

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

**ORIGINAL APPLICATION NO. 908 OF 2019
(Subject – Refund of Recovered Amount)**

DISTRICT : HINGOLI

Shaikh Nisar Ahmed Shaikh Mehboob,)

Age : 60 years, Occu. : Pensioner,)

R/o : Narrangpura, Kandhar, Tq. Kandhar,))

District Nanded.) **.... APPLICANT**

V E R S U S

1. The Superintendent of Police,)

Hingoli District, Hingoli, Having office at)

Ashtavinayak Nagar, Hingoli -431513.) **... RESPONDENT**

APPEARANCE : Shri G.N. Kulkarni, Advocate for Applicants.

: Shri B.S. Deokar, P.O. for Respondent.

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

DATE : **06.12.2022.**

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 impugned order of pay fixation passed by the respondent No. 1 i.e. the Superintendent of Police, Hingoli dated 31.05.2016 (Annexure A-2) to the extent of recovery of excess amount paid to the applicant and further

seeking refund of the said amount of Rs. 1,13,970/- deducted from the pensionary benefit of the applicant along with interest.

2. The facts in brief giving rise to this application are as follows :-

(i) The applicant joined the service of Police Department, State of Maharashtra as Police Constable in the year 1982 i.e. on 01.05.1982. He initially worked under the establishment of Superintendent of Police, Nanded. Subsequently, he was transferred to Hingoli and served there till his retirement on superannuation. During the period 1993, he was promoted to the post of Police Naik. On 13.11.1998 he came to be promoted as Police Head Constable. On 19.10.2013, he further came to be promoted as Police Sub-Inspector and retired on the said post on superannuation w.e.f. 31.03.2017 while working with the respondent i.e. the Superintendent of Police, Hingoli.

(ii) It is submitted that while the applicant was due for retirement on superannuation, the respondent fixed his pay for the purpose of pension on 31.05.2016 (Annexure A-2) thereby ordering recovery of amount of excess pay paid to the applicant due to incorrect pay fixation in the year 1998

while he was promoted to the post of Police Head Constable. The excess amount was calculated to the tune of Rs. 1,13,970/- and same is deducted from the amount of gratuity and pensionary benefits receivable by the applicant, thereby the applicant had suffered hardship. The applicant at the time of his retirement was working on the non-gazetted post. In view of that, the recovery of said excess amount was impermissible. There are various decisions of this Tribunal and the Hon'ble Bombay High Court against such recovery. The applicant has relied upon the decision of the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in **W.P. No. 256/2019** in the matter of **Shri Ashok Sheshrao Jondhale Vs. Superintendent of Police, Hingoli and Anr.** (Annexure A-6). The Hon'ble High Court in this matter was pleased to quash and set aside the recovery, which was occurred due to wrong pay fixation. Hence, the present Original Application.

3. The present Original Application is resisted on behalf of respondent by filing affidavit in reply of one Vasim Hakim Hashmi, working as Police Inspector (Control Room), in the office of Superintendent of Police, Hingoli, Dist. Hingoli, thereby he

denied all the adverse contentions raised in the Original Application. It is specifically contended that at the time of retirement of the applicant during preparation of pension papers of the applicant, the case was sent to the Pay Verification Unit, Aurangabad and it was found that due to wrong pay fixation done in the year 1998 while the applicant was promoted to the post of Police Head Constable excess amount was being paid to the applicant, which is recoverable in accordance with law. Hence, the said amount is rightly recovered from the pensionary benefits of the applicant. The applicant is not the person belonging to Group-C category and therefore, citation relied upon by the applicant would not be applicable in the instant case. Hence, the Original Application is liable to be dismissed.

4. I have heard the arguments advanced at length by Shri G.N. Kulkarni, learned Advocate for the applicant on one hand and Shri B.S. Deokar, learned Presenting Officer on the other hand.

