IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.194 OF 2019

DISTRICT : PUNE

Shri Chandrakant B. Jagalpure.)
Inspector of Police, SRPF (Retired),)
Chandrabhaga Building, Ramtekadi,)
Hadapsar, Pune – 411 022.)**...Applicant**

Versus

1. The Accountant General (A & E)-1.)
101, Pratishtha Bhavan,)
Maharshi Karve Road,)
Mumbai – 400 020.)

2. The Director & Spe. Inspector)
General of Police, Maharashtra)
Intelligence Academy,)
State Reserve Police Force,)
Group No.1, Ramtekadi,)
Pune – 411 022.)**...Respondents**

Mr. A.R. Joshi, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 27.10.2020

JUDGMENT

1. The Applicant retired as Police Inspector (PI), SRPF has challenged the order dated 01.02.2019 whereby the recovery of Rs.3,23,008/- is sought from retirement gratuity invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. Shortly stated factual matrix giving rise to the O.A. is as under:- The Applicant was in service as Inspector of Police, SRPF on the establishment of Respondent No.2. He stands retired on 31.01.2019. After retirement, he received impugned order dated 01.02.2019 on 14.02.2019 whereby recovery of Rs.3,23,008/- has been sought from retirement gratuity. At the time of retirement when the GPF file was sent to the Respondent No.1, Accountant General (A & E)-1, Mumbai, it was noticed that there was over payment of G.P.F. amount to the Applicant from his G.P.F. Account No. PCNH-63197. It was found that some of Rs.81,380/- has been wrongly added in his account in the year 1997-1998 which resulted into minus balance of Rs.3,23,008/- due to wrong entry of Rs.81,380/- at credit side in GPF account. Interest was added on that amount year by year by compounding interest, as result of which balance at the credit of the Applicant went inflating year to year. Meanwhile, the Applicant had also withdrawn substantial amount from his GPF account.

3. At the time of retirement some of Rs.2,65,632/- though found at his credit as a closing balance, the Respondent No.1 having noticed the mistake recalculated the amount and it was noticed that some of Rs.3,23,008/- has been overpaid to the Applicant and it sought to be recovered from the retirement gratuity of the Applicant. The Applicant has challenged the order dated 01.02.2019 issued by the Respondent No.1 *inter-alia* on the ground that impugned order was issued without issuing a notice and an opportunity of hearing. Secondly, the recovery from gratuity is not permissible from the retired employee in view of the decision of the Hon'ble Supreme Court in ***(2015) 2SCC (L & S) 33 (State of Punjab and others Vs. Rafiq Masih & Anr.).***

4. Shri A.R. Joshi, leaned Advocate for the Applicant sought to assail the impugned order dated 01.02.2019 on following two grounds :-

(i) Recovery of excess amount paid to the Government servant is not permissible after retirement from gratuity in view of decision of Hon'ble Supreme Court in ***Rafiq Masih's*** case (cited supra).

(ii) The impugned order of recovery is unsustainable in law for want of prior notice thereby giving opportunity of hearing and principles of natural justice are not followed.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer supported the impugned order contending that the case in hand pertains to recovery of over-payment of GPF amount to the knowledge of Applicant, and therefore, recovery from gratuity is permissible under Rule 134(A) of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Rules of 1982' for brevity). He has further pointed out that inadvertently, sum of Rs.81,380/- was shown credited to the GPF account of the Applicant entailing adding of compound interest year to year and the same was noticed by the Office of Accountant General. On recalculation, it was found that in fact, there is minus balance of Rs.3,23,008/-, and therefore, by impugned order dated 01.02.2019, the recovery was correctly sought.

6. In view of submissions advanced at the Bar, the question posted for consideration is whether the impugned order of recovery is sustainable in law.

