

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No 285 of 2021**Wednesday, this the 18th day of May, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

JC-569883H Sub Maj Indrapal Singh (Retd), S/o Shri (Late) Lala Ram, R/o Village – Kharaua, Post – Kharaua, Tehsil- Karahal, Dist- Mainpuri (U.P.)- 205142.

..... Applicant

Ld. Counsel for the: **Shri Shailendra Kumar Singh and
Applicant Shri Ravi Kumar Yadav, Advocates**

Versus

1. Union of India, through Secretary, Ministry of Defence, (Army), South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), Post DHQ, New Delhi-110011.
3. The Officer-in-Charge, Records The Mahar Regiment Centre, Saugor (M.P.).
4. Senior Accounts Officer, Pay Accounts Office (ORs), Mahar Regiment Centre, Saugor (MP)- 470001.
5. The Chief Manager, State Bank of India, Centralised Pension Processing Centre, Govindpura Branch Premises, Govindpura BHEL, Dist- Bhopal (M.P)- 462001 (For SBI Pension Account No 10062916379 of Morar Branch).

6. The Branch Manager, State Bank of India, Morar Branch, Shanket Bhawan, Dist- Gwalior (M.P.)- 474006 (For SBI Pension Account No 10062916379.

..... Respondents

Ld. Counsel for : **Shri Ashish Kumar Singh,**
the Respondents **Central Govt Counsel**

ORDER

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

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 order of discharge dated 30 Apr 2020 (Annexure A-1 & Impugned Order) wherein of recovery @ Rs. 7325/- pm till liquidation has been passed by Respondents.

(B) To refund the amount recovered from the service pension of the Applicant till date alongwith suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal.

(C) Any other relief as considered deemed fit and proper in the circumstances by this Hon’ble Tribunal be awarded in favour of the applicant.

(D) Cost of the present case as the applicant has unnecessarily been forced in litigation of instant case.

2. Brief facts of the case are that the applicant was enrolled in the Army on 06.05.1991 and he was discharged from service w.e.f. 01.12.2017 in the rank of Subedar Major after rendering 26 years, 06 months and 26 days of service. He was granted service pension Rs. 60,400/- and the same was reduced to Rs. 56,900/-. A sum of Rs 7,325/- per month was being recovered since May 2020 from his pension. Applicant represented his case for stopping recovery of amount from pension which was rejected. Being aggrieved, applicant has filed this O.A. to stop recovery of Rs 7,325/- pm and to refund the amount recovered from the pension of the applicant till date with interest.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 06.05.1991 as Clerk SD. He was promoted to the rank of Hav on 01.01.2003, Nb Sub wef 01.03.2007, Subedar wef 01.10.2009 and Sub Maj wef 11.11.2013. He was discharged from service on 01.12.2017 and was granted service pension of Sub Maj Rs. 60,400/- per month. On 20.02.2019, applicant received a communication that at the time of Final Settlement of Accounts (FSA) occurrence of ACP of Nb Sub grade was erroneously adjusted for which he was not entitled. Thus, on review, his basic pay increased and a sum of Rs. 8,12,960/- was excess paid to him. Applicant was

directed to deposit the said amount through MRO. Applicant replied that he was granted benefits of Assured Career Progression Scheme wef 07.08.2003 on their confirmation. On 01.07.2019, applicant again apprised respondents that MACP has been implemented wef 01.01.2006 and accordingly calculation be made afresh for the period from Aug 2003 to Dec 2005. He was informed by the respondents vide letter dated 15.01.2020, that he has been extended the benefit of MACP of Nb Sub wef 01.01.2006 and Sub wef 06.05.2007 and same has been adjusted and on such adjustment an amount of Rs, 76,865/- has been recovered. He was again asked to deposit an amount of Rs. 8,12,960/-. Applicant requested to reconcile record and ACP calculation for the period from 07.08.2003 to 31.12.2005 be calculated separately. Applicant received letter dated 18.03.2020 to the effect that an amount of Rs. 6,36,004/- be deposited and his last basic pay has been finalized at the rate of Rs. 56,900/-. Direction was issued to SBI, CPPC Bhopal to recover the amount against difference of gratuity, capitalized value of commuted pension and demand on account of debit balance. Applicant informed that after implementation of MACP benefits his basic pension was fixed at the rate of Rs. 60,400/- and now the same has been reduced to Rs. 56,900/-. He requested respondents to look into the matter and pass

