

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.30 OF 2020

DISTRICT : MUMBAI

Shri Sunil Vitthal Satam.)
Age : 59 Yrs., Retired Police Sub-Inspector,))
Residing at 80/B, Kamgar Nagar,))
Kurla (E), Mumbai – 400 024.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. Commissioner of Police.)
Having Office at Near Crawford Market,))
Mumbai – 400 001.)
3. Additional Commissioner of Police.)
Protection & Security, Vaju Kotak)
Marg, Mumbai – 400 001.)
4. Directorate of Accounts & Treasuries))
(Pay Verification Unit),)
Through its Director, Thackersey)
House, 3rd Floor, Ballard Estate,)
Mumbai – 400 038.)...**Respondents**

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

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

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

DATE : 08.10.2021

JUDGMENT

1. The Applicant has challenged the order dated 25.09.2018 as well as order dated 20.12.2019 thereby downgrading his pay and seeking recovery of Rs.3,31,180/- from retiral benefits of the Applicant invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

(i) The Applicant was appointed to the post of Police Constable on the establishment of Respondent No.2 – Commissioner of Police, Mumbai on 15.01.1983.

(ii) He was later appointed as Police Constable Writer on 08.01.1989 carrying same pay scale of Police Constable with additional allowance of Rs.40/- only.

(iii) The Applicant was granted the benefit of 1st Time Bound Promotion in terms of G.R. dated 08.06.1995 since completed 12 years' from the initial appointment on the post of Police Constable.

(iv) The Applicant then promoted as Head Constable Writer on 01.09.2001.

(v) He was later promoted to the post of Police Sub Inspector on 01.10.2013.

(vi) He came to be retired as PSI on 28.10.2019 on attaining the age of superannuation.

(vii) After retirement, Pay Verification Unit raised objection to verify entitlement to the Applicant for Time Bound Promotion given to him on 15.01.1995.

(viii) On receipt of objection, the Respondent No.3 by impugned order withdrawn Time Bound Promotion given to the Applicant on 15.01.1995 and revised his pay resulting into downgrading of pay and pension and recovery of Rs.3,31,180/- from retiral benefits.

3. It is on the above background, the Applicant has challenged the orders dated 25.09.2018 and 20.12.2019.

4. Shri M.D. Lonkar, learned Advocate for the Applicant strenuously urged that since the Applicant was appointed on the post of Police Constable on 15.01.1983 and has completed 12 years' service, he was rightly granted the benefit of 1st Time Bound Promotion w.e.f. 15.01.1995, and therefore, the impugned orders of recovery issued on the objection of Pay Verification Unit is *ex-facia* illegal. He has further pointed out that though in 1989, the Applicant was appointed on the post of Police Constable Writer, admittedly, the pay scale for the post of Police Constable and Police Constable Writer is same with additional allowance of Rs.40/- p.m. only for working as Writer. On this premises, he submits that the benefit of Time Bound Promotion was rightly granted on 15.01.1995 which was enjoyed by the Applicant till his retirement, and therefore, after retirement, the action of withdrawal of Time Bound Promotion and recovery is totally impermissible in law. As regard recovery, he placed reliance on the decision of Hon'ble Supreme Court in **(2015) 2 SCC (L & S) 33 [State of Punjab and Ors. Vs. Rafiq Masih (White Washer) & Ors.]**. Apart, he has pointed out that the issue involved in this O.A. is squarely covered by the decision rendered by this Tribunal in **O.A.No.783/2018 (Pradeep G. Dalvi Vs. State of Maharashtra) decided on 19.03.2019** where in exactly similarly situation, the benefit of Time Bound Promotion was given to the Applicant therein and was withdrawn on the ground that in the meantime, he was appointed on the post of Police Constable Writer. He has further pointed out that the order passed by the Tribunal has attained finality and has been implemented by the Respondents.

5. Per contra, learned Presenting Officer submits that on 08.01.1989, the Applicant was appointed in different cadre viz. Police Constable Writer which had no promotional avenues to the post of Police Naik, and therefore, the benefit of Time Bound Promotion for the post of Police Naik given to the Applicant on 15.01.1995 was wrong and the same mistake is not corrected by revising pay of the Applicant. According to her, in 2001, the Applicant was promoted as Head Constable Writer and then promoted to the post of Police Sub Inspector in 2013 and thereby Applicant had availed further promotions and it amounts to availing double benefits. She, therefore, sought to justify the impugned order of withdrawal of benefit of Time Bound Promotion and revision of pay.

6. In view of submissions advanced and pleadings, the issue posed for consideration is two-fold. First, downgrading of pay from 1995 resulting into last drawn pay and pension and secondly, recovery of Rs.3,31,180/- from retiral benefits. The Tribunal already granted interim relief against recovery in view of decision of Hon'ble Supreme Court in **Rafiq Masih's** case (cited supra).

7. Thus, indisputably, the Applicant was appointed as Police Constable on 15.01.1983 and by order dated 08.01.1989, he was appointed to the post of Police Constable Writer. Significant to note that, admittedly, the post of Police Constable and Police Constable Writer carries same pay scale except additional allowance of Rs.40/- p.m. to Police Constable Writer. As such, this is not a case where Applicant was appointed on higher pay scale within a period of 12 years from the date of his appointment. This crucial aspect to be borne in mind in the present case. Since, pay scale of Police Constable and Police Constable Writer was same, the Applicant was given the benefit of 1st Time Bound Promotion having completed 12 years from 15.01.1983 and he was granted non-functional pay in the cadre of Police Constable. True, there are different channels of promotion for the post of Police Constable and Police Constable Writer. But admittedly, the pay scale of Police

