

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 712 OF 2017
(Subject – Refund of Amount)**

DISTRICT : HINGOLI

Shri Ashok Sheshro Jondhale,)
Age : 58 years, Occu. : Pensioner,)
R/o Kandhar, Tq. Kandhar,)
Dist. Nanded.)

.. APPLICANT

V E R S U S

1) **Superintended of Police,**)
Hingoli District, Hingoli,)
Having Office at Ashtavinayak)
Nagar, Hingoli- 431 513.)

2) **Treasury Officer,**)
Treasury Office Nanded.)
Having office at Collector)
Compound, New Building Station)
Road, Near Gandhi Statue,)
Vazirabad, Nanded – 431 601.)

.. RESPONDENTS

APPEARANCE : Shri G.N. Kulkarni (Mardikar), Advocate for
the Applicant.

: Shri S.K. Shirse, Presenting Officer for the
Respondents.

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

DATE : 10.12.2018.

O R D E R

1. By filing the present Original Application, the applicant has challenged the order dated 28.02.2017 issued by

the respondent No. 1 directing recovery of an amount of Rs. 1,27,985/- from the pensionary benefits of the applicant on account of excess payment made to him due to wrong fixation of pay and also prayed to refund the said amount. The applicant has also prayed to direct the respondents not to withdraw the pay scale earlier granted to him.

2. The applicant was serving in the Police department. He came to be promoted from time to time. In the year 2013, he came to be appointed as Police Sub-Inspector and posted at Hingoli. He was due for retirement on superannuation and therefore, the respondent No. 1 fixed his pay for the purposes of pension on 28.02.2017. During the pay fixation, it was disclosed to the respondent No. 1 that the excess payment was made to the applicant due to incorrect pay fixation in the year 1998 when the applicant was working as Police Constable and therefore, issued the impugned order dated 28.02.2017 directing recovery of excess payment made to the applicant. It is contention of the applicant that the impugned order dated 28.02.2017 is causing great monetary loss to him. It is his contention that his pay has been wrongly fixed in the year 1998, but the respondents had raised this issue in the year 2017. It is his contention that the applicant

had not played any fraud on the respondents in getting the pay fixed wrongly in the year 1998. The respondents had fixed the pay of the applicant in the year 1998 on their own accord and therefore, he cannot be blamed for it. It is his contention that in the year 2017, the pension has been sanctioned. While granting pension to the applicant, an amount of Rs. 1,27,985/- had been recovered from the gratuity payable to him. It is his contention that the recovery made from his pensionary benefits is illegal and impermissible and therefore, he approached the respondent No. 1 from time to time and requested to refund the said amount illegally recovered from his pensionary benefits, but the respondents had not considered his request and therefore, he has filed the present Original Application and prayed to quash and set aside the impugned order and to refund the said amount recovered from his pensionary benefits and also prayed to direct the respondents not to withdraw his earlier pay scale.

3. The respondent No. 1 has resisted the contention of the applicant by filing his affidavit in reply. It is contended by him that because of wrong calculation, excess payment was paid to the applicant, though he was not entitled to receive it and therefore, no hardship has been caused to the applicant on

recovery of the said amount. It is contended by him that before retirement of the applicant, his service book was sent to the Pay Verification Unit, Aurangabad to verify the pay fixation, which is mandatory. At the time of verification of his service record, it has been noticed by the Pay Verification Unit, Aurangabad that the pay of the applicant was increased by Rs. 200/- due to wrong calculation w.e.f. 13.11.1998 i.e. from the date of promotion of the applicant on the post of Police Head Constable. As per 5th Pay Commission, pay scale of the post of Police Naik and Police Head Constable was Rs. 4000-100-6000. The applicant was promoted from Police Naik to Police Head Constable and the pay scale for the post of Police Naik and Police Head Constable was same, but due to wrong fixation of pay of the applicant on his promotion on the post of Police Head Constable, excess amount of Rs. 200/- had been paid to the applicant since 13.11.1998. It is his contention that on promotion of the applicant as Police Head Constable, his basic pay was fixed at Rs. 4500/- instead of 4300/- and this mistake was noticed at the time of pay verification of the applicant by Pay Verification Unit, Aurangabad. On the basis of said mistake pointed out by the Pay Verification Unit, Aurangabad, the pay of the applicant has been re-fixed. The applicant had received excess amount of Rs. 1,27,985/- due to

