**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-17179-2000

KULDIP SINGH RANA

...PETITIONER

VERSUS

UNION OF INDIA

....RESPONDENTS

1.	The date when the judgment is reserved	02.02.2026
2.	The date when the judgment is pronounced	11.03.2026
3.	The date when the judgment is uploaded	12.03.2026
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5.	The delay, if any of the pronouncement of full judgment and reason thereof.	Not applicable

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Y.P. Singla, Advocate
for the petitioner
Mr. Aseem Aggarwal, Advocate, Sr. Panel counsel
for respondents/UOI

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SANDEEP MOUDGIL, J

Prayer

1. The civil writ petition under Articles 226/227 of the Constitution of India for the issuance of a writ of certiorari, for quashing the action of the respondents whereby the respondents illegally and arbitrarily deducted a total sum of ₹66,988/- from the salary and pensionary benefits of the petitioner without passing any specific order and without affording any reasonable opportunity of being heard to the petitioner, in violation of the principles of

natural justice, and also for quashing the action of the respondents in not fixing the pension of the petitioner on the basis of last pay drawn as per Para 28 of the Pension Regulations for the Army, 1961 (Part-I), and for the issuance of a writ of mandamus directing the respondents to release the amount of ₹66,988/- along with interest @ 18% per annum and further to fix the pension of the petitioner on the basis of his last pay drawn.

Brief Facts

2. The petitioner was recruited in the Army as a Jawan on 24.06.1960. Thereafter, he was promoted to the rank of Naik on 01.01.1987 and further promoted to the rank of Havaldar on 01.01.1990. In the year 1996, District Court Martial (DCM) proceedings were initiated against the petitioner in respect of an alleged embezzlement arising out of discrepancy in the accounts for July, 1992. Although the prosecution failed to prove the charges beyond reasonable doubt, the petitioner was convicted and awarded the penalty of reduction in rank along with three months' rigorous imprisonment.

3. The petitioner submitted a pre-confirmation petition against the said conviction; however, the same was not entertained on the ground that it was not addressed to the competent authority. In the meantime, the DCM proceedings were confirmed on 07.09.1996. Consequently, the petitioner's pre-confirmation petition was rendered infructuous. The respondents advised the petitioner to file a post-confirmation petition. However, during this period the petitioner was transferred from Jalandhar Cantt. to the Punch Sector at the International Border, due to which he was unable to properly pursue his case before the competent authority at Jalandhar Cantt.

3. Due to procedural delay, the penalty of reduction in rank could be

effected only till the retirement of the petitioner, and he continued to draw the pay scale attached to the rank of Havaldar up to the date of his retirement on 30.06.2000. However, the petitioner was surprised to find in the Statement of Account for the quarter ending February, 2000 and June, 2000 (Annexures P-3 and P-5) that the respondents had deducted a sum of ₹66,988/- from the arrears of his salary and pensionary benefits.

4. Thereafter, Pension Payment Order dated 22.04.2000 (Annexure P-6) was issued to the petitioner showing his rank as TS-Naik in the pay scale of ₹3425–4700, and his pension was fixed at ₹1809/- instead of ₹1961/-, which would have been payable to him in the rank of Havaldar on the basis of the last pay drawn, as provided under Para 28 of the Pension Regulations for the Army, 1961 (Part-I). Aggrieved by the illegal deduction and incorrect fixation of pension, the petitioner served legal notices dated 04.08.2000 and 15.11.2000 upon the respondents, requesting release of the deducted amount of ₹66,988/- and proper fixation of his pension on the basis of the last pay drawn.However, the respondents failed to take any decision in the matter and merely forwarded the case to Respondent No.4 for necessary action.

5. Hence, the present writ petition.

Contentions

On behalf of petitioner

6. Learned counsel for the petitioner submits that the respondents have illegally and arbitrarily deducted a sum of ₹66,988/- from the salary arrears and pensionary benefits of the petitioner without passing any specific order. It is contended that the said deduction has been made without affording any opportunity of hearing to the petitioner, which is in clear violation of the

principles of natural justice.

7. Learned counsel further submits that the penalty of reduction in rank was never implemented during the service period of the petitioner, and he continued to draw salary in the rank of Havaldar till his retirement on 30.06.2000. It is argued that the respondents have wrongly fixed the pension of the petitioner in the rank of TS-Naik instead of Havaldar, despite the fact that pension is required to be fixed on the basis of last pay drawn as per Para 28 of the Pension Regulations for the Army, 1961 (Part-I) and the petitioner was drawing last pay in the rank of Havaldar.

On behalf of respondent

8. Learned counsel for the respondents submits that the present writ petition is not maintainable in law and is liable to be dismissed as no legal right of the petitioner has been infringed. It is further contended that the petitioner was tried by a District Court Martial for misappropriation of government money and was awarded punishment of reduction in rank along with three months' rigorous imprisonment in military custody.

