COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

33.

OA 2165/2024

JWO Rajeev PR ….. Applicant
VERSUS
Union of India and Ors. ….. Respondents

For Applicant : Mr. Raj Kumar, Advocate
For Respondents : Mr. Rajan Khosla, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

O R D E R
30.07.2025

The applicant vide the present OA makes the following prayers:-

"(a) Pass an order directing the respondents to re-fix the basic payment of the applicant ab initio as per the advertisement (Annexure A-2) and accordingly step up the payment of the Applicant in the suitable grade pay.

(b) Pass an order directing the respondents to pay arrears of difference in payment fixed after training period according to the prescribed rate mentioned in the advertisement. (Annexure A-2)

(c) Pass an order directing the respondents to return the recovery of amounts made from the pay of the applicant with 12% interest thereon from the date of recovery.

(d) Pass such further order or orders/direction as this Hon'ble Tribunal may deem fit and proper in accordance with law."

2. The counter affidavit of the respondents is on the record. During the course of the submissions made on behalf of the applicant, it has been submitted that the prayer clauses (a) and (b) reproduced hereinabove, are not being pressed. In view thereof, the said prayers are dismissed as withdrawn.

3. It is, however, submitted on behalf of the applicant that prayer clause 8 (c) reproduced hereinabove is being pressed. It has been submitted on behalf of the applicant, a recovery of an amount of Rs. 80,217/- was effected by the respondents and that it was a one-time recovery. It has been further submitted on behalf of the applicant that the said recovery was without any notice and ought not to have been made and consequently the refund of the same is sought.

4. At the outset, it has been submitted on behalf of the applicant that the said recovery was made by the respondents in the month of May 2016 and that as per averments made in counter affidavit dated 28.05.2025 too, the said recovery was made in the month of May 2016 as stated in Para 5(B) of the Brief Facts of the case were beyond the period of five years.

5. On behalf of the respondents, it has been submitted rightly to submit to the effect that the applicant was enrolled in the service on 29.06.2011 and the recovery has been effected in May 2016 and has thus been done within a period of five years and thus does not violate the embargo laid down by the Hon'ble Supreme Court vide Para 12 (iii) of the verdict of the Hon'ble

Supreme Court in *State of Punjab & Ors. v. Rafiq Masih* (Civil Appeal No. 11527 of 2014, decided on 18.12.2014), whereby vide 12 thereof it has been laid down to the effect:-

> *"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."*

6. The said submission made on behalf of the respondents is apparently correct, in view of the factum that the said recovery effected in May 2016 was not beyond a period of five years from when there had been an erroneous payment made to the applicant on erroneous computation made by the respondents. Undoubtedly, the applicant was not at fault for the said excess payment having been made. However, the submission that has

been made on behalf of the applicant that the recovery made from the applicant was wholly harsh and iniquitous and that the same caused a severe burden on the applicant does not appeal to the sense of justice. This is so in as much as the recovery was effected of the sum of Rs. 80,217/- in the month of May 2016. The applicant has however chosen to institute the OA only on 20.06.2024, and apparently, thus the said recovery did not thus operate harshly against the applicant.

7. In the circumstances, where it is apparent that the recovery was in view of the incorrect payment made to the applicant in the present circumstances of the instant case, the prayer 8(c) made by the applicant cannot be accepted. This is so in as much as laid down by the Hon'ble Supreme Court vide verdict in ***Rafiq Masih*** (supra)vide Para 12 there can be no strait jacket postulation of hardships . In the instant case as observed hereinabove the factum that the hardship did not reflect as being existence till 2024 itself is an indicator that there was none.

8. OA 2165/2024, is thus, dismissed.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(LT GEN C.P. MOHANTY)
MEMBER (A)

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