

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 332 OF 2019
(Subject – Recovery/Refund of Amount)**

DISTRICT : JALNA

Shri Sukhdev S/o Gunaji Nagre,)
Age : 58 years, Occu. : Retired,)
R/o : Kothare Hills, Sukhshanti Nagar,)
Mantha Choufuli, Jalna.)

.. **APPLICANT**

V E R S U S

1) **The State of Maharashtra,**)
Through The Secretary,)
Home Department,)
Mantralaya, Mumbai-32.)

2) **The Superintendent of Police,**)
Jalna.)

3) **The Accountant General-II,**)
Civil Lines, Nagpur.)

.. **RESPONDENTS**

APPEARANCE : Shri K.B. Jadhav, Advocate for the Applicant.

: Shri D.R. Patil, Presenting Officer for
Respondents.

CORAM : B.P. PATIL, ACTING CHAIRMAN.

DATE : 08.01.2020.

O R A L - O R D E R

1. The applicant has challenged the order dated 05.12.2017 passed by the respondent No. 2 directing recovery of an amount of Rs. 57,147/- towards excess payment made to him

due to wrong pay fixation by filing the present O.A. and also prayed to direct the respondents to refund an amount of Rs. 57,147/- recovered from his salary and retirement benefits.

2. The applicant was initially appointed as Constable on 14.10.1983 in the office of S.R.P.F., Jalna. In the year 2002, he was promoted as Head Constable. He was transferred in the office of S.P. Jalna from the office S.R.P.F., Jalna in the year 2007. In the year 2011, he was promoted on the post of Assistant Sub-Inspector and he worked on the said post till his retirement on attaining the age of superannuation w.e.f. 30.04.2018. It is his contention that the post of A.S.I. falls under Group-C category.

3. It is contention of the applicant that before his retirement, the respondent No. 2 re-fixed the pay of the applicant by the order dated 05.12.2017 w.e.f. 01.01.1996 to 01.07.2017 and directed to recover excess amount paid him due to wrong pay fixation. In pursuance of the said order, the recovery of an amount of Rs. 57,147/- was directed against him and accordingly, amount of Rs. 16,198/- and Rs. 16,196/- had been recovered from the salary of the applicant for the month of March and April 2018 and remaining amount of Rs. 24,753/- has been

recovered from his pensionary benefits i.e. gratuity amount in the month of July, 2018. It is his contention that the said recovery is impermissible in view of the guidelines given by the Hon'ble Apex Court in case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and others** reported in **2015 (4) SCC, 334**, as well as, the direction given by the Director General of Police, Mumbai by the Circular dated 05.09.2018. It is his contention that the said amount has been recovered when he was on the verge of retirement and the same is illegal. Therefore, he approached this Tribunal and prayed to quash and set aside the impugned order dated 05.12.2017 and to direct the respondents to refund the amount of Rs. 57,147/- recovered from his salary and pensionary benefits.

4. The respondent No. 1 has filed his affidavit in reply and resisted the contention of the applicant. He has not disputed the facts regarding appointment of the applicant, promotion and transfers and his date of retirement. He has denied the fact that the respondents recovered the amount illegally from the salary and pensionary benefits of the applicant without following the guidelines given by the Hon'ble Apex Court and the guidelines given by the Director General of Police, Mumbai in the Circular dated 05.09.2018. It is his contention

that the said Circular is issued on 05.09.2018 after retirement of the applicant and there is no violation of the guidelines. It is his contention that the amount has been recovered from the applicant, as the excess amount was paid to him due to wrong pay fixation. The said amount has been recovered as per the rules and there is no illegality in it and therefore, he has justified the impugned order.

5. I have heard Shri K.B. Jadhav, learned Advocate for the applicant and Shri D.R. Patil, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

6. There is no dispute regarding the fact that the applicant was initially appointed as Constable in the office of S.R.P.F., Jalna on 14.10.1983. Thereafter, he was promoted as Head Constable in the year 2002. In the year 2007, he was transferred in the office of S.P. Jalna. In the year 2011, he was promoted as A.S.I. Admittedly, the applicant retired from the service w.e.f. 30.04.2018 from the office of respondent No. 2 i.e. S.P. Jalna on attaining the age of superannuation. Admittedly, the post of ASI falls under Group-C category. Admittedly, wrong pay fixation of the applicant was made by the respondent No. 2

and accordingly, the excess payment was made to the applicant during the period from 01.01.1996 to 01.07.2017. At the time of retirement, the said mistake has been noticed by the respondents and therefore, the respondents have re-fixed the pay of the applicant by the order dated 05.12.2017 and directed recovery of excess amount from the salary of the applicant, as well as, from his retirement benefits. Admittedly, an amount of Rs. 16,198/- and Rs. 16,196/- have been recovered from the salary of the applicant for the month of March and April 2018 and remaining amount of Rs. 24,753/- has been recovered from the gratuity amount in the month of July, 2018.

