ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW

R.A. No. 56 of 2022 with M.A. No 625 of 2022
O.A. No 441 of 2021

Tuesday, the 1st day of November, 2022

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

No 6597676 Ex Sepoy Ram Milan Sharma, S/o Sampat Kumar, Permanent Resident of Village & Post- Laxmanpur (Gaddi Road), Tehsil- Huzoor, District- Rewa, Madhya Pradesh- 486005, Presently residing at

592/Ka/146, Defence Colony, Teligabh, Lucknow – 226012.

.....Review Applicant

Counsel for the Applicant/: **Shri Manoj Kumar Awasthi**
Respondents

Versus

Union of India, Through Secretary, Ministry of Defence (Army), South Block, Rashtrapati Bhawan Road, New Delhi - 110001.

……Respondents

Counsel for the Respondents/: **Shri Rajesh Shukla,**
Applicant **Central Govt Counsel**

ORDER

"Per Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)"

1. The matter came up before us under the provisions of Rule 18 (3) of the Armed Forces Tribunal (Procedure) Rules, 2008, whereby the applicant has prayed to review and set aside judgment and order dated 03.03.2022 passed in O.A. No 441 of 2021 and issue direction to respondents to refund recovered amount and stop recovery.

2. Brief facts of the case are that applicant was enrolled in Army on 24.11.1958 and he was discharged from service on 30.11.1978 in the rank of Sepoy/ Reservist. Concerned Pension Disbursing Authority erroneously made the payment of service pension of Regular Sepoy instead of rank of Reservist. When the matter came into notice, PDA recovered Rs. 1,30,000/- from the applicant's account vide letter dated 25.06.2020. Applicant was also informed vide letter dated 29.05.2020 that a sum of Rs. 8,82,055/- are due towards applicant in lieu of excess payment thereby recovery of said amount was initiated by monthly deduction of Rs. 3,000/- from the pension of applicant. Being aggrieved,

applicant filed O.A. No 441 of 2021 with the prayer to issue direction to the respondents to refund/credit the recovered amount of Rs. 1,30,000/- and to stop further recovery.

3. After hearing learned counsels of both the parties, O.A. was dismissed on the ground that excess amount paid to the applicant was recoverable keeping in view of undertaking dated 11.03.2004 given by the applicant.

4. We have gone through the Review Application and perused the judgments and policy letters issued by Govt. from time to time on the matter of recovery of excess payment made to employees.

5. There is delay of 02 months and 25 days in filing of Review Application regarding which an application for condonation of delay has been filed.

6. As per judgment of Larger Bench AFT, Principal Bench, New Delhi, dated 16.11.2021 passed in M.A. No 321 of 2018 in R.A. (Diary No 10920 of 2018 in O.A. No 64 of 2016, in the case of ***Union of India &***

Ors Versus Ex Sep M Anthony Victor**,** the delay in filing Review Application is condonable. In the said judgment, Hon'ble Principal Bench has held that:-

> ***"The tribunal is conferred with power under the Act and the Rules framed thereunder to condone delay under Section 5 of the Limitation Act in filing the Review Application despite rule 18 of the Rules".***

7. In view of decision of larger Bench of AFT, New Delhi, application for condonation of delay in moving Review application is allowed and delay in filing the Review Application is condoned.

8. In the instant case, concerned bank wrongly granted pension of Regular Sepoy instead of Reservist Sepoy to the applicant. After coming the matter in the notice, respondents started recovery of excess amount paid to the applicant. Applicant approached this Tribunal with the prayer to direct respondents to stop recovery. Matter was heard and prayer of the applicant was rejected on the ground that applicant had given undertaking to the effect that "***he agree and undertake to refund or make good any amount to which he is not entitled of any amount to***

which may be credited in his account is excess of the amount to which he is or would be entitled".

9. Various Courts have passed orders on the matter of recovery of excess amount paid to the employees. Learned counsel for the applicant has relied upon the decision of the Hon'ble Apex Court in the case of ***State of Punjab Vs Rafiq Masih*** (supra) inviting our attention to the findings recorded by the Hon'ble Apex Court in the aforesaid case which has been summed up in para 12 of the judgment, which for convenience sake 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."

10. Admittedly, the applicant is a soldier and his case is squarely covered by the decision of ***Rafiq Masih's*** case (supra) and no recovery from pensionary benefits of the applicant could be made which according to respondents was wrongly paid in excess. Apart from aforesaid judgment of the Hon'ble Apex Court, it is well settled law that no order could be passed by appropriate authority in contravention of principle 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, more

so in this case since the applicant has been paid continuously since 2006. Such action by the PCDA (Pension), Allahabad 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."*

11. In a recent judgment passed by the Hon'ble Apex Court in the case of ***Thomas Daniel Vs State of Kerala*** decided on 02.05,2022, the Hon'ble Court has held that:-

> ***"15. Having regard to the above, we are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified".***

12**.** In view of the above, though learned counsel for the respondents vehemently argued and submitted that respondents have got right to recover the amount which was paid in excess, but for the aforesaid three reasons, the decision of the respondents seems to be not sustainable in the eyes of law and as such, Review Application deserves to be partly allowed. The amount already recovered from the pension of the applicant shall not be refunded, but further recovery shall be stopped.

13. Accordingly, the Review Application No 56 of 2022 is partly **allowed** and order of this Tribunal dated 03.03.2022 passed in O.A. No 441 of 2021 directing the respondents to recover the balance amount excess paid to the applicant is recalled. This relief against the recovery is granted not because of any right of the employees but in equity,

exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. Therefore, respondents are directed to stop further recovery of excess amount paid to the applicant, from the applicant's pension from the date of production of a certified copy of the order. It is clarified that the amount already recovered from the pension of the applicant shall not be refunded.

14. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 01 November, 2022

ukt/-