

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

**ORIGINAL APPLICATION NO. 386 OF 2019
(Subject – Recovery)**

DISTRICT : AURANGABAD

Gautam S/o. Rangnath Fasale,)
Age : 60 years, Occupation : Pensioner,)
R/o : Tapadiya Pride, Flat No. 12,)
Paithan Road, Near Mahanubhav Ashram)
Police Chowki, Aurangabad.).... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through the Secretary,)
Department of Home, Government of Maharashtra,))
Mantralaya, Mumbai- 400 032.)
2. **The Special Inspector General of Police,))**
Nanded Range, Opp. Big Bazar Mall,)
New Kawtha, Nanded.)
3. **The District Treasury Officer,**)
Nanded, Station Road, Tq. Dist. Nanded.)
4. **The In-charge Officer,**))
Pay Verification Unit at Aurangabad,)
Besides the District Collector Office,)
Aurangabad.)
5. **The District Superintendent of Police,))**
Nanded, Near Wazirabad, Nanded.) ... **RESPONDENTS**

APPEARANCE : Shri R.N. Bharaswadkar, Advocate for the
Applicant.

: Shri M.P. Gude, Presenting Officer for
Respondents.

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

DATE : **08.09.2022.**

O R D E R

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed challenging the recovery of amount of Rs. 4,00,160/- on account of excess amount paid to the applicant ordered vide impugned communication dated 21.05.2019 (page No. 84 of the paper book) issued by the office of Accountant General (A & E)-II, Nagpur, as well as, previous notice of recovery dated 07.03.2019 (Annexure A-6) issued by the respondent No. 5 i.e. the Superintendent of Police, Nanded in respect of recovery of excess amount of Rs. 4,00,160/- paid to the applicant.

2. The facts in brief giving rise to this application can be stated as follows :-

(a) The applicant was initially appointed in Police Department as Police Sub-Inspector in the year 1989 in the pay scale of Rs. 1640-60-2600 EB-75-2900 vide order dated 20.03.1999 (Annexure A-1). The applicant was granted revised pay scale of Rs. 5500-175-9000 as on

01.01.1996. Vide order dated 14.06.2005 (Annexure A-2) (wrongly mentioned as 07.07.2005) issued by the respondent No. 5 i.e. the Superintendent of Police, Beed, granted deemed date of promotion to the applicant on the post of Assistant Police Inspector from 10.02.2001 and the applicant was granted basic pay scale of Rs. 8500/- vide order dated 06.08.2011 (Annexure A-3). The respondent No. granted revised pay scale of Rs. 20290+760=21050 with grade pay of Rs. 5000/-.

(b) It is further submitted that the applicant stood retired on superannuation on 31.01.2017 on the post of Police Inspector. Before his retirement, the applicant addressed the communication dated 14.01.2017 (Annexure A-4) to the office of Director General of Police, Maharashtra State Mumbai through the respondent No. 5 i.e. the S.P. Nanded stating therein that the Departmental Enquiry in relation to the investigation of offence under Section 376 of I.P.C. was pending, in which the name of the applicant was arrayed and thereby he requested to decide the Departmental Enquiry, whereby the applicant would get his retiral benefits. Thereafter, the applicant submitted further application dated 10.05.2018 (Annexure A-5) to the office of

Director General of Police, Maharashtra State, Mumbai through the respondent No. 5 i.e. the S.P. Nanded requesting to issue No Dues Certificate in favour of the applicant, as the same was required to forward the pension proposal of original applicant to the office of Accountant General-II, Nagpur contending further that the Departmental Enquiry pending against the applicant was completed and the applicant was punished by ordering to deduct of Rs. 2000/- from the monthly pension of the applicant for the period of six months.