7. Learned Advocate for the applicant has submitted that the impugned order has been issued by the respondent No. 2 when the applicant was on the verge of retirement and re-fixed the pay of the applicant on the ground that the wrong pay fixation has been made and the applicant was paid excess amount during the period from 01.01.1996 to 01.07.2017. He has submitted that the pay has been fixed by the respondents on their own accord and the applicant had not played any role in getting the same. The applicant had never practiced fraud on the respondents in getting the excess payment and he never misrepresented the respondents and therefore, he cannot be

blamed for it. The excess payment has been recovered from the salary and pensionary benefits of the applicant, when he was on the verge of retirement. He has submitted that the excess payment made to the employees due to wrong pay fixation cannot be recovered from the employees, who are on the verge of retirement and from their retirement benefits in view of the guidelines given by the Hon'ble Apex Court in case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and others** reported in **2015 (4) SCC, 334**, wherein it is 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, 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."

8. Learned Advocate for the applicant has submitted that the case of the applicant is squarely covered by the guidelines given by Hon'ble Apex Court in the above cited decision. The recovery has been made from the applicant from his pensionary benefits and it is illegal. Therefore, he has prayed to quash and set aside the impugned order dated 05.12.2017 and prayed to direct the respondents to refund an amount of Rs.

57,147/- recovered from the salary and pensionary benefits of the applicant by allowing the present O.A.

9. Learned Presenting Officer has submitted that the applicant has received the excess amount due to wrong pay fixation since 01.01.1996 and received excess payment during the period from 01.01.1996 to 01.07.2017. He has submitted that at the time of retirement of the applicant, the said mistake has been noticed by the respondent No. 2 and therefore, the respondent No. 2 re-fixed the pay of the applicant by the order dated 05.12.2017 and directed recovery of excess amount paid to the applicant. He has submitted that on the basis of the said order, an amount of Rs. 16,198/- and Rs. 16,196/- had been recovered from the salary of the applicant for the month of March and April 2018 and remaining amount of Rs. 24,753/- has been recovered from his pensionary benefits i.e. gratuity amount in the month of July, 2018. He has submitted that the said recovery has been made in view of the provisions of rules and there is no illegality in it. He has submitted that the respondents had followed the directions of the Director General of Police, Mumbai and the decision of the Hon'ble Apex Court and therefore, he has justified the impugned order of recovery and prayed to dismiss the present Original Application.

10. On perusal of the record, it reveals that the applicant was initially appointed as Constable. Thereafter, he was promoted on the post of Head Constable and Assistant Sub-Inspector. At the time of retirement, he was serving as ASI. The post of ASI falls under Group-C category. At the time of retirement of the applicant, the respondent No. 2 scrutinized his service record and that time the competent authority wrongly revised the pay of the applicant w.e.f. 01.01.1996 and therefore, he has received excess pay during the period from 01.01.1996 to 01.07.2017. The respondent No. 2 has corrected the said mistake by re-fixing the pay of the applicant by the order dated 05.12.2017 and directed recovery of excess payment made to the applicant due to wrong pay fixation during the period from 01.01.1996 to 01.07.2017. An amount of Rs. 57,147/- has been paid to the applicant in excess of his entitlement. Therefore, an amount of Rs. 16,198/- and Rs. 16,196/- had been recovered from the salary of the applicant for the month of March and April 2018 and remaining amount of Rs. 24,753/- has been recovered from his pensionary benefits i.e. gratuity amount in the month of July, 2018. The documents show that the recovery has been made when the applicant was on the verge of retirement and

after his retirement from his salary and from his pensionary benefits.

11. On perusal of the record, it reveals that the applicant has not played any role in getting the excess pay. The pay of the applicant has been fixed by the respondent No. 2 mistakenly and the applicant never misrepresented the respondent No. 2 in getting the excess pay. Not only this, but he never practiced fraud on the respondents in getting the said excess pay and therefore, the applicant cannot be blamed for it. Because of the mistake committed by the respondent No. 2, the excess payment was made to the applicant from 01.01.1997. Therefore, the said recovery cannot be made from the salary and pensionary benefits of the applicant, when he was on the verge of retirement. Such recovery is not permissible in view of the guidelines given by the the Hon'ble Apex Court in case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and others** reported in **2015 (4) SCC, 334**. Therefore, the impugned order dated 05.12.2017 directing recovery from the salary and pensionary benefits of the applicant is illegal. The recovery made by the respondent No. 2 from the salary of the applicant in pursuance of the order dated 05.12.2017 is illegal. The respondent No. 2 recovered the amount from the salary and pensionary benefits of the applicant

illegally and therefore, the applicant is entitled to get its refund. Therefore, the impugned order dated 05.12.2017 requires to be quashed and set aside by allowing the present Original Application.

12. In view of the discussions in the foregoing paragraphs, the Original Application is allowed. The impugned order dated 05.12.2017 directing recovery of excess payment made to the applicant is hereby quashed and set aside. The respondent No. 2 is directed to refund the amount of Rs. 57,147/- to the applicant within three months from the date of this order, failing which the respondents are liable to pay the interest @ 9% p.a. on the said amount from the date of this order till its realization.

There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 08.01.2020.

(B.P. PATIL)
ACTING CHAIRMAN

KPB S.B. O.A. No. 332 of 2017 BPP 2020 Refund of Amount