

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 461 OF 2017
(Subject – Recovery/Pension)**

DISTRICT: LATUR

Shri Shaikh Ahmed S/o Imamsab,)
Age: 60 years, Occu. : Pensioner,)
R/o Galli No. 6, Tawarja Colony,)
Opp: Roshan Urdu High School, Latur,)
Tq. & Dist. Latur.) **.. APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through its Secretary,)
Water Conservation Department,)
Mantralaya, Mumbai-32.)
- 2) **The Accountant General, (A & E)-II,**)
Pension Branch Office,)
Post Box No. 114, Civil Lines,)
Ravi Bhawan Road, Nagpur -440001)
- 3) **The Executive Engineer,**)
Small Scale Irrigation)
(Water Conservation) Division,)
Latur, Tq. & Dist. Latur.) **.. RESPONDENTS**

APPEARANCE : Shri I.D. Maniyar, Advocate for the Applicant.

: Smt. Deepali S. Deshpande, Presenting Officer
for the Respondents.

CORAM : SHRI B.P. PATIL, MEMBER (J)

DATE : 29.06.2018.

O R D E R

1. By filing the present Original Application, the applicant has sought direction of this Tribunal to the respondent to pay the pension as per the proposals dated 07.02.2015,

22.02.2016 and 13.05.2016 forwarded by the respondent No. 3 and also prayed to quash and set aside the pay fixation order dated 08.06.2015 and order dated 09.06.2015 directing recovery of an amount of Rs. 46800/- from him.

2. The applicant was appointed as a Peon by the respondent No. 3 on 22.09.1981. Accordingly, he joined the duties and served the respondent No. 3. On attaining the age of superannuation, he was retired on 31.05.2015. The respondent No. 3 forwarded the proposal for sanctioning pension to him to the respondent No. 2 on 07.02.2015. On receiving the said proposal, the respondent No. 2 sanctioned the pension to the applicant. While sanctioning the pension to the applicant, it has noted some deficiencies and informed the respondent No. 3 that the pay of the applicant on MACP have benefited in the PB of Rs. 5200-20200/- with Grade Pay of Rs. 1900/- w.e.f. 01.10.2006 and therefore, he is not eligible for benefit of fixation in the same PB and GP w.e.f. 19.03.2008 made effective from 01.07.2008, which leads to excess payment of pay and allowances. It has also issued directions to the respondent No. 3 to regularize the pay of the applicant correctly and to recover the excess amount paid to the applicant from DCRG. Thereafter, respondent No. 3 by order dated 08.06.2015 re-fixed the pay of the applicant and directed recovery of the excess amount from the applicant. The excess

amount or Rs. 46,800/- had been shown to be recovered from the applicant. Thereafter, without issuing any notice or calling explanation from the applicant, respondent No. 3 on 07.07.2015 recovered the amount from the applicant. It is his contention that the said recovery made by the respondent No. 3 is illegal. It is his contention that the applicant was promoted on 05.03.2008 as Typist and as per the Rule 11(1)(a) of the Maharashtra Civil Services (Pay) Rules, 1981 his pay has been fixed in that cadre. Thereafter, in the year 2011, the respondent No. 3 fixed his pay as per the recommendation of 6th Pay Commission and granted benefits to the applicant as per the Assured Progress Scheme in view of the G.R. dated 18.04.2010, by order dated 13.11.2013 w.e.f. 01.10.2006. It is his contention that there is no illegality in the pay fixation made by the respondent No. 3 and respondent No. 3 has fixed his pay as per the Rule 11 (1)(a) of the Maharashtra Civil Services (Pay) Rules 1981. It is his contention that the respondent No. 3 forwarded his pension proposal on the basis of pay fixed by it on 07.02.2015, 22.02.2016 & 13.05.2016 to the respondent No. 2, but the respondent No. 2 had not considered the said proposal and directed the respondent No. 3 to re-fix the pay of the applicant. On the basis of said direction, the respondent No. 3 re-fixed the pay of the applicant on 08.06.2015

and directed the recovery of an amount of Rs. 46,800/- by the order dated 09.06.2015, which are illegal.