5. Upon perusal of the facts and documents on record and more particularly the impugned order of pay fixation dated 31.05.2016 (Annexure A-2), it is evident that the excess amount of pay was granted to the applicant, when the applicant was

promoted from the post of Police Naik to the post of Police Head Constable on 13.11.1998. The said wrong pay fixation was corrected and thereby pay of the applicant was reduced resulting into recovery of excess payment of Rs. 1,13,970/-. It is not disputed that the said amount is deducted from the pensionary benefits receivable by the applicant.

6. It is a fact that the applicant retired on superannuation from the post of Police Sub-Inspector. The recovery is of the period when the applicant was working in the cadre of Police Head Constable, which is Group-C category post. In view of the same, it is to be seen as to whether the excess amount paid to the applicant can be recovered from him from his pensionary benefits. The applicant retired on superannuation on 31.03.2017. The impugned order of pay fixation and recovery is dated 31.05.2016 (Annexure A-2).

7. Learned Advocate for the applicant strenuously urged before me that the recovery of excess amount on account of wrong pay fixation is impermissible in certain situation as laid down by the Hon'ble Apex Court in **Civil Appeal No. 11527/2014 arising out of S.L.P. (C) No. 11684/2012 & Ors. (State of Punjab and others etc. Vs. Rafiq Masih (White**

Washer) etc.) reported at **AIR 2015 SC 596**. In the said citation, in para No. 12 it is observed 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.”

8. The respondent has stated that the applicant retired from the post of Police Sub-Inspector, which falls in Group-B category. However, it is not in dispute that the post of Police Sub-Inspector is non-gazetted post. Moreover, in the present matter, the

amount is recovered by passing the order before 10 months of the retirement of the applicant i.e. on 31.05.2016 (Annexure A-2).

9. In the circumstances as above, Clause Nos. (i), (ii), (iii) & (v) of para No. 12 of the judgment of the Hon'ble Apex Court would be applicable in the instant case. Moreover, para No. 12 (ii) does not specify or restrict to the cadre of Government servants falling under Group-C and Group-D category only. In view of that, the recovery from retired employees and who are due to retire within one year the recovery cannot be made. Moreover, the recovery is of the period beyond five years of date of recovery. Moreover, the applicant is challenging the impugned order dated 31.05.2016 (Annexure A-2) only to the extent of recovery. He has no grievance about reduction of pay on account of re-pay fixation. In the circumstances, the present case will squarely fall within the parameters laid down by the Hon'ble Apex Court in the case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.** (cited supra).

10. Moreover, learned Advocate for the applicant also placed reliance on the decision of the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in **W.P. No. 256/2019** in the

matter of **Shri Ashok Sheshrao Jondhale Vs. Superintendent of Police, Hingoli and Anr.** (Annexure A-6). The petitioner therein was also retired from the post of Police Sub-Inspector. At the time of his retirement in his case also amount was recovered on account of wrong pay fixation done on 13.11.1998 while he was promoted as Police Head Constable. The Hon'ble High Court was pleased to observe that the recovery was impermissible. The said ratio is squarely applicable in the present case. In the circumstances, I hold that the impugned order dated 31.05.2016 issued by the respondent i.e. the Superintendent of Police, Hingoli to the extent of recovery of excess amount is not sustainable in the eyes of law. Hence, the same is liable to be quashed and set aside and the applicant is entitled for refund of the said amount.

Hence, the following order :-

ORDER

The Original Application No. 908/2019 is partly allowed in following terms :-

- (i) The impugned order of pay fixation passed by the respondent i.e. the Superintendent of Police, Hingoli dated 31.05.2016 (Annexure A-2) is hereby quashed and set aside.

- (ii) The respondent i.e. the Superintendent of Police, Hingoli is directed to refund the excess amount of Rs. 1,13,970/- recovered from the pensionary benefits of the applicant to the applicant within a period of three months from the date of this order.
- (iii) There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 06.12.2022.

(V.D. DONGRE)
MEMBER (J)

KPB S.B. O.A. No. 908 of 2019 VDD Refund of recovered amount