9. Learned counsel further submits that consequent to the reduction in rank, the petitioner was not entitled to draw pay and allowances of the rank of Havaldar, and therefore his pension was correctly fixed in the minimum rank of Naib (Time Scale) by PCDA (Pensions), Allahabad vide PPO dated 22.04.2000. It is argued that due to procedural delay, the punishment was recorded through Part-II Order in the year 1998, and therefore the petitioner errorneously continued to receive pay and allowances of the rank of Havaldar until the order was processed and any excess payment made earlier was subsequently adjusted at the time of final settlement of accounts by PAO (OR)

Artillery, and accordingly the recovery of ₹66,988/- was lawful and justified.

10. Arguments were heard and the judgement was kept reserved on 02.02.2026.

Legal Issue

Whether recovery of excess salary paid due to administrative or procedural delay is legally permissible where the employee was aware, or ought reasonably to have been aware, that such payment was inconsistent with his lawful rank or entitlement, and whether such circumstances fall outside the equitable bar ordinarily applicable against recovery of excess payments?

Analysis

11. At the outset, it is pertinent to discuss the law relating to recovery of excess payments made to government employees which has evolved through a careful and gradual judicial balancing of competing constitutional values. On one hand lies the principle that public money cannot be dissipated through mistake, and that any payment made without legal sanction remains recoverable. On the other lies the equitable concern that an employee who innocently receives payments, calculated entirely by the employer, should not be subjected to harsh and unexpected recoveries long after the benefit has been received and consumed. The modern jurisprudence of service law represents the reconciliation of these two principles.

12. The early judicial approach was largely founded upon the doctrine that money paid without authority of law cannot be retained. Courts consistently recognised that the State is under an obligation to safeguard the public exchequer and that an employee cannot claim a vested right in an amount which was never legally due to him. This principle was emphatically

articulated by the Supreme Court in ***Chandi Prasad Uniyal v. State of Uttarakhand, (2012) 8 SCC 417***, where the Court observed that any amount paid without legal entitlement is recoverable and that public funds cannot be permitted to remain in the hands of a person merely because the mistake originated with the employer. The Court stressed that employees are not entitled to retain payments which were clearly in excess of their lawful entitlement and that the State has a duty to rectify such errors once discovered. Relevant extract is under:

> *16. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.*

13. However, judicial thought did not remain confined to the strict doctrine of restitution as courts gradually acknowledged that the rigid enforcement of recovery could, in certain circumstances, operate with considerable hardship, particularly where the employee had no role in the error and had structured his financial affairs in the bona fide belief that the payment was legitimate. It is within this equitable context that the Supreme

Court, in ***Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475***, recognised that recovery may not always be justified where excess payment had been made due to a bona fide mistake of the employer and the employees were not guilty of any misrepresentation or fraud, while observing that:

> *"58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess."*

14. The law ultimately attained a more definitive articulation in "***State of Punjab v. Rafiq Masih (White Washer), (2015) 4 SCC 334"***, where the Supreme Court crystallised certain categories of cases in which recovery would ordinarily be impermissible. The Court held that recovery of excess payments would generally be barred in situations such as recovery from employees belonging to lower service categories, recovery from retired employees or those nearing retirement, recovery of payments made over a long period exceeding five years, or cases where recovery would be so harsh and arbitrary that it would outweigh the employer's right to reclaim the amount. The principle that emerged was essentially equitable: when the employee is completely innocent and the mistake is wholly attributable to the employer, recovery may be interdicted to prevent disproportionate hardship.

15. Yet, it is crucial to emphasise that this doctrine was never intended to create an absolute immunity against recovery. The judgment itself recognised that the principle operates only where the employee is free from

blame and unaware of the overpayment. The equitable protection collapses where the employee either contributed to the error or knowingly accepted a benefit beyond his entitlement.

16. This limitation was clarified soon thereafter in "***High Court of Punjab & Haryana v. Jagdev Singh, (2016) 14 SCC 267***". The Supreme Court held that where an employee had furnished an undertaking that any excess payment found later would be refundable, recovery would be permissible notwithstanding the equitable considerations discussed earlier.

17. Further refinement of the doctrine occurred in ***"Thomas Daniel v. State of Kerala, 2022 SCC OnLine SC 536"***, where the Court reiterated that the equitable bar against recovery applies only when the employee had neither misrepresented facts nor possessed knowledge of the overpayment. If the employee had knowledge of the irregularity, the State's right to recover cannot be defeated merely by invoking the doctrine of hardship. Relevant extract is 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."

18. In view of this evolving jurisprudence, a coherent doctrinal structure emerges. The law does not impose an absolute prohibition on recovery of excess payments. Instead, it creates an equitable shield for employees who are genuinely blameless and unaware of the error. Where the employee knew, or reasonably ought to have known, that the payment exceeded his entitlement, the shield disappears and the State's right to recover prevails. Equity, as the classical maxim reminds us, does not assist a volunteer who knowingly retains a benefit that the law does not sanction - *nullus commodum capere potest de injuria sua propria* which means that a party may not derive an advantage from its own unlawful acts. Thus, the writ court must carefully examine whether the petitioner stood in innocent ignorance or in conscious acquiescence and a claim founded upon an inequitable advantage cannot be sustained in law.

