

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

**OA 616/2025**

**Ex CPO Dongare Suresh Sopan** ..... **Applicant**

**VERSUS**

**Union of India and Ors.** ..... **Respondents**

**For Applicant** : Mr. Vivek Bhai Patel,, Advocate  
**For Respondents** : Ms. Nehal Jain, Advocate

**CORAM**

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

**O R D E R**

The applicant 'No. 151698W Ex CPO Dongare Suresh Sopan' vide the present OA makes the following prayers:-

**"8. RELIEF (S) SOUGHT:**

*In view of the above, it is therefore, most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to:-*

*(a) Quash the Respondent Impugned decision as indicated in Corr PPO 4 issued on 04 December 2024 and as also indicated in Pension Slip of the applicant for the month of December 2024 & January 2025 [ANNEXURE A-1(colly)], upto the extent of the recovery demand as raised i.e Rs. 1,64,020/-.*

*(b) Direct the Respondent to stop any further recovery and refund the amount that has already been recovered from pension of the applicant till date (ie Rs. 19,710/- as on Pension slip for January 2025) along with the fixed interest @ 12% p.a on the amount from the date when the amount was recovered to till date the amount is fully refunded to the applicant.*

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***(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the Applicant and against the Respondent.***

An interim prayer was made by the applicant as under:-

***"The applicant most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to direct the Respondent to stop any further recovery from Pension of the applicant contemplated on account of the demand raised, with immediate effect."***

2. During the course of the hearing on 03.04.2025, it was directed to the effect:-

***"On behalf of the respondents has been submitted copy of letter no. S/Auth/1024/151698 dated 03.04.2025 alongwith the Annexure thereto, copies of which have been supplied to counsel for the applicant. The respondents seek time to file a response to the interim prayer which be filed within two weeks."***

***2. The matter be re-notified on 15.05.2025."***

The matter on hearing was thereafter reserved for orders vide order dated 15.05.2025.

3. Vide the separate order dated 19.05.2025, when the matter was taken up for directions, in view of the prayer made seeking grant of interim relief being substantially similar to the relief prayed for vide the OA, it has been considered appropriate to dispose of the OA on merits.

4. The applicant joined the Indian Navy on 01.09.1986 and retired from service on 31.08.2018. On retirement, his pension was fixed in the rank of CPO *à* of Rs. 26,400 per month plus DR to which he was entitled to from time to time.

5. The applicant had commuted 50% of his pension i.e. Rs 13,200 and thus his residual pension was Rs. 13,200 plus DR. In September 2024, the applicant's pension was revised in OROP (revised with effect from 01.07.2024) to Rs 27,950 plus DR vide the corrigendum PPO 3 issued on 21.09.2024. Thereafter, the respondents started making a recovery of Rs 9,855 from his monthly pension from December 2024 onwards. The applicant submits that he was not given any information from the Record Office nor from the Directorate of Pay and Allowances, NHQ, New Delhi in relation thereto.

6. The applicant submits that he informed the IHQ MOD/ DPA/ NAVPEN, Mumbai and the PCDA(Pension), Prayagraj, wherein he was called upon to submit a request and thus he submitted the representation informing that he had not drawn any HBA loan, nor had he been paid any extra pension and thus requested for the stoppage of the recovery.

7. The applicant submits that vide a corrigendum PPO no 4 no. 401201805080 and e-PPO no. S0034672018 dated 04.12.2024, unjust demand of an amount of Rs. 1,64,020 was raised against him without any reasons for such demand and recovery.

8. The applicant has submitted that in terms of a catena of judgments, payments made in excess amounts, if any, paid to employees cannot be effected if they have been paid without any fraud or misrepresentation on behalf of the employee and in any event any recovery after a period of five years on the ground of any misinterpretation of rules by the respondents cannot be effected.

9. Reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in **State of Punjab and others etc** versus **Rafiq Masih (White Washer) etc** in Civil Appeal 11527/2014 dated 18.12.2014 whereby vide para 12 thereof it has been observed 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."

