

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 95 OF 2018

DISTRICT: - NANDED.

Damodhar S/o. Nivruttirao Shrikhande,

Age-59 years, Occu. : Pensioner
R/o. Shri-Swami Samarth Niwas,
Plot No. 15-A Sambhaji Nagar
Near Rashtramata High School
Taroda (Bk), Nanded,
Tq. and Dist. Nanded.

.. APPLICANT.

V E R S U S

Superintendent of Police,

Nanded District, Nanded,
Having office at S.P. Office
Road Vazirabad,
Nanded-431601.

.. RESPONDENT.

APPEARANCE : Shri. Girish N. Kulkarni (Mardikar),
learned Advocate for the applicant.

: Smt. M.S. Patni, learned Presenting
Officer for the respondent.

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

DATE : **26TH MARCH, 2019**

O R D E R

By filing the present Original Application the applicant has challenged the order dated 24.8.2017 passed by the respondent No. 1 directing recovery of amount of Rs. 1,36,158 (Rs. One lac thirty six thousand one hundred fifty eight only)

from his pensionary benefits and prayed to quash and set aside the said order. He has further prayed to direct the respondents to refund the amount of Rs. 1,36,158/- deducted from his pensionary benefits.

2. The applicant was appointed as Junior Clerk in the Home Department, Government of Maharashtra and more particularly on the establishment of Superintendent of Police w.e.f. 3.1.1991. Accordingly, he joined his service in the office of Superintendent of Police, Aurangabad on 3.1.1991 and he served there till 2.1.1993. On 3.1.1993 he was transferred on the establishment of Superintendent of Police, Nanded. He served there as Junior Clerk till 27.7.2008. Thereafter, again he has been transferred as Junior Clerk on the establishment of State Reserve Police Force (SRPF) Gat No. 12, Hingoli. Accordingly, he joined there and worked up to 30.10.2010. On 1.11.2010 he was promoted as Senior Clerk and transferred on the establishment of respondent again. Accordingly, he joined his new posting and worked there till 10.9.2014. On 11.9.2014 he has been transferred on the establishment of Superintendent of Police, Hingoli, and he worked there up to 28.6.2016. On 29.6.2016 he came to be transferred on the establishment Superintendent of Police,

Nanded. Since then he was working there. He rendered service satisfactorily without blot. He came to be retired on superannuation w.e.f. 31.7.2017. At the time of his retirement, his pay has been revised and re-fixed by the respondent in the month of June, 2017. However, respondent issued the communication dated 1.7.2017 regarding retirement of the applicant w.e.f. 31.7.2017. It is contention of the applicant that because of revised pay fixation order dated 28.6.2017 the recovery of Rs. 1,36,158/- was directed. It is contention of the applicant that no notice has been issued to him by the respondent before revision of his pay and before issuing the order directing recovery from him. No opportunity of hearing was given to him by the respondent before passing the impugned order. On 24.8.2017 respondent issued the impugned order and directed the applicant to deposit amount of Rs. 1,36,158/- towards excess payment made to him and also informed that on depositing the said amount his pension papers will be processed. Because of the compelling circumstances, the applicant deposited an amount of Rs. 1,36,158/- with the Government by Challan on 5.9.2017. It is contention of the applicant that he was serving as Senior Clerk at the time of

retirement. The post of the Senior Clerk was Group 'C' post. The recovery has been ordered when he was on the verge of the retirement and the amount has been recovered after his retirement. It is his contention that the said recovery is not permissible in view of the guidelines given by the Hon'ble Supreme Court in the decision in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** reported in [**AIR 2015 SC 696/(2015) 4 SCC 334**] and, therefore, he approached this Tribunal challenging the order directing the recovery and also prayed to direct the respondents to refund the amount of Rs. 1,36,158/- recovered from him by allowing the present Original Application.

3. Respondent resisted the contentions of the applicant by filing an affidavit in reply. He has not disputed regarding appointment of the applicant as Junior Clerk, his promotion on the post of Senior Clerk, date of retirement, several transfers of on several establishments. It is his contention that benefit of time bound promotion was given to the applicant on 2.1.2003, but the same has been withdrawn from 3.6.2006. It is his contention that the applicant was promoted on the post of Senior Clerk w.e.f. 1.11.2010 and,

therefore, his pay has been revised and re-fixed by the order dated 28.6.2017 and that time it was found that the excess amount towards pay has been paid to the applicant for the period from 2.1.2003 to 3.6.2006 and, therefore, the recovery has been directed. It is his contention that the recovery has been ordered as per the rules and legal provisions, therefore, he prayed to reject the present Original Application.

4. I have heard the arguments advanced by Shri. Girish N. Kulkarni (Mardikar), learned Advocate for the applicant and Smt. M.S. Patni, learned Presenting Officer for the respondent. I have perused the application, affidavit of the applicant, affidavit in reply filed by the respondent. I have also perused the documents placed on record by both the parties.

5. Admittedly, the applicant was initially appointed as Junior Clerk on the establishment of Superintendent of Police, Aurangabad and thereafter he has been transferred at the different places at different establishments. Admittedly, the applicant was promoted as Senior Clerk on 1.11.2010 and transferred on the establishment of Superintendent of Police Nanded. Admittedly, the applicant retired on superannuation

w.e.f. 31.7.2017 from the establishment of the respondent. Admittedly, first time bound promotion was granted to the applicant w.e.f. 2.1.2003, but it has been withdrawn with effect from 3.6.2006. Admittedly, at the time of retirement of the applicant, his pay has been revised and re-fixed and at that time it was noticed by the respondent that an amount of Rs. 1,36,158/- has been paid to the applicant in excess though he was not entitled to it. The said payment was made to the applicant because of wrong fixation of pay made by the respondent. Admittedly, the said amount has been deposited by the applicant with the Government by Challan on 5.9.2017.

