

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**

**ORIGINAL APPLICATION NO. 147/2016**

Ramdayal Singh Ramnath Thakur,  
Aged about 60 years, Pensioner,  
R/o Plot No.71, Kamgar Nagar,  
Near CID Office, Katol Road, Nagpur. -----**Applicant.**

**Versus**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Home, Madama Cama Marg ,  
Rajguru Square, Secretariat Mumbai.
2. The Commissioner of Police, Civil Lines,  
Nagpur.
3. The Accountant General, ( A & E ) II,  
Maharashtra, Civil lines,  
Nagpur. ----- **Respondents**

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1. Shri Shashikant Borkar, Advocate for the applicant.
  2. Shri M.I. Khan, Presenting Officer for the Respondents.
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**CORAM** : S.S. Hingne: Vice Chairman  
**DATE** : 8<sup>th</sup> December, 2016

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**ORDER**

The applicant, API, took exception of the recovery of the amount vide order dtd. 15/2/2016 (Annex.A-1, page 17 ) which

was double payment of the G.P.F. amount.

2. Heard Shri Shashikant Borkar, Id. Counsel for the applicant and Shri M.I. Khan, Id. P.O. for the respondents.

4. At the outset , it is to be clarified that it is not the refund of the excess payment but the recovery of the double payment. The applicant is superannuated as a Asstt. Police Inspector (API) on 30/6/2014. On 1/4/2014 i.e. 2 months before the retirement, he applied for the non-refundable G.P.F. withdrawal. It was allowed to him and cheque of Rs.3,77,000/- was issued on 9/5/2014 and the amount was paid to him on 30/5/2014. After a month the applicant is superannuated.

5. It reveals that a note of this withdrawal was not taken and the full amount of the G.P.F. was paid to the applicant ( without deducting the amount of Rs.3,77,000/-). The respondent No. 2 realized the double payment and thereon the applicant was intimated by the respondent no. 2 and he was called upon by the office and accordingly he appeared on 11/9/2015 and admitted the double payment and undertook and assured to refund the same in writing on 11/9/2015 ( page-82).

6. The A.G. has also intimated the respondents vide communication dtd. 29/9/2015 ( Annex.R-2, page-81) about the double payment and asked for the recovery of the amount with interest. Thereon the respondent no.2 vide communication dtd. 26/10/2015 ( Annex. R-IV, page-83) again informed the applicant, as he did not respond and turn up. Consequent to the above letter, the applicant appeared on 9/11/2015 in the Commissioner's office and resiled from the earlier undertaking to repay the amount and come with the case that he cannot refund the amount ( Page-84). The A.G. office also wrote to the Commissioner office on 20/1/2016 ( page-86) for the recovery. In effect the Commissioner office passed the order on 15/2/2016 (Annexure-A-4, page-84) which is impugned in this O.A.

7. The Id. Counsel for the applicant vehemently urged that as per Rule 134- A of the Maharashtra Civil Services ( Pension ) Rules, 1982, (hereinafter referred to as the Pension Rules ) if the excess payment is to be recovered, the reasonable opportunity is to be given to the pensioner before the recovery as per proviso to this Rule. Rule 134 –A runs as under :-

**Rule 134-A** “ Recovery and adjustment of excess amount paid

- (i) It is found that due to any reason whatsoever an excess amount has been paid to him during the period of his service including service rendered upon re-employment after retirement , or
- (ii) any amount is found to be payable by the pensioner during such period and which has not been paid by or recovered from him, or
- (iii) It is found that the amount of licence fee and any other dues pertaining to Government accommodation is recoverable from him for the occupation of the Government accommodation after the retirement,

then the excess amount so paid, the amount so found payable or recoverable shall be recovered from the amount of pension sanctioned to him. ]

Provided that the Government shall give a reasonable opportunity to the pensioner to show cause as to why the amount due should not be recovered from him :

Provided further that the amount found due may be recovered from the pensioner in installments so that the amount of pension is not reduced below the minimum fixed by Government.

8. The Id. Counsel for the applicant further urged that no such notice was issued in this case and therefore the recovery cannot be done.

9. As against this, the Id. P.O. submits that the applicant was duly noticed about the excess payment and he appeared in the office of the Commissioner and has given the undertaking ( Annex.R-2, page-82) and this is in compliance of the Rule.

