

E Court
ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Original Application No. 276 of 2021

Monday, this the 10th day of October, 2022

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

Ex No. 15429530X Naik/Blood Transfusion Assistant Shankar Ingali, son of Shivanand Ingali, Permanent resident of Raxi Road, Shiragaon, District-Belgaum, Karnataka-591309.

..... 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 OIC, AMC Records, Lucknow Cantt, Lucknow.
4. PAO (OR) AMC, Ledger/Gp-3, Lucknow-02.
5. 431 Fd Hospital, PIN-903431, C/o 56 APO.

..... Respondents

By Legal Practitioner - **Shri Sunil Sharma**, Advocate
for the respondents Central Govt Counsel

ORDER (Oral)

1. Being aggrieved with impugned orders dated 22.03.2021 and 07.05.2021 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 quashing the AMC Records letter bearing No 15429530X/Pen/Debit/Gen/2021 dated 22 March 2021 and letter of even number dated 07 May 2021 (Annexure No A-1).

(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 was enrolled in the Army Medical Corps (AMC) on 25.09.2009. While serving with 431 Field Hospital, the applicant committed a civil offence, that is to say committed sexual assault to a male child of a Junior Commissioned Officer contrary to Section 10 of the Protection of Children from Sexual Offence (POCSO) Act, 2012. For this heinous act he was tried by General Court Martial (GCM) on 10.11.2018 which awarded him (i) to be reduced to

the ranks (ii) to suffer rigorous imprisonment for five years in civil jail and (iii) to be dismissed from service. Subsequently, on pronouncement of sentence awarded to him, casualties were published by 431 Field Hospital under different Part-II Orders. The Part-II Orders were published incorrectly leading to wrong credit of money in his bank account. Later, when the error was detected the Part-II Orders were cancelled and re-published. With the result, the final settlement of account (FSA) was closed with a debit balance of Rs 8,18,748/- and with AFPP Fund balance of Rs 50,404/-. In this regard a consent memo was sent to the applicant (who is lodged in civil jail) for completion and return to AMC Records duly countersigned by Zila Sainik Board so that debit balance could be deducted from his AFPP Fund and also advised him to deposit remaining amount of Rs 7,68,344/- into Govt Treasury in favour of PCDA (CC), Lucknow by MRO through nearest branch of State Bank of India. The applicant has neither responded to the memo nor deposited his debit balance amount to the Govt Treasury even after sending reminder on 07.05.2021. The applicant has filed this O.A. to issue directions to the respondents not to recover the amount in view of order dated 18.12.2014 passed by the Hon'ble Supreme Court in Civil Appeal No 11527 of 2014, **State of Punjab and**

Ors vs Rafiq Masih (White Washer), order dated 02.05.2022 passed by the Hon'ble Supreme Court in Civil Appeal No 7115 of 2010, ***Thomas Daniel vs State of Kerala & Ors*** and order dated 20.05.2022 passed by this Tribunal in O.A. No. 456 of 2021, ***Ex Rect Satyendra Kumar Dwivedi vs Union of India & Ors.***

3. Learned counsel for the applicant submitted that the applicant was tried by the GCM and is presently lodged in civil jail for punishment awarded under Section 69 of Army Act, 1950 read with Section 10 of POCSO Act, 2012. He further submitted that the applicant was paid monetary entitlement till 10.11.2018 and he received no excess amount towards payment of service benefits. It was further submitted that applicant was informed vide letter dated 22.03.2021 followed by reminder dated 07.05.2021 that certain amount was outstanding against him when FSA was finalized. He further submitted that the respondents have failed to indicate the period of excess payment and the circumstances which led to accumulation of this amount.

