

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 29 OF 2017  
(Subject – Recovery)**

**DISTRICT : JALGAON**

**Shankar Daga Chaudhari,** )  
Age : 60 years, Occu. : Service Jr. Engineer (Retired),)  
R/o : 84 Pavan Nagar, Behind Cotton )  
Market Yard, Dhule, District : Dhule. )

**.... APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
Secretary, Command Area Development )  
Authority, Water Resources Department, )  
Mantralaya, Mumbai. )
2. **The Superintending Engineer,** )  
Jalgaon Irrigation Project Circle, )  
Jalgaon. )
3. **The Executive Engineer,** )  
Lower Tapi Project Division, )  
Chopda, District : Jalgaon. )
4. **The Accountant General,** )  
Maharashtra State, Partishka Bhavan, )  
(Old CGO Building), 101 Maharshi Karve )  
Road, Mumbai-400 020. )

**... RESPONDENTS**

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**APPEARANCE** : Shri A.D. Sugdare, Advocate for Applicant.

: Shri M.P. Gude, Presenting Officer for  
Respondent Nos. 1 & 4.

: Shri Y.M. Patil, Advocate for respondent Nos. 2  
& 3 (**Absent**).

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**CORAM** : **SHRI V.D. DONGRE, MEMBER (J).**  
**DATE** : **03.01.2023.**  
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**ORDER**

1. The present Original Application is filed seeking following reliefs :-

*“9(A) By order or directions by this Tribunal, it may be declared that the applicant is eligible to receive pension and pensionary benefits by taking into account his temporary past service from date his appointment on 02.03.1981 on the post of Technical Assistant and his pension case be submitted to the respondent No. 4 the Accountant General, Mumbai for grant of pension.*

*(A-1) By order or directions by this Tribunal, the order No. 242/2016, dated 15.12.2016 issued by the Executive Engineer, Lower Tapi Project Division, Chopda for recovery of an amount of Rs. 1,85,437 (Rupees one lack eighty five thousand four hundred thirty five) be quashed and set aside.”*

2. However, during the course of arguments learned Advocate for the applicant filed pursis on record dated 29.09.2022 seeking deletion of prayer clause 9(A). Hence, the

present O.A. will be considered only for prayer clause 9(A-1), which is reproduced hereinabove.

3. The facts in brief giving rise to this Original Application can be stated as follows :-

(a) The applicant was initially selected for Technical Assistant Training. After completion of training successfully, he was given appointment on the post of Technical Assistant in the office of Executive Engineer, Girna Canal Modernization Division at Jalgaon from 02.03.1981. He continuously worked on the said post. He was given annual increments and other benefits attached to the said post. The applicant completed three years continuous service on the post of Technical Assistant. He also passed the Sub Overseer Departmental Examination. The applicant was given appointment on the post of Civil Engineering Assistant vide order dated 09.10.1989. He resumed his duty on that post on 01.11.1989 in Jalgaon Irrigation Project Circle, Jalgaon. Moreover, as per the order dated 04.09.2004 (Annexure A-1), the applicant was given deemed date on the post of Sub-Overseer as of 18.05.1985 in view of G.R. dated 22.04.1977.

(b) It is further submitted that after completion of 12 years satisfactory service on the post of Technical Assistant and Sub-Overseer, the applicant was granted benefit of first time bound promotion w.e.f. 01.10.1994 pursuant to the G.R. dated 08.06.1995. After completion of 24 years' service, the applicant was granted second time bound promotion w.e.f. 01.10.2006 in view of G.R. dated 01.04.2010 as per the order dated 09.11.2010 (Annexure A-2). The applicant came to be promoted to the post of Junior Engineer as per the order dated 02.07.2007 (Annexure A-3). He retired on superannuation from the said post w.e.f. 30.06.2015 as is seen from retirement letter dated 20.05.2015 (Annexure A-4) issued by the respondent No. 3.

(c) It is submitted that after his retirement, pension papers of the applicant were sent to the office of respondent No. 4 i.e. the Accountant General, Maharashtra State, Mumbai by the respondent No. 3. The respondent No. 3 submitted the said pension papers by revising the pension making recovery of excess payment made to the applicant allegedly towards grant of first time bound promotion as on 01.10.1994 and second time bound promotion after completion of 24 years of service as on 01.10.2006, to

which the applicant was not eligible. The said re-fixation of pay order No. 48/2016 dated 05.05.2016 is at Annexure A-5. In view of the order dated 05.05.2016 (Annexure A-5), the respondent No. 3 issued impugned order No. 242/2016 dated 15.12.2016 (Annexure A-6) computing recovery of excess payment of Rs. 1,85,437/-, which was paid to the applicant during the period from 01.01.1986 to 30.06.2015.

(d) It is submitted that the said order of recovery No. 242/2016 dated 15.12.2016 (Annexure A-6) is challenged in this Original Application. It is contended that the said order was an erroneous decision. It was passed without application of mind. The respondent authorities ought to have considered the G.R. dated 07.10.2016 (Annexure A-7) in that regard. That was also policy decision of the Government to consider the past service on temporary basis for grant of benefits under time bound promotion and pensionary benefits. Moreover, the recovery is sought after retirement of the applicant on superannuation. It is well settled by the 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 Washer) etc.)** reported at **AIR 2015 SC 596,**

wherein it is said that recovery of excess amount if paid long back to the group C and D employees cannot be recovered. Hence, the present Original Application.