(c) It is further contended that thereafter, the respondent No. 5 i.e. the Superintendent of Police, Naded issued notice dated 07.03.2019 (Annexure A-6) to the applicant contending that the Pay Verification Unit, Aurangabad raised objection about the pay of the applicant fixed as on 01.01.1996 and raised objection to the said re-fixation and therefore, recovery of an amount of Rs. 4,00,160/- towards excess payment was computed and the same was to be recovered from the pensionary benefits to be received by the applicant. Thereafter, the office of the Accountant General (A & E)-II, Nagpur issued impugned communication dated 21.05.2019 (page No. 84 of the paper

book) ordering recovery of Rs. 4,00,160/- towards excess payment from the pensionary benefits of the applicant.

(d) It is contention of the applicant that the alleged wrong pay fixation of the applicant was done by the respondents on their own accord and it was not at the behest of the applicant and the applicant cannot be blamed for it. The recovery of excess amount is sought after about 23 years, which is impermissible. Hence, the present Original Application.

3. The affidavits in reply pre and post amendment are jointly filed on behalf of respondent Nos. 1, 2 & 5 and separately on behalf of respondent No. 4. Thereby adverse contentions raised in the O.A. and amended O.A. are denied and it is specifically contended that in the year 1996 and more particularly on 01.01.1996, the office of the Superintendent of Police, Jalna wrongly fixed the pay scale of the applicant and granted basic pay of Rs. 6550/- as per the 5th Pay Commission. In fact, as on 01.01.1996, the applicant was entitled for basic bay of Rs. 6200/- instead of Rs. 6550/-. The Pay Verification Committee, Aurangabad raised objection and directed to fix the revised pay scale of the applicant and to make recovery of excess amount

paid to the applicant and in view of the same, the office of respondent No. 5 on 15.01.2017 revised the pay scale of the applicant and it was found that an excess amount of Rs. 4,00,160/- was wrongly paid to the applicant. Hence, by the impugned notice dated 07.03.2019 the respondent No. 5 directed the applicant to deposit the said amount and subsequently, the Accountant General (A & E)-II, Nagpur issued the order dated 21.05.2019 ordered recovery of the said amount from the pensionary benefits of the applicant. Both the orders are legal and proper and therefore, the present Original Application is liable to be dismissed.

4. The applicant filed his rejoinder affidavit to the affidavits in reply and denied all the adverse contentions raised therein and reiterated the contentions raised in the present Original Application.

5. I have heard the arguments at length advanced by Shri R.N. Bharaswadkar, learned Advocate for the applicant on one hand and Shri M.P. Gude, learned Presenting Officer for the respondents on the other hand.

6. Perusal of the rival pleadings and submissions of both the sides would show that the controversy revolves around recovery

of excess amount received by the applicant due to wrong pay fixation done by the order dated 19.10.2004 (page No. 50-C to 50-D of the paper book), whereas the applicant was granted monthly basic pay of Rs. 6550/- as on 01.01.1996. According to the respondents, the correct basic pay of the applicant as on 01.01.1996 in the cadre of PSI is Rs. 6200/- instead of Rs. 6550/-. The applicant stood retired on superannuation on the post of Police Inspector on 31.01.2017. Before his retirement, the retirement benefit proposal was to be sent to the Accountant General, Nagpur. Hence, the respondent No. 5 i.e. the S.P., Nanded sent letter dated 10.05.2018 (Annexure A-5) to the Director General of Police, Maharashtra State, Mumbai seeking information of any pending Departmental Enquiry against the applicant. In that regard, the information was received that the applicant was punished in the Departmental Enquiry and punishment of deduction of Rs. 2000/- for the six months from the pensionary benefits of the applicant was ordered. Moreover, the Pay Verification Unit, Aurangabad raised objection regarding previous pay fixation done as on 19.10.2004 (page No. 50-C to 50-D of the paper book) stating that it was a wrong pay fixation. In view of the same, revised pay fixation dated 15.01.2017 (page No. 50-B of the paper book) was done,

whereby the excess payment was noticed. Accordingly, the respondent no. 5 issued the impugned notice dated 07.03.2019 (Annexure A-6) to the applicant directing him to deposit the excess payment of an amount of Rs. 4,00,160/- within three days or else, it will be deducted from the pensionary benefits of the applicant. Subsequently, the office of the Accountant General (A & E)-II, Nagpur issued impugned communication dated 21.05.2019 (page No. 84 of the paper book) addressed to the respondent No. 5 i.e. the Superintendent of Police, Nanded to deduct the amount of Rs. 4,00,160/- from the pensionary benefits of the applicant. Both these notice and communication are challenged in the present Original Application.

