

**zCOURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 1560/2018 WITH MA 3894/2024 AND MA 516/2021

Lt Cdr Bhisham Kumar (Retd) **Applicant**

VERSUS

Union of India and Ors. **Respondents**

For Applicant : Mr. Bikrama Sah, Advocate

For Respondents : Mr. Prabodh Kumar, Sr. CGSC

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)

HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicant has filed this OA and the reliefs claimed in Para 8 read as under:

"(a) Impugned order dated 08.05.2018 at Annexure-A/2 and PPO dated 09.07.2018 at Annexure-A/4 be set aside to the extent these orders effect recoveries of amount

paid to the applicant, at enhanced rate of pensions.

(b) Applicant may be granted any other reliefs which this Hon'ble Tribunal may deem appropriate, just and proper in the interest of justice, equity and fair play."

BRIEF FACTS OF THE CASE

2. The applicant was enrolled in the Indian Navy as a Writer Sailor on 04.04.1960. He was subsequently commissioned as an officer on 30.09.1971 and, after rendering 22 years of commissioned service, retired from naval service on 27.09.1993 in the rank of Lieutenant Commander (Lt Cdr).

3. The applicant, along with other similarly situated officers, approached this Tribunal by way of **O.A. No. 464/2013 (Lt Cdr Bhisham Kumar & Ors. vs. Union of India)**, seeking a revision of his pension to the rank of Commander (Time Scale) with the corresponding Grade Pay, predicated on the judgment in **Maj. K.G. Thomas vs. UOI** vide order dated 25.02.2015, this Tribunal allowed the application and directed the respondents to grant revised pension, arrears for the three years preceding the filing of the O.A., and interest at the rate of 12% per annum.

4. While the respondents' oral request for leave to appeal was rejected by this Tribunal on the date of the order, the respondents subsequently implemented the directions through a Conditional Sanction Letter dated 16.09.2015 issued by the Integrated Headquarters, MoD (Navy), Directorate of Pay & Allowances. This sanction was explicitly made contingent upon the outcome of the Civil Appeal filed before the Hon'ble Supreme Court.

5. The conditional nature of this disbursement was further codified in the Corrigendum Pension Payment Order (PPO) issued on 10.12.2015. Under the "Note" section in sub-para 5, the PPO clearly stipulated that the implementation of the Tribunal's order was subject to the final outcome of the Civil Appeal pending before the Apex Court. The PPO further provided that the arrears disbursed to the applicant would be subject to recovery from his pension in the event the Civil Appeal was decided in favor of the Government.

6. Pursuant to this conditional implementation, the applicant received a total disbursement of approximately ₹19,40,000/- as arrears of enhanced pension. It is a matter of record that from

this sum, an amount of approximately ₹5,65,000/- was recovered at source by the Income Tax authorities.

7. On 21.02.2018, the Hon'ble Supreme Court in ***Union of India & Ors. vs. Suchet Singh Yadav [(2018) 4 SCC 391]***, set aside the order of this Tribunal dated 25.02.2015, thereby extinguishing the legal entitlement upon which the applicant's claim for enhanced pension was based.

8. In view of the Apex Court's reversal and the specific conditions attached to the initial disbursement, the respondents issued the impugned orders dated 08.05.2018, cancelling the earlier sanction and initiating recovery proceedings for the disbursed arrears. The applicant has moved the present O.A. seeking to quash these recovery proceedings, primarily on the grounds of equity and extreme financial hardship.

CONTENTIONS OF THE PARTIES

9. The learned counsel for the applicant submitted that the applicant was enrolled in the Indian Navy as a Writer Sailor on 04.04.1960 and was subsequently commissioned as an officer on 30.09.1971, eventually retiring in the rank of Lieutenant Commander on 27.09.1993. It is submitted that the applicant is

a septuagenarian pensioner who has served the nation with distinction for over three decades and is currently at an advanced stage of life.