7. At the very outset, it needs to be stated that undisputedly, the mistake occurred in maintaining GPF Account of the Applicant wherein sum of Rs.81,380/- was wrongly added in the year 1997-98 resulting into addition of compound interest year to year and the amount kept inflating year to year. The Respondents have produced the statement of GPF Account which is at Page No.126 of Paper Book. It clearly exhibits that sum of Rs.81,380/- was wrongly added in the Column of 'Arrears' and interest went on adding year to year. The perusal of GPF Account Extract further reveals that the Applicant has withdrawn sum of Rs.19,89,700/- in between 2001-2002 to 2018-2019 i.e. during subsistence of GPG Account and before retirement. As per Extract of

account, the closing balance shown as 2,65,632/- was result of incorrect addition of Rs.81,380/- and interest thereon year to year. As the interest was added year to year, the amount keep inflating and the Applicant has withdrawn substantial amount of Rs.19,89,700/- from the account to which he was not in fact entitled to credit amount in his GPF Account. The Respondents have also produced statement of interest which is at Page 127 of P.B. Thus, the perusal of Extract of GPF Account (Page Nos.126 and 127 of P.B.) reveals that in fact, there was minus balance of Rs.3,30,008 after correction of account and it sought to be recovered from gratuity payable to the Applicant. As stated above, undisputedly, this happened due to wrong entry of Rs.81,380/- at credit side in the account of the Applicant and it is nowhere the case of the Applicant that he was entitled to that amount of Rs.81,380/-. Indeed, by letter dated 16.02.2019, he had shown willingness to refund Rs.81,380/-. He was paying regular contribution which was correctly shown. Initially, there was no entry of contribution in the year 1996-97, but it was later added in GPF Account. Suffice to say, this is not a case of missing credit and there is absolutely no dispute about the contribution made by the Applicant in his GPF Account as well as withdrawals and advances he availed from time to time.

8. As such, this is a case of over-payment of GPF amount and not the case of wrong fixation of pay or release of incorrect increments, etc. As per G.P.G. Scheme, the Government servant has to make subscription in the GPF yearly and interest is to be credited as per prescribed rate of interest. At the end of service, the Government servant is entitled to withdraw GPF which is at his credit.

9. True, in view of decision of Hon'ble Supreme Court in ***Rafiq Masih's*** case, the recovery of excess payment is impermissible in the situations summarized in Para No.12 of the Judgment, which is a under:-

"***12.*** *It is not possible to postulate all situation s 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 belong to Class-III and Class-IV services (or Group 'C' and Group 'D' services).

(ii) Recovery from retired employees, or employees who are due to retire 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."

10. However, the perusal of the decision in ***Rafiq Masih's*** case reveals that it was a case arising upon the mistake committed by the Department in determining the emoluments payable to the employees and the employees were found not guilty of furnishing any incorrect information or fraud. In that case, the excess payment was made while fixation of pay scale and other allowances to which the employees were not entitled.

11. At this juncture, it would be apposite to reproduce Para Nos.2 and 3 of the Judgment to understand what was the issue before the Hon'ble Supreme Court in ***Rafiq Masih's*** case.

"***2.*** *All the private respondents in the present bunch of cases, were given monetary benefits, which were in excess of their entitlement. These benefits flowed to them, consequent upon a mistake committed by the concerned competent authority, in determining the emoluments payable to them. The mistake could have occurred on account of a variety of reasons; including the grant of a status, which the concerned employee was not entitled to; or payment of salary in a higher scale, than in consonance of the right of the concerned employee; or because of a wrongful fixation of*

salary of the employee, consequent upon the upward revision of pay-scales; or for having been granted allowances, for which the concerned employee was not authorized. The long and short of the matter is, that all the private respondents were beneficiaries of a mistake committed by the employer, and on account of the said unintentional mistake, employees were in receipt of monetary benefits beyond their due.

3. *Another essential factual component in this bunch of cases is, that the respondent-employees were not guilty of furnishing any incorrect information, which had led the concerned competent authority, to commit the mistake of making the higher payment to the employees. The payment of higher dues to the private respondents, in all these cases, was not on account of any misrepresentation made by them, nor was it on account of any fraud committed by them. Any participation of the private respondents, in the mistake committed by the employer, in extending the undeserved monetary benefits to the respondent-employees, is totally ruled out. It would therefore not be incorrect to record, that the private respondents, were as innocent as their employers, in the wrongful determination of their inflated emoluments."*

12. Thus, on equitable considerations having regard to difficulties of retired employees, the recovery of excess payment held arbitrary where no fraud or suppression of fact can be attributed to them.

