

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI, BENCH NAGPUR
ORIGINAL APPLICATION NO 186 OF 2016**

DISTRICT : NAGPUR

Tarachand s/o Urkudaji Gajbhiye)
R/o: Kailash Gruhnirman Soc.)
Plot no. 51, Vidya Nagar,)
NAGPUR 440 009.)...**Applicant**

Versus

1. The State of Maharashtra)
Through its Secretary,)
Finance Department,)
[Accounts & Treasury],)
Mantralaya, Mumbai - 32)
2. The Director of Accounts)
& Treasuries,)
Govt. Cottages Plot no. 176,)
Free Press Journal Marg,)
Mumbai 400 021.)
3. Accountant General-II,)
Civil Lines, Nagpur-01.)
4. Senior Treasury Officer,)
Civil Lines, Nagpur-01.)...**Respondents**

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Shri Bharat Kulkarni, learned advocate for the Applicant.
Shri M.I. Khan, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 10.03.2017

ORDER

1. Heard Shri Bharat Kulkarni, learned advocate for the Applicant and Shri M.I Khan, learned Presenting Officer for the Respondents.


2. This Original Application has been filed by the Applicant challenging order dated 19.1.2016 from the Respondent no. 2, refixing his pension retrospectively from the date of his retirement, i.e. 30.6.2010, in terms of Government Circular dated 17.12.2013.

3. Learned Counsel for the Applicant stated that the Applicant is in the cadre of Accounts Officer, Group-B under the Respondent no. 2, and was working in Gadchiroli district under District Rural Development Agency. He retired on 30.6.2010. As per G.R dated 6.8.2002, an employee posted to Tribal/Naxal affected area is entitled to one step promotion. The Applicant was accordingly drawing his pay on one step promotion when he retired. His pension was fixed on the basis of last pay

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drawn as per rules. However, Respondent no. 1 has retrospectively amended the Maharashtra Civil Services (Pension) Rules, 1982 by notification dated 27.10.2014. It has been provided that those working in Tribal/Naxal affected areas on one step promotion will be entitled to get pension on the basis of the pay they would have received without considering one step promotion. Learned Advocate Shri Kulkarni stated that even before rules were amended the Respondent no. 1 had issued a Government circular dated 17.12.2013 in this regard, seeking recovery of excess pension paid to such persons. Learned Counsel for the Applicant stated that this circular is not retrospective in application and the pension already paid to the Applicant cannot be reduced nor any recovery be made. Learned Counsel for the Applicant relied on the judgment of the Hon. Supreme Court in **STATE OF PUNJAB Vs. RAFIQ MASIH (WHITE WASHER) & ORS (2015) 4 SCC 334.**

4. Learned Presenting Officer for the Respondents stated that the G.R dated 6.8.2002 is issued to encourage sensitive and efficient officers to work in Tribal/Naxal affected area. By this G.R various incentives which are given to such officers to encourage them to work in such areas are consolidated. One of the important incentive is one step promotion which is applicable as long as these employees are working in Tribal/Naxal affected areas. If an employee is transferred



out of such area, his pay is refixed in the original scale. Learned Presenting Officer argued that once a person has retired, he no longer works in Tribal/Naxal affected areas, and therefore, there is no justification in his pension being fixed on the basis of his pay on one step promotion scale. Considering the policy of the Government, therefore, it was decided to make the above position clear and Circular dated 17.12.2013 was issued. Though this Circular was stayed by another Circular dated 15.2.2014, the stay was vacated by yet another Circular dated 18.12.2014. Maharashtra Civil Services (Pension) Rules, 1982 have also been amended accordingly by notification dated 27.10.2014. Learned Presenting Officer stated that a similar case is pending before the Hon'ble High Court, of Judicature at Bombay, Nagpur Bench, Nagpur (Writ Petition no 1701/2015), wherein Rule 9(36) of the Maharashtra Civil Services (Pension) Rules, 1982 is being examined by the Hon. High Court. The order of this Tribunal dated 11.4.2014 in O.A no 661/2012 holding that a person was entitled to pay on the basis of his last pay drawn irrespective of the fact that this was one step promotion has been stayed by the aforesaid order of the Hon. High Court, Nagpur Bench. Learned Presenting Officer also relied on the judgment of the Hon. Supreme Court in the case of **HIGH COURT OF PUNJAB & HARYANA & ORS Vs. JAGDEV SINGH, 2016 SCC Online SC 748**, wherein it has been held that if a Government employee has given an

undertaking to refund any excess payment, if so detected and demanded subsequently, the recovery can be made from his pensionary benefits. This judgment has interpreted the earlier judgment of Hon'ble Supreme Court in RAFIQ MASIH's case (supra). Learned Presenting Officer stated that the Applicant has given such an undertaking which is available in his Service Book, that if any excess payment is made to him, it can be recovered from his pensionary benefits. In view thereof, the action of the Respondents is fully justified.

