

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

Suppl.

1.

OA 689/2016

Ex NK Vijdender Kumar Yadav

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. V S Kadian, Advocate

For Respondents : Mr. Arvind Patel, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

08.02.2024

Vide our detailed order of even date, we have allowed the OA 689/2016. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of our order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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ORDER

1. The applicant vide the present O.A 689/2019 has made the following prayers:-

*“(a) Direct respondents to repay all the allowances which were deducted at the time of Final Settlement of account(Annexure A-1) at the time of his discharge. And/or
(b) Direct respondents to pay interest @12% p.a. over the allowances deducted.
(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case .”*

2. The applicant No. 15668803P Ex Naik Vijender Singh Yadav was enrolled in the Indian Army on 29.04.1998 and discharged from service on 31.12.2014(AN) at his own request on compassionate grounds after rendering 16 years, 08 months and 02 days service under Army Rule 13(3) III(iv) and was granted service pension @

Rs.7825/- per month w.e.f. 01 Jan 2015 vide PCDA(P) Allahabad PPO No. S/46366/2014(Army) dated 12.09.2014. At the time of discharge from service, according to the respondents as per their Counter Affidavit dated 15.11.2016, the Final Settlement of accounts (FSA) in respect of the applicant was carried by PAO(OR) and Final Settlement of accounts (FSA) was issued by the Kumaon Regiment, Ranikhet which is an establishment of the Defence Accounts Department. The applicant submits that a sum of approximately Rs. 2,06,559/- was deducted from his balance in the final settlement of account erroneously and though the applicant approached the authorities to re-consider and repay the amount which was wrongly deducted from him and also issue a Legal Notice dated 18.03.2016, there was no favourable response and thus the present OA was instituted.

3. The applicant submits that the unauthorised recovery from due retiral benefits is against the fundamental right of the applicant as settled in a catena of verdicts by the Hon'ble Supreme Court and also submits that no recovery could have been effected by the respondents without putting the applicant to notice and giving him a hearing in the matter as laid down by the Hon'ble Supreme Court in **Bhagwan Shukla v. Union of India & Ors.** JT 1994(5) SC 253. Inter alia, the

applicant submits that in terms of Para-179 of Financial Regulation, ordinarily all personal claims should be audited finally within 12 months from the date of payment and that before recovery of an overpayment detected within this period is effected, the individual against whom the claim is preferred has to be within the requisite notice which in the instant case was not so sent to the applicant nor was he informed that the extra payment sought to be deducted from him was not authorised. Inter alia, the applicant submits that once he was paid with his due allowance as per rules, he was attached to Delhi though his unit was in J&K and the allowances paid were scrutinised at various levels and properly audited by the authorities who seek to deduct the same and that such deduction after several years is barred by the verdict dated 18.12.2014 of the Hon'ble Supreme Court in *State of Punjab & Ors. vs. Rafiq Masih(Whitewasher) etc.* in Civil Appeal No. 11527/2014 and submits that as laid down therein that any recovery if made by the employee is iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recovery,- ought not to be permitted.

4. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *Col B.J. Akkara(Retd) v. Govt. of India & Ors.*(2006) 11 SCC 709 to submit to the effect that

where there had been no payment made on the account of wrong misrepresentation or fraud on the part of the applicant and that relief restraining back recovery of excess payment is granted by the Court not because of any right in the employee, but in equity, in exercise of judicial discretion to relieve the employee from the hardship that will be caused if recovery is implemented. To contend to similar effect, reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *Syed Abdul Qadir & Ors. v. State of Bihar* 2009 AIR SCW 1871. Reliance was also placed on behalf of the applicant on the Govt of India, Min of Personnel, Public Grievances and Pension, DoP&T letter No. F.No. 18/03/2015-Estt.(Pay-I) dated 02.03.2016 to submit to the effect that it has been stipulated therein as under:-

"5. The matter has, consequently, been examined in consultation with the Department of Expenditure and the Department Legal Affairs. The Ministries / Departments, are advised to deal with the issue of wrongful/ excess payments made to Government servants in accordance with the above decision of the Hon'ble Supreme Court in CA No. 11527 of 2014 (arising thus by SLP(C) No. 11684 of 2012) in State of Punjab and others etc vs Rafiq Masih (White Washer) etc. However, wherever the waiver of recovery in the above-mentioned situations is considered, the same may be allowed with the express approval of Department of Expenditure in terms of this Department's OM No. 18/26/2011- Estt(Pay-I) dated 6th February, 2014."