13. Whereas in the present case, as stated above, this is not a case of mistake in fixation of pay scale or other emoluments payable to the Applicant. On the other hand, this is a case of withdrawal of excess GPF amount by the Applicant than the amount which should have been at his credit. Due to wrong entry of Rs.81,380/-, his amount went on inflated because of addition of interest and in the meantime, the Applicant had withdrawn substantial amount of Rs.19,89,700/- from his account. Had sum of Rs.81,380/- was not credited in his account, the amount at his credit would have been much lesser and he would not have been entitled to withdraw Rs.19,89,700/- from his account. However, due to mistake of addition of Rs.81,380/-, his credit balance went on inflated which facilitates withdrawal of Rs.19,89,700/- from the account. The Applicant was Police Inspector and he was in receipt of GPF slip year to year as per the prevalent practice. The Applicant was thus aware of the extent of contribution made by him. Despite this position, he had applied for withdrawal advances from GPF account which was sanctioned by the Department on the basis of wrong and inflated credit at his account.

This being the position, it will have to be held that the Applicant had knowledge of inflated credit at his account. But he did not bring it to the notice of the Department, so as to correct the same. On the contrary, he went on withdrawing the amount from time to time. This definitely shows suppression of facts and there is element of dishonesty. The Applicant being Government servant and aware of inflated amount at his credit ought to have brought this aspect to the notice of Department as a honest Government servant. This being the position, in my considered opinion, the decision in ***Rafiq Masih's*** case is of little assistance to the Applicant in present scenario. The decision in ***Rafiq Masih's*** case would apply where no mistake or fraud can be attributed to the employee and there is mistake of the Department in fixation of pay and allowances payable to the employee. There is no such equitable consideration in the present mater. The Applicant is guilty of suppression of fact, and therefore, principle of equity is not applicable. I have therefore, no hesitation to sum-up that the decision in ***Rafiq Masih's*** case would not apply to the present situation.

14. Shri Joshi, learned Advocate for the Applicant further sought to refer certain decisions in support of submissions. He referred the decision of Hon'ble Bombay High Court in **Writ Petition No.3128/2018 (Original Side) Smt. Nilam S. Naik Vs. The Registrar General & Ors.) decided on 8th March, 2019**. It was a case of fixation of wrong pay and it was re-fixed having noticed the mistake at the fag end of service of the Petitioner. The Hon'ble High Court relying on the decision in ***Rafiq Masih's*** case quashed the order of recovery from gratuity. As such, it was a case of wrong fixation of pay and allowances.

15. Shri Joshi, learned Advocate for the Applicant referred to the decisions rendered by this Tribunal in **O.A.No.1102/2015 (Syed M. Hashmi Vs. Government of Maharashtra) decided on 14.06.2016** and **O.A.No.79/2017 (Babusha G. Tambe Vs. The Special Inspector General of Police & Ors.) decided on 23.03.2018**. In **Syed Hashmi's** case, the increment was granted to him though he has not passed

Marathi Examination and recovery was sought after retirement. Whereas in Babusha Tambe's case, the excess payment was made due to wrong fixation of pay scale. In both matters, the benefit of ***Rafiq Masih's*** decision was given to the Applicants and O.As. were allowed. Whereas, in the present case, the decision in ***Rafiq Masih's*** case is not attracted for the reason stated above, and therefore, these decisions rendered in fact situation are of no assistance to the Applicant.

16. Lastly, reliance was also placed on the decision rendered by this Tribunal in **O.A.608/1999 (Smt. Vansashri A. Parchure Vs. The State of Maharashtra) decided on 31.01.2000**. It pertains to grant of two increments released in the year 1987. It was noticed that the Applicant therein was not entitled to it, and therefore, it was withdrawn and recovery was sought on the basis of G.R. dated 24.07.1991. The Tribunal held that G.R. dated 24.07.1991 has no retrospective effect and secondly, no prior notice was given prior to impugned recovery. Accordingly, recovery order was quashed. Shri Joshi placed reliance on Para No.12 of the Judgment and tried to contend that as per law of limitation there cannot be recovery of the period beyond three years. Para No.12 relied by him from the said Judgment is as under :-

> "**12.** As per the law of limitation in case if the Government wants to recover any amount which is wrongly paid to the government employee there could be recovery within a period of 3 years from the date of the order. Therefore, in case had I found that the order of holding that the applicant was not entitled to get two increments and that she has been wrongly granted two increments then in that case I would have allowed only recovery for 3 years prior to the date of application."