3. It is contentions of the applicant that the applicant is serving in Class-III cadre at the time of his retirement. The recovery has been made from his pensionary benefits and the said recovery is regarding the excess payment made to him on account of wrong fixation of pay and that too, for the period in excess of five years before the order of recovery is issued and therefore, the said recovery is not permissible in view of the guidelines issued given by the Hon'ble Apex Court in case of **State of Punjab and others etc. Vs. Reafiq Masih (White Washer) etc. in Civil Appeal No. 11527 of 2014 (Arising Out of Slp (C) No. 11684 of 2012) with Civil Appeal NO. 11528 of 2014** reported in **2015 AIR (SC) 696**. Therefore, he prayed to allow the present O.A. and to quash the impugned order dated 08.6.2015 re-fixing his pay and order dated 09.06.2015 directing the recovery of an amount of Rs. 46,800/- by allowing the present Original Application. He has also prayed to direct the respondents to fix his pension as per the proposals dated 07.02.2015, 22.02.2016 & 13.05.2016 forwarded by the respondent No. 3.

4. The respondent No. 2 has resisted the contention of the applicant by filing his affidavit in reply. It is his contention

that the Comptroller and Auditor General of India discharges duties through field offices, i.e. Accountants General office in accordance with the provisions of Article 149 of the Constitution of India read with the Comptroller and Auditor Generals (Duties, Powers and Conditions of services) Act, 1971. The role of this respondent in respect of pension cases is limited to scrutiny of proposals received from Heads of Officers/Pension Sanctioning Authority of Government of Maharashtra in respect of persons, who retired from various State Government offices situated in Vidarbha and Marathwada regions, with reference to the rules in M.C.S. (Pension) Rules and other Government Resolutions issued from time to time and to authorization of the pensionary benefits, if found admissible. The Officer of the respondent does not act on its own volition, but authorizes pensionary benefits only on receipt of proper pension papers duly attested by the respective Pension Sanctioning Authority/Head of Office of State Government.

5. It is the contention of the respondent that the applicant retired on 31.5.2015 as Typist from the office of the respondent No. 3. He was initially appointed as Peon (Class IV) and during his tenure as Class IV, he got 1st time bound promotion on 01.10.1994 and on completion of 24 years of his service he got 2nd Assured Career Progression Promotion as per

6th Pay Commission on 01.10.2006 in the pay scale of Rs. 5200-20200/- with Grade Pay of Rs. 1900/-. His pre-revised pay scale was Rs. 7180+G.P. Rs. 1600/-. As per the option, he was granted one increment of Rs. 270/- on 01.10.2006 raising pay of Rs. 7450/-+ G.P.1900/- by giving benefit of rule 11(A) of the MCS (Pay) Rules, 1981 in the pay scale of Rs. 5200-20200/- as per the G.R. dated 01.09.2015. Thus, the Pay Fixation made by the respondent No. 3 as per his office order dated 13.11.2013 on promotion as Clerk in the same grade pay and same pay band i.e. 5200-20200/- Grade Pay of Rs. 1900/- by giving one additional increment on 01.07.2008 again was brought to the notice of the respondent No. 3 and it was requested to regulate the same and recover the overpayment, if any, vide this office Admissibility Report dated 18.02.2015. Accordingly, the respondent No. 3 worked out the excess payment of pay and allowances to the tune of Rs. 46,800/-and intimated vide letter dated 22.02.2016 that the amount has been recovered from the amount payable from Gratuity. It is his contention that the respondent No. 3 had put to notice to the applicant that in case of excess payment, the same shall be recovered and further informed that the pay fixation is subject to pay verification by the Pay Unit as per the order dated 13.11.2013. It is contended by it that there is no illegality in the pay fixation of the applicant and therefore, the

excess amount has been recovered from him. Therefore, he prayed to reject the present Original Application.

