

**ARMED FORCES TRIBUNAL
REGIONAL BENCH
JABALPUR**

CORAM :

**HON'BLE MR JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN GOPAL R, MEMBER (A)**

OA 69/2022 with MA 132/2022

No. 6361486 Sep Moti Lal (Retd)
S/o Late Shri Balmeek,
R/o H.No. 35, Near Mandir,
Beldah, Hanumangarh, Rampur Naikin,
District – Sidhi (M.P) - 486771

.....Applicant

Versus

- 1. Union of India,**
Through the Secretary,
Ministry of Defence,
Government of India, New Delhi.
- 2. The COAS,**
IHQ, MoD (Army),
DHQ, PO, New Delhi.
- 3. PCDA (P),**
Draupadi Ghat,
Allahabad
- 4. OIC, ASC Records (South),**
Bangalore (Karnataka)

.....Respondents

For Applicant : Mr Arya Bhatt and Mr Brahmendra Pathak, Advocates

For Respondents : Mr RK Jaiswal, CGSC

ORDER

MA 132/2022

Keeping in view the averments made in this application finding the same to be bonafide, in the light of the decision in *Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648]*, the same is allowed condoning the delay in filing the OA, MA stands disposed of.

OA 69/2022

Brief Facts of the Case

1. The applicant was enrolled in ASC, on 01.01.1966 with terms of engagement of 10 years in Colour Service and 05 years in Reserve Service. On completion of his Colour and Reserve Service, individual had been discharged from service on 01.01.1981 under Army Rule 13(3) III (i) on fulfilling conditions of enrolment.
2. As he had completed pensionable service, he was in receipt of the Reservist Pension w.e.f. 01.01.1981 vide PPO No. S/2756/81 dated 16.03.1981. From time to time, his pension had been periodically revised. The individual was drawing his pension through SB A/c No. 11391668628, State Bank of India, ADB Churhat, Sidhi (M.P). It emerges that the individual had been paid pension for the rank of regular Sepoy instead of a Reservist by the Pension Disbursing Agency (PDA).
3. Vide SBI, Centralized Pension Processing Cell, Bhopal letter No. CPPC/RECOVERY/2020-2021/1 dated 29.05.2020 (*Annexure A/1*), the individual had been intimated that a sum of Rs. 7,79,101/- had been paid to him erroneously on account of Sepoy's pension instead of Reservist's pension during the period 01.01.2006 to 30.04.2020. Hence, a sum of Rs. 3,00,000/- was going to be recovered in one instalment and the balance of 479101/- would also be recovered based on instructions for recovery of excess payment issued by RBI as per Para 11 of RBI Master Circular dated 01.07.2015.

4. Despite representation to Banking Ombudsman not to effect the recovery, the bank vide SBI CPPC, Bhopal letter No. CPPC/2020-21/OMBUDSMAN/203 dated 25.09.2020, had gone ahead with a recovery of sum of Rs. 3,00,000/- in one go and also initiated process for recovery of the balance amount. From the documents placed on record, it emerges the recovery had been started of based on Audit of e-Pension Payment Scrolls of SBI, CPPC, Bhopal for the month of 11/2019 by PCDA (P) wherein the overpayment of pension had been detected and the same being communicated by PCDA(P), Allahabad letter No. AT/SAC/T-4/2020 dated 30.04.2020 addressed to ***The Chief Manager, SBI, CPPC, Bhopal***. As per PCDA(P), the individual was only entitled Rs. 3,500/- p.m. as basic pension w.e.f. 01.01.2006 and Rs. 9,000/- p.m. as basic pension under 7th CPC (01.01.2016).

Brief Arguments by the Counsel for the Applicant

5. The Counsel averred that pension of the applicant had been reduced in gross violation of principles of natural justice and was illegal and impermissible. Drawing attention to the settled law position as held by the Apex Court in ***State of Punjab & Others Vs Rafique Masih (2014) 8 SCC 883***, which had upheld that the recovery of amount paid in excess without fault on the part of the employee is illegal, the same is applicable in the case of recovery of excess Pension paid by the fault of the organisation to the pensioner.

