

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 500 OF 2017

(Subject – Recovery)

DISTRICT : PARBHANI

Shri Vijaysing S/o Phulsing Rathod,)
Age : 60 years, Occu. : Retired,)
R/o : 126, Satyam Niwas, Shriram)
Nagar, Parbhani, Dist. Parbhani.)

.. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,)**
Through its Secretary,)
Department of Revenue & Forest,)
Mantralaya, Mumbai.)
- 2) **The Conservator of Forest,)**
Social Forestry, Aurangabad)
Region, Aurangabad.)
- 3) **The Deputy Director Social)**
Forestry,)
Parbhani, Dist. Parbhani.)
- 4) **The Accountant General-II (A&E,))**
Nagpur.)
- 5) **The Treasury Officer,)**
Parbhani, Dist. Parbhani.)

.. **RESPONDENTS**

APPEARANCE : Shri V.G. Pingle, Advocate for the Applicant.

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

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

DATE : 08.01.2019.

ORDER

1. The applicant has challenged the orders dated 11.04.2017 and 04.02.2017 directing recovery from his pension amount on account of excess payment due to wrong fixation of pay and also prayed to direct the respondents to refund the amount recovered from him by filing the present Original Application.

2. The applicant was appointed as a Forest Guard in the office of Range Forest Officer, Parbhani on 26.07.1985. After rendering 12 years' service on the said post, he was given first benefit under Assured Career Progression Scheme (ACP) w.e.f. 26.07.1997. Thereafter, second benefit of A.C.P. scheme was given to the applicant w.e.f. 1.07.2006 by the respondent No. 3 and the orders have been issued on 04.11.2009, 24.12.2014 and 03.01.2015 in that regard. In view of the order dated 24.12.2014, the applicant was placed in sanctioned grade pay of Rs. 4400/- as per the G.R. While passing the said order, the Chief Conservator of Forest, Aurangabad relied on the G.Rs. 1.4.2010, 05.5.2010, 05.07.2010, 08.06.2011 and 01.07.2011. As per the G.R. dated 31.08.2009, the applicant had given his option for fixing the pay scale, as the second promotional scale was given after 01.01.2006. Accordingly, pay was revised and

the scale was granted to him and it was approved by the higher authorities. On superannuation, the applicant was allowed to retire. On 30.01.2016, the respondent No. 3 informed the office of Accountant General-II, Nagpur that excess amount of Rs. 30,610/- was paid to the applicant due to wrong fixation of pay w.e.f. 01.10.2006 and requested to recover the said amount from the applicant. Accordingly, the A.G., Nagpur by its communication dated 12.04.2016 directed to recover the same from the applicant. It is contention of the applicant that on 11.01.2017, respondent No. 4 without assigning any reason and contrary to the earlier order dated 12.04.2016, calculated that an amount of Rs. 2,45,923/- has been paid to the applicant, thought he was not entitled and therefore, directed to recover the same. Thereafter, the respondent No. 3 made communication with the respondent No. 4 the A.G.-II, Nagpur on 19.10.2016 and 04.02.2017. On the basis of said communications, the respondent No. 4 directed the respondent No. 5 i.e. Treasury Office, Parbhani to recover the amount from the pension of the applicant. The respondent No. 3 abruptly directed to recover an amount of Rs. 10,000/- per month from the pension of the applicant without giving any opportunity to the applicant. Accordingly, an amount of Rs. 10,000/- has been recovered from the pension of the applicant from the month of March 2017

onward and they recovered an amount of Rs. 40,000/- from the pension of the applicant till filing of the present Original Application. It is his contention that the recovery has been made in view of the orders dated 11.01.2017 and 04.02.2017. It is his contention that the said recovery is against the guidelines given by the Hon'ble Apex Court in case of **State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc.** in **Civil Appeal No. 11527 of 2014 (Arising Out of SLP (C) No. 11684 of 2012)** decided on 18.12.2014 and reported in **2015 (4) SCC 334**, as well as, the decision of the Hon'ble High Court of Bombay Bench at Nagpur in case of **Lata Gajanan Wankhede Vs. State of Maharashtra** in **W.P. No. 2648/2016** decided on 01.07.2016 and reported in **All M.R. 2017 (2) Page -177**. He has submitted that the impugned orders are illegal and therefore, he prayed to quash and set aside the impugned orders dated 11.01.2017 and 04.02.2017 and prayed to direct the respondents to refund the amount recovered from his pension. The applicant has also prayed that, it may be declared that he is entitled to get promotional scale w.e.f. 1997 and 2006 as per the Government policy.

