

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.144 OF 2017
WITH
ORIGINAL APPLICATION NOS.154, 576, 624 & 619 OF 2017**


DISTRICT : MUMBAI

ORIGINAL APPLICATION NO.144 OF 2017

Shri Mahadeo Nivrutti Jagdale.)
Working as Police Head Constable – Driver)
Office of Additional Commissioner of Police)
(Motor Transport) Nagpada, Mumbai 400 008)
Residing at C-A/205, 120-A,)
Shree Shanti Niketan, Sector-8, Kharghar,)
Navi Mumbai 410 210.)...**Applicant**

Versus

1. Government of Maharashtra,)
Through the Additional Chief Secretary,)
Home Department,)
Mantralaya, Mumbai.)
2. Commissioner of Police,)
Mumbai having office at Crawford Market,)



Fort, Mumbai 400 001.)

3. Additional Commissioner of Police,)
 Motor Transport Division, Mumbai,)
 Nagpada, Mumbai 400 008)...**Respondents**

WITH

ORIGINAL APPLICATION NO.154 OF 2017

Shri Bhanudas Krishna Shinde.)
 Retired Head Constable – Driver)
 Motor Transport, office of Additional)
 Commissioner of Police, Nagpada,)
 Mumbai 400 008,)
 Residing at post Parkhande, Satalewadi,)
 Taluka – Wani, District Satara 412 803)... **Applicant**

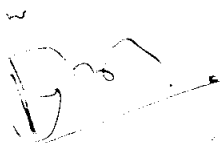
Versus

1. Government of Maharashtra & 2 Ors.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.576 OF 2017

Shri Tanaji Dnyanu Jadhav.)
 Retired Head Constable – Driver,)
 Office of Additional Commissioner of Police,)
 Motor Transport Section, Nagpada, Mumbai)



Residing at Sahani Palace Co-op. Hsg. Soc.)
 Sector-1, K-Wing, R.No.304,)
 Shirwane – Nerul, Navi Mumbai.)
 Residing at post Parkhande, Satalewadi,)
 Taluka – Wani, District Satara 412 803)...**Applicant**

Versus

1. Government of Maharashtra & 2 Ors.)...**Respondents**

WITH

ORIGINAL APPLICATION NO.624 OF 2017

Shri Janardan Arjun Rane.)
 Aged about 59 years, Retired Head Constable-)
 Driver, Office of Additional Commissioner of)
 Police, Motor Transport Section, Nagpada,)
 Mumbai and residing at Building No.92,)
 Room No.3242, Nehru Nagar Police Colony,)
 Kurla (E), Mumbai 400 024.) ...**Applicant**

Versus

Government of Maharashtra & 2 Ors.)...**Respondents**

AND



ORIGINAL APPLICATION NO.619 OF 2017

1. Shri Vasant B. Katkar.)
Aged about 57 years, working as Police)
Head Constable, Nagpada Motor Transport)
Section, Mumbai 400 008 and residing at)
Plot No.32, Sector 5, Room No.402,)
Kamothe, Navi Mumbai.)

2. Shri Sakharam B. Bhadsale.)
Age : 58 yrs., working as Police Constable)
(Driver), Nagpada Motor Transport Section,)
Mumbai 400 008 and residing at Gulam)
Rasul Chawl, Room No.6, Meghwadi, Shani)
Mahatma Mandir, Jogeshwari (E),)
Mumbai 400 060.)

3. Shri Anant N. Rane.)
Age : 56 yrs., working as Police Head Constable)
Nagpada Motor Transport Section,)
Mumbai 400 008 and residing at Worli B.D.D.)
Chawl No.26, Room No. 78, Opp. Doordarshan,)
Worli, Mumbai 400 018.)

4. Shri Narayan P. Gaikwad.)
Age : 54 yrs., working as Police Head Constable)
Nagpada Motor Transport Section,)



Mumbai 400 008 and residing at B-Edgeware,)
 1604, D.P. Road, Near Fatima Church,)
 Majiwada, Thane (W) – 400 601.)