17. I find myself unable to accept the submission advanced by the learned Advocate for the Applicant about the applicability of law of limitation in view of Rules framed in this behalf pertaining to recovery of excess payment from retiral benefits in "Rules of 1982". Rules 132 and 133 pertain to the recovery of Government dues which includes dues pertaining to Government accommodation and other dues viz. balance of House Building Advance, over-payment of pay and allowances, etc.

Whereas, Rules 134 and 134-A provide for adjustment and recovery of other dues (other than dues) covered under Rules 134 and 134-A of 'Rules of 1982'. At this juncture, it would be apposite to reproduce Rules 134 and 134-A of 'Rules of 1982' which are as follows :-

"**134. Adjustment and recovery of dues other than dues pertaining to Government accommodation.**-(1) For the dues other than the dues pertaining to occupation of Government accommodation as referred to in clause (b) of sub-rule (3) of Rule 132, the Head of Office shall take steps to assess the dues two years before the date on which a Government servant is due to retire on superannuation; or on the date on which he proceeds on leave preparatory to retirement, whichever is earlier.

(2) The assessment of Government dues referred to in sub-rule (1) shall be completed by the Head of Office eight months prior to the date of the retirement of the Government servant.

(3) The dues as assessed under sub-rule (2) including those dues which come to notice subsequently and which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of [retirement gratuity] becoming payable to the Government servant on his retirement.

134-A. Recovery and adjustment of excess amount paid.- [If in the case of a Government servant, who has retired or has been allowed to retire,-

(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.]

[underline supplied]

18. Thus, in view of Rules quoted above, particularly Rules 134 and 134-A of 'Rules of 1982', the Government is empowered to recover the dues and excess payment made to the employee from his gratuity and pension. It does not speak about any limitation. This being the clear position of Rules, the submission advanced by the learned Advocate for the Applicant that there could be no recovery of the period of more than three years being barred by law of limitation is fallacious and misconceived.

19. For the aforesaid reasons, I have no hesitation to sum-up that the decision in ***Rafiq Masih's*** case is of little assistance to the Applicant in the present scenario. This is a case of over-payment of GPF amount to the knowledge of the Applicant and not a simple case of mistake of the Department in wrong fixation of pay and allowances.

20. However, there is merit in the submission advanced by the learned Advocate for the Applicant that for want of prior notice and opportunity of hearing to the pensioner, the recovery is not permissible. As stated above, Rule 134-A empowers the Government to recover excess amount which has been paid to the Government servant during the period of his service and the said amount can be recovered from gratuity and pension. However, as per proviso to Rule 134-A, the Government is required to give reasonable opportunity to the pensioner to show cause as to why the amount due could not be recovered from him. It provides that Government shall give reasonable opportunity to the pensioner to show cause as to why the amount due should not be recovered from him. Whereas, in the present case, admittedly, no such prior notice was given to the Applicant before issuance of impugned order dated 01.02.2019. True, on receipt of notice, the Applicant gave letter dated 16.02.2019 showing his consent to adjust Rs.81,380/- wrongly credited in his account and he has also shown readiness to deposit the said amount. This letter dated 16.02.2019 is at Page No.41 of P.B. Whereas, the

impugned order recovered was passed on 01.02.2019. The Applicant retired on 31.01.2019. It is thus explicit that prior to issuance of impugned order of recovery dated 01.02.2019, show cause notice was not given to the Applicant. The learned P.O. fairly concedes that no notice was given. As such, there is no compliance of mandatory requirement of issuance of show cause notice as contemplated under Rule 134-A of 'Rules of 1982'. Therefore, the impugned action of recovery deserves to be quashed by giving liberty to the Respondents to take necessary action of recovery after issuance of show cause notice to the Applicant. To this extent, interference is warranted.

21. The totality of aforesaid discussion leads me to conclude that the impugned action of recovery is unsustainable in law because of absence of prior show cause notice to the Applicant as contemplated under Rule 134-A of 'Rules of 1982'. Hence, I pass the following order.

O R D E R

(A) The Original Application is allowed partly.

(B) The impugned order dated 01.02.2019 is quashed and set aside.

(C) Needless to mention that the Respondents are at liberty to take necessary action for recovery after following due process of law.

(D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 27.10.2020
Dictation taken by :
S.K. Wamanse.
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