3. The respondent Nos. 1 to 3 have filed their affidavit in reply and resisted the contentions of the applicant. They have no

dispute regarding grant of benefits of Assured Career Progression Scheme (ACP) on completion of 12 years and 24 years of service by the applicant. It is their contention that the respondent No. 3 fixed the pay of the applicant at Rs. 15,940/- + Grade Pay of Rs. 4400/- and forwarded the pension proposal for sanction to the respondent No. 4 i.e. the Accountant General-II, Nagpur. The A.G.-II, Nagpur raised objection to the proposal and informed to fix the pay of the applicant at Rs. 13,930/- + Grade Pay of Rs. 4400/-. The respondent No. 3 fixed the pay of the applicant at Rs. 13930/-+ Grade Pay of Rs. 4400/-. An excess amount of Rs. 30,610/- was paid to the applicant because of wrong fixation of pay and therefore, the office of respondent No. 3 forwarded the proposal to the respondent No. 4 i.e. the A.G.-II, Nagpur for recovery of the said amount. Accordingly, an amount of Rs. 30,610/- has been recovered from the applicant. After retirement of the applicant, the pension proposal was submitted to the respondent No. 4 for grant of pension to the applicant. At the time, the respondent No. 4 raised some objections and informed the respondent no. 3 vide letter dated 03.09.2015 to recheck pay fixation made as on 01.10.2006 i.e. w.e.f. A.C.P.S. and overpayment made to the applicant and recover the same from D.C.R.G. The respondent No. 3 then verified the record and accordingly, re-fixed the pay of the applicant and communicated

it to the respondent No. 4 by the letter dated 19.08.2016 along with detailed calculation chart and also requested to recover an amount of Rs. 2,45,923/- from pension payable to the applicant. Thereafter, again respondent No. 3 sent reminder letter to the office of respondent No. 4 i.e. A.G.-II, Nagpur on 19.10.2016. The applicant was also informed about it by the said communications dated 19.08.2016 and 19.10.2016. On the basis of said letters, the respondent No. 4 directed to recover excess amount of 2,45,923/- from the applicant by its letter dated 11.01.2017 and thereafter, respondent issued letter on 04.02.2017. It is their contention that an amount of Rs. 40,000/- has been recovered from the applicant's pension amount on the basis of said order and there is no illegality in it. It is their contention that the excess payment has been made to the applicant due to wrong fixation of pay and therefore, the same requires to be recovered from him and therefore, the impugned orders have been issued. It is their contention that there is no illegality in the said order and therefore, they have supported the impugned orders.

4. The respondent No. 4 has filed his affidavit in reply and resisted the contentions of the applicant. It is his contention that the Comptroller and Auditor General of India discharges

duties through field offices, i.e. Accountants General Offices in accordance with the provisions of Article 149 of the Constitution of India read with the Comptroller and Auditor General (Duties, Power, and Conditions of Service) Act, 1971. Accordingly, the role of this Respondent in respect of pension case is limited to scrutiny of proposals received from Head of offices of Govt. of Maharashtra/Pension Sanctioning Authorities 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 1982 and other Government Resolutions issued from time to time and subsequently authorization of pensionary benefits, if found admissible. This Respondent office does not act on its own violation, but authorizes pensionary benefits only on receipt of proper pension papers duly attested the Head of Office /Pension Sanctioning Authority of the State Government. This respondent shall not be in a position to authorize pensionary benefits if, either the proposal is not received from the Head of the Office/Pension Sanctioning Authority in the prescribed format with requisite documents or if it is found not confirming to any of the provisions of the M.C.S. (Pension) Rules, 1982 and other Government Resolutions issued from time to time.

It has further contended that the role of the Respondent office is limited to scrutiny of the pension proposal and authorization of the Pensionary benefits on its receipt from the head of office/Pension Sanctioning Authority i.e. Respondent No. 3, if the proposal is in conformity with the rules laid down M.C.S. (Pension) Rules, 1982 and other relevant Government Resolution /Orders. The pension proposal was received in its office on 27.08.2015 from Pension Sanctioning Authority i.e. Dy. Director Social Forestry Division Parbhani. The pensionary benefits were released by its office issuing authorities for Pension, Gratuity and Commutation on 03.09.2015. The respondent's office vide authority letter dtd. 03.09.2015 had requested to Pension Sanctioning Authority/Respondent No. 3 to re-check pay fixation as on 01.10.2006 (Second A.C.P.) and recover the overpayment if confirmed from the Gratuity amount at their level under intimation to this answering respondent. The respondent's office had calculated Pensionary benefits considering his last pay as 13930 + 4400/-. The respondent No. 3 / Pension Sanctioning Authority on 30.01.2016 intimated about the overpayment amount of Rs. 30610/- on account of excess payment of leave encashment and requested the respondent's office for recovering said amount from the relief on pension of the applicant. In reply the respondent's office vide letter dated 12.04.2016, had asked

