

**Form No. 4** **Court No 1**  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**O.A. No. 413 of 2022**

**Brijesh Kumar Srivastava**  
By Legal Practitioner for the Applicant

Applicant

Versus

**Union of India & Others**  
By Legal Practitioner for Respondents

Respondents

<b>Notes of the Registry</b>	<b>Orders of the Tribunal</b>
	<p><b><u>03.08.2022</u></b>  <b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b>  <b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p style="text-align: center;">Order pronounced.</p> <p style="text-align: center;">O.A. No. 413 of 2022 is <b>allowed</b>.</p> <p style="text-align: center;">For order, see our judgment passed on separate sheets.</p> <p style="text-align: center;">Misc. Applications, pending if any, shall be treated as disposed of accordingly.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p>

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**COURT No.1****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****ORIGINAL APPLICATION No. 413 of 2022**

Wednesday, this the 03<sup>rd</sup> day of August, 2022

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

Brijesh Kumar Srivastava (Ex Rfn), S/o Sri Prabha Kant Srivastava, R/o 04, Sitapur Road, Maiku Muzaffar Vihar Colony, Roodahi, Lucknow.

..... Applicant

Learned counsel for the Applicant : **Shri Rang Nath Pandey**, Advocate  
**Shri Rahul Pandey**, Advocate

Versus

1. The Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.
2. Commanding Officer, 137 CETF Bn (TA), 39 GR, PIN-934337, C/o 56 APO.
3. Senior Record Officer, Abhilekh Karyalay, Records, 39 Gorkha Rifles, PIN-900445, C/o 56 APO.
4. Officer Incharge, PCDA (Central Command), Lucknow.

.....Respondents

Learned counsel for the Respondents. : **Shri Amit Jaiswal**, Advocate  
Central Govt. Counsel

**ORDER (Oral)**

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

- (a) *To quash the impugned order dated 12.04.2022 passed by Respondent No 2 issued vide letter No 137/30062258H/Dossier/TA/PDC by which respondent No 2 has directed applicant to deposit a sum of Rupees 2,38,987/- (Rupees two lakh thirty eight thousand nine hundred eighty seven) through MRO in favour of PCDA (CC), Lucknow (Annexure No A-1 to compilation No 1).*
- (b) *To quash the impugned order dated 21.03.2022 passed by Respondent No 3 vide letter No 30062258H/Dossier/TA/PDC, by which respondent No 3 has directed applicant to deposit a sum of Rupees 2,38,987/- (Rupees two lakh thirty eight thousand nine hundred eighty seven) through MRO in favour of PCDA (CC), Lucknow (Annexure No A-2 to compilation No 1).*
- (b) *To direct the respondents concerned to not to recover Rs 2,38,987/- (Rupees two lakh thirty eight thousand nine hundred eighty seven) from the applicant.*
- (d) *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.*
- (e) *To award the cost of the proceeding to the applicant.*

2. Brief facts of the case are that the applicant was recruited in the Indian Army on 06.01.2001 and he was discharged from service after completion of terms of engagement on 30.11.2018 (AN). He was re-enrolled in 137 Composite Ecological Task Force (CETF) Battalion of Territorial Army, 39 Gorkha Rifles (GR) on 01.06.2020. During the course of his training his verification roll was sent on 25.09.2020 to Senior Superintendent of Police, Lucknow for verification of his character and antecedent. His verification

was received through District Soldier Welfare Board, Kaserbagh, Lucknow vide letter dated 29.06.2021 in which he was found to be involved in FIR No 170/19 under Section 279, 337, 504 and FIR No 273/119 under Section 506 of IPC. Accordingly, a Show Cause Notice dated 09.09.2021 was issued and he replied on 29.09.2021 which being found insufficient he was discharged from service w.e.f. 27.12.2021. Against this discharge order he filed O.A. No 825 of 2021 before this Tribunal which was dismissed vide order dated 03.08.2022. At the time of his discharge while finalizing the Final Statement of Account (FSA) it revealed that a sum of Rs 2,38,987/- was due from the applicant and therefore, he was issued a recovery notice dated 21.03.2022 and 12.04.2022. Applicant has filed this O.A. to quash aforesaid notices and direct the respondents not to recover the aforesaid amount.