10. The learned counsel for the applicant submitted that the enhanced pension and arrears, totaling approximately ₹19,40,000/-, were disbursed to the applicant strictly in accordance with the judicial directions passed by this Hon'ble Tribunal in O.A. No. 464/2013 dated 25.02.2015. It is contended that there was no misrepresentation, fraud, or deceit on the part of the applicant in obtaining these benefits, as they were released by the respondents following the dismissal of their oral prayer for leave to appeal.

11. Placing reliance on the judgment of the Hon'ble Supreme Court in State of ***Punjab vs. Rafiq Masih (White Washer)*** [(2015) 4 SCC 334] and ***Syed Abdul Qadir vs. State of Bihar*** [(2009) 3 SCC 475], the learned counsel submitted that recovery from a retired employee is prohibited in law where such action would cause extreme and undue hardship. It is vehemently argued that the recovery of such a substantial sum at this stage

of the applicant's life would render him "penniless, penurious, and destitute," effectively resulting in "untold misery."

12. The learned counsel further submitted that the condition of recovery inserted in the Sanction Letter dated 16.09.2015 and the Corrigendum PPO dated 10.12.2015 was a unilateral and arbitrary act of the respondents. It is contended that since the original order of this Tribunal dated 25.02.2015 was absolute and unconditional, the respondents lacked the legal authority to self-impose a recovery clause. The learned counsel argued that such a "conditional implementation" was an attempt to overreach the judicial process and should not be held against the applicant.

13. The learned counsel also drew the attention of this Tribunal to the fact that a significant portion of the arrears, amounting to approximately ₹5,65,000/-, was already deducted and recovered by the Income Tax authorities at source. It is submitted that seeking recovery of the gross amount would result in "double jeopardy," forcing the applicant to refund money he never actually received, thereby violating the principles of equity and fair play.

14. In the Rejoinder filed by the applicant, the learned counsel reaffirmed that the subsequent reversal of the law by the Hon'ble Supreme Court in the case of ***Suchet Singh Yadav (supra)*** should not be applied in a manner that causes "unprecedented hardship" to a retired officer, as the payments were received in good faith and utilized for basic subsistence and family maintenance over several years.

15. *Per contra*, the learned counsel for the respondents submitted that the recovery proceedings initiated against the applicant are strictly in accordance with the law and the specific conditions under which the arrears were originally disbursed. It is submitted that the implementation of this Tribunal's order in O.A. No. 464/2013 was never absolute, but was expressly made subject to the final outcome of the litigation then pending before the Hon'ble Supreme Court.

16. It was further submitted by the respondents that since the matter was *sub-judice* before the Apex Court, the Integrated Headquarters, MoD (Navy) issued a Conditional Sanction Letter dated 16.09.2015. The learned counsel emphasized that this condition was explicitly communicated to the applicant through

the Corrigendum PPO dated 10.12.2015, which contained a specific note stating that the implementation was subject to the final outcome of the Civil Appeal and that any arrears paid would be recovered from his pension in case the Civil Appeal was decided in favor of the Government.

17. The learned counsel for the respondents submitted that the applicant, being a retired commissioned officer, was fully aware of the contingent nature of the payment at the time of receipt. It is argued that having accepted the financial benefit with the clear knowledge of a recovery clause, the applicant is now legally bound by the terms of that acceptance and cannot challenge the recovery on the grounds of "hardship."

18. The learned counsel for the respondents relied on the judgment of ***Suchet Singh Yadav (supra)***, wherein the Apex Court set aside the order of this Tribunal dated 25.02.2015. It is submitted that once the underlying judicial order was overturned, the applicant lost any legal entitlement to the enhanced pension, and the respondents are duty-bound to recover the unauthorized payments to protect the public exchequer.

19. The learned counsel for the respondents further relied on the distinction between a "departmental mistake" and a "conditional court order." It is submitted that the principles in ***State of Punjab vs. Rafiq Masih (White Washer) (supra)*** and ***Syed Abdul Qadir vs. State of Bihar (supra)*** are not applicable here. The respondents contend that those precedents protect employees from recoveries arising out of an employer's error, whereas in the present case, the payment was a deliberate, temporary measure subject to a judicial "claw-back" provision.