10. Likewise, reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in **Syed Abdul Qadir and Others** versus **State of Bihar and Others** (2009) 3 SCC 475 to submit to the effect that it has been observed vide para 59 therein as under:-

"59. Undoubtedly, the excess amount that has been paid to the appellants -teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be

*held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned Counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made."*

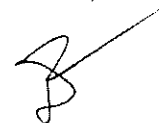
11. Reliance was also placed on behalf of the applicant on the judgment of the Hon'ble Supreme Court in **Secretary, Department of Irrigation** versus **Dharmatma Singh** in SLP (CC) 14563/2010 decided on 29.07.2013, to submit to the effect that it has been laid down therein as under:-

*"since the employee himself was not responsible in any manner for the mistake in fixing his pay leading to overpayment and thus held the recovery impermissible thereof."*

12. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in **M.P. Medical Officers Association vs The State of Madhya Pradesh and Ors** Civil Appeal 5527/2022 dated 26.08.2022 and other connected matters to submit to the effect that it has been observed therein to the effect:-

*"5. ....Therefore, as such, there was neither any misrepresentation on the part of the concerned employees - members of the appellant association nor can the mistake be attributed to them. The mistake, if any, can be said to be that of the Department/State,*

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who issued the circular dated 23.05.2009 under which the members of the association were given certain benefits till the same was withdrawn in the year 2012. Therefore, in the peculiar facts and circumstances of the case, the State was not justified in ordering recovery of the excess amount paid along with the interest. It is true that *stricto sensu*, the decision of this Court in the case of *State of Punjab and others Vs. Rafiq Masih*, (2015) 4 SCC 334 may not be applicable. However, at the same time, as observed hereinabove, and in the facts and circumstances of the case, the State was not justified in ordering recovery of the excess amount paid with interest, more particularly, when it is reported that some of the doctors/dentists – members of the association have retired on attaining the age of superannuation and the recovery shall be from their pension/pensionary benefits.....”

13. Reliance was also placed on behalf of the applicant on the verdict dated 02.05.2022 of the Hon'ble Supreme Court in **Thomas Daniel versus State of Kerala and Ors** Civil Appeal 7115 / 2010 to submit to the effect that it has been directed therein as under:-

“(9) This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of

*judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess."*

14. The respondents vide their affidavit dated 08.04.2025 have submitted to the effect:-

*"D. That, in this regard, it is submitted that the Applicant joined the Indian Naval service on 01.09.1986 with a Basic Pay of Rs. 825/. Thereafter, he was promoted to Leading rank on 08.01.1992, Petty Officer rank on 02.10.2004, and Chief Petty Officer rank 01.01.2012.*

***E. That, at this stage, it may also be pertinent to refer to the brief history of (S. No. 151966-B) S Singh Jhajharia, EX-CPO LOG (SC). The ex-sailor joined service on 17.09.1987 with basic pay of Rs. 825/-. He was promoted to SEA I on 18.09.1989, Leading rank on 30.01.1993, Petty Officer rank on 12.07.2007, and Chief Petty Officer rank on 01.05.2012. Further, the ex-sailor attained qualification of MARCOS w.c.f. 01.03.1995.***

*F. That, since the Applicant was promoted to Leading rank on 08.01.1992 and Ex-CPO LOG (SC) S. Singh Jhajharia was promoted to Leading rank on 30.01.1993, the Applicant was senior to Ex-CPO LOG (SC) S. Singh Jhajharia in Leading rank.*

*G. Thereafter, the Applicant transited from 5 CPC to 6th CPC w.e.f. 01.01.2006 with Basic Pay of Rs. 7,910/- and Ex-CPO LOG (SC) S Singh Jhajharia also transited from 5% CPC to 6 CPC w.e.f. 01.01.2006 with Basic Pay of Rs. 8,490/*

***H. That due to certain misinterpretation of rules and considering that the Applicant was senior in Leading rank in comparison with Ex-CPO LOG (SC) S Singh Jhajharia, the Applicant was stepped up w.e.f. 01.01.2006 and his Basic pay was enhanced from Rs. 7,910/- to Rs. 8,490/- w.e.f. 01.01.2006 in the month of February 2011.***

*I. That the Applicant's Basic Pay was stepped down from Rs. 8,490/- to Rs. 7,910/- w.e.f. 01.01.2006 due to the following reasons: -*

**(a) The Applicant's Basic Pay was stepped down from Rs. 8,490/- to Rs. 7,910/- w.e.f. 01.01.2006 considering the fact that Ex-CPO LOG (SC) S Singh Jhaharia, belongs to Special Forces (ie., Marine Commandos), which involves special group as mentioned in guidelines promulgated for 5<sup>o</sup> CPC (NI 1/S/98) and the Applicant belongs to Group "C".**