the respondent No. 3 / Pension Sanctioning Authority to effect the recovery of the overpayment amount at their level while disbursing the gratuity under intimation to this respondent office. Afterwards, the respondent No. 3 on 19.8.2016 submitted the proposal for revised pensionary benefits along with overpayment statement and accordingly this respondent office had issued revised pensionary benefits on 06.10.2016 along with instructions to recover excess paid pensionary benefits. The Respondent No. 3 vide letter dated 19.10.2016, requested the respondent to issue a letter to Treasury Officer, Parbhani to recover the overpayment amount of Rs. 245923/- from the relief on pension of the applicant. As per the directions given by the P.S.A. and respondent No. 3, the Respondent's office vide letter dated 11.01.2017 issued instructions to the Treasury Officer, Parbhani to recover the same from the relief on pension of the applicant. In the circumstances, the Respondent's Office has only complied with the directions of the Pension Sanctioning Authority and Respondent No. 3, however, with reference to oral order dated 26.07.2017 of MAT Aurangabad, the respondent's office has directed the Treasury Officer Parbhani, vide letter dated 29.08.2017 to not to make the recovery of overpayment of 245923/- as pointed out earlier vide this Office letter dated 11.01.2017 till further orders. A copy of the Hon'ble MAT order

dated 26.07.2017 was also forwarded to the Treasury Officer, Parbhani for compliance. It is his contention that the recovery has been made as per the rules and there is no illegality in it and therefore, he prayed to reject the Original Application.

5. The respondent No. 5 resisted the contentions of the applicant by filing his affidavit in reply. It is his contention that the Accountant General-II, Nagpur by its order dated 11.01.2017 directed his office to recover the excess payment made to the applicant during the period from the month of April 2010 to August 2015 in the tune of Rs. 2,45,925/- in monthly instalment of Rs. 10,000/- from pension of the applicant. Accordingly, his office recovered the excess amount in instalments from the applicant from the month of March 2017 to July 2017 and thereafter, stopped the recovery in view of the interim order dated 26.07.2017 passed by this Tribunal in the present O.A. It is his contention that he acted as per the direction given by the Tribunal. On these grounds, he prayed to dismiss the present Original application.

6. I have heard Shri V.G. Pingle, learned Advocate for the applicant and Smt. Deepali S. Deshpande, learned Presenting Officer for the respondents. I have perused the documents filed on record by both the parties.

7. At the time of hearing of the matter on merit, on instructions, the learned Advocate for the applicant has submitted that the applicant is not going to press the prayer clause XII (D) and the applicant waived the prayer in that regard. In view of this, now the applicant has only grievance regarding the recovery of an amount of Rs. 2,45,925/- .

8. Admittedly, the applicant joined the service of the respondents as a Forest Guard on 26.07.1985. On completion of 12 years' service on the said post, first benefit of Assured Career Progression Scheme (ACP) was granted to him w.e.f. 26.07.1997. After completion of 24 years of service second benefit of A.C.P. scheme, was extended to the applicant w.e.f. 1.07.2006. Admittedly, the applicant received pay and salary accordingly. Admittedly, the applicant retired on 31.08.2015 on superannuation. Admittedly, before his retirement, the respondent No. 3 sent pension papers of the applicant to the respondent No. 4 and at that time, it was noticed by the respondent No. 4 that the pay fixation of the applicant has been made wrongly at the time of granting second benefit under A.C.P. Scheme. Therefore, he directed the respondent No. 3 to re-fix the pay of the applicant and on the basis of same, the respondent No. 3 re-fixed his pay and directed recovery of an amount of Rs.

2,45,923/- and informed the respondent No. 4 accordingly. On the basis of communication received from the respondent No. 3, the respondent No. 4 directed the respondent No. 5 to recover the said amount from the pension of the applicant by equal installment of Rs. 10,000/- per month. Admittedly, the respondent No. 3 initially wrongly fixed the pay of the applicant in the pay scales of Rs. 15,940/- + Grade Pay of Rs. 4400/- instead of Rs. 13,930/- + Grade Pay of Rs. 4400/-. Because of the wrong pay fixation, the excess amount was paid to the applicant and therefore, recovery was ordered.