3. Shri Subhash H. Savalkar.)
 Age : 57 yrs., working as Driver, Asst. Sub. I,)
 Santacruz Police Station, Mumbai and residing)
 at New Municipal Chawl No.10, Shivshakti)
 Nagar.)

)...Applicants

Versus

1. Government of Maharashtra & 2 Ors.)...Respondents

Mr. M.D. Lonkar, Advocate for Applicants.

**Mr. A.J. Chougule, Presenting Officer for Respondents in
 OA Nos.144/17, 154/17, 576/17 & 624/17 and Ms. S.
 Suryawanshi, Presenting Officer for Respondents in OA
 No.619/17.**

P.C. : R.B. MALIK (VICE-CHAIRMAN)

DATE : 07.09.2017

JUDGMENT

1. These five Original Applications (OAs) brought by retired Head Constables/Drivers in the Office of the Respondent No.3 – Additional Commissioner of Police, Motor Transport relate to the orders whereby their pay was



sought to be downwardly revised and consequently a claim for recovery was made. The facts in substance are the same and the facility demands the disposal of all these five OAs by this common Judgment.

2. The Applicants have all retired recently. They came to be initially appointed in the constabulary on different dates and then were appointed as Police Constable/Driver way back in 1980s. They were promoted from time to time and lastly they were promoted as Police Head Constables/Drivers. Their pay was earlier fixed and all of them got their first Time Bound Promotion after completion of 12 years of their initial appointments. The Pay Verification Unit, however, raised objections and hence, by the impugned orders, the pay of the Applicants was sought to be downwardly revised and directions were issued to make recovery of the amount which was supposed to have been paid to them in excess of their entitlement. The Applicants are aggrieved thereby and are up before me by way of these OAs.

3. I have perused the records and proceedings and heard Mr. M.D. Lonkar, the learned Advocate for the Applicants, Mr. A.J. Chougule, the learned Presenting Officer (PO) for the Respondents in the first four OAs and



Ms. S. Suryawanshi, the learned Presenting Officer for the Respondents in the 5th OA.

4. The 1st Respondent is the State of Maharashtra in Home Department, the 2nd Respondent is the Commissioner of Police, Mumbai and the 3rd Respondent as already mentioned above is Additional Commissioner of Police, Motor Transport, Mumbai.

5. The issue is as to whether in the set of these circumstances, the move of the Respondents above referred to is legally sustainable. It quite clearly is not, and right at the outset, be it noted quite clearly that this controversy is now fully governed by a Judgment of the Hon'ble Supreme Court and at least three Judgments of this Tribunal, one of which was confirmed by the Hon'ble High Court. The Judgment of the Hon'ble Supreme was in the matter of **State of Punjab and others Vs. Rafiq Masih (White Washer) : (2015) 4 SCC 334**. As far as the Judgments of this Tribunal are concerned, one Judgment was in the matter of **OA 331/2016 (Shri Tanaji S. Namane Vs. State of Maharashtra and one another and another OA, dated 22nd September, 2016** rendered by me. Another Judgment of this Tribunal was rendered by the then Hon'ble Vice-Chairman in **OA 923/2015 (Shri Balkrishna B. Nikam Vs. Government of Maharashtra and 3 others,**



dated 18.2.2016) which was confirmed by a Division Bench of the Hon'ble Bombay High Court in **Writ Petition No.7404/2016 (State of Maharashtra and others Vs. Balkrishna B. Nikam, dated 3rd October, 2016)** and there was one other Judgment rendered by me in **Revision Application No.8/2017 in OA 342/2016 (The Joint Director of Vocational Education and Training and one another Vs. Shri Prakash L. Hotkar and 3 others, dated 28.6.2017)** which review was filed against the order in **OA 342/2016 (Shri Prakash L. Hotkar Vs. Principal, Industrial Training Institute and 4 others, dated 9.3.2017)**. The Respondents have relied upon a Judgment of the Hon'ble Supreme Court in **Civil Appeal No.3500/2006 (High Court of Punjab and Haryana and others Vs. Jagdev Singh, dated 29th July, 2016)**. **Rafiq Masih** was discussed by the Hon'ble Supreme Court in **Jagdev Singh's** case also and only one aspect of the matter was explained, but otherwise, **Rafiq Masih** also holds the ground.

