

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.783 OF 2018

DISTRICT : MUMBAI

Shri Pradeep Ganpat Dalvi.)
Age : 59 Yrs., Retired Police Sub-Inspector,)
Residing at Room No.6, 2nd Floor, Shri Sai Laxmi)
Co-op. Hsg.Soc.Ltd, Parulekar Marg,)
Bhawani Shankar Road, Dadar (W),)
Mumbai – 400 028.) **...Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. Commissioner of Police.)
Having Office at Crawford Market,)
Mumbai – 400 001.)
3. Addl. 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.

Ms. N.G. Gohad, Presenting Officer for Respondents.

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

DATE : **19.03.2019**

JUDGMENT

1. Heard Shri M.D. Lonkar, learned Advocate for the Applicant and Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

2. In the present Original Application, the issue posed for consideration is whether the impugned order dated 18.07.2017 down-grading last drawn pay of the Applicant and consequent second impugned order dated 20.02.2018 for recovery of Rs.1,73,354/- is legal and valid.

3. Factual matrix is as follows :

The Applicant was appointed on the post of Police Constable in the office of Commissioner of Police on 09.03.1985. He was thereafter posted as Police Constable Writer on 27.05.1993. Since he had completed 12 years of continuous unblemished service, the benefit of first Time Bound Promotion (TBP) was granted to him on 09.03.1997. Thereafter, he was promoted to the post of Head Constable Writer. In 2017, he was promoted to the post of Police Sub Inspector. He retired on attaining the age of superannuation on 30.04.2018. When pension papers were processed and forwarded to the office of Accountant General (A.G.), objection was raised by the office of A.G. that, as the Applicant was posted as Police Constable Writer by order dated 27.05.1993, how the promotion to the post of Police Naik given to him by way of benefit of TBP is permissible and recovery needs to be made. The A.G. further directed to re-fix the pay and again submit the proposal for pension. In view of objection raised by the office of A.G, surprisingly, the office of Respondent No.2 cancelled the benefit of first TBP given

to the Applicant and re-fixed his pay which resulted into down-grading last drawn pay as well as recovery of Rs.1,73,354/- on account of alleged excess payment in respect of benefit of first TBP. The Applicant has challenged these impugned orders in the present O.A.

4. Shri M.D. Lonkar, learned Advocate for the Applicant urged that the objection raised by office of A.G. about the promotion to the post of Police Naik and consequent action taken by Respondent No.2 is *ex-facie* illegal. He has pointed out that in 1998, mistakenly the promotion to the post of Police Naik was given to the Applicant though he was working on the post of Police Constable Writer. Admittedly, for the post of Police Constable Writer, there was no avenue of promotion to the post of Police Naik. Therefore, having realized the mistake, the Department at his own cancelled the promotion order. He has also pointed out that, admittedly, there is no difference in the pay scale of Police Constable and Police Constable Writer except some additional allowance to Police Constable Writer. He, therefore, urged that the action of Respondent No.2 to withdraw the benefit of first TBP which was rightly granted to the Applicant in 1997 is *ex-facie* illegal, and therefore, the down-grading of last drawn pay as well as pursuant order of recovery are not at all sustainable in law and facts.

5. Per contra, Ms. N.G. Gohad, learned Presenting Officer for the Respondents made feeble attempt to justify the action taken by Respondent No.2. However, she could not justify the action taken by Respondent No.2 to withdraw the benefit of first TBP which was already granted to the Applicant in 1997.

6. Thus, the issue involved in the present matter is two-fold. First, the down-grading of last drawn pay resulting into reduction in pension and second, the recovery of Rs.1,73,354/-.

