

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 594 of 2022**

Wednesday, this the 2nd day of November, 2022

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

Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex JWO Anandeshwar Awasthi
S/o Sri Hari Prasad Awasthi,
R/o Flat No. B/301, Krishna Lok, Daroga Kheda, Meeranpur, Pinvat,
Lucknow (UP) – 226401

..... Applicant

Ld. Counsel for the Applicant: **Shri Rang Nath Pandey**, Advocate

Versus

1. The Union of India, through Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Director of Air Veterans (III), Air Headquarters, Air Force Record Office Building, Subroto Park, New Delhi – 110010.
3. Principal Controller of Defence Account (Pension), Draupadi Ghat, Prayagraj – 211014.

..... Respondents

Ld. Counsel for the Respondents : **Dr. Gyan Singh**,
Central Govt Counsel

ORDER (Oral)

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:-

- a) To quash the impugned Pension Pay Order No. 349201913414 dated 18.12.2019 issued by Respondent No. 2 (Annexure No. A-1).
- b) To direct the respondents concerned to issue a new Pension Pay Order and fix pension of the applicant on the basis of last basic pay of Rs. 58,600/- which was drawn by applicant at the time of Retirement from service.
- c) To direct the respondent concerned to pay the arrears of difference of monthly pension, gratuity as well as Leave encashment which is applicable to the applicant as per law/entitlement in accordance with law.
- d) To direct the respondent concerned to pay the House Rent Allowance (HRA) to the applicant w.e.f. 1.7.2019 to 31.12.2019.
- e) To issue any suitable order or direction which this Hon'ble Tribunal may deem fit and proper under the present facts and circumstances of the case.
- f) To award the cost of the proceeding to the applicant."

2. Counter affidavit filed by the respondents is taken on record.

3. The factual matrix on record is that the applicant was enrolled in the Indian Air Force on 11.04.1981. The applicant was promoted to the rank of JWO and was discharged from service on 31.12.2019. The basic pay of the applicant was fixed to Rs. 58,600/- at the time of discharge from service but he has been issued PPO dated

18.12.2019 by respondent No. 2 showing basic pay of Rs. 55,200/- instead of his last basic pay of Rs. 58,600/-. The applicant submitted online applications to the respondents but no reply received till date. Being aggrieved, the applicant has filed the instant Original Application.

4. Submission of learned counsel for the applicant is that he was enrolled in the Indian Air Force on 11.04.1981. The applicant was promoted to the rank of JWO and was discharged from service on 31.12.2019 after rendering more than 38 years of service. The basic pay of the applicant was fixed to Rs. 58,600/- at the time of discharge from service which is evident from the last e-Pay Slip of Nov/Dec. 2019. The applicant has been issued PPO dated 18.12.2019 by respondent No. 2 showing basic pay of Rs. 55,200/- instead of his last basic pay of Rs. 58,600/- which is incorrect. The applicant submitted online application to the Grievance Cell before respondent No. 2 on 14.04.2021 and 29.04.2021 but the grievances of the applicant have not been redressed till date.

5. Learned counsel for the applicant placed reliance on the judgment of the Hon'ble Apex Court in SLP No. 4722 of 2021, **Union of India vs. M Siddaraj** which has been decided on 05.04.2021 directing that pension shall be granted to the applicants on the basis of last pay drawn and apart from this various Hon'ble Tribunals as

well as Hon'ble High Courts are also of the similar view and supporting the case of the applicant. Hence, applicant is also entitled PPO on the last basic pay drawn and accordingly, fresh PPO showing basic pay of Rs. 58600/- be issued to the applicant granting arrears of monthly pension, gratuity and leave encashment.

6. Learned counsel for the respondents submitted that applicant was discharged from service on 31.12.2019 and his basic pay was reduced from Rs. 58,600/- to 55,200/- due to wrong fixation of pay on grant of MACP as on 01.01.2006 as objected by JCDA (AF). The audit authority has insisted to grant MACP on 01.01.2006 only after migration to 6th CPC as MACP is the part of 6th CPC.

7. Learned counsel for the respondents further submitted that in the present case, basic pay of the applicant has been reverted from Rs. 58,600/- to 55,200/- for calculation of pension and NE benefits, however, no recovery has been initiated from PPO. He pleaded for dismissal of Original Application being bereft of merit and lack of substance.

8. We have heard learned counsel for the parties and have perused the record.

9. In the present case, applicant's basic pay has been reduced from Rs. 58,600/- to Rs. 55,200/- due to grant of benefit of MACP and

6th CPC simultaneously as on 01.01.2006 whereas, as per audit authority, MACP can only be granted after migration to 6th CPC being MACP part of 6th CPC which resulted PPO issued by decreasing basic pay, i.e. from Rs. 58,600/- to Rs. 55,200/- and this resulted in getting less service pension by the applicant.

10. The Hon'ble Apex Court in the case of ***State of Punjab v. Rafiq Masih*** (2014) 8 SCC 883 has 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.”

11. It is emerged from the above that applicant's service pension has been fixed taking into account his basic pay of Rs. 55,200/- and

not his last pay drawn as on 31.12.2019 (Rs. 58,600/-) as observed by the audit authority (Joint CDA (AF) stating that benefit of MACP can be granted only after migration to 6th CPC being MACP part of 6th CPC. Since, JCDA (AF) has reduced basic pay of the applicant as per observation made by the audit authority, which seems to be logical as observed by them and also as per policy on the subject.

12. As conceded by the respondents in their counter affidavit, no recovery has been initiated from the applicant. Hence, in view of judgment of the Hon'ble Apex Court in **Rafiq Masih** (supra), there being no fault on the part of the applicant, no recovery will be made from the applicant on account of grant of benefit of MACP and fixation of basic pay as per 6th CPC, and in the meantime, if any recovery initiated by reducing basic pay from Rs. 58,600/- to Rs. 55,200/-, the same will be refunded back to the applicant.

13. In view of aforesaid, Original Application is **disposed off**. The respondents are hereby directed not to make any recovery arising due to difference in fixation of basic pay by granting benefit of MACP/6th CPC as on 01.01.2006. The respondents shall issue fresh PPO taking his last pay drawn Rs. 58,600/- in case any clarification received in favour of the applicant on this issue from the competent authority, otherwise the present PPO issued on basic pay of Rs.

55,200/- will suffice. The Respondents are directed to comply with the order accordingly.

14. No order as to costs.

15. Pending Misc. Application(s), if any, shall stand disposed off.

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

Dated: November, 2022
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