6. Quite pertinently, in the context of the present facts also, it is an admitted position that the over-payment even if it was made, was solely due to the official act and none of the Applicants can be assailed of any sharp practice or employment of dishonourable tactics. The



money was paid to them from time to time and they accepted it. They were, till they demitted the office on superannuation Group 'C' employees (Class-III).

7. It is quite clear that the Judgment of this Tribunal in **Tanaji Namane** (supra) was ultimately complied with by the Respondents for which useful reference could be made to the documents (Exh. 'L' collectively) at Page 44 of the Paper Book (PB). In the Affidavit-in-reply filed by Mr. Sandip H. Shinde, Assistant Commissioner of Police, Motor Transport, in Para 20 (Page 53 of the PB), it is clearly admitted that the decision of this Tribunal in **Namane's** case was implemented by the 3rd Respondent.

8. This Tribunal in **Balkrishna Nikam** (supra) on the entirely similar set of facts involving the Applicant who was at par with the present Applicants relied upon **Rafiq Masih** (supra) and quoted Para 12 of the Judgment of the Hon'ble Supreme Court in that matter, which in fact, can safely be reproduced here as well as follows :

“**12.** It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments mistakenly been made by the employer, in excess of their entitlements. 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 retired within one year, of the order of recovery,

(iii) Recovery from 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 employee, 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.

It would become very clear from I and II of the above principles laid down by the Hon'ble Supreme Court that there should be no recovery from the Applicant herein."



The above passage from **Rafiq Masih**, as I shall be presently pointing out is apt for guidance. Returning to **Balkrishna Nikam** (supra), the then Hon'ble Vice-Chairman was pleased to hold that the Applicant therein who was at par with the present Applicants was not liable to be subjected to the kind of treatment that the present Applicants are being sought to be meted out. The order therein impugned was quashed and set aside and the OA was allowed. The State carried the matter to the Hon'ble High Court in **Writ Petition No.7404/2016** (supra). It was noted by the Hon'ble High Court that it was the case of the State that the employee was mistakenly given Time Bound Promotion and that was pointed out by Pay Verification Unit. Thereafter, Para 12 of the **Rafiq Masih's** case was reproduced by Their Lordships. The following observations were made thereafter in Paras 2, 3 and 4.

“2. Learned Counsel appearing for petitioner-State submits that State is not recovering any amount from the respondent but re-fixing the emoluments of respondent which he received for the purposes of benefit of services.

3. The State has taken 25 years to realize that some mistake occurred in counting 12 years



period of giving time bound promotion to respondent, that also when the pay verification unit raised this issue.


4. The Maharashtra Administrative Tribunal after perusing the record and considering the submissions formed its opinion. The view opted by the Tribunal cannot be termed as unreasonable or perverse. In the facts we are not inclined to interfere into the view adopted by the Tribunal in exercise of our writ jurisdiction. There is no merit in the petition. It is dismissed.

Sd/-
(Prakash D. Naik, J.)

Sd/-
(Naresh H. Patil, J.)”

It is, therefore, absolutely clear that the present Applicants falling in Group ‘C’ category were fully entitled to the benediction enshrined in **Rafiq Masih** (supra) and **Balkrishna Nikam** (supra).

9. There is another aspect of the matter herein which is an undertaking that is there only in case of the Applicant Mr. Jagdale and 3 of the 5 Applicants in OA 619 of 2017. As far as the other three Applicants are concerned, they did not give any such undertaking. The



case of the Respondents is that the said Applicant is precluded from disputing the liability because he has given the undertaking. It was precisely for this particular purpose that reliance was placed on **Jagdev Singh's** case (supra) by the Respondents. As already mentioned in case of all others, there was no undertaking at all and even in case of the Applicant Mr. Jagdale and 3 Applicants of 5 in OA 619/2017, the Applicant gave some kind of undertakings, a copy of which is at Exh. 'R-2' (Page 58 of the PB) in Jagdale's OA. That was basically in relation to the option exercised by the said Applicant in the matter of pay fixation. His pay was fixed by the order dated 21st January, 2014 (Exh. 'A', Page 12 of the OA 144/2017). Now, this pay fixation does not refer to the Time Bound Promotion that the said Applicant was given. Further, in **Jagdev Singh's** case, **Rafiq Masih** has been referred to and in the Review Application of **Prakash Hotkar** (supra), I sought guidance therefrom. Paras 9 and 10 thereof can safely be reproduced for facility.