wrong fixation of pay and therefore, Pay Verification Unit, Aurangabad directed the respondent No. 1 to recover the said amount wrongly paid to the applicant. Respondent No. 1 has recovered the said amount as per rules. It is their contention that the applicant has given consent cum certificate on 16.08.2017 and given authority cum consent to recover the said amount wrongly paid to him. On the basis of undertaking given by the applicant, the said amount has been recovered from the gratuity amount of the applicant and there is no illegality in it. Therefore, he justified the impugned order and recovery of excess amount paid to the applicant. On these ground he prayed to dismiss the present O.A.

4. Heard Shri G.N. Kulkarni (Mardikar), learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents. I have perused the documents placed on record by both the parties.

5. Admittedly, the applicant joined the services in Police Department in the year 1982 as Police Constable. Thereafter, he was promoted from time to time. Admittedly, on 13.11.1998 he was promoted as Police Head Constable. There is no dispute about the fact that on 13.01.2010 he was promoted on the post of

Assistant Police Sub Inspector. Thereafter, he was promoted as Police Sub Inspector on 19.10.2013. Admittedly, in the year 1998 at the time of promotion of the applicant on the post of Police Head Constable, his pay has been wrongly fixed at Rs. 4500/- instead of Rs. 4300/- and thereafter, the said mistake has been continued. Admittedly, at the time of retirement of the applicant, his service record has been sent to the Pay Verification Unit, Aurangabad for verification of his pay and that time it was disclosed that the pay of the applicant has been wrongly fixed in the year 1998 and the excess payment was made to the applicant. Therefore, recovery has been directed by the respondent No. 2 in the tune of Rs. 1,27,985/- from the applicant. Admittedly, the said amount has been recovered from the pensionary benefits of the applicant i.e. gratuity amount on his retirement. Admittedly, the applicant has given undertaking cum certificate to the respondent No. 1 and undertook to repay the excess amount, if any paid to him at the time of submitting his pension papers. Admittedly, the applicant was retired as Police Sub Inspector, which was group-B post.

6. At the outset, it is material to note that, at the time of arguments, the learned Advocate for the applicant has not

stressed much on the point of re-fixation of pay of the applicant. He has not disputed the fact that the pay of the applicant has been wrongly fixed in the year 1998, when he was promoted on the post of Police Head Constable. The pay of the applicant has wrongly been fixed at Rs. 4500/- instead of Rs. 4300/- in the year 1998. Admittedly, prior to promotion of the applicant on the post of Police Head Constable, the applicant was serving on the post of Police Naik and pay scale of the post of Police Naik and Police Head Constable was Rs. 4000-100-6000 as per the 5th Pay Commission and therefore, the applicant was not entitled to get additional increment on his promotion from the post of Police Naik to Police Head Constable. The pay of the applicant has been wrongly fixed at Rs. 4500/- instead of Rs. 4300/- at the time of his promotion and the said mistake has been noticed by the Pay Verification Unit, Aurangabad while verifying the service record of the applicant before his retirement. On the basis of objection raised by the Pay Verification Unit, Aurangabad, the respondent No. 1 issued the impugned order correcting the pay of the applicant and re-fixed his pay. There is no illegality in the said order and therefore, I found no substance in the submissions advanced by the learned Advocate for the applicant in that regard.

7. Learned Advocate for the applicant has submitted that the pay of the applicant has been wrongly fixed by the respondents in the year 1998, when the applicant was serving as Police Head Constable, which is Group-C post. He has submitted that the applicant had not played any role in fixing his pay and the respondents on their own accord, fixed his pay. The mistake was committed by the respondents in fixing the pay of the applicant and for that the applicant cannot be blamed. He has submitted that on the basis of said mistake, i.e. wrong fixation of pay the excess amount has been paid to the applicant and the said amount has been recovered by the respondents from the retiral benefits of the applicant. He has submitted that the said recovery cannot be made from the pensionary benefits of the applicant, as the excess payment was paid to the applicant when he was serving as Group-C employee. He has further submitted that the recovery has been made after retirement of the applicant and therefore, same is impermissible in view of the guidelines given by the Hon'ble Apex Court in case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** reported in **(2015) 4 SCC 334.**

8. Learned Advocate for the applicant has further submitted that the guidelines given by the Hon'ble Apex Court in the above cited case are applicable to the Government employees of all categories i.e. Group-A to Group-D and therefore, the recovery made from the applicant is illegal, as the same has been made from the retiral benefits of the applicant and that too after retirement of the applicant and therefore, he prayed to allow the present Original Application.