appropriate order. Applicant has not received any reply till date. Learned counsel for the applicant further submitted that keeping in view decision of the Hon'ble Apex Court dated 02 May 2022 passed in **Civil Appeal No 7115 of 2010** in the case of **Thomas Daniel vs State of Kerala & Ors** directions be issued to the respondents to stop recovery of Rs 7,325/- pm and to refund the amount recovered from the pension of the applicant till date with interest.

4. On the other hand, learned Counsel for the respondent submitted that applicant was discharged from service 01.12.2017 in the rank of Sub Maj and he was granted pension accordingly and his pension was revised from time to time. On 01.11.2017, the applicant was posted with Records, The Mahar Regiment and he was drawing Basic Pay @ Rs. 60,400/- per month. He **misinterpreted the Govt of India, Ministry of Defence letter No 14(1)/99-D(AG) dated 07 Aug 2003 and got published Part II Order dated 20.11.2017 for grant of ACP Nb Sub Grade with effect from 07.08.2003.** The aforesaid Part II Order was accepted by PAO (OR), The Mahar Regiment and basic pay of the applicant was enhanced to Rs. 64,100/- (Copy of FSA Nov 2017 is attached as Annexure-VII with counter affidavit). After adjustment of excess payment demand of Rs.

6,36,004 instead of Rs. 8,12,960/- in LPC cum Data Sheet was made. Necessary recovery on account of difference of Gratuity Capitalised value of commuted pension and demand on account of debit balance made as mentioned at Note-1 & Note-2 of E-PPO No 172201700005-0102 dated 30 Apr 2020 (Copy attached as Annexure- XVIII of counter affidavit) are being recovered from the applicant @ Rs. 7,325/- (1/3 of applicant's monthly pension in each month). The same was intimated to applicant vide letter dated 30.04.2020. Learned counsel for the respondents pleaded that excess amount was paid to applicant due to misinterpretation of policy, hence O.A. filed by the applicant has no substance and is liable to be dismissed.

5. We have heard learned counsel for the parties and perused the policy letters on grant of ACP as well as judgment relied upon by the applicant.

6. The question before us to decide is 'whether relief should be granted against the recovery of the excess payment made on account of the wrong interpretation/ understanding of the policy dated 07.08.2003?

7. To resolve this controversy, perusal of various policies issued from time to time relating to MACP and judgments passed by various courts is required.

20. In support of their submission citing the Hon'ble Apex Court judgment dated 29.07.2016 rendered in the case of **High Court of Punjab & Haryana and Ors vs Jagdev Singh**, Civil Appeal No 3500 of 2006, respondents have contended that the amount paid in excess is recoverable. We have perused the aforesaid judgment and we find that recovery made/being made from the applicant is justified in view of para 11 and 12 of the aforesaid judgment which for convenience is reproduced as under:-

“11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

12. For these reasons, the judgment of the High Court of which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable installments. We direct that the recovery be made in equated monthly installments spread over a period of two years.”

8. Part II Order for grant of MACP of Nb Sub from 07.08.2003 was published under Govt of India, Min of Def policy letter dated 07.08.2003. Para 1 and 2 of this policy letter stipulates that aim of this policy letter was that, Armed Forces enrolled at the level of Sepoy and equivalent shall be granted first financial upgradation in the pay scale of Nk and equivalent after completion of ten years of service subject to completion of other terms and conditions. Para 3 of this policy letter stipulates that second financial upgradation of ACP scheme will come into effect to the scale of Hav and equivalent on completion of twenty years of qualifying service. Thus, it is clear that instant policy letter was not applicable to the applicant and applicant was wrongly granted MACP to the rank of Nb Sub from 07.08.2003.