4. Learned counsel for the applicant further submitted that after announcement and confirmation of sentence the applicant is undergoing sentence and he had handed over all his belongings to his NOK and thereafter, he has no access to his

account and excess payment, if any, made to his account by the respondents. The learned counsel submitted that in view of the Hon'ble Apex Court judgment in the case of **State of Punjab and Ors vs Rafiq Masih (White Washer), Thomas Daniel vs State of Kerala & Ors** (supra) and order dated 20.05.2022 passed by this Tribunal in O.A. No. 456 of 2021, **Ex Rect Satyendra Kumar Dwivedi vs Union of India & Ors** (supra) recovery should be stopped against the applicant.

5. On the other hand, learned counsel for the respondents submitted that the applicant having been enrolled in the AMC on 25.09.2009 was tried by GCM held on 10.11.2018 for an offence under Section 69 of the Army Act, 1950 read with Section 10 of the POCSO Act, 2012 and awarded the following punishments:-

- (i) To be reduced to the ranks.
- (ii) To suffer rigorous imprisonment for five years in civil jail and,
- (iii) To be dismissed from service.

6. It was further submitted that subsequent to pronouncement of sentence awarded to him, casualty regarding MILRI (imprisonment in military custody) w.e.f. 10.05.2018 to 10.11.2018 was inadvertently published by 431 Field Hospital vide Part-II Order dated 20.08.2019 and the same was accepted by DOLPHIN system at Pay Accounts Office. Accordingly, the system automatically generated

RMILRY from 11.11.2018 adjusting Part-II Order in statement of account which resulted in credit of Rs 1,46,069/- to his IRLA (individual running ledger account) and subsequently his salary was released w.e.f. October 2019 onwards. The learned counsel accepted that as per documentation procedure Part-II Order regarding MILRI should not have been published in applicant's case but it was published inadvertently.

7. Learned counsel for the respondents further submitted that when this error came to light, the applicant was informed about debit balance to be deposited in bank through MRO as this amount was erroneously credited to his account due to system fault and it was withdrawn by his NOK. It was further submitted that consent form for adjustment of overpayment from his AFPP fund was sent to the applicant with directions to return the form duly completed as also to deposit the money in Govt Treasury, but the applicant never turned up. It was pleaded that the applicant was well aware about stoppage of his pay and allowances after dismissal from service but even then the amount was withdrawn which is illegal in the eyes of law. He pleaded for dismissal of O.A.

8. Heard Shri Vinay Pandey, learned counsel for the applicant and Shri Sunil Sharma, learned counsel for the respondents and perused the record.

9. No 15429530X Naik Shankar Ingli was enrolled in the Army on 25.09.2009. While posted with 431 Field Hospital he was tried by GCM for an offence under Section 69 of the Army Act, 1950 read with Section 10 of POCSO Act, 2012 and he was awarded (i) to be reduced to the ranks, (ii) to suffer rigorous imprisonment for five years in civil jail and (iii) to be dismissed from service.

10. Being dismissed from service, the applicant was not entitled to pay and allowances w.e.f. 11.11.2018 but since Part-II Order with regard to aforesaid punishment was wrongly published by 431 Field Hospital, this resulted in credit of Rs 8,18,748/- towards pay and allowances to his account. In regard to this the respondents forwarded consent form to the applicant vide letter dated 22.03.2021 advising him to deposit balance amount of Rs 7,68,344/- in Govt Treasury after deducting Rs 50,404/- held in his AFPP fund account. For convenience sake, extract of letter dated 22.03.2021 is reproduced as under:-

- "1. x x x x x.
2. *It is intimated that FSA (final settlement of account) has been closed by PAO (OR) AMC with debit balance of Rs 8,18,748/- (Rupees eight lakhs eighteen thousand seven hundred forty eight only) and AFPP fund balance Rs 50,404/- (Rupees fifty thousand four hundred four only).*
3. *Therefore, a blank consent certificate is enclosed herewith for completion and early return to this office duly countersigned by concerned Zila Sainik Board so that debit balance can be deducted from AFPP Fund.*
4. *In view of the above, you are advised to deposit remaining debit balance of Rs 7,68,344/- (8,18,748-50,404=7,68344/- (Rupees seven lakhs sixty eight thousand three*

hundred forty four only) immediately into govt treasury in favour of PCDA (CC), Lucknow by MRO (Military Receivable Order) (copy attached) through your nearest branch of State Bank of India and forward two receipt copies of MRO alongwith consent certificate to this office for our further action. Further delay in deposition of Govt money will invite a legal issue and FIR will be registered against you.