9. Learned Advocate for the applicant has further submitted that the undertaking has been given by the applicant at the time of his retirement and the said undertaking has not been given by the applicant, when his pay has been wrongly fixed in the year 1998 and the excess payment was made to him. In support of his submissions, he has placed reliance on the judgment delivered by this Tribunal at Mumbai in **O.A. No. 1102/2015** in case of **Syed Maqbol Hashmi Vs. The State of Maharashtra and Ors.** decided on 14.06.2016.

10. Learned Advocate for the applicant has also placed reliance on the judgment delivered by this Tribunal at Mumbai in **O.A. No. 79/2017** in case of **Shri Babusha Genbhau Tambe Vs. The Special Inspector General of Police and Ors.** decided on

23.03.2018 and the judgment delivered by this Tribunal in case of **Shri Ramdas Nagorao Sangle Vs. The Superintendent of Police** in **O.A. No. 554/2016** decided on 12.10.2017. He has submitted that in view of the said facts and circumstances, the O.A. requires to be allowed and the amount recovered from the applicant requires to be refunded to the applicant.

11. Learned Presenting Officer has submitted that the applicant was retired as a Group-B officer in the cadre of Police Sub Inspector and therefore, the principles laid down in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** reported in **(2015) 4 SCC 334** are not attracted in this case. He has submitted that the excess payment was made to the applicant because of wrong pay fixation and therefore, same has been recovered from the pensionary benefits of the applicant. The applicant was a Group-B officer and therefore, no hardship has been caused to the applicant due to recovery made from his pensionary benefits. He has further submitted that the applicant has given undertaking cum certificate at the time of his retirement and undertook to recover the excess payment made to him and therefore, in view of the judgment of the Hon'ble Apex Court in case of **High Court of Punjab and Haryana and Ors.**

Vs. Jadev Singh in **Civil Appeal No. 3500 of 2006** decided on 29.07.2016, the recovery is permissible. He has submitted that as the applicant belongs to Group-B category, there is no illegality in the impugned order and therefore, he prayed to reject the present Original Application.

12. On perusal of the record, it reveals that the applicant has been retired as Police Sub-Inspector i.e. Group-B officer. The Hon'ble Apex Court in case of **High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh** in **Civil Appeal No. 3500 of 2006** decided on 29.07.2016, has mentioned the situations in which the excess amount paid to the employees due to wrong fixation of pay cannot be recovered. It has been specifically mentioned therein that in case of recovery of such amount from the employees belonging to Group-C and Group-D class, hardship will be caused to them and therefore, such recovery from them was impermissible. There is no mention in the said decision that the said principle is applicable to the employees who are belonging from Group-A and Group-B category. Therefore, in my view, the principles laid down therein are not attracted in the instant case, as the applicant retired from Group-B officer and the recovery has been made from him after retirement. The judgment

of the Hon'ble Apex Court in the above cited decision specifically provides that only Group-C and D employees are covered under the said judgment. Therefore, I do not find substance in the submissions advanced by the learned Advocate for the applicant in that regard. Case of the present applicant is not covered by the principles laid down in the above cited decision in case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** and therefore, there is no illegality in the impugned order, by which the excess amount has been recovered from the applicant. Therefore, I do not find merit in the present O.A. Consequently, the O.A. deserves to be dismissed.

13. In view of the discussions in the foregoing paragraphs, the O.A. stands dismissed with no order as to costs.

PLACE : AURANGABAD.
DATE : 10.12.2018.

(B.P. PATIL)
MEMBER (J)

KPB/S.B. O.A. No. 712 of 2017 BPP 2018 Refund of amount