10. From the bare perusal of the proviso it is manifest that reasonable opportunity to the pensioner to show cause about the recovery of the amount is to be given. Truly in the official matters everything is to be put in black and white to avoid the complications and further challenge. The purpose behind this provision is that the pensioner should be made aware of the recovery. It is immaterial by what mode he is intimated. Anyhow fact remains that the applicant was intimated of the recovery and he has given the undertaking . As such it cannot be said that the applicant was not given the reasonable opportunity. What is reasonable is explicit. It is not the case that the applicant was called upon and on the very day the recovery order was passed. Thus, the applicant got the reasonable opportunity as contemplated by the Rule.

11. It is also the applicant's case that the said undertaking was taken under coercion. Needless to mention that in cases of

the undue influence and coercion, the details are to be given so as to hold how and what type of coercion and undue influence was exercised. In the absence of details the bare statement does not carry conviction particular when the applicant was holding the post of API and he was no longer in service being retired. Not only that but the writing on that page is in the handwriting of the applicant himself. It is hard to hear that the applicant was pressurized to write such contents and that is not also the case of the applicant. In the present advance technical age when the mode of communications are made by various means and modes even the message by mobile or by any mode can be sufficient to hold the due service.

12. As a next string to the bow the applicant relied on the well known case of **State of Punjab and others vs Rafiq Masih** ( **White Washer** ) reported in [ **( 2015 ) 4 SCC 334**]. The Id. Counsel for the applicant urged that the applicant is retired Group-C employee and therefore his case is covered in the situations laid down in category 1 and 2 wherein the recovery cannot be done.

13. Per contra is the contention of the Id. P.O. and he relied on the case decided by the Apex Court of the Land in case of

**High Court of Punjab and Haryana -Vs Jagdeo Singh**, Civil Appeal No. 3500/2006 decided on 29/7/2016. In the said case Their Lordships of the Apex Court of the Land considered the Rafiq Masih's case and observed that the employee had given the undertaking to refund the amount and thus, he was on notice that if any excess payment is made, it would have been required to be refunded and hence recovery can be done.

14. This leads to the facts of the case in hand. The applicant herein was serving as a API. He was superannuated on 30/6/2014. Before retirement i.e. on 1/4/2014 he applied for withdrawal of the GPF amount ( non-refundable) and the amount of Rs.3,77,000/- was paid to him on 30/5/2014 i.e. just one month before the retirement. Due to this short period, the necessary entries were not carried out in record and after superannuation the applicant was paid full GPF amount since the noting of withdrawal was not recorded.

15. The Accountant General (R/3) vide letter dtd. 29/9/2015 (page-81) pointed out about this double payment and asked for the recovery of the amount with interest i.e. Rs.3,77,000 + interest , totaling to Rs.3,09,666/-. Thereon the applicant was intimated and

called in the office of R/2. On 11/9/2015, the applicant admitted the double payment and given the undertaking to refund the amount. However, the applicant did not comply. Hence the second communication was issued on 26/10/2015 ( Annex.R-2-IV, page-83). The applicant resiled from earlier stance and informed on 9/11/2015 ( Annex.R-2, page 84) his inability to pay the refund. Consequently the respondent no.2 passed the order dtd. 15/2/2016 ( Annex-R-4, page 85) directing the recovery in installments which is impugned in this case.

16. The Id. Counsel for the applicant relied on Rafiq Masih's case. The Id. P.O. relied on **Jagdeo Singh's** case. As such it is necessary to go through the observations made in the cases. It is manifest that points like misrepresentation, fraud, mistaken beliefs etc. are not involved in the matter. In the Rafiq Masih's case Their Lordships considered all the earlier views rendered while deciding cases of **Shyam Babu Verma -vs- Union of India,(1994)2 SCC 521, Sahib Ram -vs.-State of Haryana, 1995 Supp (1)SCC 18, Syed Abdul Qadir -vs- State of Bihar, (2009) 3 SCC 475 and Chandhi Prasad Uniyal -vs- State of Uttarakhand, (2012) 8 SCC**



883 . The material observations made by their Lordships are reproduced as under :-

In para 7, it is observed :-

*“ Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer’s right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above considerations, and the rest to be applied, reference needs to be made to situations when this Court exempted employees from such recovery,-----”*

In para 8 it is enunciated as under :-

*“ If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee’s right would*

*outbalance, and therefore eclipse, the right of the employer to recover.”*

In para 10, it is observed as under :-

“ An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law.”

Lastly Their Lordships have enunciated the prepositions and in which situations they are to be applied.