20. Regarding the Income Tax deduction of approximately ₹5,65,000/-, the respondents submitted that this amount was remitted to the tax authorities as per statutory requirements. It is submitted that the applicant's grievance regarding the tax portion lies with the Income Tax Department and does not provide a legal basis to stay the recovery of the gross arrears disbursed under the conditional PPO.

ANALYSIS

21. On the careful perusal of the material available on record and also the submissions made on behalf of the parties, we are of the view that the claim of the applicant to quash these

recovery proceedings is not sustainable in the eyes of law for the reasons recorded hereinafter.

22. With respect to the merits of the case and to put the facts in perspective, it is observed that the genesis of the dispute lies in the implementation of this Tribunal's order in OA 464/2013 dated 25.02.2015. While the respondents disbursed a gross sum of approximately ₹19,40,000/- as arrears, this disbursement was not an absolute or final settlement of dues. The Corrigendum PPO dated 10.12.2015 explicitly contained a "Note" stating that the implementation was subject to the final outcome of the Civil Appeal pending before the Hon'ble Supreme Court. It was further stipulated that the arrears would be recovered from the applicant's pension in case the Civil Appeal was decided in favor of the Government. The applicant was clearly on notice of the fact that the order was pending before the Hon'ble Supreme Court, and the decision of the Hon'ble Supreme Court might warrant future recovery of the said arrears.

23. We further note that a similar issue pertaining to the entitlement of pre-1996 retirees to the next higher pay scale (specifically the scale of ₹13500-17100) was finally adjudicated

by the Hon'ble Supreme Court in ***Suchet Singh Yadav (supra)***.

The Apex Court, while interpreting the Government Order dated 21.11.1997, held that the benefit of higher pay scales was intended for officers who were in active service as of 01.01.1996 and could not be extended to those who had already retired. Para 37 of the said judgment states to the effect: -

“37. There cannot be any dispute to propositions laid down in above mentioned cases of this Court where this Court has laid down that the State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut-off date for extension of benefits especially pensionary benefits, there has to be a classification founded on some rational principle when similarly situated class is differentiated for grant of any benefit. As noted above, present is not a case where there is any discrimination in pensionary benefits of pre 01.01.1996 and post 01.01.1996 retirees. The applicants, base their claims on the order of the Government of India dated 21.11.1997 and we have already held that those who were not in service on 01.01.1996 could not claim any benefit of the order dated 21.11.1997. Thus, present is not a case of any kind of discrimination and differentiation in pensionery benefits of pre and post 01.01.1996 retirees. We have already noticed above that order

dated 21.11.1997 was issued in reference to pay and allowances of Armed Forces Officers, which pre-supposes that these officers were in the establishment on 01.01.1996. We thus are of the view that applicants were clearly not entitled for grant of benefit of higher pay scale under the order dated 21.11.1997. The orders of the Armed Forces Tribunal extending the said benefit to those applicants who had already retired before 01.01.1996 are set aside whereas the orders of the Armed Forces Tribunal which have taken the view that Armed Forces Officers, who have retired before 01.01.1996 are not entitled for pensionary benefits are upheld.”

Crucially, the Apex Court expressly listed the appeal arising from the applicant's own case and formally set aside the order dated 25.02.2015. By virtue of this reversal, the legal basis for the grant of enhanced pension stood extinguished *ab initio*. Consequently, the 'conditional implementation' clause contained in the Corrigendum PPO came into operation, thereby conferring upon the respondents the legal right to seek restitution of the arrears paid.

24. The contention of the applicant regarding the "unilateral" nature of the recovery clause in the PPO cannot be accepted.

