

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW**

**ORIGINAL APPLICATION No. 191 of 2022**

Tuesday, this the 13<sup>th</sup> day of September, 2022

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

No. 07232716-X Ex Nk Tarkeshwar Singh, S/o Shri Brij Bhushan Singh, R/o Vill & PO- Sahatwar, Distt- Ballia- 277211 (Uttar Pradesh).

..... Applicant

Learned counsel for the Applicant : **Shri Pankaj Kumar Shukla,**  
**Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence, (Army) South Block, New Delhi.
2. Chief of Army Staff, Integrated Head Quarters, Ministry of Defence, South Block, New Delhi- 110011.
3. Defence Security Corps Records, PIN- 901227, C/o 56 APO.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.) 211014.
5. SBI, CPPC, Allahabad – 211002 (U.P.).
6. SBI, Sahatwar, Ballia- 277211 (U.P.).

.....Respondents

Learned counsel for the Respondents. : **Shri Sunil Sharma,**  
**Central Govt. Counsel**

## ORDER

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

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

- (A) *To issue order or directions to the respondents to stop illegal recover of Rs. 3,500/- per month from pension, immediately & refund the recovered amount and to decide his representation dated 05.07.2021 in correct perspective as per law.*
- (B) *Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.*

2. Brief facts of the case are that the applicant was enrolled in Territorial Army on 20.01.1963 and he was discharged from service on 20.01.1983. He rendered about 12 years of qualifying service in Army and he was granted service pension for the services rendered in the Army vide PPO No S/004158/1983. He was re-enrolled in DSC on 20.07.1983 and discharged from DSC service on 31.07.2000. He was granted 2<sup>nd</sup> service pension for the services rendered in DSC vide PPO No S/007029/2000. Pension of the applicant granted for the services in the army was reduced by way of recovery of Rs. 3,500/- per month in basic pension, stating that he was

drawing extra Basic Pension. The total amount claimed to be recovered was Rs. 7,15,975/- in 205 instalments @ Rs. 3,500/- per month from 01.02.2021 to 28.02.2038. Applicant submitted representation which was not considered by the respondents. Being aggrieved, applicant has filed this O.A. with a request to stop recovery of Rs. 3,500/- per month from the pension of the applicant and refund amount already recovered.

3. Learned counsel for the applicant submitted that the applicant was discharged from Army after rendering about 12 years of qualifying service and he was granted pension vide PPO No S/004158/1983. In the month of February 2021, pension of the applicant was reduced by way of recovery of Rs. 3,500/- per month in basic pension stating that he was drawing extra Basic pension. The total amount claimed to be recovered was Rs. 7,15,975/- in 205 instalments from 01.02.2021 to 28.02.2038. Applicant made a complaint about recovery but the respondents did not consider representation of the applicant. Learned counsel for the applicant submitted that the Hon'ble Apex Court in the case ***State of Punjab and Others Vs Rafiq Masih Civil Appeal No 11527/2014*** has held that even if payment has mistakenly been made by employer in excess of their entitlement that cannot be recovered from

class III and IV employees. In pursuance of law laid down by the Hon'ble Apex Court, Govt of India, Min of Personnel, Public Grievances and Pensions Department of Personnel and Training has also provided not to recover excess amount. High Court Allahabad in ***Writ Petition A No. 11179 of 2019 Umesh Chandra Pandey Vs State of U.P.*** vide its order dated 06.01.2020 has been pleased to not only quash the recovery but also directed to refund the amount which has been already recovered. Learned counsel for the applicant pleaded that directions be issued to respondents to stop recovery and to refund amount already recovered in the bank account of the applicant.

4. On the other hand, learned counsel for the respondents submitted that the applicant rendered about 12 years of qualifying service in Territorial Army and he was erroneously paid service pension @ Rs. 17,785/- per month (Applicable to Regular Sepoy) whereas he was entitled Rs. 9,000/- per month (Applicable to Reservist Sepoy). Applicant is a reservist hence Circular No. 501 and 555 are not applicable to him. Reserve Bank of India has issued Circular to recover the excess payments made to the recipients directing the concerned banks that as soon as the wrong payment made to

a pensioner comes to the notice of the paying branch, the branch should adjust the same against the amount standing to the credit of the pensioner's account to the extent possible including lump sum arrears payment. Anomaly was found in audit report and it was revealed that excess pension amounting to Rs. 7,15,975/- was paid to the applicant for which order of recovery @ Rs. 3,500/- per month in 205 instalment was passed wef Feb 2021 in terms of RBI Master Circular for Disbursement of Government Pension dated 17.03.2018. Applicant submitted representation dated 05.07.2021 to forward details of amount being recovered. Much prior to submitting letter dated 05.07.2021, applicant was informed about the details of amount excess paid to him by the respondents vide letter dated 12.02.2021 while recovery was started.