4. The present Original Application is resisted by filing affidavit in reply separately on behalf of respondent No. 1 and jointly on behalf of respondent Nos. 2 & 3 (wrongly stated as respondent Nos. 3 & 4) by one Shri Vivekanand S/o Gangadhar Jadhav, working as Sub Divisional Officer, Lower Tapi Rehabilitation Sub-Division, Chopda, District Jalgaon, thereby he denied all the adverse contentions raised in the Original Application. At the outset it is contended that the applicant was wrongly given time bound promotion on 01.10.1994, which ought to have been given from 18.05.1997 i.e. the date on which he completed 12 years continuous service on the post then held by him and the second benefit thereafter 12 years completion on 18.05.2009 instead of 01.10.2006. In view of that, the pay of the applicant was correctly re-fixed as per the order dated 05.12.2016 and consequently recovery of excess payment by the order 15.12.2016 (Annexure A-6) is ordered. Moreover, the applicant had given undertaking while re-fixing his pay at earlier point of time. Hence, there was no impediment for department to recover the excess amount, which the department was entitled to

receive. Hence, there is no merit in the Original Application and it is liable to be dismissed.

5. The affidavit in reply is filed on behalf of respondent No. 4 by one Shri Govind S/o Balkrishna Khulge, working as Sr. Accountants Officer in the office of the Principal Accountant General (A&E), Maharashtra, Mumbai, thereby he denied all the adverse contentions raised in the O.A. It is submitted that the respondent No. 4 office acts on the pension papers submitted by the concerned office, from which the Government servant retires. Consequently, the respondent No. 4 authorizes the pension, pensionary benefits and recovery of excess amount. However, the said recovery of excess amount is stayed by this Tribunal by the order dated 19.01.2017. In view of the same, the recovery is not done.

6. I have heard the arguments advanced by Shri A.D. Sugdare, learned Advocate for the applicant on one hand and Shri M.P. Gude, learned Presenting Officer for respondent Nos. 1 and 4 on the other hand. Shri Y.M. Patil, learned Advocate for respondent Nos. 2 and 3, is **absent**.

7. As discussed earlier, the present Original Application is proceeded only in respect of amended prayer clause 9(A-1), which is pertaining to recovery of excess amount paid to the applicant.

8. On perusal of the impugned order dated 15.12.2016 (Annexure A-6) would show that the recovery of excess amount of Rs. 1,85,437/- during the period from 01.01.1986 to 30.06.2015 is ordered to be recovered. During the said period, the applicant was working on the posts of Sub-Overseer, Civil Engineering Assistant and lastly as Junior Engineer i.e. Group-B post. The posts of Sub-Overseer and Civil Engineering Assistant are of Group-C, whereas post of Junior Engineer is of Group-B. Admittedly, recovery of excess amount is ordered on account of wrong pay fixation by giving first time bound promotion w.e.f. 01.10.1994 instead of 18.05.1997 and second time bound promotion w.e.f. 01.10.2006 instead of 18.05.2009. The applicant is not challenged the order of re-fixation of pay dated 05.05.2016 (Annexure A-5), whereby his pay was reduced. The applicant has only challenging the recovery part of it, which is issued separately as per the impugned order dated 15.12.2016 (Annexure A-6).



9. Learned Advocate for the applicant in these circumstances, strenuously urged before me that the said recovery arising out of wrong pay fixation computed after retirement of the applicant is not permissible as per the law laid down by the Hon'ble Apex Court Hon'ble Apex Court in the matter of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.** (cited supra), wherein in para No. 12 of the said judgment, it is laid down 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, summarize 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 the 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 employees, 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. Undisputedly, the applicant stood retired from the post of Junior Engineer on 30.06.2015 as reflected in retirement order dated 20.05.2015 (Annexure A-4). The recovery of excess amount is of the year beyond five years of date of retirement being from 01.01.1986 to 30.06.2015. In the circumstances, the present case will fall under the Clause Nos. (i), (ii), (iii) & (v) of para No. 12 of the judgment of the Hon'ble Apex Court. Though the respondent authorities have pleaded that the requisite undertaking was taken from the applicant, no document is produced on record by the respondents to substantiate the same. In view of the same, in my considered opinion, recovery of excess amount from the applicant is legally impermissible. Therefore, this O.A. succeeds. In the result, I proceed to pass following order :-

**ORDER**

(i) The Original Application is allowed in terms of prayer clause -9(A-1), which is as follows :-

*“(A-1) By order or directions by this Tribunal, the order No. 242/2016, dated 15.12.2016 issued by the Executive Engineer, Lower Tapi Project Division, Chopda for recovery of an amount of Rs. 1,85,437 (Rupees one lack eighty five thousand four hundred thirty five) be quashed and set aside.”*

- (ii) The interim order dated 19.01.2017 stands merged into final order.
- (iii) There shall be no order as to costs.

**PLACE : AURANGABAD.**  
**DATE : 03.01.2023.**

**(V.D. DONGRE)**  
**MEMBER (J)**