

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 428 of 2017

Thursday, this the 21st day of October, 2021

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

Gaya Ram (Ex Sep 13827776 (MT))
S/o Late Goka Ram,
R/o Village – Chandpur, Post – Maseni,
District – Farrukhabad (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri Ashok Kumar**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, Delhi-110011.
2. Incharge Record Office ASC (South), Bangalore PIN 560007, C/o 56 APO.
3. Principal Controller of Defence Account (Pensions), Draupadi Ghat, Allahabad.
4. State Bank of India, Centralized pension Processing Centre, 4 Kutchery Road, Allahabad – 211002 through its Chief Manager.
5. State Bank of India, Head Branch, District Shahjahanpur through its Branch Manager.

..... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,
Central Govt Counsel.

ORDER

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

“(i) This Hon'ble Court may graciously be pleased to direct the respondent no. 2 to issue new pension paper order

(PPO) to the applicant, mentioning ex-Sepoy and grant pension accordingly.

- (ii) This Hon'ble Court may graciously be pleased to direct the respondents to stop the deduction of the amount of pension in the name of reservist, showing excess payment w.e.f. year, 2007.
- (iii) This Hon'ble Court may graciously be pleased to direct the respondents to refund the deducted amount of pension to the applicant (ex. Sepoy) w.e.f. 1-1-2007 and also ensure the payment of enhanced arrear of revised pension by giving benefit of six pay commission one rank one pension in the bank account of applicant.
- (iv) This Hon'ble Court may further be pleased to pass such other and/or further order as deem fit, proper and necessary in the circumstances of this case."

2. Supplementary affidavit dated 14.09.2021 filed by the applicant is taken on record.

3. The brief facts of the case are that applicant was enrolled in the Indian Army on 20.01.1964 with terms of engagement of 10 years in colour and 10 years in reserve. On completion of 12 years and 222 days in colour service, he was transferred to the Reserve w.e.f. 29.08.1976. Thereafter, on completion of his Reserve service, the applicant was discharged from reserve service on 31.01.1984 (AN) on completion of terms of engagement under Rule 13 (3) III (i) of Army Rules, 1954. He was granted Reservist pension @ Rs. 79/- per month w.e.f. 01.02.1984 for life vide PPO dated 16.04.1984. His reservist pension was further revised @ Rs. 91/- per month w.e.f. 01.02.1984 vide Corrigendum PPO dated 24.09.1985. Consequent to

6th CPC, his reservist pension was revised vide Corrigendum PPO dated 16.07.2014 @ Rs. 3500/- per month w.e.f. 01.01.2006. The applicant submitted a letter of grievance dated 29.04.2013 which was received by Records wherein applicant raised issue of non receipt of revised PPO and revision of his pension which was replied stating that benefits of improvement in pension under the provision of PCDA (P) Allahabad Circular No. 430 dated 10.03.2010 are applicable only to service pensioner and not to reservist pensioner. Your pension as per 6th CPC has been revised w.e.f 01.01.2006 @ Rs. 3500/- per month plus Dearness Relief as applicable for which you may contact your Pension Disbursing Authority (PDA). Applicant also submitted an application to Station Commander Station HQ Fatehgarh with regard to recovery being made from his pension account. The application of the applicant was examined by ASC Records and suitably replied vide letter dated 14.09.2015. Thereafter, applicant served an appeal dated 30.05.2016 for grant of service pension instead of Reservist pension in the light of existing rules/policy. The applicant raised his grievance to refund the deducted amount of pension in the name of reservist showing excess pension by his PDA but no relief was given to the applicant. Being aggrieved the applicant has filed the present Original Application.

4. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 20.01.1964 and was discharged from service on 31.01.1984 as Sepoy which is mentioned in Discharge Book of the applicant also. Accordingly, applicant was issued PPO and service pension alongwith all terminal benefits for the post of ex-Sepoy at the

time of his retirement. The respondents showing the applicant as a reservist after serving a period of 20 years and 12 days is illegal and unjust. The applicant received full service pension for the post of Sepoy upto 2007 but in the year 2007, bank all of sudden stopped paying pension to the applicant. The applicant submitted an application in the year 2010 to grant him pension as applicable to an ex-Sepoy but respondents paid no heed and ultimately bank started deducting pension w.e.f 27.04.2012 towards extra amount already paid to the applicant since 1984 as such Rs. 1,38,462/- was deducted and against total recovery of Rs. 1,97,725/- and remaining by deducting Rs. 2400/- per month till the excess paid amount is not adjusted.

