

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

82.

OA 2003/2023 WITH MA 353/2025

Hav (ACP N/Sub) Ashok Kumar (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate
For Respondents : Mr. Sarvan Kumar, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER
12.02.2025

MA 353/2025

Counter affidavit has been filed. There being some delay in filing the counter affidavit, this application has been filed seeking condonation of delay. Delay condoned. Counter affidavit is taken on record.

2. MA stands disposed of.

OA 2003/2023

3. The applicant has invoked the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 by filing this application. In Para 8, the reliefs sought by the applicant are as follows:

(A) *Quash and set aside the recovery by the respondents vide FSA (Annex -A2) by declaring it arbitrary and contrary to*

law settled by the Hon'ble Apex Court in Syed Abdul Qadir (supra) and State of Punjab Vs Rafiq Masih (supra) referred in Thomas Daniel (Annexure A-4).

- (B) Direct respondents to restore or Step up his Basic pay @ Rs. 46,200 pm instead of Rs. 44,900 by extending most beneficial option, which has been modified just prior to discharge by withdrawing one increment paid to him during migration to 6th or 7th CPC, impacting his pension and other retiral benefits which is barred by the settled law placed in Annex- A4 and A5.*
- (C) Issue direction to the respondents to fix the anomaly in the Basic Pay of the applicant wef 01 Jan 2006 onwards and grant him benefit option during transaction to 5th, 6th and 7th CPC in terms of judgment placed as Annex -A5.*
- (D) Direct the respondents to credit amounts to the account of the applicant with applicable interest which has been recovered during issuance of FSA and arrears to be paid with 10% interest.*

4. Upon notice being issued, the respondents filed a detailed counter affidavit. In Para 4 and 5 of the counter affidavit, the respondents made the following assertions:

4. It is pertinent to submit here that, since the subject matter was pertaining to the audit authority i.e. PAO (OR) EME Secunderabad, EME Records vide letter No. 14622988/T-A/Court Case Cell dated 31.07.2023 and 14622988/T-A/Court Case Cell dated 17.08.2023 had approached PAO (OR) EME for their comments on the subject OA. Accordingly, PAO (OR) EME vide their letter NO. G- tech/138/Court Case/14622988/2023 dated 21.08.2023 (Copy attached and marked as Annexure RI) has offered their comments stating that "the pay accounts (IRLAs) of the JCOs/Ors who are being discharged are comprehensively reviewed in the months of discharge. In the process, payment due are credited and excess payments already made, if any, are deducted in the final settlement of accounts (FSA) of the respective JCO/ORs. The

resulting net amount is disbursed to JCO/ORs. Accordingly, pay account of the applicant was finalized in the month of Oct 2020 on account of his discharge from service w.e.f. 31.10.2020 and sum of Rs. 4,39,747/- was disbursed to the applicant. It is also submitted that the detailed bifurcation of the payment provided is enclosed. The debits of Rs. 1,36,639/- and Rs. 7,246/- (incorrectly mentioned as Rs. 7248/- in OA) mentioned in the OA are only part of the adjustments carried out by the computer system to credit outstanding dues and to deduct excess payments made, if any. Applicant has been drawing excess increment thus resulting in the recovery of the above said amount. The reduction of basic pay from Rs. 46,200/- to Rs. 44,900/- is due to excess increment drawn from 01.07.2009. The same was rectified and recovered in the FSA.”

5. In view of the above, it is submitted that the debits of Rs. 1,36,639/- and Rs. 7,246/- (Rs. 7,248/- mentioned in the OA) are only part of the adjustments carried out by the computer system to credit outstanding dues and to deduct excess payments made, if any. With regards to reduction in basic pay from Rs. 46,200/- to Rs. 44,900/- was due to correction of excess increment drawn by the applicant w.e.f. 01.07.2009. The recovery made by the respondents was due to excess increment drawn by the applicant. As such, the subject OA filed by the applicant is infructuous and devoid of merits. Hence, the Hon'ble Tribunal may graciously be pleased to dismiss the OA at first hearing itself in the interest of the organization please.