7. At the very outset, it needs to be noted that, on receipt of objection of A.G, the Respondent No.2 simply jumped up and cancelled the benefit of first TBP given to the Applicant without considering that it has nothing to do with promotion given to the Applicant to the post of Police Naik mistakenly. In so far as promotion to the post of Police Naik is concerned, it was immediately withdrawn and rightly so. However, it has nothing to do with the benefit of first TDP. Admittedly, the Applicant was appointed on the post of Police Constable on 09.03.1985 and has completed 12 years continuous service in 1997. Accordingly, the benefit of first TBP was given to him. However, in view of objection raised by A.G, the Respondent No.2 instead of clarifying the position cancelled the benefit of first TBP given to the Applicant. The perusal of impugned order dated 18.07.2017 makes it clear that the pay has been re-fixed by withdrawing the benefit of first TBP granted to the Applicant in 1997. It is not the case of Respondents that the Applicant was not entitled to the first TBP or the same was given mistakenly. As such, in present situation, if the action of Respondents to withdraw the benefit of first TBP allowed to stand, then it would amount to wipe out the earlier 12 years' service of the Applicant which of-course is not legal and permissible, particularly, when there is no dispute about the entitlement of the Applicant to the said benefit or first TBP, therefore, the action on the part of Respondents to withdraw the benefit of first TBP is obviously unsustainable in law and facts.

8. Consequently, the recovery of Rs.1,73,354/- calculated because of withdrawal of benefit of first TBP cannot be countenanced. The perusal of impugned order dated 18.07.2017 (Page No.40 of P.B.) reveals that, at the time of retirement, last drawn pay of the Applicant was 13810 + Grade Pay 2400. However, it was reduced to 13270 + Grade Pay 2400 because of withdrawal of the benefit of first TBP given to the Applicant in 1997. This being the position,

the down-grading of last drawn pay which is the base for grant of pension is obviously not only unjust, but unknown to law.

9. This is not a case where wrong fixation was done resulting into excess payment of salary made to the employee which can be corrected for the purpose of fixation of correct pension. Here is the case where benefit of first TBP which was rightly granted to the Applicant has been withdrawn at the time of his retirement resulting into down-grading of last drawn pay which has an effect of wiping out the earlier 12 years' service of the Applicant, which is ex-facie illegal.

10. At this juncture, it would be apposite to see the clarification issued by Government in G.R. dated 01.11.1995 (Page Nos.22 to 27 of P.B.). 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. ८.६.९९ 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.

11. In view of above, in the present case, even if temporary promotion was given to the Applicant to the post of Police Naik which was later on withdrawn, will not work to his disadvantage, so as to deny him the benefit of first TBP having completed 12 years' service in 1997. This is the crucial aspect which has been completely missed or ignored by Respondent No.2 while dealing with the objection raised by the office of A.G.

12. Now, turning to the aspect of recovery of Rs.1,73,354/- which is in fact no more *res-integra* in view of Judgment of Hon'ble Supreme Court in **Civil Appeal No.11527/2014 (State of Punjab and others Vs. Rafiq Masih (White Washer))**

decided on 18th December, 2014. At this juncture, it would be apposite to reproduce Para No.12 of the Judgment which reads 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 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.*

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.”

13. 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 (cited supra).

14. The Applicant retired from the post of Police Sub Inspector which falls in the category of Group ‘C’. Sum of Rs.1,73,354/- sought to be recovered on account of payment made to the Applicant in view of grant of first TBP in 1997 and the recovery is now being made after retirement in 2018. Suffice to say, such

recovery is not permissible and the Judgment of Hon'ble Supreme Court in **Rafiq Masih's** case is squarely attracted.

15. The necessary corollary of aforesaid discussion leads me to sum-up that the impugned action of down-grading of pay by order dated 18.07.2017 as well as the order of recovery of Rs.1,73,354/- by order dated 20.02.2018 are illegal and deserve to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 18.07.2017 down-grading last drawn pay of the Applicant is set aside.
- (C) Consequently, the impugned order of recovery of Rs.1,73,354/- by order dated 20.02.2018 is also set aside.
- (D) The Respondents are directed to release retiral benefits of the Applicant within two months from today.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 19.03.2019

Dictation taken by :

S.K. Wamanse.