6. Learned Advocate for the applicant has submitted that the applicant retired as Senior Clerk i.e. Group 'C' post, on superannuation w.e.f. 31.7.2017. He has submitted that the applicant received the benefit of time bound promotion w.e.f. 2.1.2003 by the order passed by the concerned respondent authority, but the same has been withdrawn w.e.f. 3.6.2006. He has submitted that the applicant never misrepresented or practiced fraud on the respondent in getting the benefit of the time bound promotion in the year 2003. The concerned authority on its own accord passed the said order and,

therefore, the excess payment has been made to him during the period from 2.1.2003 to 3.6.2006. Therefore, the applicant cannot be blamed for it. He has submitted that the amount has been recovered from the applicant when the applicant retired from the service. The applicant was compelled to deposit the said amount on the ground that his pension papers will not be processed till he deposits the excess amount. He has submitted that the recovery of the excess amount has been made from the applicant after his retirement. The said recovery is impermissible in view of the guidelines given by the Hon'ble Supreme Court in the decision in case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** (supra), wherein it is 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."

7. He has further submitted that the said recovery is illegal and, therefore, he prayed to quash and set aside the impugned order directing the recovery and also prayed to direct the respondent to refund the amount of Rs. 1,36,158/- recovered from him, by allowing the present Original Application.

8. Learned Advocate for the applicant has further submitted that this Tribunal has decided the case of similarly situated persons in O.A. No. 784/2016 on 14th December, 2017, wherein the similar issue was involved and directed to the respondents therein to refund the excess amount recovered from the applicants therein. He has submitted that

in view of the decision of this Tribunal, as well as, decision of the Hon'ble Supreme Court in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** (supra), the applicant is entitled to get refund of the amount deposited by him and, therefore, he prayed to allow the present Original Application.

9. Learned Presenting Officer has submitted that recovery has been ordered from the applicant by the respondent after revision of the pay of the applicant. He has submitted that at the time of retirement of the applicant pay of the applicant has been revised as the benefit of time bound promotion granted to the applicant on 2.1.2003 has been withdrawn on 3.6.2006. He has submitted that during that period, the excess payment has been made to the applicant and, therefore, recovery of the amount of Rs. 1,36,158/- has been directed. He has submitted that the pay of the applicant has been revised and re-fixed in accordance with the rules and there is no illegality. The amount has been paid to the applicant in excess of his entitlement and, therefore, the recovery has been ordered. He has submitted that there is no illegality in the impugned order, as it is in accordance with

the rules and, therefore, he supported the impugned order and prayed to dismiss the present O.A.

10. On going through the record, it reveals that the applicant has been retired as Senior Clerk on the establishment of Superintendent of Police w.e.f. 31.7.2017. The applicant retired as Group 'C' employee. The pay of the applicant has been revised and fixed on 28.6.2017 before his retirement on the ground that first benefit of time bound promotion granted to the applicant on 2.1.2003 has been withdrawn by order dated 3.6.2006. The applicant was asked to deposit the excess amount of Rs. 1,36,158/- with a warning that his pension papers will not be processed till then. Because of the compelling circumstances the applicant deposited the amount of Rs. 1,36,158/- with the Government by Challan on 5.9.2017 after his retirement. The record shows that the respondents committed the mistake while granting the benefit of time bound promotion to the applicant and, therefore, the excess payment has been made to the applicant. The applicant neither misrepresented the respondents nor practiced any fraud on the respondents in getting the said benefit. The applicant had played no role in getting the excess payment. The excess payment has been

made to the applicant because of the mistake committed by the respondents and, therefore, the applicant cannot be blamed for it. Hardship has been caused to the applicant because of recovery of the excess payment from him made by the respondents after his retirement in compelling circumstances. Such type of recovery is not permissible in view of settled principles and guidelines laid down by the Hon'ble Supreme Court in the decision in case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** (supra). The principles and guidelines laid down in the above said decision are most appropriately applicable in the instant case. Moreover, similar issue has been dealt with and decided by this Tribunal in the case of Shaikh Mehboob Yakubsab Vs. Superintendent of Police, Nanded & Ors. in O.A. No.784/2016 decided on 14.12.2017. The case of the applicant is squarely covered by the decision rendered by this Tribunal in O.A. No. 784/2016, as well as, guidelines issued by the Hon'ble Supreme Court in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** (supra). Therefore, in my opinion the impugned order directing the recovery of Rs. 1,36,158/- from the applicant is

illegal and, therefore, the same requires to be quashed and set aside by allowing the present O.A.

11. Since the recovery of Rs. 1,36,158/- has been made from the applicant illegally, he is entitled to get refund of this amount.

12. In view of the above, the present Original Application is allowed. The impugned order directing the recovery of Rs. 1,36,158/- is hereby quashed and set aside. The respondents are directed to refund the amount of Rs. 1,36,158/- to the applicant within a period of 3 months from the date of this order, failing which the amount shall carry interest @ 9% p.a. from the date of this order till its realization. There shall be no order as to costs.

MEMBER (J)

PLACE : AURANGABAD.

DATE : 26TH MARCH, 2019

O.A.NO.95-2018(SB-Recovery)-HDD-2019