5. *x x x x x."*

11. When nothing was heard from side of the applicant, respondents again forwarded letter dated 07.05.2021 intimating him to deposit the money in Govt Treasury, but the applicant has not deposited Rs 7,68,344/- (this amount is stated to have been withdrawn by NOK of the applicant from saving bank account) in Govt Treasury even after today. For convenience sake extract of letter dated 07.05.2021 is reproduced as under:-

"1. *x x x x x*

2. *It is intimated that FSA (Final Settlement of Account) has been closed by PAO (OR), AMC with debit balance of Rs 8,18,748/- (Rupees eight lakhs eighteen thousand seven hundred forty eight only) and AFPP Fund balance Rs 50,404/- (Rupees fifty thousand four hundred and four only).*

3. *MRO and consent certificate as asked for vide this office letter quoted under reference has not been received by this office till date.*

4. *You are advised to deposit remaining debit balance of Rs 7,68,344/- (8,18,748-50,404=7,68,344) (Rupees seven lakhs sixty eight thousand three hundred forty four only) immediately into Govt Treasury in favour of PCDA (CC) Lucknow by MRO (Military Receivable Order) (copy attached) through your nearest branch of State Bank of India and forward two receipt copies of MRO alongwith consent certificate to this office for our further action. Further delay in deposition of Govt money will invite a legal issue and FIR will be registered against you.*

5. *An early action is expected."*

12. It is observed that once an individual is dismissed from service and casualty regarding dismissal is accepted by concerned Pay Accounts Office the individual is not entitled for any pay and allowances. The applicant being a soldier was well

aware about his pay and allowances entitlement. He was also aware that after dismissal from service he was not entitled to pay and allowances. In such circumstances when monthly salary and other allowances were inadvertently credited to his account due to programming system error, he or his NOK should have informed his unit authority/Record Office, but the applicant/NOK has knowingly received the money to which he was not entitled for.

13. In **Rafiq Masih** (supra) the Hon'ble Supreme Court has held that if the mistake of making wrongful payment is detected within five years, it would be open to the employer to recover the same. For convenience sake, the relevant part of the aforesaid judgment is reproduced as under:-

"x x x x. We are of the view, that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. x x x x"

14. Further, reliance has been made by learned counsel for the applicant on two pronouncements of the Hon'ble Apex Court i.e. **Thomas Daniel and Ex Rect Satyendra Kumar Dwivedi** (supra). In this regard we find that though pay and allowances were credited in applicant's account due to fault in system by Pay Accounts Office erroneously, it should not have been withdrawn by his NOK knowing well that applicant after dismissal from service is not entitled to pay and allowances. Thus, it is apparent that the amount seems to have been

withdrawn from the bank account by mutual connivance of NOK and the applicant. In view of the fact that the amount which was not entitled to applicant and it being credited erroneously due to system fault, citations relied upon by learned counsel for the applicant do not apply in this case being based on different facts and circumstances.

15. In view of the above, we are of the view that the amount of Rs 7,68,344/- is recoverable from the applicant as he was dismissed from service in the year 2018 and the mistake came to knowledge of the respondents in the year 2019 i.e. within one year and it was corrected by notifying fresh Part-II Order rejecting previous casualty by which the amount was wrongly credited to his account.

16. For the reasons aforesaid, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years.

17. In view of the above, O.A. is **dismissed**.

18. No order as to costs.

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

(Vide Admiral Abhay Raghunath Karve)
Member (A)

Dated : 10.10.2022

rathore

(Justice Umesh Chandra Srivastava)
Member (J)

