

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 13 OF 2023
(Subject:- Refund of Recovered Amount)**

DISTRICT:-OSMANABAD

Suresh Bhiva Wagh,)
Age 59 years, Occu. Retired as A.S.I.)
R/o. Sant Goraba Kaka Nagar,)
Sanjay Road, Osmanabad,)
Tq. and Dist. Osmanabad.)
Mob. No. 8888847429) **APPLICANT**

V E R S U S

The Dist. Superintendent of Police,)
S.P. Office, Osmanabad.) **RESPONDENT**

APPEARANCE : Shri G.J. Kore, learned Counsel
for the applicant.
: Smt. Sanjivani K. Deshmukh-Ghate,
learned Presenting Officer for the
respondent authority.

CORAM : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

DATED : **18.01.2024.**

O R A L - O R D E R

Heard Shri G.J.Kore, learned counsel for the applicant and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the respondent authorities.

2. By filing this Original Application the applicant is seeking quashing and setting aside the impugned order dated 16.06.2022 thereby directing the recovery of certain amount from the retiral benefits of the applicant and also seeking refund of the said deducted amount of Rs. 1,38,120/-. The applicant is also seeking quashing and setting aside the impugned order dated 11.11.2022 thereby rejecting the claim of the applicant to refund of recovered amount.

3. Brief facts giving rise to the Original Application are as follows:-

(i) The applicant was serving in the Police Department. He was initially appointed on 03.11.1990 as Constable. The applicant came to be retired on superannuation on 30.06.2021. At that time he was working as a Assistant Sub Inspector (ASI) which comes under Class-III category.

(ii) It is the further case of the applicant that the respondent has passed the order of pay fixation on 23.05.2022 and after the said pay fixation it was noticed that amount of Rs. 1,38,120/- was wrongly paid to the applicant. Learned counsel for the applicant submits that the respondent has issued letter on 16.06.2022 to the accountant and directed to deduct the amount of Rs. 1,38,120/- from the

gratuity amount of the applicant. It has been stated in the said letter that during service time the aforesaid excess payment has been wrongly paid to the applicant. Hence, this Original Application.

4. Learned counsel for the applicant submits that due to wrong fixation of pay excess payment amounting to Rs. 1,38,120/- was paid to the applicant. Learned counsel for the applicant submits that the applicant was in Class-III category at the time of his retirement. Learned counsel for the applicant submits that similarly situated employees of the same department have approached to this Tribunal by filing Original Application No. 404/2019 and O.A.No. 48/2019 respectively. This Tribunal has allowed the said O.As. and directed the respondents to repay the deducted amount to the applicants. The copies of the said orders are annexed to the present Original Application. The applicant has submitted the representation on 01.11.2022 before the respondent authority and requested to repay the amount of Rs. 1,38,120/- which was deducted from his final retirement amount. However, the respondent by its letter/order dated 11.11.2022 rejected the request of the applicant and it has informed to the applicant

that deducted amount cannot be refunded as undertaking was given by the applicant.

5. Learned counsel for the applicant in order to substantiate his contention placed reliance in the case law of Hon'ble Apex Court in **Civil Appeal No. 11527/2014 arising out of S.L.P. (C) No. 11684/2012 & Ors. (State of Punjab and others etc. Vs. Rafiq Masih (White Washter) & Ors.** reported at **AIR 2015 SC 596.**

6. The respondents has filed the affidavit in reply and on the basis of said reply the learned P.O. submits that the applicant while serving in SRPF was given time bound promotion to the rank of Police Naik w.e.f. 03.11.2002 raising his pay from Rs. 3965/- to 4000/-. However subsequently by mistake when the applicant was given regular promotion as per his turn to the rank of Police Naik on 26.01.2005, again his pay was fixed twicely and due this mistake, there was over payment to the tune of Rs. 1,38,120/- till the date of his superannuation i.e. 30.06.2021. Learned P.O. submits that the respondent noticed the said mistake and thereafter issued order dated 16.06.2022 the directed to recovery the

excess payment amounting to Rs. 1,38,120/- paid to the applicant due to wrong fixation of pay.