“9. The learned CPO relied upon a Judgment in the matter of **Civil Appeal No.3500 of 2006 (High Court of Punjab and Haryana and others Vs. Jagdev Singh, dated 29th July, 2016)**. That was a matter where a compulsorily retired Civil



Judge disputed the move of the Government to revise his pay scale. Their Lordships held that in as much as he had given an undertaking, he would not be allowed to resile therefrom and the Government's move could not be impeached. Now, if the learned CPO sought to rely upon **Jagdev Singh** for the proposition that, here also, the Applicant had given an undertaking and hence, he cannot be allowed to question any action pursuant thereto, I do not think, I can quite agree with him. In the Judgment in the OA, I have discussed the undertaking aspect of the matter. At that time, the original Respondents did not cite **Jagdev Singh's** case. I held that as between the so called undertaking and the Judgment of the Hon'ble Supreme Court in **Rafiq Masih**, the binding authority will be that of the Hon'ble Supreme Court. Further, the Applicant was a Group 'C' employee unlike **Jagdev Singh** who was a Group 'A' employee. Even in **Jagdev Singh**, in Para 10, Their Lordships discussed **Rafiq Masih's** case and reproduced therefrom Para 12 which I have already reproduced above. It is very clear from the observations in **Jagdev Singh** in Para 11 that



the mandate of **Jagdev Singh** would be applicable in the matter of recovery from retired employees or those who were to retire within one year from the order of recovery. It was in that sense that, the issue of undertaking assumed significance. I must repeat that in **Jagdev Singh**, the concerned Officer was a Group 'A' employee while here, the original Applicant was a Group 'C' employee. In **Jagdev Singh**, there was no Rule like Rule 131 of the Pension Rules here which prescribed the limit for exercising the powers therein in the matter of revision of pay scale, etc.

10. It must have been observed that, I have discussed this Review Application almost as if it were an OA. Going by the statutory confines of the provisions with regard to review set out at the threshold, it is quite clear that, in the first place, let me mention it clearly, there is no apparent mistake in the Judgment in the OA. There is at least no mistake that would be rectified in review jurisdiction. Review jurisdiction has to be exercised in accordance with the statute prescribing the same and in my opinion, the

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present application does not survive the legal test. It is very pertinent to note that, in the OA, there is not even a tangential reference to Rule 131 of the Pension Rules. I would, therefore, conclude by holding that this RA is devoid of substance and is accordingly dismissed. The order in the OA had not been stayed. However, for the sake of facility, I grant time of four weeks from today to comply therewith, failing which the stipulation of interest as set out in Para 15 of the Judgment in the OA would come into force. No order as to costs.”

10. The upshot, therefore, is that the Respondents are unable to sustain their case in any manner whatsoever, and therefore, these OAs will have to be decided strictly in line with the other OAs referred to hereinabove, the order of one of which was confirmed by the Hon'ble High Court. It is clear that the Respondents will have to so conduct themselves as if the impugned orders never existed at all. The orders herein impugned are quashed and set aside and the OAs are allowed with directions to the Respondents to act in accordance herewith in every respect within a period of two months from today. The Respondents shall not make any recovery

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and as already mentioned, the pay of the Applicants will be fixed as if impugned orders were not in existence and consequently, modification, if any shall be made in the quantum of pension and other post retiral benefits and the pension strictly in accordance herewith, shall be regularly paid to the Applicants. No order as to costs.

Sd/-

(R.B. Malik)
VICE-CHAIRMAN
07.09.2017

Mumbai

Date : 07.09.2017

Dictation taken by :

S.K. Wamanse.

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