5. Learned counsel for the applicant further submitted that applicant again sent an application to the respondents requesting not to deduct the amount from his pension and also to give the benefit of 6th CPC but the same was denied vide their letter dated 14.09.2015. Thereafter, applicant served a legal notice dated 20.02.2016 to the respondents to treat him as Sepoy and not a reservist, which was denied/rejected by the respondents. The pension paying bank of the applicant vide its letter dated 30.03.2016 stated that since the applicant was retired as reservist vide PPO No. S/2617/84 but due to wrong rank of Sepoy filled in the system, applicant was getting excess pension, however on receipt of revised PPO as per 6th CPC his basic pension was fixed @ Rs. 3500/-. Therefore, excess pension of Rs. 2,63,956/- has been paid, out of which 71,031/- has been recovered

from pension and remaining Rs. 1,78,525/- is still to be recovered from pension of the applicant.

6. Learned counsel for the applicant further submitted that para 186 of Financial Regulation Part-1 provide that "*when the erroneous payment have been left unchallenged owing to oversight, the audit officer should not on its own initiate, undertake a re-audited of bills paid more than 12 months previously, but should report the facts of the case to the competent financial authority for orders and a re-audit should be undertaken only if the competent financial authority so desires.*" Hence, PDA is not competent to undertake a pre-audit of bills paid more than 12 months previously. The recovery of Rs. 2,63,956/- is not only beyond jurisdiction of PDA but also a very harsh step taken by the respondents after retirement from service without any fault on the part of the applicant.

7. Learned counsel for the applicant placed reliance on the judgment of AFT (RB) Chennai (Circuit Bench, Hyderabad) in OA No. 156 of 2017, ***L/Nk Yenumula Sivaramayya vs. Union of India and others***, decided on 29.01.2019 and judgment of a three Judge Bench in ***State of Punjab v. Rafiq Masih*** (2014) 8 SCC 883 and pleaded that applicant's case is squarely covered with the judgments and therefore, amount recovered by the respondents be refunded to the applicant.

8. Learned Counsel for the respondents submitted that applicant was enrolled in the Army on 20.01.1964 with terms of engagement of 10 years in colour and 10 years in reserve. On completion of 12

years and 222 days in colour service, he was transferred to the Reserve w.e.f. 29.08.1976. Thereafter, on completion of his Reserve service, the applicant was discharged from reserve service on 31.01.1984 (AN) on completion of terms of engagement under Rule 13 (3) III (i) of Army Rules, 1954. He was granted Reservist pension @ Rs. 79/- per month w.e.f. 01.02.1984 for life vide PPO dated 16.04.1984. His reservist pension was further revised @ Rs. 91/- per month w.e.f. 01.02.1984 vide Corrigendum PPO dated 24.09.1985. Consequent to 6th CPC, his reservist pension was revised vide Corrigendum PPO dated 16.07.2014 @ Rs. 3500/- per month w.e.f. 01.01.2006.

9. Learned Counsel for the respondents further submitted that as per Regulation 155 of Pension Regulations for the Army 1961, (Part-1), *“An OR reservist who is not in receipt of a service pension may be granted on completion of the prescribed colour and reserve qualifying service, of not less than 15 years a reservist pension at the rate of Rs. 1500/- p.m., on his transfer to pension establishment either on completion of his term of engagement or prematurely irrespective of the period of colour service.”* Therefore, the applicant was meeting the criteria for grant of Reservist Pension, he was granted the same accordingly. It is also pertinent to mention that under the provisions of Regulation 132 of Pension Regulations for the Army, 1961 (Part-1), service pension is granted to those personnel who have completed minimum 15 years of qualifying colour service. However, in this case, applicant has rendered only 12 years and 222 days (less than 15

years) colour service, therefore, he is not eligible for grant of service pension.