7. Learned P.O. submits that the applicant has submitted the application on 01.11.2022 requesting to refund the deducted amount and the respondent has rightly rejected the request of the applicant by giving suitable reasons. Learned P.O. submits that as per directions of the Government in Finance Department's Circular dated 22.11.2021, the applicant has given an undertaking to refund the amount to Government, if paid in excess. Learned P.O. further submits that the directions of the Director General of Polices circular are dated 05.09.2018 and the Circular of Finance Department, Government of Maharashtra is dated 22.11.2021. Therefore, the recovery has been correctly made.

8. Learned P.O. submitted that once the applicant has given an undertaking to refund the said amount, now he cannot retract from the said undertaking and claim back the said amount. Learned P.O. submits that the applicant is neither entitled for the amount nor interest on the amount deducted from his pensionary benefits towards the recovery of

overpayment. There is no substance in the Original Application and the same is liable to be dismissed.

9. The applicant while serving as a Assistant Sub Inspector retired on 30.06.2021 on attaining the age of superannuation. The applicant is not responsible for the wrong fixation of pay nor has misled the facts in any manner in this regard. The applicant is a Class-III employee at the time of his retirement and in view of ratio laid down by the Hon'ble Apex court, the recovery from the pensionary benefits of the applicant that too after his retirement is illegal and impermissible.

10. In case of **State of Punjab & Ors. Vs. Rafiq Masih, in Civil Appeal No.11527/2014 decided on 18.12.2014.** In the said decision, the Hon'ble Apex Court has observed as follows:-

“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.”

In view of the aforesaid judgment of the Hon'ble Apex Court, the case of the applicant is squarely covered by circumstances (i) to (iii) mentioned in the above said decision as detailed in the above paragraphs.

11. It appears that the amount has been recovered from the pensionary benefits of the applicant though it is impermissible. However, it is to be noted that the Special Inspector General of Police has issued circular dated 05.09.2018 and directed not to recover the excess payment paid to the employees from the pensionary benefits or retirement

benefits in view of the judgment and directions given by the Hon'ble Apex Court as reproduced herein above. Thus the action on the part of respondent is illegal.

12. The contention as has been raised on behalf of the respondents that the applicant has given an undertaking to refund the amount to the Government, if paid in excess, and as such, the applicant is now estopped from claiming any relief. The said undertaking is of the date 29.11.2021. It is difficult to accept the contention of the respondents that the applicant has given the said undertaking voluntarily. Even if it is accepted that such undertaking is given by the applicant, that may not be of any help to respondents to oppose the request made by applicant for the reason that the said undertaking has been obtained recently after the retirement of the applicant.

13. In view of above, the impugned order dated 16.06.2022 issued by the respondent directing recovery of Rs. 1,38,120/- from the pensionary benefits of the applicant and order dated 11.11.2022 rejecting the representation of the applicant for refund of recovered amount are illegal and the same are required to be quashed and set aside. It further

appears that the respondent has recovered the said amount illegally from the pensionary benefits of the applicant. In view of same the applicant is entitled for the refund of the said amount recovered from the pensionary benefits of the applicant. Hence, the following order:-

ORDER

The Original Application No. 13 of 2023 is hereby allowed with the following terms:-

- (A) The impugned orders dated 11.11.2022 and 16.06.2022 issued by the respondent are hereby quashed and set aside.
- (B) The respondent is directed to refund the amount of Rs. 1,38,120/- to the applicant within three months from the date of receipt of certified copy of this order with interest @ 9% p.a. from the date of actual recovery till the date of refund.
- (C) In the circumstances there shall be no order as to costs.
- (D) The Original Application stands disposed of in aforesaid terms.

MEMBER (J)

Place:-Aurangabad

Date : 18.01.2024

SAS O.A. 13/2023(S.B.) VKJ Refund of Recovered Amount.