view of the Hon'ble Apex

Court judgment in the case of **State of Punjab vs Rafiq Masih**, (2014) 8 SCC 883. In the aforesaid judgment the Hon'ble Apex Court has held 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. The respondents while filing counter affidavit submitted that no recovery has been initiated, but the fact is that an amount of Rs 2,14,120/- has been recovered from the account of the deceased soldier in the month of November and December, 2019. Thus, we find that in view of **Rafiq Masih** (supra) the respondents are required to refund Rs 2,14,120/- that was illegally recovered from his account keeping in view that there was no fault on the part of the deceased soldier.

12. In view of aforesaid, Original Application is **allowed**. The respondents are directed to Rs 2,14,120/- to the applicant within a period of four months from today. The respondents are further directed to fix and grant correct family pension to the applicant forthwith. Default will invite interest @ 8% p.a.

13. No order as to cost.

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

(Maj Gen Sanjay Singh)
Member (A)

Dated : 19.05.2023

Rspal/rathore

(Justice Anil Kumar)
Member (J)