

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.601 OF 2020**

**DISTRICT: NASHIK  
SUBJECT: DENIAL OF  
INTEREST**

Shri Uttamrao Pandharinath Ugale. )  
Aged: 65 Yrs., Occ. Nil, Retired as )  
Assistant Photographer from the office of )  
below named Respondent, R/o. Parijat, )  
480/9, Dyaneshwar C.H.S. Ltd., )  
Konark Nagar, Nashik – 3. )...**Applicant**

**Versus**

The Superintendent of Police. )  
Nashik [Rural], Nashik Having )  
Office at Nashik. )...**Respondents**

**Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.**

**Archana B. Kologi, learned Presenting Officer for the Respondents.**

**CORAM : A.P. Kurhekar, Member (J)**

**DATE : 02.02.2022.**

**JUDGMENT**

1. The Applicant has challenged communication dated 15.02.2020 to the extent of not considering interest on the refund of Rs.4,48,724/- (Four Lakhs Forty Eight Thousand Seven Hundred Twenty Four Only) and also claim revision of pay and allowances consequent to order of quashing recovery of Rs.4,48,724/- (Four Lakhs Forty Eight Thousand Seven Hundred Twenty Four Only).

2. Following are the prayer Clause in O.A.:-

a) By a suitable order / direction, this Hon'ble Tribunal may be pleased to set aside the impugned order dated 15.02.2020 passed by the Respondent (EXHIBIT-A) to the extent to which the same as denied

to the Petitioner the interest of 5 years and 2 months @ 12% p.a. from 10.12.2014 to 15.02.2020.

b) By a suitable order / direction, this Hon'ble Tribunal may be pleased to direct the Respondent to revise upwards his salary of the month of June 2014 based on the grant of the second benefits of Time Bound Promotion and the yearly increments and correspondingly the pension amount be re-fixed and to grant to the Petitioner the arrears of pay and allowances based thereon with the interest thereon @ 12% p.a. till the realization from due date.

3. Shortly stated undisputed facts giving rise to this O.A. are as under:-

The Applicant stands retired as Assistant Police Inspector from the establishment of Respondent Superintendent of Police, Nashik Rural on 31.07.2014. When he was at the verge of retirement pay verification unit found incorrect fixation of pay resulting into excess payment of Rs.4,48,724/- (Four Lakhs Forty Eight Thousand Seven Hundred Twenty Four Only) from 1994 till retirement. After retirement in pursuance of recovery order dated 01.09.2014 sum of Rs.4,48,724/- (Four Lakhs Forty Eight Thousand Seven Hundred Twenty Four Only) was recovered from the retiral benefits. The said action was challenged by the Applicant in O.A. No.890/17. O.A. was allowed by order dated 04.02.2020 and directions were given to refund Rs.4,48,724/- (Four Lakhs Forty Eight Thousand Seven Hundred Twenty Four Only) within 6 weeks and accordingly amount was refunded.

4. It is on the above background the Applicant made representation on 11.02.2020 claiming refund of Rs.4,48,724/- (Four Lakhs Forty Eight Thousand Seven Hundred Twenty Four Only) along with interest at the rate of 12% on the said amount. However, by impugned communication he was only informed that refund of Rs.4,48,724/- (Four Lakhs Forty Eight Thousand Seven Hundred Twenty Four Only) is already processed. It was actually paid to the Applicant on 23.04.2020.

5. Now, in this O.A. the Applicant is claiming interest at the rate of 12% from 10.12.2014 to 15.02.2020 and also upper revision on the ground since recovery order is quashed, he is entitled to the then existing pay scale which was before recovery. In view of objection of pay verification unit it was found that the Applicant's pay was wrongly fixed, and therefore at the verge of retirement re-fixation and recovery of Rs.4,48,724/- (Four Lakhs Forty Eight Thousand Seven Hundred Twenty Four Only) was found. In other words his pay was downgraded in view of earlier mistake in pay fixation and he is getting pensionary benefits as per revised and correct pay scale.

