

**COURT NO. 2, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**O.A. No. 682 of 2019**

**In the matter of :**

**Col Mukesh Juyal (Retd.)**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Shri Aditya Puar, Advocate**

**For Respondents : Shri Prabodh Kumar, Advocate**

**CORAM :**

**HON'BLE Ms. JUSTICE ANU MALHOTRA, MEMBER (J)**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

Feeling aggrieved by the recovery of Rs. 1,02,194/- from his pensionary benefits, the applicant has filed the present OA by invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act') and the reliefs claimed in Para 8 read as under :

***"(i) Petitioner, hence, prays for quashing of the Impugned orders in so far as it declares the Petitioner liable to pay the sum of Rs. 102194/- (Rupees One hundred and two thousand one***

*hundred and ninety four only), since the recovery is impermissible in law, and even as per the Respondents own rules;*

- (ii) The Petitioner further prays for return of all funds illegally appropriate from his pension account and his pension towards said recovery;*
- (iii) With a further prayer that the Respondent's may be directed to release funds illegally recovered from him with costs and compensation and interest within a time-bound manner;*
- (iv) Any other relief which the Hon'ble Tribunal may deem fit in the interest of Petitioner."*

### **BRIEF FACTS**

2. The applicant was commissioned into the Indian Army, Kumaon Regiment, on 24.08.1985. On superannuation, the applicant retired from service on 31.05.2017. Thereafter, the applicant was re-employed with effect from 27.06.2017 and was released from the Army on 31.12.2017. It is the grievance of the applicant that after his retirement, he received a letter from the respondents dated 05.11.2018 stating that due to certain incorrect calculations made on

behalf of them, a recovery (debit balance) of Rs. 1,02,194/- was outstanding and towards the above debit balance, a sum of Rs. 30,000/- was directly debited from the pension account of the applicant and monthly recovery was being made. According to the applicant, he sent a communication to the respondents to stop the recovery being illegal and unjustified. However, no reply has been received from the respondents in this regard.

### **CONTENTIONS OF THE PARTIES**

3. The learned counsel for the applicant submitted that the respondents have committed a grave error in effecting the recovery after the retirement of the applicant for the miscalculations made on their own part which is unsustainable in law. The learned counsel placed reliance on the verdict of the Hon'ble Supreme Court in ***State of Punjab and others Vs. Rafiq Masih (White Washer) [(2015) 4 SCC 334]*** and stated that the present case is covered by the said judgment of the Hon'ble Supreme Court. The learned counsel for the applicant submitted that there is neither any misrepresentation, nor fraud played by the applicant, nor was any incorrect information furnished on

his part and thus the incorrect fixation of pension has been on the part of the respondents and, therefore, no recovery can be made from the pension of applicant and the amount already recovered from his pension account may be refunded.

4. *Per contra*, the learned counsel for the respondents justified the recovery being effected from the applicant and submitted that the applicant was re-employed in service with effect from 27.06.2017 and was released from that service on 31.12.2017 and consequent upon the re-employment, the applicant's pay was fixed at the rate of Rs. 61,300/- plus grade pay of Rs. 6,700/- as per Para 4(b) and 5 of the MoD Letter No. 1/69/2008/D (Pay/Service) dated 24.07.2009 as per the 6<sup>th</sup> CPC. The learned counsel further submitted that the order for revised fixation of pay of the re-employed Army Officers based on the recommendations of the 7<sup>th</sup> CPC was received by the respondents in February, 2018 vide letter dated 09.01.2018 and the applicant's pay was re-fixed in February, 2018, which gave rise to the recovery of Rs.1,11,118/-. The learned counsel for the respondents further submitted that during March, 2018 to October, 2018,



debit balance of IRLA of the applicant was reduced to Rs.1,02,194/- from the earlier amount due to adjustment of rent and allied charges against Govt. accommodation, which are legitimate govt. dues. Therefore, the learned counsel for the respondents prayed for dismissal of the OA.

### **ANALYSIS**

5. We have heard the learned counsel for the parties and have gone through the records produced before us. We find that the issue which needs to be decided is, as to whether the recovery (debit balance) of excess payment from the applicant's pension account is legally permissible or not.

6. It is an undisputed fact that the applicant was commissioned in the Indian Army on 24.08.1985 and superannuated from service on 31.05.2017. Thereafter, the applicant was re-employed in the Army with effect from 27.06.2017 and was released from the service on 31.12.2017.

7. The Hon'ble Apex Court in the case of **Rafiq Masih (supra)**, 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."*

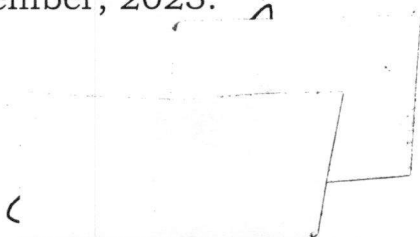
8. In view of the above, though the learned counsel for the respondents vehemently argued and submitted that the respondents have got a right to recover the amount which was paid in excess for the govt. dues, but the over-payment made was not due to any fraud or misrepresentation on the

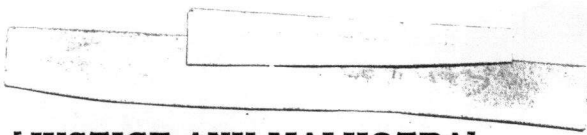
part of the applicant and the same was due to wrong fixation of pay and allowance made by the respondents. Therefore, in view of the above judicial pronouncement, the respondents cannot recover the excess amount paid to the applicant after his retirement.

9. Accordingly, OA 682 of 2019 is allowed and the impugned order of recovery of excess amount from the pensionary benefits of the applicant is set aside. The respondents are directed to refund the amount which has been recovered from the pension of the applicant in pursuance to the impugned order within a period of four months from the date of receipt of this order.

10. There is no order as to costs.

Pronounced in open Court on this 20<sup>th</sup> day of November, 2023.

  
[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

  
[JUSTICE ANU MALHOTRA]  
MEMBER (J)

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