

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 337 of 2022**Monday, this the 19th day of September, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 629822-B Ex JWO (MACP) Santosh Sharma
S/o Shri Parmatama Sharma
R/o House No. 255, A-1 Vimannagar, Post : Harjindernagar,
District : Kanpur – 208007 (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri R. Chandra**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. The Chief of the Air Staff, Air Headquarters, New Delhi-11.
3. Directorate of Air Veterans, Air Headquarters, SMC Building, 1st Floor, Subroto Park, New Delhi – 110010.
4. Joint CDA (Air Force), Subroto Park, New Delhi – 110010.

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal**,
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) The Hon'ble Tribunal may be pleased to set aside the rejection order dated 06/03/2021 (Annexure No. A-1).
- (II) The Hon'ble Tribunal may be pleased to direct the respondents to re-calculate service pension and all retirement benefits as per last basic pay Rs. 55200.00 of

the month of Jan 2020 instead of basic pay Rs. 53600.00 of Oct 2019 along with its arrears and interest thereon at the rate of 18% per annum.

- (III) Hon'ble Tribunal may be pleased further to direct the respondents to issue a fresh Corrigendum PPO.
- (IV) Any other appropriate order or direction which the Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case."

2. The factual matrix on record is that the applicant was enrolled in the Indian Air Force on 17.01.1985. The applicant was granted MACP rank of JWO and 6th CPC benefits w.e.f. 01.01.2006. In the month of Oct. 2019, basic pay of the applicant was 53,600/-. The applicant was discharged from service on 31.01.2020 and his basic pay as on 31.01.2020 was Rs. 55200/-. The applicant has been issued PPO by Joint CDA (AF) showing basic pay of the month of Oct 2019, Rs. 53600/- and not as per last pay drawn in Jan. 2020, Rs. 55200/-. Being aggrieved, the applicant has filed the instant Original Application.

3. Submission of learned counsel for the applicant is that he was enrolled in the Indian Air Force on 17.01.1985. The applicant was granted MACP rank of JWO and 6th CPC benefits w.e.f. 01.01.2006. The basic pay of the applicant was 53,600/- as per e-Pay Slip of the month of Oct. 2019. The applicant was discharged from service on 31.01.2020 and his basic pay as on 31.01.2020 was Rs. 55200/-. The applicant has been issued PPO by Joint CDA (AF) showing basic pay of the month of Oct 2019, Rs. 53600/- and not as per last pay

drawn in Jan. 2020, Rs. 55200/-. The applicant submitted an appeal dated 21.01.2021 to show his last basic pay drawn, i.e. Rs. 55200/- instead of Rs. 53600/- and requested to reconsider his pension and issue a fresh PPO calculating his pension based on last pay drawn, i.e. Rs. 55200/- but the same was denied by respondent No. 3 vide letter dated 06.03.2021 stating that *“it is intimated that office of JCDA (AF) objected the cases in respect of Air Veteran imparted with the benefits simultaneous applicability of MACP and 6th CPC from same date stating that grant of MACP on 01.01.2006 is applicable only after migration to 6th CPC (Pay as on 31.12.2005). Pay fixed as per option of migration to 6th CPC after grant of MACP (Financially benefit option to Air Veterans) has not been accepted by JCDA (AF) insisting for recovery of excess payment as well as reducing the last basic pay drawn for calculation of non effective benefits to retired veterans. In view of above basic pay has been reverted from Rs. 55200/- to Rs. 53600/- for calculation of pension and NE benefits”*.

4. Learned counsel for the applicant further submitted that on 24.03.2021, respondent No. 3 intimated that his case has been processed and forwarded to JCDA (AF) for audit verification and on receipt of outcome duly audited by NE, dues will be either credited in his bank account or recovered as applicable.

5. Learned counsel for the respondents submitted that applicant was discharged from service on 31.01.2020 and his basic pay was reduced from Rs. 55200/- to 53600/- 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.

6. Learned counsel for the respondents further submitted that in the present case, basic pay of the applicant has been reverted from Rs. 55200/- to 53600/- for calculation of pension and NE benefits, however, no recovery has been initiated from PPO, therefore, case file is kept pending for want of clarification sought from Ministry of Defence. He pleaded for dismissal of Original Application being bereft of merit and lack of substance.

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

8. In the present case, applicant's basic pay has been reduced from Rs. 55,200/- to Rs. 53,600/- 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. 55,200/- to Rs. 53,600/- and this resulted in getting less service pension by the applicant.

9. 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."

10. It is emerged from the above that applicant's service pension has been fixed taking into account his basic pay for the month of Oct. 2019 (Rs. 53,600/-) and not his last pay drawn as on 31.01.2020 (Rs. 55,200/-) 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.

11. As conceded by the respondents in their counter affidavit, no recovery has been initiated from the applicant and case file is kept pending for want of clarifications from Ministry of Defence. 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. 55,200/- to Rs. 53,600/-, the same will be refunded back to the applicant.

12. Resultantly, 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 are further directed to issue fresh PPO taking his last pay drawn Rs. 55,200/- on receipt of clarification from Ministry of Defence, only if it goes in favour of the applicant otherwise the present PPO issued on basic pay of Rs. 53,600/- will suffice. The Respondents are directed to comply with the order accordingly.

13. No order as to costs.

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

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

Dated: September, 2022

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