Constable and Police Constable Writer are same except meager allowance of Rs.40/- p.m. to Writer. This being the position, only because Applicant was appointed in the meantime as Police Constable Writer, now after retirement, withdrawing of benefit of Time Bound Promotion granted on 15.01.1995 would be totally unjust, particularly when the post of Police Constable Writer was not carrying higher pay scale. One can understand if Applicant was promoted or appointed in different cadre carrying higher pay scale before completion of 12 years where he cannot be said entitled for the benefit of Time Bound Promotion counting his service from initial date of appointment. In other words, this is not a case of wrong fixation of pay resulting into excess payment of pay and allowances which can be corrected for the purpose of fixation of correct pension. Indeed, this is a case where the benefit of 1st Time Bound Promotion was rightly granted but withdrawn after retirement resulting into downgrading of last drawn pay which has effect of wiping out earlier 12 years' service of the Applicant. The very object of benefit of Time Bound Promotion is to take care of stagnation and to give non-functional promotion subject to fulfillment of eligibility criteria for the promotional post. Since Applicant initially appointed as Police Constable, his next promotional post was Police Naik and accordingly, pay of next promotional as a non-functional promotion was granted to him on 15.01.1995.

8. At this juncture, it would be apposite to see the clarification issued by Government in G.R. dated 01.11.1995. On issue No.11, the Government clarified as under :-

१	२	३
११	कर्मचा-याने धारण केलेल्या पदाची श्रेणीवाढ होवून त्याच कर्मचा-यास श्रेणीवाढ केलेल्या पदावर नियुक्त केले असल्यास १२ वर्षांच्या नियमित सेवेचा कालावधी केव्हापासून मोजावा तसेच वेतनश्रेणी तीच असून केवळ पदनाम बदललेले असेल किंवा पद त्याच वेतनश्रेणीतील अन्य पदात रुपांतरित समाविष्ट झाले असल्यास वेतनश्रेणीचा फायदा कसा देण्यात यावा ?	पूर्वी धारण केलेल्या मूळ पदाची श्रेणीवाढ झाल्यावर कर्मचा-यास श्रेणीवाढ पदावर नियुक्ती मिळाली असल्यास त्याच श्रेणीवाढ झालेल्या पदावरील १२ वर्षांच्या नियमित सेवेनंतरच दि. ८.६.९५ च्या शासन निर्णयातील इतर अटी व शर्तीनुसार वरिष्ठ वेतनश्रेणी अनुज्ञेय होईल. वेतनश्रेणी तीच असून केवळ पदनाम बदलले असेल किंवा त्याच वेतनश्रेणीतील अन्य पदात रुपांतर/समाविष्ट केले असल्यास किंवा निव्वळ वेतनश्रेणीत सुधारणा झाली असल्यास मूळ पदावरील १२ वर्षांच्या नियमित सेवेनंतर वरिष्ठ वेतनश्रेणीचा लाभ अनुज्ञेय होईल.

9. Indeed, this issue is squarely covered by the decision rendered by this Tribunal in O.A.No.783/2018 (cited supra). In that case also, the Applicant was appointed as Police Constable in 1985 and thereafter, posted as Police Constable Writer in 1993. He was granted the benefit of 1st Time Bound Promotion in 1997 considering his 12 years' service from 1985. Thereafter, he was promoted to the post of Head Constable Writer and further promoted to the post of Police Sub Inspector in 2017 and retired in 2018. In same situation, after retirement, objection was raised about entitlement to him to the benefit of 1st Time Bound Promotion in 1997 on the ground of his appointment to the post of Police Constable Writer in 1993. The Tribunal allowed the O.A. quashing recovery by order dated 19.03.2019. Admittedly, the said Judgment had been implemented. As such, the Applicant being similarly situation person is definitely entitled to the said benefit on the ground of parity.

10. The submission advanced by the learned P.O. that since Applicant was appointed on the post of Police Constable Writer in 1989 and he had different channels of promotion, and therefore, the benefit of Time Bound Promotion given to him in 1995 has been rightly withdrawn is unpalatable basically for the reason that pay scale of Police Constable and Police Constable Writer is same, except only addition allowance of Rs.40/- p.m. to Writer. In such situation, the refusal of benefit of Time Bound Promotion would be totally unjust and it would amount to ignore and wipe out Applicant's initial 12 years' service, which is contrary to law and object of scheme of Time Bound Promotion.

11. Now turning to the aspect of recovery of Rs.3,31,180/-. Indeed, this issue is no more *res-integra* in view of Judgment of Hon'ble Supreme Court in **Rafiq Masih's** case wherein in Para No.12 of the Judgment Hon'ble Supreme Court culled out situations where recovery on account of excess payment would be impermissible, which is as follows :-

“12. It is not possible to postulate all situations 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 belonging 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."*

12. This issue has been again considered by the Hon'ble High Court in **Writ Petition No.7404/2016 (State of Maharashtra Vs. Balkrishna Nikam)** and the action of recovery as well as re-fixation of emoluments of the Government servant after retirement has been set aside in view of law laid down by Hon'ble Supreme Court in **Rafiq Masih's** case.

13. The Applicant admittedly retired on the post of Police Sub Inspector which falls in Group 'C' and Rs.3,31,180/- sought to be recovered after retirement. As such, in view of decision in **Rafiq Masih's** case, recovery is totally impermissible.

14. The totality of aforesaid discussion leads me to sum-up that the impugned action of downgrading pay and allowances and recovery of Rs.3,31,180/- is illegal and impugned orders deserves to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned orders dated 25.09.2018 and 20.12.2019 are quashed and set aside.
- (C) The Respondents are directed to release the retiral benefits to the Applicant within two months from today.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 08.10.2021

Dictation taken by :

S.K. Wamanse.

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