19. Viewed through this settled framework, the present case shall be examined. In the present matter, the substratum of the petitioner's grievance rests upon the deduction of ₹66,988/- from salary arrears and pensionary benefits and the fixation of pension in a rank lower than Havaldar. It is not in dispute that the petitioner was enrolled in the Regiment of Artillery on 24.06.1980 and was subsequently promoted to the rank of Naik w.e.f 01.07.1980 and Havaldar w.e.f 01.03.1990. The narrative of events discloses that the petitioner had been tried by a District Court Martial under Section 52(b) of the Army Act, 1950 for misappropriation of government funds and was awarded punishment of reduction in rank coupled with a term of rigorous imprisonment. The punishment, once confirmed, inevitably carried with it the

legal consequence that the petitioner could not legitimately continue to draw the emoluments attached to the higher rank. A reduction in rank is not a peripheral administrative entry but a substantive alteration of service status, directly affecting pay, responsibilities and pensionary entitlement. Once such punishment was imposed and confirmed, the petitioner was no longer legally entitled to the pay scale attached to the higher rank.

20. As admitted by the respondents, that the continuation of higher salary occurred merely because the administrative process of recording the punishment in the service records and issuing the corresponding orders took some time. The fact that administrative processes delayed the formal recording of the punishment through Part-II orders until 1998 cannot, by any juridical alchemy, transform an irregular payment into a vested entitlement. The petitioner cannot plausibly assert such innocence. The punishment of reduction in rank was neither hidden nor ambiguous. It was a direct consequence of the court martial proceedings whose outcome was fully known to him. A soldier, disciplined by the rigours of military command and aware of the hierarchical structure that governs service conditions, cannot reasonably contend that he believed himself entitled to continue receiving pay attached to a rank which he had already been reduced from by judicial order. His subsequent posting as a gunner, consistent with the reduced rank, would have made the position even more evident. The continuation of higher pay was therefore not an entitlement arising from lawful service but a transient administrative anomaly occasioned by procedural delay. In such circumstances, it would be unrealistic to suggest that he genuinely believed himself entitled to the pay and allowances of the higher rank.

21. The doctrine laid down in the cases discussed above protects employees who innocently receive payments which they cannot reasonably detect as erroneous. But where the entitlement is directly linked to a known disciplinary punishment, the irregularity becomes self-evident. The petitioner, fully conscious that his rank had been reduced, continued to receive the higher pay without bringing the discrepancy to the notice of the authorities. The equitable protection developed in service jurisprudence cannot extend to such circumstances.

22. Equally unpersuasive is the contention that pension ought to have been fixed on the basis of the last pay drawn under Paragraph 28 of the Pension Regulations for the Army, 1961 (Part I). The expression "last pay drawn" in pension jurisprudence cannot be read in isolation from the legality of the pay itself. Pension is not calculated upon a fortuitous figure accidentally credited into an employee's account, it is computed upon the lawful emoluments attached to the rank which the employee was legally entitled to hold at the time of retirement. If the pay drawn was the result of an administrative error inconsistent with the employee's rank, it cannot form the foundation for pensionary computation. Otherwise, a temporary mistake would crystallise into a permanent financial liability upon the public exchequer. Where a punishment of reduction in rank had already been confirmed and had attained finality, the lawful basis for pension could only be the reduced rank. To accept the petitioner's argument would be to elevate an accounting delay into a substantive right, thereby converting administrative inadvertence into a permanent financial obligation of the State.

23. Thus, when the authorities adjusted the excess amount and fixed the pension on the basis of the rank that the petitioner lawfully held, they merely restored the legal position that ought to have existed from the moment the punishment took effect. The recovery of the excess amount was therefore not punitive in character but corrective in nature, a necessary step to reconcile the accounts with the petitioner’s true entitlement.

24. The evolution of the law on recovery of excess payments therefore demonstrates a consistent judicial philosophy. Equity intervenes to protect innocence, not to legitimise advantage obtained with knowledge of its irregularity. Where the employee is blameless, courts restrain recovery to prevent hardship. Where the employee is aware that the payment exceeds his lawful entitlement, the balance tilts decisively in favour of the State’s duty to reclaim public money. The present case lies firmly within the latter category, where the correction of accounts is not only legally permissible but necessary to uphold the principle that public funds must be disbursed strictly in accordance with law.

25. Viewed through this prism, the deduction of ₹66,988/- represents nothing more than the rectification of a bona fide administrative delay in implementing a lawful punishment. The petitioner continued to draw higher pay during the interregnum not because he possessed a legal entitlement but because the machinery of record-keeping moved slower than the reality of his service status. To allow him now to retain the benefit of that delay and to demand pensionary advantages flowing from it would be to convert a procedural lapse into an instrument of unjust enrichment.

Conclusion

26. In such circumstances, the recovery effected by the authorities must be regarded as a legitimate correction of accounts rather than an arbitrary deprivation, and the fixation of pension on the basis of the reduced rank stands on firm legal footing.

27. Consequently, the petitioner's claim does not merit the intervention of this Court in the exercise of its extraordinary writ jurisdiction. The present petition is dismissed being devoid of merit.

28. Pending applications, if any, stand disposed of.

(SANDEEP MOUDGIL)
JUDGE

11.03.2026
Meenu

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*