5. The Applicant is relying mainly on the judgment of the Hon'ble Supreme Court in RAFIQ MASIH's case (supra), in so far as recovery of excess payment is concerned. However, the Respondents have placed a copy of his Service Book where he has given an undertaking that if any excess payment is made to him, he would have no objection if the same is recovered from his pensionary benefits. Hon'ble Supreme Court in the case of JAGDEV SINGH (supra) has held that:

“11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an

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undertaking while opting for the revised pay scale. He is bound by the undertaking.”

The facts in the present case are remarkably similar. The Applicant has given an undertaking that excess payment can be recovered from his pensionary benefits and as such the Respondents can recover any excess payment made to the Applicant in excess of his entitlement.

6. Coming to the issue whether Circular dated 17.12.2013 has retrospective application or not, it is seen that the Applicant claims that it has no retrospective application. However, Para 3 of this Circular reads as follows.

“या संदर्भातील शासनाचा निर्णय प्रलंबित असल्यामुळे अशा सुचना देण्यात येत आहेत की, आदिवासी व नक्षलग्रस्त भागातून दिनांक ०९.०९.२००६ रोजी किंवा त्यानंतर सेवानिवृत्त झालेल्या अधिकारी/ कर्मचारी यांना निवृत्तीच्या दिनांकास ते ज्या मूळ पदावर कार्यरत आहेत (एकस्तर पदेन्नतीचे पद वगळून), त्या पदाच्या पे-बॅन्डमध्ये ते घेत असलेले वेतन + अनुज्ञेय ग्रेड वेतनावर निवृत्तीवेतनाची परिगणना करावी. ज्या कर्मचा-यांना अशा परिगणनेनुसार अनुज्ञेय निवृत्तीवेतनापेक्षा जास्त निवृत्तीवेतन अदा करण्यात आले आहे, त्या निवृत्तीवेतनधारकांकडून जास्त अदा केलेले निवृत्तीवेतन महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम १९८२ मधील नियम १३४ (ए) (दि.३०.०७.२००७ नुसार केलेली सुधारणा) नुसार वसूल करण्याची कार्यवाही या नियमातील परंतूकानुसार करण्यात यावी.”

There is a clear provision in this Circular that all Government servants, who retired from Tribal/Naxal


affected areas on 1.1.2006 or thereafter, will be entitled to draw pension on the basis of their original pay and not on the pay they were drawing on one step promotion. This is a clear provision which suggest retrospective application of the Circular. Similarly, the relevant Maharashtra Civil Services (Pension) (Amendment) Rules, 2014 have been notified on 27.10.2014 and a new rule has been added to Rule 9(36), which reads:-

“2. In rule 9 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as “the principal Rules”)—

(a) in clause (36), after sub-clause (iii), the following sub-clause shall be added, namely-

“(iv) Any kind of financial incentive, including different in pay on account of one-step promotion (other than by way of Time Bound promotion or Assured Career Progression) as per any policy of the Government, shall not be admissible for calculating pay.”

The Applicant has not challenged the Constitutional validity of the aforesaid Circular. There is no request in the relief clause 11 in the Original Application in that regard. Otherwise also, looking into the philosophy behind issuing the G.R dated 6.8.2002, this Circular appears to be fully justified. A Government servant appointed to a Tribal/Naxal affected area is not given



permanent one step promotion. Such promotion is given to him as long as he is working in such areas. Such a posting is supposed to be temporary and only young officer below the age of 50 years are expected to be posted in Tribal/Naxal affected areas. Ordinarily, therefore, situation where a person retires from Tribal/Naxal affected area should not arise. If a person retiring in such areas given pension on one step promotion basis when he is no longer required to work in that area will be highly discriminatory vis-a-vis other persons similarly situated and who retire from areas other than Tribal/Naxal affected area. It is my considered opinion that Circular dated 17.12.2013 is fully in consonance with the G.R dated 6.8.2002. The only issue is regarding recovery of excess payment which has already been discussed in the preceding paragraph.

7. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

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(Rajiv Agarwal)
Vice-Chairman

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Place : Mumbai *Nas pur*
Date : 10.03.2017
Dictation taken by : A.K. Nair.