Since the respondents had challenged the original order before the higher forum, they were within their rights to make the payment "contingent" upon the final judicial outcome. The applicant, having accepted the substantial financial benefit with the express knowledge of this recovery condition, is now bound by the principle of restitution. Once the underlying decree was set aside by the Hon'ble Supreme Court, the parties must be restored to the position they would have occupied had the reversed order never been passed.

25. Before parting, it is pertinent to observe that the reliance placed by the learned counsel for the applicant on the cases of ***State of Punjab vs. Rafiq Masih (White Washer) (supra)*** and ***Syed Abdul Qadir vs. State of Bihar (supra)*** is misplaced. Those precedents are designed to protect retired employees from recoveries arising out of bona fide departmental mistakes where the employee was unaware of the overpayment. In the instant case, there was no mistake, there was a conditional implementation of a court order. The presence of a specific "claw-back" provision in the PPO removes the element of "innocent

receipt" which is the prerequisite for relief under **Rafiq Masih (White Washer) (supra)**.

26. Our view is further fortified by the decision in **Chandi Prasad Uniyal vs. State of Uttarakhand [(2012) 8 SCC 417]**, wherein the Hon'ble Supreme Court emphasized that any amount paid or received without the authority of law can always be recovered, as the law implies an obligation on the payee to repay the money to prevent unjust enrichment. The Court noted that such funds are "taxpayers' money" and the absence of fraud on the part of the recipient does not bar the State from seeking restitution.

27. Regarding the grievance that ₹5,65,000/- was deducted as Income Tax at source, we find that while the respondents are technically entitled to the restitution of the gross amount, it would be iniquitous to force a septuagenarian pensioner to refund the entire sum in a single lump sum. Following the spirit of the law laid down in **Chandi Prasad Uniyal v. State of Uttarakhand [(2012) 8 SCC 417]** and **High Court of Punjab & Haryana vs. Jagdev Singh [(2016) 14 SCC 267]**, where the Apex Court directed that recovery from retirees must be made in

reasonable installments to avoid extreme hardship, we are of the view that the recovery should be spread over a feasible period. The applicant remains at liberty to approach the Income Tax authorities for a refund of the tax portion upon production of the recovery certificate provided by the respondents.

28. In view of the foregoing, we find no illegality or infirmity in the impugned orders dated 08.05.2018 and 09.07.2018. The respondents have acted within their legal rights to seek restitution of public money following the reversal of the judicial basis for such payment by the Hon'ble Supreme Court. However, to ensure that the recovery is not oppressive, we direct that:

- (i) Recovery shall be effected in instalments of one-third of the monthly pension until the liquidation of the amount paid in excess to the applicant, as per Rule 95 (d) of the Pension Regulations for the Army, 2008 (Part-II).**
- (ii) During the period of recovery, if any arrears or lump-sum payments accrue to the applicant, viz. OROP arrears, Pay Commission arrears, etc., the same shall be diverted towards liquidation of the excess payment, depending on the amount outstanding for recovery.**

(iii) No interest shall be charged on the recovery amount.

(iv) The respondents shall ensure that a statement to the effect that recovery is being made is reflected in the applicant's pension slip to facilitate his tax refund claim.

29. Hence, the OA 1560/2018 is dismissed with the above directions.

30. Pending miscellaneous application(s) shall also stand disposed of.

31. No order as to costs.

Pronounced in the open Court on this 15th day of January, 2026.

(JUSTICE NANDITA DUBEY)

MEMBER (J)

(RASIKA CHAUBE)

MEMBER (A)

/MF/

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B.

OA 1560/2018 with MA 516/2021 & 3894/2024

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For Applicant : Mr. Bikrama Sah, Advocate
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**HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIIKA CHAUBE, MEMBER (A)**

O R D E R
15.01.2026

Vide our detailed order of even date we have dismissed the OA 1560/2018. Learned counsel for the applicant makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007.

After hearing learned counsel for the respondents and on perusal of 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, the prayer for grant of leave to appeal stands declined.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

/

(RASIIKA CHAUBE)
MEMBER (A)

POOJA