5. A perusal of the aforesaid clearly shows that, on account of the discharge of the applicant w.e.f. 31.10.2020, a sum of Rs. 4,39,747/- (Four lakh thirty-nine thousand seven hundred forty-seven only) was disbursed to him. However, while verifying the disbursement undertaken, it transpired that the debit due from the applicant was Rs. 1,36,639/- and Rs. 7,246/-, which is incorrectly mentioned by the applicant

in the OA as Rs. 7,248/-. Subsequently, the reductions in the basic pay of the applicant from Rs. 46,200/- to Rs. 44,900/- was due to an excess increment paid to him from 01.07.2009. In view of the aforementioned, when the pay fixation was correctly done, the basic pay was fixed at Rs. 44,900/-, and therefore, the recovery had to be effected. The respondents justify the recovery on account of the incorrect pay fixation, which resulted in the applicant being granted an additional increment.

6. From the above, it is clear that the recovery impugned in this application is the result of the incorrect fixation of the applicant's pay by the respondents, and there is nothing attributable to the applicant regarding the erroneous payment. The issue concerning the recovery from pensionary benefits payable to an employee after retirement has been the subject of deliberation before the Hon'ble Supreme Court in various cases, starting with Syed Abdul Qadir and Others Vs. State of Bihar & Ors. (2009 3 SCC 475) and State of Punjab Vs Rafiq Masih (White Washer) (AIR 2015 SC 696). Subsequently, another Bench of the Hon'ble Supreme Court in the case of Thomas Daniel Vs State of Kerala & Ors. (AIR 2022 SCC 387) rebutted the issue by passing an order

on 02.05.2022, and after considering the principles laid down by the Hon'ble Supreme Court in Rafiq Masih (supra), reproduced the following principles laid out in paragraph 18 of the judgment:

18. It is not possible to postulate all situations of hardship that would govern employees on the issue of recovery, where payments have mistakenly been made by the employer in excess of their entitlement. Nevertheless, based on the decisions referred to hereinabove, we may, as a ready reference, summarize the following few situations where recoveries by employers would be impermissible in law:

- (i) Recovery from employees belonging to Class III and Class IV series (or Group C and Group D services).*
- (ii) Recovery from retired employees, or employees who are due to retire within one year from the order of recovery.*
- (iii) Recovery from employees when the excess payment has been made for a period exceeding five years before the order of recovery is issued.*
- (iv) Recovery in cases where an employee has been wrongfully required to discharge duties of a higher post and has been paid accordingly, even though they 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, harsh, or arbitrary to such an extent that it would far outweigh the equitable balance of the employer's right to recover.*

7. From the above, it is clear that recovery from employees belonging to Class III and Class IV services, or Group C and Group D services, where payments have been made more than five years before the order of recovery is issued, is impermissible in law.

8. In this case, the aforesaid principle would squarely apply, and therefore the impugned recovery made is unsustainable in law. To that extent, the relief sought in

prayer clause 8(a) stands allowed. The impugned recovery from the pay of the applicant, on account of the wrong fixation of pay, is quashed, and the entire amount recovered is directed to be refunded to the applicant within a period of two months.

9. So far as the relief 8 (b) with regard to restoration or stepping up of the basic pay from Rs 44,900/- to Rs. 46,200/- is concerned, the respondents in Para 4 and 5 of their counter affidavit have given the details and circumstances for reduction of basic pay. Therefore, if the applicant is aggrieved with the reasons given in Para 4 and 5 of the counter affidavit, he shall have the liberty to re-agitate the same, if so advised, before an appropriate forum.

10. With the above, the OA is partly allowed and disposed of to the extent indicated hereinabove.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[RASIKA CHAUBE]
MEMBER (A)

/Ps/
OA 2003/2023