10. Learned Counsel for the respondents also submitted that a letter of grievance dated 29.04.2013 was received by Records wherein applicant raised issue of non receipt of revised PPO and revision of his pension which was replied stating that benefits of improvement in pension of personnel below officer rank under the provision of PCDA (p) Allahabad circular No. 430 dated 10.03.2010 are applicable only to service pensioner and not to reservist pensioner. Your pension as per 6th CPC has been revised w.e.f 01.01.2006 @ Rs. 3500/- per month plus Dearness Relief as applicable for which you may contact your Pension Disbursing Authority (PDA). Applicant also submitted an application to Station Commander Station HQ Fatehgarh with regard to recovery being made from his pension account. The application of the applicant was examined by ASC Records and suitably replied vide letter dated 14.09.2015. Thereafter, applicant served an appeal dated 30.05.2016 for grant of service pension instead of Reservist pension in the light of existing rules/policy. The applicant raised his grievance to refund the deducted amount of pension in the name of reservist showing excess pension by his PDA. The applicant is only eligible for reservist pension and not service pension. He pleaded for dismissal of O.A.

11. Heard learned counsel for the parties and perused the relevant documents available on record.

12. A three Judge Bench of the Hon'ble Apex Court in **State of Punjab v. Rafiq Masih** (2014) 8 SCC 883, proceeded to explain that the observations made by the Court in the case of **Shyam Babu Verma** (1994) 2 SCC 521 and in **Sahib Ram Verma** (1995) Supp (1) SCC 18 not to recover the excess amount paid to the appellant therein, were in exercise of its extraordinary powers under Article 142 of the Constitution of India which vest the power in the Court to pass equitable orders in the ends of justice. In **Shyam Babu Verma** (supra) case, the Court observed as under :-

“11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same.” (emphasis is ours) It is apparent, that in Shyam Babu Verma's case (supra), the higher pay-scale commenced to be paid erroneously in 1973. The same was sought to be recovered in 1984, i.e., after a period of 11 years. In the aforesaid circumstances, this Court felt that the recovery after several years of the implementation of the pay-scale would not be just and proper. We therefore hereby hold, recovery of excess payments discovered after five years would be iniquitous and arbitrary, and as such, violative of [Article 14](#) of the Constitution of India.

In **Sahib Ram Verma** (Supra), the Hon'ble Apex Court has concluded as under :-

“4. Mr. Prem Malhotra, learned counsel for the appellant, contended that the previous scale of Rs 220-550 to which the appellant was entitled became Rs 700-1600 since the appellant had been granted that scale of pay in relaxation of the educational qualification. The High Court was, therefore, not right in dismissing the writ petition. We do not find any force in this contention. It is seen that the Government in consultation with the University Grants Commission had revised the pay scale of a Librarian working in the colleges to Rs 700-1600 but they insisted upon the minimum educational qualification of first or second class M.A., M.Sc., M.Com. plus a first or second class B.Lib. Science or a Diploma in Library Science. The relaxation given was only as regards obtaining first or second class in the prescribed educational qualification but not relaxation in the educational qualification itself.

5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the

relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant.”

13. The Hon’ble Apex Court in **Rafiq Masih** (supra) case has also held in its concluding para 12 that :-

“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.”

14. It is emerged from the above that the applicant has been paid excess amount of pension due to wrong filling of data in system of PDA Bank on receipt of PPO after retirement from service resulted excess payment due to difference in service pension and reservist pension granted to the applicant. The excess payment came to notice in the year 2007 and therefore, Bank started recovery of excess payment of pension made to the applicant amounting to Rs. 2,63,956/-, out of which 71,031/- has been recovered from pension and remaining Rs. 1,78,525/- is still to be recovered from pension of

the applicant. Hence, in view of aforesaid judgments of the Hon'ble Apex Court, an amount of Rs. 71,031/- recovered from the applicant on account of excess payment of pension is liable to be refunded to the applicant there being no fault on the part of the applicant and remaining amount i.e. Rs. 1,78,525/- which is to be recovered from the pension of the applicant cannot be recovered in terms of the aforesaid judgment of the Hon'ble Apex Court.

15. In view of above, Original Application is allowed. The respondents are hereby directed to refund complete amount to the applicant recovered so far from his pension out of Rs. 2,63,956/-, and henceforth, no further recovery will be made from the pension of the applicant. The Respondents are directed to comply with the order within a period of four months from the date of receipt of certified copy of the order. Default will invite interest @ 8% per annum till actual payment.

16. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: October, 2021
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