6. The respondent No. 3 resisted the contention of the applicant by filing his affidavit in reply. It is his contention that the applicant was appointed as Chowkidar not as Peon by order dated 14.09.1981. He joined the service on 22.09.1981 in the pay scale of Rs. 200-3-230-55-255 EB-5-280. As per the option exercised by the applicant on 01.09.1995, pay of the applicant has been fixed in the pay scale of Rs. 775-12-955-EB-15-1030-20-1150 w.e.f. 01.10.1994 as per the G.R. dated 08.06.1995 and the office order dated 13.03.1996. On completion of 24 years of service by the applicant, as per the G.R. dated 01.04.2010 and the office order of the Superintending Engineer, Minor Irrigation (Local Sector) Circle, Aurangabad dated 26.09.2015 pay scale of Rs. 4440-7440 and Grade Pay of Rs. 1600+300=1900 granted to the applicant as per Rule 11 (A) of M.C.S. (Pay) Rules, 1981. One increment has been granted to the applicant in the pay scale as per the option given by him.

7. Thereafter, the applicant became eligible for the promotion on the post of Typist in Class-C category and he was promoted as Typist by the office order dated 05.03.2008 in the pay scale of Rs. 3050-75-3950-80-4590. The respondent No. 3

sanctioned the pay scale of applicant as Typist vide office order dated 03-05-2008, in which the applicant has given one increment by oversight by the respondent No. 3. Thereafter, on retirement of the applicant, the proposal for sanction of pension and pensionary benefits was submitted by the respondent No. 3 to the office of respondent No. 2. The respondent No. 2 scrutinized the proposal and found that the applicant was not entitled to get one additional increment and informed the respondent No. 3 that “the pay of the official on MACP has been fixed in the PB 5200-20200/- with grade pay of Rs. 1900 w.e.f. 01.10.2006 and therefore, he is not eligible for benefit of fixation in the same PB and GP w.e.f. 19.03.2008 made effective from 01.07.2008 which leads to excess payment of pay and allowance. The pay may be regularized correctly and recovered the excess pay and allowance paid from 01.07.2008 to till date of retirement from DCRG.” Accordingly, the respondent No. 3 has re-fixed the pay scale of the applicant and re-fixed his pay and directed recovery of excess amount of Rs. 46,800/- paid to him. The said amount has been recovered from the applicant from pensionary benefits and there is no illegality in it. It is contention of respondents that in view of the MCS (Pay) Rules, 1981, the pay of the applicant has been re-fixed and recovered the excess amount paid to him due to wrong pay fixation. Therefore, there is no

illegality in it and therefore, he prayed to reject the present Original Application.

8. I have heard Shri I.D. Maniayar, learned Advocate for the applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

9. Admittedly, the applicant was appointed as Chowkidar on the establishment of respondent No. 3 by order dated 14-09-1981 and he joined the duties on 22-09-1981. In the year 1996 his pay scale has been fixed in the pay scale of Rs. 775-12-955-EB-15-1030-20-1150 w.e.f. 01.10.1994 in view of the G.R. dated 08.06.1995 and thereafter, again he was given benefit of MACP on completion of 24 years of service in view of the G.R. dated 01.04.2010 w.e.f. 01.10.2006 and he was granted pay scale of Rs. 4440-7440 with grade of Rs. 1600+300=1900. At that time, one increment in the pay scale has been given to him as per the option exercised by him. Admittedly, the applicant has been promoted as Typist in Group-C cadre by the order dated 05.03.2008 in the pay scale of Rs. 3050-75-3950-80-4590. While fixing the pay in that cadre, again one increment has been given to him and accordingly, he was paid till his retirement. Admittedly, the respondent No. 3 forwarded the proposal of the

applicant for pension and pensionary benefits to the respondent No. 2 and while scrutinizing the same, the respondent No. 2 noticed the irregularity on the part of the respondent No. 3, while fixing the pay of the applicant and at that time, the applicant was serving in Group-C cadre and accordingly, directed the respondent No. 3 to rectify the mistake. On the basis of said directions, the respondent No. 3 rectified the mistake and re-fixed the pay of the applicant by issuing impugned order dated 08.06.2015 and directed recovery of an amount of Rs. 46,800/- from the applicant vide order dated 09.06.2015 on account of excess payment made to him due to wrong fixation of pay. Admittedly, the said amount has been recovered from the pensionary benefits of the applicant.