3. Learned counsel for the applicant submitted that the applicant was discharged from Army service on 01.12.2018. He further submitted that applicant's character was exemplary during the period of his service in the Army and nothing adverse was reported at any occasion. It was further submitted that the applicant got selected for Chef Trade in 137, Composite Ecological Task Force (CETF) Battalion and he was not aware of his involvement in criminal cases prior to enrolment and no FIR was lodged against him. Learned

counsel for the applicant further submitted that cases pending against him were decided on 05.04.2021 but due to Covid-19 order of court could not be obtained and submitted to Police Station. It was further submitted that SHO, Bakshi Ka Talab is relative of opposite party hence the FIR was lodged against the applicant only to make harassment. It was further submitted that there being restrictions of discharge during Covid-19 pandemic, the applicant was discharged from service and a sum of Rs 2,38,987/- has been directed to be remitted to PCDA which is in violation of principles of natural justice. He pleaded for setting aside order dated 21.03.2022 and 12.04.2022 keeping in view the Hon'ble Supreme Court judgment in the case of **State of Punjab & Ors vs Rafiq Masih (White Washer)**, AIR 2015 SCC 696 and **Thomas Daniel vs State of Kerala & Ors**, AIR 2022 0 SCC 387.

4. On the other hand, learned counsel for the respondents submitted that prior to enrolment in Chef Community in 137, Composite Ecological Task Force (CETF) Battalion, the applicant served for approx 18 years in Army for which he is in receipt of service pension. He further submitted that on receipt of police verification it came to the knowledge of the respondents that two FIRs under Section 279, 337, 504 and 506 were lodged against him prior to enrolment and based on police report a letter dated 31.07.2021 was issued asking his

comments to which he replied on 03.08.2021 stating that the above cases had been closed on 05.04.2021.

5. Learned counsel for the respondents further submitted that the individual was well aware of the cases registered against him, however in reply to Show Cause Notice he submitted that no such case was registered against him and did not disclose the factum of criminal cases registered against him in para 12 and 12 (a) of Territorial Enrolment Form. Thus, on account of giving false statement at the time of enrolment he was discharged from service. He pleaded that since the applicant was discharged from service by following due procedure, therefore Rs 2,38,987/- outstanding against him should be deposited in Govt Treasury for which two notices dated 21.03.2022 and 12.04.2022 have already been issued to the applicant.

6. Heard Shri Rang Nath Pandey, learned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents and perused the record.

7. Having been discharged from Army service the applicant was re-enrolled as Chef Community in 137, Composite Ecological Task Force (CETF) Battalion on 01.06.2020. During the course of his training his police verification could not be completed as he was found involved in a criminal case.

Therefore, he was discharged from service w.e.f. 27.12.2021. The applicant filed O.A. No. 825 of 2021 before this Tribunal for setting aside his discharge order dated 27.12.2021 and reinstatement into service. This O.A. was dismissed vide order dated 03.08.2022 keeping in view of his involvement in criminal cases prior to enrolment as this fact was not disclosed at the time of recruitment.

8. We have given our anxious consideration and find that applicant has been ordered to pay a sum of Rs 2,38,987/- after being discharged from service. In this regard, the views expressed by the Hon'ble Apex Court judgment in the case of ***State of Punjab Vs Rafiq Masih***, Civil Appeal No 11527 of 2014 decided on 18.12.2014 are in favour of the applicant. For convenience sake para 12 of the aforesaid judgment 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."*

9. Additionally, very recently the Hon'ble Apex Court in ***Thomas Daniel vs State of Kerala & Ors***, Civil Appeal No 7115 of 2010 decided on 02.05.2022 has also expressed the same views 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."*

10. The Case of ***Thomas Daniel*** (supra) is also in favour the applicant in which it was held in para 9 as under:-

*"9. This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by 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 not recoverable. This relief against the recovery is granted not 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. This Court has further held that if in a given case, 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."*

11. Admittedly, the applicant is a discharged recruit and his case is squarely covered by the decision of aforementioned Hon'ble Apex Court judgments. It is well settled law that no order could be passed by appropriate authority in contravention to principles of natural justice. In this case since the applicant has been discharged from service during the course of his training on account of false statement made during the course of recruitment process, such action by the respondents seems to be unjustified and is hit by Article 14 of the Constitution of India.

12. The respondents vehemently argued and submitted that they have right to recover the amount from the applicant as his verification could not be completed as he had given false answer at the time of recruitment, but for the reasons stated above, the decision of the respondents seems to be not sustainable in the eyes of law and as such, Original Application deserves to be allowed.

13. Accordingly, the Original Application No 413 of 2022 is **allowed** and the impugned orders dated 21.03.2022 and 12.04.2022 are set aside. The respondents are directed not to recover the aforesaid amount from the applicant.

14. No order as to costs.

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

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

Dated: 04.08.2022

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**(Justice Umesh Chandra Srivastava)**  
**Member (J)**