9. Learned Advocate for the applicant has submitted that the respondent No. 3 has wrongly fixed the pay of the applicant and there was no misrepresentation or fraud on the part of the applicant while fixing his pay. He has submitted that the said mistake has been noticed by the respondent No. 4 when the pension proposal of the applicant was sent by the respondent No. 3. He has submitted that the said recovery has been directed when the applicant was retired and the respondent No. 4 directed the respondent No. 5 to recover the said amount from his pension. He has submitted that the applicant was retired from the post of Class-III (Group-C) and therefore, the said recovery is illegal and 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. Rafiq Masih (White Washer) etc.** in **Civil Appeal No. 11527 of 2014 (Arising Out of SLP (C) No. 11684 of 2012)** decided on 18.12.2014 and reported in **2015 (4) SCC 334**. He has further submitted that the said recovery cannot be made in view of the judgment delivered by the Hon'ble High Court of Bombay Bench at Nagpur in case of **Lata Gajanan Wankhede Vs. State of Maharashtra** in **W.P. No. 2648/2016** decided on 01.07.2016 reported in **All M.R. 2017 (2) Page -177**. He has submitted that an amount of Rs. 40,000/- has been recovered from the pension of the applicant and in case, if the recovery is continued then hardship will be caused to the applicant and his family members and therefore, he prayed to allow the present Original Application and prayed to quash and set aside impugned orders dated 11.01.2017 and 04.02.2017. He has also prayed to direct the respondent to refund the amount recovered from pension of the applicant.

10. Learned Presenting Officer has submitted that wrong pay scale has been granted to the applicant while granting second benefit of A.C.P. scheme and therefore, excess payment of Rs. 2,45,923/- has been paid to the applicant from the year 2010 till his retirement. The said fact has been noticed by the

respondent No. 4, when the proposal regarding pension of the applicant has been sent by the respondent No. 3 and accordingly, respondent No. 4 informed the respondent No. 3 to re-fix the pay of the applicant. The respondent No. 3 thereafter, re-fixed the pay of the applicant and directed recovery of excess amount of Rs. 2,45,923/- paid to the applicant. On the basis of letter submitted by the respondent No. 3, the respondent No. 4 directed the respondent No. 5 to recover the said amount from the pension of the applicant in equal installment of Rs. 10,000/- per month. She has submitted that there is no illegality in the impugned orders and therefore, she prayed to reject the present Original Application.

11. On going through the record, it reveals that the applicant was serving as a Forest Guard on Group-C post. The excess payment was made to the applicant due to wrong pay fixation made by the respondents. No role has been played by the applicant in getting wrong pay fixation. There was no misrepresentation or fraud practiced by the applicant in getting the pay fixation done by the respondents and therefore, the applicant cannot be blamed for it. The mistake was occurred because of the wrong fixation of pay done by the respondent No. 3 and therefore, the excess amount has been paid to the

applicant since the year 2010. The said mistake has been noticed by the respondent No. 4 when the pension proposal was sent by the respondent No. 3 and at that time, the applicant was on the verge of retirement. The impugned orders have been issued by the respondents after retirement of the applicant. Therefore, the said recovery of excess payment made to the applicant was recovered from the pension of the applicant or his pensionary benefits. Said recovery 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. Rafiq Masih (White Washer) etc.** in **Civil Appeal No. 11527 of 2014 (Arising Out of SLP (C) No. 11684 of 2012)** decided on 18.12.2014 and reported in **2015 (4) SCC 334**, wherein it has been 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."

The case of the applicant is covered under clause No. 12 (i) to (iii) of the said judgment. Therefore, the orders dated 11.01.2017 and 04.02.2017 issued by the respondents directing recovery of excess amount from the pension amount of the applicant are not sustainable in the eye of law and therefore, it require to be quashed and set aside.

12. The respondents recovered the amount of Rs. 40,000/- from the pension amount of the applicant from the month of March 2017 to June 2017 and the said recovery is

illegal in view of the guidelines given by the Hon'ble Apex Court in case of **State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc.** in **Civil Appeal No. 11527 of 2014 (Arising Out of SLP (C) No. 11684 of 2012)** decided on 18.12.2014 reported in **2015 (4) SCC 334.** Therefore, it require to be quashed and set aside.

13. In view of the discussions in the foregoing paragraphs, the Original Application is allowed. The impugned orders dated 11.01.2017 and 04.02.2017 issued by the respondents directing recovery of excess amount paid to the applicant from his pension are hereby quashed and set aside. The respondents are directed to refund the amount of Rs. 40,000/- already recovered from the pension of 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 : 08.01.2019.

(B.P. PATIL)
MEMBER (J)