**(b) Therefore, the Applicant cannot be stepped up against a different group and in a different pay scale. As per Para i and ii of Note 8 of Special Navy Instruction 1/S/08, "Both the junior and senior should belong to the same group and trade and the ranks to which they are promoted should be identical" and "The pre-revised scale pay and revised pay scale of the lower and higher rank in which they are entitled to draw pay should be identical".**

*(c) Additionally, the stepping up of Basic Pay was not carried out on the date of promotion of the junior, therefore, it does not meet the criteria promulgated by Gol for stepping up of pay.*

*(d) The Applicant was stepped up from Rs. 7,910/- to Rs. 8,490/- w.e.f. 01.01.2006 in the month of February 2011 with arrears amounting to Rs. 46,912/- under 6 CPC regime and the same was objected by PCDA(N)/IRLA.*

*(e) Subsequently, the Applicant's Basic Pay was reverted to pre-step-up Basic Pay i.e., from Rs. 8,490/- to Rs. 7,910/- w.e.f. 01.01.2006 in the month of May 2017 with a recovery of Rs. 1,64,020/-."*

*(emphasis supplied)*

15. The respondents thus prayed that appropriate orders or directions be passed and that the recovery from the pension of the applicant be not stayed.

## **ANALYSIS**

16. On a consideration of the submissions that have been made on behalf of either side, though it is brought forth that an erroneous payment of Rs 8,490 of basic pay was being paid to the applicant from 01.01.2016 till the month of May 2017, however, as averred by the respondents vide their affidavit, dated 08.04.2005 itself, the said payment was made as averred in para H of the affidavit of the respondents due to misinterpretation of rules and considering that the applicant was senior in the leading rank in comparison with Ex-CPO LOG (SC) S Singh Jhajharia, and thus the applicant was stepped up with effect from 01/01/2006 and his basic pay had been enhanced from Rs 7,910 to Rs 8,490 with effect from 01/01/2006 in the month of February 2011 whereas the same could not have been stepped up as averred in para I (b) of the affidavit of the respondents against a different group and a different trade and a different pay scale.

17. Furthermore, the applicant was a Chief Petty Officer whereas Ex-CPO LOG (SC) S Singh Jhajharia, belonged to the Special Forces (i.e. Marine Commandos) which was in a special group as mentioned in guidelines promulgated for 5th CPC

(NI/1/S/98) and the applicant on the other hand belonged to Group C. Thus, however, it cannot be overlooked that even though the excess payment had been made erroneously to the applicant in terms of the settled law and in view of the catena of verdicts of the Hon'ble Supreme Court. The applicant who belongs to Group C and from whom the recovery is sought to be made of excess payment made to him from 01.01.2006 till May 2017 in terms of the corrigendum PPO 4 dated 04.12.2024 with recovery sought to be effected of amounts paid in excess much beyond a period of five years prior to when the amount had been paid cannot be effected as the same is expressly barred in terms of the verdict of the Hon'ble Supreme Court in **State of Punjab and others etc** versus **Rafiq Masih (White Washer) etc** (supra) para 12 (iii).

18. Furthermore, it cannot also be overlooked that the monthly pension received by the applicant is only Rs 27,950 per month as per the pension slip January 2025 placed on record and thus a recovery of Rs 9,855 per month is apparently is wholly iniquitous and harsh and would far outweigh the equitable balance of the employer's right to recover in terms of the verdict of the Hon'ble Supreme Court in **State of Punjab and others etc** versus **Rafiq Masih (White Washer) etc** para 12(v).

19. Thus the prayer made by the applicant seeking a restraint against any recovery of any amount from his pension of the sum of Rs 1,64,020 as per the corrigendum PPO no 4 no. 401201805080 and e-PPO no. S0034672018 dated 04/12/2024 from the applicant's pension is stayed and is set aside *in toto*.

20. The OA 616/2025 is thus **allowed** and the amounts recovered by the respondents pursuant to the said corrigendum PPO no 4 dated 04.12.2024 of a sum of Rs 9,855 in the months of December 2024, January 2025, February 2025, March 2025, April 2025 and May 2025 are directed to be refunded to the applicant within a period of two months from the date of this order.

21. The Corrigendum PPO be accordingly issued and arrears be paid within two months from the date of receipt of this order failing which, interest @ 8% p.a. would be liable to be paid by the respondents to the applicant on all arrears till the date of payment.

22. Copy of this order be uploaded forthwith.

Pronounced in the open Court on 29 day of May, 2025.

**[REAR ADMIRAL DHIREN VIG]**  
**MEMBER (A)**

AP

**[JUSTICE ANU MALHOTRA]**  
**MEMBER (J)**

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