

COURT NO. 1  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

138.

OA 907/2022

Nk Mohamad Rasulu (Retd) ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. U S Maurya, Advocate

For Respondents : Mr. Arvind Kumar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER  
10.01.2024

Invoking the jurisdiction of this Tribunal applicant has  
filed this application and seeks the following reliefs.

“(a) Direction to respondents to set aside Recovery  
amount of Rs. 7,00,118/- of DSC PPO (Annexure A-1)

(b) Direction to respondents to credit the Pension as  
per PPO without recovering amount Rs. 7,00,118/- as  
respondents did not follow the procedure of Regulation  
95 of Over payments of pension which says as “shall  
not be recovered, but shall be reported to the President  
through Controller General of Defence Account”  
(Annexure A-3). And procedure of recovery as laid  
down by Govt. of India Ministry of Defence letter dated  
04-07-1975 & para 73.1 of the Pension Payment  
Instructions 2005 which has been adjudicated in the  
case of Chander Singh Vs. Union of India order dated  
10-09-2013 by AFT (RB) Chandigarh (Annexure A-4)

and in terms of principles laid down by the Hon'ble Supreme Court in the case of State of Punjab and other etc. Versus Rafiq Masih (White Washer) (Civil Appeal No. 11527 of 2014 (Arising out of SLP (C) No. 11684 of 2012) etc. decided on 18.12.2014 and Govt. of India letter dated 02.03.2016 (Annexure A-5).

(c) The applicant be granted any other relief which this Hon'ble Tribunal may deem appropriate, just and proper in the interest of justice and in the facts and circumstances of the case.

(d) Award cost of the OA to the applicant."

2. Applicant was enrolled in the Indian Army in the Regiment of Artillery on 4<sup>th</sup> May, 1981 and was discharged from service with effect from 31<sup>st</sup> May, 2003 (AN) under the provisions of Army Rule 13 (3) item III (i) after rendering 22 years and 28 days of qualifying service for which he has been granted service pension of life. After discharge from the Regular Army service the applicant was enrolled in the DSC on 31<sup>st</sup> December, 2005 and did not opt to count his former service towards DSC service. Accordingly, after completing his initial term of engagement, he was granted extension of service from 31<sup>st</sup> December, 2015 up to 9<sup>th</sup> May, 2018 i.e., till he attained the age of superannuation which was 55 years. Further, he was granted two years enhanced service from 10 May 2018 to 09 May 2020. Finally, he was

discharged with effect from 31<sup>st</sup> May, 2020 (AN) after rendering 14 years, 05 months and 01 days and for this he was granted service gratuity and death-cum-retirement gratuity to the tune of Rs. 6,70,118/- (Rupees Six lakh seventy thousand one hundred and eighteen only) and Rs.1,38,645/- (One lakh thirty eight thousand six hundred and forty five only) respectively.

3. As the applicant had not completed 15 years of qualifying service in the DSC, he was not granted pension and therefore, the applicant seeks second pension for the DSC service after condoning the shortfall of less than a year, invoking the jurisdiction of this Tribunal by filing OA 1662/2020 and following the law laid down by the full bench of this Tribunal in the case of Smt Shama Kaur Vs. Union of India and others (OA 1238/2016), this OA was allowed and vide order dated 9<sup>th</sup> November, 2020, the applicant was directed to be granted second pension for the service in DSC amount of pension was directed to be paid within four months.

4. However, after the settlement of the second pensionary benefit when a sum of Rs. 7,00,118/- (Rupees Seven Lakh e hundred and eighteen only) was being deducted from the

second pension that was paid to the applicant, the applicant invoked the jurisdiction of this Tribunal by filing MA 849/2021 before this Tribunal and made a complaint that he is not being granted the benefit as directed by this Tribunal in the matter of granting second pension and the recovery of Rs. 7,00,118/- was challenged by him.

5. Vide order passed on 3<sup>rd</sup> December, 2021, this Tribunal found that 'in case the applicant feels that the recovery to be made is illegal, he is granted liberty to challenge the same by filing a separate application as it gives a fresh cause of action to him' and now the applicant challenges the said recovery before us in this application and by placing reliance on Pension Regulation for the Army 1961, Para 2, Chapter 6 pertaining to recovery and over payment and Regulation 95 specifically dealing with over payment of pension, argued that the recovery is unsustainable in law and challenges the recovery and invites our attention to the law laid down in the case of State of Punjab and others etc. Vs. Rafiq Masih (White Washer) [Civil Appeal No. 11527 of 2014 (arising out of SLF (C) No. 11684 of 2012) etc. decided on December 18, 2014] to say that the recovery are unsustainable in law. The applicant has challenged the said recovery on various

grounds and has raised various pleadings in his application which are in our considered view is not relevant to be mentioned for the purpose of deciding the case.

6. As far as the respondents are concerned they admit the legal position and submit that after the applicant was discharged from the second service as he was not entitled to pension on account of non-qualifying for the same as qualifying service being less than 15 years he was granted service gratuity and death-cum-retirement gratuity which is paid only to non-pensioners and therefore second pension shall not be granted to him. A sum of Rs. 7,00,118/- was paid to the applicant being retirement gratuity amount of Rs. 1,38,645/- and service gratuity of Rs. 6,70,118/-. That apart at the time of discharge from DSC, as the applicant had not paid ECHS of Rs. 30,000/- (Rupees Thirty thousand) the said amount is now recovered from the applicant as he is now being paid service pension for the second service rendered in the DSC. It is the case of the respondents that applicant for the second service rendered in the DSC was not entitled to pension as he has not completed 15 years of qualifying service and when the employee is not granted pension as per rule he is granted service gratuity and

retirement gratuity. This was granted to the applicant but now as he is to be granted second service pension, the amount of gratuity and service gratuity has to be recovered. As mentioned in the provision of Pension Regulation for the Army 1961 Para 2 this is being recovered in the form of equal installment of over payment to the applicant to which he was not legally entitled to.

7. We have heard learned counsel for the parties and we find that the applicant after his retirement from service is in the DSC was not granted service pension as he did not complete the qualifying service of 15 years and as such he was granted service gratuity and death-cum-retirement gratuity in lieu of pension. Now as he is being granted service pension for the DSC service, the same is be recovered from his service benefits.

8. In our considered view, this is strictly in accordance to the rules and regulation and the applicant cannot have grievance in this regard. The applicant can get service pension for the second service rendered only if he refunds the service gratuity and his death-cum-retirement gratuity granted to him amounting to Rs. 7,00,118/- and if the respondents are recovering it from the pension in equal



installments, we see no reason to interfere in it. The applicant cannot blow hot and cold at the same time and derive two benefits when he is only entitled to any one of them. A pension is granted to an employee who has earned the same having completed the qualifying service in which case he is not entitled to the gratuity amount which was paid to him for the second service with DSC. Accordingly, in our considered view the respondents have not committed any error in directing for recovery of the said amount, to that extent the prayer made by the applicant is unsustainable in law and therefore rejected.

9. As far as ECHS subscription is concerned, respondents may verify from the records as to whether for the regular service rendered by the applicant in the Army before entering the DSC, any subscription was paid by him and in case any subscription was paid at that point of time, respondents cannot compel the applicant to again pay the ECHS subscription. ECHS subscription is required to be paid only once and if the applicant has not paid the same for the first service before discharge from the Army, only in that case, the said amount can be recovered from the applicant.

10. With the aforesaid findings, no further indulgence made in the matter.

11. Application stands dismissed.

[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

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

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