5. Learned counsel for the respondents pleaded that judgment and order passed by the Hon'ble Apex Court in the case of ***State of Punjab & Others Vs Rafiq Masih passed in Civil Appeal No 11527/2014*** is not applicable in this case as facts and circumstances in this case are different. In the case in hand, the applicant was paid excess pension erroneously. He submitted that Hon'ble High Court of Madhya Pradesh, Indore

Bench in W.P No 2538/2017 titled ***Victor Joseph Vs Director Pension and Provident Fund Gujrat State and State Bank of India*** has held that ***“Since excess payment was erroneously made by the respondent Bank to the petitioner and it is being recovered in instalments as per RBI Circular, therefore, no case for interference in the present writ petition is made out. The Writ petition is accordingly dismissed”***. He pleaded that amount excess paid to the applicant towards pension can always be deducted from his account as per rule and accordingly, the same was deducted after giving him proper information. Learned counsel for the respondents prayed that in this case grounds for relief claimed by the applicant are incorrect, wrong and not tenable in the eye of law and O.A. is liable to be dismissed.

6. We have heard learned counsel for the parties and perused the material placed on record.

7. The question before us to decide is ‘whether relief should be granted to the applicant against the recovery of the excess payment made to the applicant?’

8. It is not disputed that the applicant was paid pension after retirement from Territorial Army which was revised from time to time. During audit, it was revealed that applicant was erroneously granted pension for the services rendered in Territorial Army @ Rs. 17,785/- (Pension of Regular Sepoy) whereas he was entitled pension Rs. 9,000/- per month (Pension of Reservist Sepoy).

9. 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. Hence, in view of aforesaid judgments of the Hon<sup>ble</sup> Apex Court, recovery of excess payment of pension to the applicant is liable to be stopped being no fault on the part of the applicant in terms of the aforesaid judgment of the Hon<sup>ble</sup> Apex Court.

11. 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 paid in excess. Apart from aforesaid judgment of the Hon<sup>ble</sup> 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 respondents to serve a notice calling response from the applicant before making any recovery and only thereafter recovery could be made.

12. Various High Courts in catena of decisions have consistently held that a Govt servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery.

13. Courts have also observed that if the excess amount was paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/ allowance or on the basis of a particular interpretation of rule/ order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are recoverable. The relief against the recovery is not granted because of any right of the employee but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery

is ordered. Courts have also held that if it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess. 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.

14. Various Courts have held that if following conditions are fulfilled relief against recovery of excess wrong payment of emoluments/allowances from an employee can be recovered.

(a) The excess payment was made on account of any misrepresentation/ misinterpretation or fraud on the part of the employee.

(b) Such excess payment was made by the employer by applying a wrong principle for calculating the pay/ allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

(c) 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.

15. Additionally, in a very recent judgment passed by the Hon'ble Apex Court on 02 May 2022 in **Civil Appeal No 7115 of 2010** in the case of **Thomas Daniel vs State of Kerala & Ors** the Hon'ble Apex Court has expressed the same view again. In this case the appellant was granted excess payment due to mistake on the part of the respondents and recovery was made effective after 10 years from the date of his discharge which the Hon'ble Apex Court refuted observing as under:-

*"We are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified"*

16. Though learned counsel for the respondents vehemently argued and submitted that respondents have got right to recover the amount which was erroneously paid in excess, but since payment made was not due to fraud or misinterpretation of rule by the applicant and in view of judgment of the Hon'ble Apex Court, the decision of the respondents seems to be not

sustainable in the eyes of law and as such, Original Application deserves to be partly allowed. Amount already deducted by the Bank shall not be refunded to the applicant. However, further recovery of pension shall be stopped with immediate effect.

17. In view of above, Original Application is partly **allowed**. The respondents are directed to stop recovery of the excess amount paid to the applicant with immediate effect and grant pension of the reservist Sepoy to the applicant as per rule.

18. No order as to costs.

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

Dated: 13 September, 2022

Ukt/-