Court No.1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

T.A.No. 30 of 2012

Tuesday, the 31st day of October, 2017

Hon'ble Mr. Justice D.P.Singh, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Major V.S.Malik, son of Sri Data Ram Malik, resident of F-2, AWJHO Colony, Rakshapuram, Meerut (U.P.)

…….. Petitioner

By Legal Practitioner Shri S.K.Bajpai, Advocate, Learned counsel for the petitioner.

Versus

1. Office of the Principal CDA (P), Allahabad through Senior Accounts Officer (P).

2. C.D.A. (Pension) through Deputy CDA (P), C.D.A. (Pension) Allahabad.

3. Union of India through Ministry of Defence, New Delhi.

4. Manager, D.P.O.O. (P) Meerut.

By Legal Practitioner Shri Kaushik Chatterji, Learned Counsel for the Respondents, assisted by Col Hemant Kakar, OIC Legal Cell

ORDER (Oral)

1. Being aggrieved with the impugned order of recovery from pensionary benefits, the petitioner preferred a writ petition bearing No. 48351 of 2003 in Hon'ble High Court of Judicature at Allahabad and in pursuance to the power conferred under Section 34 of the Armed Forces Tribunal Act, 2007, the same has been transferred to this Tribunal and now registered as T.A.No. 30 of 2012.

2. Heard Shri S.K.Bajpai, learned counsel for the petitioner and Shri Kaushik Chatterji, learned counsel for the respondents, assisted by Col Hemant Kakar, OIC Legal Cell and perused the record.

3. The petitioner was enrolled in the Indian Army in 1964 and voluntarily retired in 1984 while holding the rank of Major. He was paid pension immediately after his retirement. Later on, supplementary PPO was issued and he was provided enhanced pension right from 1996 in view of the recommendations of Vth Pay Commission and paid arrears accordingly on 05.07.2000 treating his pension as Rs.5528/- per month, for which he also paid Income Tax. According to the petitioner, he received a letter dated 06.05.2003, according to which his gross pension ought to have been Rs.4146/- and thus overpayment from 01.01.1996 to 30.04.2003 had been made to him. The petitioner was, thus, directed to refund the amount of Rs.1,57,876/-. He made a representation on 24.05.2003 denying that any excess amount was paid to him, but the respondents passed orders on 12.09.2003 directing the petitioner to deposit the alleged amount. On 22.09.2003, the respondents further passed orders that 1/3rd amount will be deducted from the petitioner's pension. As per petitioner's counsel, the said amount has been recovered from the petitioner's pension. The petitioner has prayed for refund of the recovered amount.

4. Learned counsel for the petitioner submits that no excess amount was paid to the petitioner. His submission is that even if at all any excess amount was paid to him, the respondents were not legally entitled to recover the same. He has placed reliance on an Apex Court's judgment reported in *(2015) 4 SCC 334,* **State of Punjab and others versus Rafiq Masih (white washer) and others**, wherein the Hon'ble

Supreme Court after considering the earlier judgments, in para 18 of the report, has sum up the right of recovery with regard to excess payment and laid down certain situations wherein recoveries by the employers would be impressible in law, which is reproduced as under:

> *"18. 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:*
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> *(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."*

5. From a perusal of the aforesaid judgment of the Hon'ble Supreme Court, it is clear that in the opinion of their Lordships, recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery, or recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued, would be impermissible in law. Situation (ii) read with situation (iii) as postulated by the Apex Court in the case of **Rafiq Masih** (supra) squarely covers the petitioner's case

and leaves no room for doubt that the impugned recovery made from the petitioner was not permissible. The TA, therefore, deserves to be allowed.

6. Accordingly, T.A is allowed. The impugned orders dated 06.05.2003, 12.09.2003 and 22.09.2003 are set aside. The respondents are directed to refund the amount recovered from the petitioner's pension forthwith, say, within a period of four months from today.

No order as to costs

(Air Marshal BBP Sinha)
Member (A)

(Justice D.P.Singh)
Member (J)

Dated : Oct 31, 2017
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