5. Inter alia, it was submitted on behalf of the applicant that the applicant's grade pay as per the Final statement of accounts issued by the respondents was Rs. 2800/- and that the applicant thus fell within the category of a Group C employee in terms of the verdict of the Hon'ble Supreme Court in *State of Punjab & Ors. vs. Rafiq Masih(Whitewasher) etc.*, as stipulated in Para-12(1) thereof.

6. Specific reliance was placed on behalf of the applicant on the guidelines laid down by the Hon'ble Supreme Court in *State of Punjab & Ors. vs. Rafiq Masih(Whitewasher) etc.* vide Para-12 thereof which reads 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."

7. At the outset, it is essential to observe that on behalf of the respondents it is not refuted that the applicant falls within the category of Group C Service employee of the respondents. The recovery that the respondents sought to effect is for the reasons set forth in Annexure R-2 annexed to the Counter Affidavit as under:-

Sl. No	Nature of Debit	Period	Remarks
(a)	LCCA	01042014 to 31122014	Amount Rs. 126/- is credited to the PBOR
(b)	AM Bonus	01012000 to 31122014	Bonus on Closing Credit Balance is recovered during FSA.
(c)	AM Tfr Grant	05012009	20% excess amount paid (80% of BP is admissible when the individual move from peace to field or field to peace). So 20% excess amount was recovered during FSA.
(d)	AM PMHAH	01112011 to 31122014	PBOR entitled @75% w.e.f. 01.11.2011 to 31122014 but paid @150 & @90 w.e.f. 01012014 to 31122014 but paid @180
(e)	AM CILQ	05102017 to 31122014	PBOR was posted in 60RR(naga) wef 01.11.2006. He was entitled CILQ for CCOTH city rate but wrongly paid CCA1 city rate. PBOR was posted in 7 KUMAON REGIMENT(J&K) wef 05/01/2009 and paid CILQ for CCX city rate which is wrongly paid because he was entitle CCZ city rate.

			Excess amount Rs-142295/ is recovered during FSA.(Due Drawn statement each)
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8. The said recoveries were effected on 29.04.2004 as per Annexure R-1 annexed with the Counter affidavit of the respondents. Though, an attempt has been made through the Counter Affidavit filed on behalf of the respondents to contend to the effect that it was the Kumaon Regiment which was carrying out/finalising the accounts qua the applicant and that the applicant is required to implead the office of the PAO(OR) of the Kumaon Regiment in the instant case, it cannot be overlooked that the OIC Records, Records of the Kumaon Regiment, Ranikhet(UK) is arrayed as the Respondent No. 3 to the present OA and the counter affidavit has been filed on behalf of the Respondent nos. 1-4 to the present OA who are arrayed as under:-

MEMO OF PARTIES

EX NK VIJENDER KUMAR YADAV (Army No.15668803P)
H.No E-126, Ganesh Nagar,
Pandav Nagar Complex
Delhi-110092

..... APPLICANT

VERSUS

1. Union of India through,
Secretary, Ministry of Defence
South Block, New Delhi
2. Chief of Army Staff
Integrated HQ of MoD(Army)
DHQ, PO New Delhi-110011
3. OIC Records
Records The Kumaon Regiment
Ranikhet (UK)
4. Principle Controller of Defence Accounts
Darupadi Ghat, Allahabad (UP)

..... RESPONDENTS

9. As observed by the Hon'ble Supreme Court in *State of Punjab & Ors. vs. Rafiq Masih(Whitewasher) etc.* vide observations in Para-11 thereof, employees in the lower rung of service spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the reciprocal gains to the employer and that thus recovery from employees belonging to the lower rungs i.e. Class-III and Class-IV sometimes denoted as Group 'C' and Group 'D' service ought not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them for such recovery would be iniquitous and arbitrary and would breach the mandate contained in Article 14 of the Constitution of India.

10. In the instant case thus the applicant falls in Group 'C' of the services of the respondents clearly falls within the ambit of the verdict of the Hon'ble Supreme Court in Para- 11 and 12(1) in *Rafiq Masih(Supra)* and thus the recovery made from the applicant by the Respondents of the amount of Rs. 2,06,559/- is held to be wholly iniquitous and without issuing any notice to the applicant to be heard in a manner as observed vide verdict of the Hon'ble Supreme Court in

Pronounced in the open Court on the 8 day of February, 2024.

[JUSTICE ANU MALHOTRA]
MEMBER (J)

Page 9 of 9