9. The policy status with regard to applicability of Assured Career Progression (ACP) Scheme and Modified Assured Career Progression Scheme (MACPS) was implemented in Vth Central Pay Commission in terms of Govt of India, Min of Def letter No 14(1)/99-D (AG) dated 07 Aug 2003 . As per this policy **Personnel Below Officer Rank (PBOR) of the Armed Forces enrolled at the level of Sepoy and equivalent and NCsE of the Air Force only were entitled for grant of first financial upgradation in the pay scale of Naik after completion of 10 years of qualifying service and second financial upgradation in the pay scale of Havildar on completion of**

20 years of qualifying service. Direct entry Havildars were not eligible for grant of ACP under this category.

10. In pursuance to Administrative Instructions for grant of ACP consequent to 6th CP C, a directly recruited PBOR as a Sepoy, Hav or JCO was made entitled to minimum three financial up gradations after 8, 16 and 24 years of service. This ACP policy was applicable from 01.01.2006 and old provisions were applicable till 31.12.2005. Regular service for the purpose of ACP was applicable from the date of joining of a post in direct entry grade vide Govt of India, Min of Def letter No B/33513/ACP/AG/PS-2(c) dated 03.08.2009. This administrative instruction was cancelled vide Army HQ policy letter dated 28.02.2011.

11. Govt of India, Min of Def superseded policy letter dated 03.08.2009 and issued fresh policy letter No B/33513/ACP/AG/PS-2 (c) dated 28.02.2011 for grant of MACP considering the recommendation of Sixth Central Pay Commission for grant of three financial upgradation at intervals of 8, 16 and 24 years of continuous regular service. This scheme was effective from 01.09.2008. Further implementation date of MACP Scheme was modified with effect from 01.01.2006 instead of 01.09.2008 vide Govt of India, Min of Def

letter No 14 (1)/99-D (AG) dated 25.07.2018. The applicant was granted MACP- 1 (Nb Sub Clerk Scale) from 01.06.2006 and MACP- 2 (Sub Clerk Scale) from 06.05.2007.

12. Applicant was promoted to the rank of Nb Sub Clerk on 01.03.2007, Sub Clerk on 01.10.2009 and Sub Maj Clerk on 01.10.2013 and Part II Order to this effect was published. Applicant was granted ACP- I, (Nb Sub Clerk Scale) on 01.01.2006 and ACP -II (Sub clerk Scale) on 06.05.2007 which was not applicable to him as policy letter dated 03.08.2009 was superseded vide policy letter dated 28.02.2011. Accordingly, Part II Order for grant of ACT was cancelled vide Part II order dated 20.11.2017.

13. On implementation of MACP Scheme issued vide Govt of India Policy letter dated 30.05.2011, the applicant was not entitled for grant of MACP –I of Nb Sub Clerk Scale as he was already promoted to the rank of Nb Sub Clerk wef 01.03.2007 and MACP- II of Sub Clerk Scale as he was promoted to the rank of Sub Clerk wef 01.09.2008.

14. The applicant was drawing Basic Pay @ Rs. 60,400/- per month as on 01.11.2017. Policy letter dated 07.08.2003 was **mis-interpreted** and illegally Part II Order for grant of ACP Nb Sub Clerk Scale was published on 20.11.2017 whereas the