6. Being aggrieved by the unauthorised illegal recovery from the meagre Reserve Pension, being discriminatory and arbitrary in nature, the OA has been filed with the following prayers: -

- (a) To direct the respondents to reverse the unauthorised deduction of Rs. 3,00,000/- to the applicant and also stop further recovery of overpayment of pension.

- (b) Any other relief/order which the Tribunal may deem fit and proper under the fact and circumstances including cost of litigation.

Brief Arguments by the Counsel for Respondents

7. The bank has erroneously made the payment of service pension for the rank of regular Sepoy instead of the rank of Reservist during the period 01.01.2006 to 30.04.2020. When the same had been brought to the notice by PCDA(P) to the SBI, CPPC, Bhopal, the PDA recovered Rs. 3,00,000/- in June 2020 and started recovery for the balance of Rs. 4,79,101/-. The said recovery was based on Para 11 of RBI Master Circular dated 01.07.2015 containing instructions for recovery for excess payment. The Counsel also averred that before starting payment of pension, the bank normally obtains an undertaking in prescribed format from the pensioner that any excess payment credited to his account can be recovered by the bank. Hence, application may be dismissed being devoid of merit with cost.

Consideration

8. Having heard the Counsel for the Applicant and the Respondents, the questions which remain in front of us is two fold:-

- (a) The circumstances which led to the excess payment and responsibility for the same lies with the Applicant or the PDA/ Respondents?
- (b) Whether the PDA was correct in recovery of the excess amount from the Pensioner?

9. Coming to the issue of circumstances which led to the excess payment, we conclude that there had been no intentional fraud or misrepresentation by the applicant. On perusal of the PCDA(P), Allahabad letter No. AT/SAC/T-4/2020 dated 30.04.2020 addressed to *The Chief Manager, SBI, CPPC, Bhopal*, it clearly emerges non-applicability of enhanced pensions to Reservists. Hence, we hold that the error which

led to the excess payment solely rests on the Pension Disbursing Agency (i.e. SBI, CPPC, Bhopal).

10. The second issue regarding the correctness of the course of action undertaken to recover the excess amount, we hold that it is violative of the settled law position regarding recoveries as laid down by the Hon'ble Supreme Court in *Civil Appeal 11527/2014, State of Punjab Vs Rafiq Masih*. In Rafiq Masih's case, the Apex Court had summed up the circumstances where in recovery could not be effectuated and held that the circumstances are independent from each other and operate separately and only one of the conditions out of them needs to be satisfied. The action of basing the recovery on RBI Master Circular dated 01.07.2015, we are constrained to point out that it is not in consonance with the tenets laid down by the Apex Court in Rafiq Masih (Supra) case. Furthermore, executive instructions given in DOPT, Ministry of Personnel, Public Grievances & Pension, Govt of India letter No. F.No. 1 8/03/20 1 5-Estt. (Pay-I) dated 02.03.2016 again reiterates the circumstances under which recovery cannot be effected for excess/wrong payments.

11. The averment by the Counsel for the Respondents that before the commencement of pension, as per procedure, an undertaking would have been given by the pensioner to the PDA with regard to concurrence for recovery of excess/wrong payment, it is another settled law position as held by Hon'ble Supreme Court in *Civil Appeal 6357/2019 Sabbir Hasan Vs State of Uttar Pradesh*, wherein it was held that a recovery effected by the department was illegal despite an undertaking by the employee that excess payment could be recovered in case any mistake was found.

12. The OA is allowed. We hereby order that the Pension Disbursing Agency to reimburse an amount of Rs 7,79,101/ which had been recovered for wrong/excess payment for the period 01.01.2006 - 30.04.2020 within four weeks of receipt of the copy of this order, failing which, the reimbursement will carry interest @ 8% per annum.

13. The PCDA (P) will ensure compliance of this order by passing necessary instructions to the SBI, CPPC, Bhopal. Registry to also ensure that a copy of this order be served to SBI, ADB Churhat, Sidhi (M.P) from where the applicant is drawing his pension (SB a/c No 11391668628).

14. No order as to costs.

Pronounced in Open Court on

18th July 2023

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN GOPAL R)
MEMBER (A)

A/L