6. O.A. No.890/17 was allowed by the Tribunal on the basis of judgment of the Hon'ble Supreme Court in **(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer))** in which recovery is held impermissible. It is in that context O.A. was allowed and directions were issued to refund Rs.4,48,724/- (Four Lakhs Forty Eight Thousand Seven Hundred Twenty Four Only).

7. Now turning to the relief claimed in the O.A., insofar as interest claim is concerned the Applicant is claiming interest at the rate of 12% on Rs.4,48,724/- (Four Lakhs Forty Eight Thousand Seven Hundred Twenty Four Only) from 10.12.2014 to 15.02.2020. Learned Advocate for the Applicant fairly concedes that no such claim for interest was raised in the pleading of O.A. No.890/17. However, he sought to contend that the Applicant is entitled to interest on the said amount. In this behalf he made reference to decision of the Hon'ble High Court in **Writ Petition No.695 of 2016 (Prabhakar s/o. Ramdas More & Ors. v/s. The State of Maharashtra & Ors.) decided on 12.02.2018**. In the light of decision of the Hon'ble Supreme Court in **Rafiq Masih's case (cited supra)** direction were issued to refund amount recovered from Gratuity with interest at the rate of 10% from the date of recovery till realization. Reference was also made to the decision of the Hon'ble High Court in **Writ Petition No.10401 of 2018 (Tukaram Rajba**

**Phavade v/s. The Regional Dairy, Development Officer) decided on 29.07.2021** wherein direction were issued to refund excess amount recovered from the Government servant with interest. In my humble opinion since in O.A. No.890/17 admittedly there was no claim or prayer for interest, now the Applicant cannot claim interest. The claim of the Applicant for interest is now hit by Order 2 Rule 2 of C.P.C which *inter-alia* provides that were a person entitled to more than one relief in respect of the same cause of action he may sue for all reliefs, but where he omits to sue for some relief, he shall not afterwards sue for any relief so omitted. This being the position claim of interest is totally untenable. Apart, interest is to be granted when person is deprived of to which he is legally entitled. Whereas, in present case what was recovered and thereafter refund to the Applicant was amount he wrongly received. Suffice to say claim of interest is totally unsustainable.

8. As regard prayer Clause B, submission was advanced by learned Advocate for the Applicant that since recovery order was quashed, the Applicant was entitled to have same pay scale which was before recovery. In other words, he is claiming the benefit of wrong fixation of pay even for pension. This submission advanced by learned Advocate for the Applicant is totally fallacious and misconceived.

9. The Tribunal in O.A. No.890/17 quashed recovery part only meaning thereby the order of re-fixation was maintained. Indeed, there is no such claim in O.A. No.890/17 that downgrading of pay was incorrect. What was in challenge was the recovery in view of the decision of the Hon'ble Supreme Court in **Rafiq Masih's case (cited supra)**. Indeed, the Applicant retired on 31.07.2017. Whereas, **Rafiq Masih's case (cited supra)** was decided by the Hon'ble Supreme Court by judgment dated 18.12.2014.

10. Be that as it may, the Hon'ble Supreme Court held that recovery of excess payment made to the Government servant on account of mistake

on the part of Department without there being any fraud or misrepresentation by Government servant could be impermissible after retirement in view of hardship likely to be caused to them, particularly Group 'C' & Group 'D' employees. As such, what is held impermissible is recovery of excess payment made to a Government servant and to continue wrong payment for Pensionary purpose. In view of wrong fixation, Applicant's pay was re-fixed and downgraded. As such, downgraded pay was the only entitlement of the Applicant for pensionary purpose, otherwise, if Applicant's contention is accepted, it would amount to perpetuate the illegality and continuing excess benefits to him which is not at all intended in the judgment.

11. The totality of the aforesaid discussion leads me to sum-up that the claim made by the Applicant in present O.A. is devoid of any merit and O.A. deserves to be dismissed. Hence, the order.

**ORDER**

Original Application is dismissed with no order as to costs.

**Sd/-**  
**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai  
Date: 02.02.2022  
Dictation taken by: N.M. Naik.