applicant was not entitled to any upgradation under this policy letter being Direct Entry Graduate Havildar. Resulting his basic pay enhanced to Rs. 64,100/- per month. (copy of FSA Nov 2017 is enclosed as Annexure – VII with counter affidavit). In the meantime, initial Pension Payment Order dated 13.11.2017 was issued by PCDA (P), Allahabad and handed over to the applicant as he was discharged from service on 30.11.2017 in which the applicant was granted service pension @ Rs. 32,800/- per month wef 01.12.2017 without ACP-1 (Nb Sub Clerk Scale). His Basic pay was re-fixed and a Corrigendum PPO dated 10.08.2018 with revised Basic Pension @ Rs. 34,600/- per month instead of Rs. 32,800/- per month was issued. Applicant is a Direct Entry Hav wef 06.05.1991. The applicant gave an application dated 19.06.2018 (copy attached with pleadings) that he is getting less basic pay than his batch mate. His basic pay was re-fixed @ Rs. 64,100/-per month on 30.11.2017. On checking of FSA of Nov 2017 of the applicant, it was revealed that the basic pay of the applicant hiked due to erroneously adjustment of ACP (Nb Sub Clerk Scale) wef 07.08.2003 whereas the applicant being Direct Entry Hav was not entitled for any upgradation under the provision of ACP Scheme in terms of Govt of India, Min of Defence policy dated 07.08.2003. Matter was informed concerned authorities as well as to CDA,

Jabalpur and after investigation it was revealed that applicant was wrongly granted ACP from 07.08.2003. Accordingly, Part II Order for grant of ACP (Nb Sub Clerk Scale) was cancelled vide order dated 10.12.2018. As per correct entitlement, due and drawn statement was prepared and Rs. 8,12,960/- was due towards the applicant. After adjusting Basic Pay @ Rs, 56,900/- applicant was in debit of Rs, 6,36,004/- instead of Rs. 8,12,960/-. Subsequently PCDA (P) Allahabad issued Corrigendum PPO dated 20.04.2020 and modified his service pension @ Rs 31,050/- per month instead of Rs. 34,650/- per month wef 01.12.2017 for life. The reduction in basic pay and pension also led to reduction of gratuity and capitalized value of commuted pension. Necessary recovery against difference of gratuity, capitalized value of commuted pension and demand on account of debit balance was modified by PCDA (P) Allahabad vide PPO dated 20.04.2020 and same is being recovered from the applicant @ Rs. 7,325/- i.e. 1/3 of applicant/s monthly pension in each month.

15. Applicant has relied upon the judgment passed by Hon'ble Apex Court in ***Civil Appeal No 7115 of 2019, Thomas Daniel Vs State of Kerala*** decided on 02.05.2022. We have gone through this judgment. Facts and circumstances of the

case of **Thomas Daniel** are different from the case of applicant. In case of **Thomas Daniel**, there was no misinterpretation of rule and policy by the employee, hence his recovery was stopped. In this case, applicant was granted 90% of DCRG amount after withholding 10% of the said amount and subsequently later on amount was released to the applicant.

16. 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.

17. 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.

18. 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.

19. In the case in hand, applicant was wrongly granted MACP of Nb Sub Clerk Scale and after rectifying the mistake as per policy on MACP, Part II Order for grant of MACP from 2003 was cancelled and order of recovery was passed. Applicant is not entitled stoppage of recovery in terms of judgments passed by the Hon'ble Apex Court decision dated 29.07.2016 rendered in CA No 3500/2006 titled **High Court of Punjab & Haryana & Ors vs Jagdev Singh** and Hon'ble High Court of Punjab and

Haryana at Chandigarh order dated 20.05.2019 passed in CWP No 3159/2016 titled **Smt Sunita Mahajan vs UOI & Ors**, and recovery made and amount ordered to be recovered from the applicant is as per policy.

20. In view of the above, we are of the view that the amount excess paid to the applicant is recoverable which respondents should recover in easy equated monthly installments as per policy. We also direct the respondents not to force the applicant to deposit the excess paid money in lump-sum as the applicant is not at fault in this case.

21. Thus, we are of the view that excess amount paid to the applicant is recoverable. In view of above, Original Application is devoid of merit and is, accordingly **dismissed**.

22. No order as to costs.

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

Dated: 18 May 2022

Ukt/-