17. No doubt, the applicant is the Class-3 retired employee falling under category 1 and 2. However, the Id. P.O. vehemently urged that if the case is considered in the light of the observations made by Their Lordships in **Jagdeo Singh's** case which is latest the recovery has to be done . First and foremost contention is that the amount is not paid by mistake etc. but first payment is made

at the instance of the applicant. The applicant was aware that he is to retire within a month. Moreover, the respondents department had no occasion to take the undertaking of the refund amount which is usually taken by the departments when the payment is to be made. It was the amount which was to be paid to the applicant and therefore the department has no reasons to take such undertaking. Therefore to that extent no fault lies on the respondents department.

18. Moreover, it can be said that the applicant was on notice and well aware that he will get the amount to that extent less because he had withdrawn it. However, he got the entire amount of the GPF and that time he was aware what was his total outstanding amount and the amount of Rs.3,77,000/- was to be deducted but that was not deducted. Thus, the applicant by circumstances was on notice that he is getting the excess payment and he shall have to refund it because that aspect will be surfaced when the matter will be scrutinized by the Treasury or A.G. There is Rule 134-A of the Pension Rules for such recovery and applicant being Police Officer cannot be ignorant of legal provision. The submission holds water. As such it can be said that as observations made in the

latest case i.e. Jagdeo Singh, when the employee was on notice of the refund the same can be recovered.

19. Moreover the payment of advance was made at the instance of the applicant and not at the instance of the respondents so as to hold that it was mistake of the respondents. The mistake of the respondents was that due to paucity of time the entry was not taken and double payment was made.

20. The Id. P.O. Shri Khan, ingeniously argued that if the payments are made mistakenly by the employer in excess of their entitlement, cannot be recovered but here the payment is made at the instance of the employee and not by mistake of the employer. The Id. P.O. further argued that there is no question of any hardship to the applicant because he had already received the amount in advance and if the respondents had to pay it double then that will be a hardship to the respondents and therefore the equitable balance lies in favour of the latter. He proceeded to argue that this view will be proper in view of the observations made by Their Lordships in para 7 quoted above.

21. It is also argued that if the applicant has taken the advantage of taking the amount twice and therefore recovery of such amount cannot be said to be unfair, wrongful, improper or unwarranted than the corresponding right of the employer to recover the amount as observed by Their Lordships in para 8 above and as such the recovery cannot be iniquitous and arbitrary. Having regard to the peculiar facts that the applicant withdrew the amount one month before of his retirement and not apprised the respondents and kept mum though he got the amount second time within month and therefore the right involved of the employer to recover the amount cannot be said to be wrongful, improper or unwarranted than any right of the employee because the employee has no right to get that amount twice. The recovery cannot be said to be harsh and arbitrary because the employee had received the amount just before a month and it ought to have been deducted when the final GPF amount to be withdrawn on retirement. The applicant has pleaded that his family consists of his wife, son and daughter who are marriageable but that itself cannot be a ground to hold that hardship will be caused to the applicant and no such details are pleaded and established.

22. As a last string to the bow, it is submitted that the impugned orders are issued by the R/2 and 3 i.e., the Commissioner and A.G office and they are not the Govt. and the notice under Rule 134-A of the Pension Rules can be issued by the Govt. only and the Govt. means the Governor of Maharashtra as defined in Rule 9(21) of the Maharashtra Civil Services ( Pension) Rules, 1982. He proceeded to argue that the Governor is the only authority to issue the notice. Needless to mention that the Govt. or the Governor do not act in any manner and whatever is done by the Department or Head of the Department is done in the name of the Governor. Therefore the Governor or the Govt. do not come in picture and whatever is done by the Department or Head of the Department is in the name of the Governor. In this view of the matter, the submission made on this point has not legs to stand.

23. From the foregoing discussion, it is manifest that the applicant's case fits in the guidelines made by Their Lordships in **Jagdeo Singh's** case. It is urged that the applicant's case falls under clause No. 1 and 2 but the said propositions are to be applied to the cases which fulfilled the guidelines and principles laid down in the discussion. To accept the submission of the Id. Counsel for the

applicant means to dilute the principles laid down by Their Lordships which is not permissible. The principles cannot be ignored laid down by Their Lordships in both cases which are reproduced above.

24. If the applicant's case is considered in the light of those principles, I am of the considered view that the recovery has to be done else it will be a case of unjust enrichment for the applicant at the cost of public exchequer and interest.

25. In effect it has to be concluded that the case propounded by the applicant is devoid of any merit. Consequently the O.A. deserves to be rejected. The respondents have claimed the interest that cannot be allowed to be charged. Thus, the respondents can recover the principal amount i.e. Rs.3,77,000/- only. With this modification the O.A. stands rejected with no order as to costs.

**( S.S. Hingne )**  
**Vice-Chairman.**

Skt.