7. In view of the same, it is evident that the applicant is only challenging the recovery and not the revised pay fixation order. In this regard, the revised pay fixation order dated 15.01.2017 (page No. 50-B of the paper book) is produced along with the affidavit in reply filed on behalf of respondent Nos. 1, 2 and 5 is not challenged. By the revised pay fixation order, the pay of the applicant and consequential pension amount to be received by him can be said to have been reduced.

8. In order to substantiate the protection against the recovery learned Advocate for the applicant placed reliance on the decision

of the co-ordinate Bench of this Tribunal at Mumbai in **O.A. No. 401/2019** in the matter of **Shri Shakil Isaque Shaikh Vs. The Director General of Police and Anr.** decided on 12.03.2021. In the said case, the applicant therein stood retired as Sr. Police Inspector (Class-I) on 31.03.2017. After retirement of the said applicant, department noticed excess payment of Rs. 1,96,950/- while fixation of pay on his promotion from 2008 onward. The office of Accountant General, Mumbai deducted the said amount from the gratuity of the applicant, which was challenged. The case law of the Hon'ble Supreme Court in **Civil Appeal No.11527/2014 (State of Punjab and others Vs. Rafiq Masih (White Washer), decided on 18th December, 2014** was referred in the said O.A. and more particularly principles laid down in para No. 12 were reproduced, which are as under :-

“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."

Thereafter, in para No. 10, the following observations were made in the said decision in O.A. No. 401/2019 :-

"10. True, the Applicant retired as a Class-I officer, and therefore, applicability of Clause -1 is ruled out. The submission advanced by learned P.O. that the decision in Rafiq Masih's case is applicable to Group -D and C employee only is misconceived. The Hon'ble Supreme Court has culled out five situations and out of which, situation No.(i) is in respect of Group -D and C employees. In so far as Class-II, III and V are concerned, the benefit of it, is not restricted to Group -C and Employees otherwise specific reference of Group -C and D would have found place but it is not so. In present case, excess payment has been made for a period excess of five years before the order of recovery is issued which attract clause (iii) of Para No.12

of the judgment. Apart, clause (ii) & (v) also attracted since recovery is iniquitous as well as arbitrary.”

9. Considering the facts of the present case, in the background of the facts of the O.A. No. 401/2019 relied upon by the learned Advocate for the applicant, in my opinion, the facts of the case in hand are similar to the great extent. It is held that in view of Clause Nos. (ii), (iii) & (v) of para No. 12 of the judgment of the Hon'ble Supreme Court in **State of Punjab and others Vs. Rafiq Masih (White Washer)** (cited supra), the excess recovery was held to be impermissible. The view taken in the above-said O.A. No. 401/2019 would be aptly applicable in the present case also. In view of the same, I hold that the recovery is not legal and proper and it is required to be quashed and set aside. I therefore, proceed to pass following order :-

ORDER

The Original Application No. 386/2019 is allowed in following terms :-

(A) The impugned notice of recovery dated 07.03.2019 (Annexure A-6) issued by the respondent No. 5 i.e. the Superintendent of Police, Nanded and impugned communication dated 21.05.2019 (page No. 84 of the paper book) issued by the office of Accountant General (A & E)-II, Nagpur are hereby quashed and set aside.

- (B) If the excess payment of Rs. 4,00,160/- is already recovered / withheld, the respondents are directed to refund the same to the applicant within a period of two months from the date of this order.
- (C) There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 08.09.2022.

(V.D. DONGRE)
MEMBER (J)

KPB S.B. O.A. No. 386 of 2019 VDD Recovery