10. Learned Advocate for the applicant has submitted that the applicant was initially serving in the Group-D cadre and in the year 2008 he was promoted as Typist in Group-C cadre. He has submitted that the applicant had given benefit of first time bound promotion, as well as, second benefit under MACP on completion of his service tenure of 12 and 24 years respectively in the year 1994 and 2006 as per the G.Rs. issued by the Government of Maharashtra on 08.06.1995 and 01.04.2010 respectively. He has submitted that in the year 2008, the applicant has been promoted as Typist. Accordingly, his pay has

been fixed as per the Rule 11(A) of the MCS (Pay) Rules, 1981 and one increment was granted to him. He has submitted that accordingly the applicant received the salary till his retirement. He has argued that the respondent No. 3 has forwarded the proposal to sanction the pension and pensionary benefits to the applicant to the respondent No. 2 on the basis of salary paid to him. But that time, the respondent No. 2 noted some deficiency and directed the respondent No. 3 to re-fix the pay of the applicant and correct the pay fixation and to recover the excess amount paid to him due to wrong fixation of pay. He has submitted that accordingly, the respondent No. 3 re-fixed the pay of the applicant and recovered the amount of Rs. 46,800/- from his pensionary benefits. He has submitted that the recovery has been made after retirement of the applicant and the said recovery is in respect of excess payment made to him for the period exceeding five years from the date of order and therefore, it is not permissible in view of the guidelines given by the Hon'ble Apex Court in case of **State of Punjab and others etc. Vs. Reafiq Masih (White Washer) etc.** in **Civil Appeal No. 11527 of 2014 (Arising Out of Slp (C) No. 11684 of 2012) with Civil Appeal NO. 11528 of 2014** reported in **2015 AIR (SC) 696**. The Hon'ble Apex Court in its judgment has observed in paragraph-12 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.”

He has submitted that the said recovery is illegal and therefore, he prayed to refund the amount of Rs. 46,800/- recovered from the applicant illegally and he also prayed to direct the respondents to re-fix his pension as per the old pay fixation.

11. Learned Presenting Officer has submitted that there is no illegality in the recovered ordered by the respondent No. 3. She has submitted that the applicant received two benefits under the time bound promotion and MACP on completion of 12 and 24 years of service respectively. At the time of granting second benefit under MACP, the applicant has exercised the option and therefore, one increment was given to him as per the Rule 11 (A) of the M.S.C. (Pay) Rules, 1981. In the year 2008, he was promoted as Typist in Group-C cadre and while fixing his pay, one more increment was granted to him by the respondent No. 3 mistakenly and therefore, excess payment was made to the applicant. She has submitted that the said deficiency was noticed to the respondent No. 2 while scrutinizing the pension papers of the applicant and accordingly, the respondent No. 2 directed the respondent No. 3 to rectify the mistake and therefore, respondent No. 3 re-fixed the pay of the applicant and accordingly, pensionary benefit has been granted to the applicant. She has submitted that one additional increment was given to the applicant mistakenly. The earlier pension proposal sent by the respondent No. 3 cannot be considered. The respondent No. 2 has rightly rectified the said mistake and accordingly, pension has been sanctioned to the applicant accordingly. Therefore, she prayed to reject the present Original Application.

12. On perusal of record, it reveals that the applicant received first time bound promotion in view of the G.R. dated 08.06.1995 on completion of 12 years of service and in the year 2013 he received second benefit under MACP in view of the G.R. dated 01.04.2015. At that time, he exercised the option and therefore, one additional increment was given to him. In the year 2008, he was promoted as Typist in the Group-C category by order dated 05.03.2008 and therefore, his pay has been re-fixed accordingly. While fixing the pay in that cadre, one additional increment was given to him in view of the provisions of Rule 11(A) of the MCS (Pay) Rule, 1981, though he was not eligible and therefore, the applicant had received the excess payment till his retirement. At the time of processing the pension papers of the applicant, the said mistake has been noticed by the respondent No. 2 and therefore, it had directed the respondent No. 3 to rectify the mistake and to recover the amount paid in excess to the applicant and accordingly, granted pension to the applicant.

13. Considering the record, it is crystal clear that the applicant received one additional increment, when he was promoted in the cadre of Typist, Group-C cadre, though he was not entitled. The applicant had exercised the option, while getting second benefit under MACP and he got one increment in view of the Rule 11(A) of MCS (Pay) Rules, 1981. But again one more

increment was granted to the applicant at the time of fixing his pay on his promotion as Clerk and therefore, excess payment has been made to the applicant. The said mistake has been rectified as per the directions given by the respondent No. 2 to respondent No. 3 and accordingly, the pay of the applicant has been re-fixed by the order dated 08.06.2015. On the basis of said re-fixation, the pension has been fixed and granted to the applicant. There is no illegality in the pay fixation of the applicant and pension granted to him. The earlier proposals sent by the respondent No. 3 dated 07.02.2015, 22.02.2016 & 13.05.2016 were on the basis of wrong pay fixation done by the office of respondent No. 3, which has been subsequently rectified. Therefore, the same cannot be considered, as there is nothing wrong in the fixation of pension of the applicant. Therefore, the directions, as prayed for by the applicant to consider the earlier proposals sent by the respondent No. 3 on 07.02.2015, 22.02.2016 & 13.05.2016 cannot be issued.

14. So far as the recovery of an amount of Rs. 46,800/- from the applicant on account of wrong fixation of pay is concerned, it is material to note that the said fixation has been made by the respondent No. 3 on its own accord. The applicant neither made any representation nor practiced fraud on the respondent No. 3 for getting the additional increment and

therefore, the applicant cannot be blamed for it. The said recovery has been ordered after retirement of the applicant and the said amount has been recovered from his pensionary benefits. In view of the guidelines given by the Hon'ble Apex Court in case of **State of Punjab and others etc. Vs. Reafiq Masih (White Washer) etc.** in **Civil Appeal No. 11527 of 2014 (Arising Out of Slp (C) No. 11684 of 2012) with Civil Appeal NO. 11528 of 2014** reported in **2015 AIR (SC) 696**, such type of recovery cannot be made from the pensionary benefits of the applicant, as he was retired Group-C employee. The principles laid down in the above cited decision are appropriately applicable in the instant case. In the instant case, the amount recovered from the pensionary benefits of the applicant is impermissible and illegal and therefore, the impugned order dated 09.06.2016 directing the recovery of an amount of Rs. 46,800/- issued by the respondent No. 3 requires to be quashed and set aside by allowing the present Original Application.

15. In view of the discussions in foregoing paragraphs, the Original Application deserves to be allowed partly. Resultantly, the O.A. is partly allowed. The impugned order dated 09.06.2015 issued by the respondent No. 3 recovery of an amount of Rs. 46,800/- from the pensionary benefits on account of excess payment made to him on account of wrong fixation of pay is

hereby quashed and set aside. The respondents are directed to refund the amount of Rs. 46,800/- to the applicant within a period of three months from the date of the order, failing which the respondents are liable to pay the interest @ 8% p.a. on the said amount from the date of the order till its repayment. The rest claim of the applicant is rejected. There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 29.06.2018.

(B.P. PATIL)
MEMBER (J)

KPB/S.B. O.A. No. 461 of 2017 BPP 2018 Recovery/pension