

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 79 of 2017 (SB)

Ramdas S/o HIRAMANJI KALAMBE,
Aged 60 years, Occ. Pensioner,
r/o Laxman Deshmukh Layout,
Gal Chowk, Katol, Tq. Katol,
Dist. Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) The Director General of Police,
Kulaba, Mumbai.
- 3) The Inspector General of Police,
Nagpur (Region), near Sadar,
Police Station, Civil Lines, Nagpur.
- 4) The Superintendent of Police,
Nagpur District (Rural),
near Police Control Room,
Civil Lines, Nagpur.
- 5) The Accountant General (A&E)-II,
Nagpur, Pension Branch Office,
Civil Lines, Nagpur-01.
- 6) The Treasury Officer, Nagpur
Treasury Office, Collectorate,
Nagpur.

Respondents

Shri Sudhir Malode, Ku. N.G. Sahu, Advocates for the applicant.

Shri H.K. Pande, learned P.O. for respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGMENT

(Delivered on this 8th day of August,2018)

Heard Shri Sudhir Malode, learned counsel for the applicant and Shri H.K. Pande, learned P.O. for the respondents.

2. The applicant joined as Police Constable on 06/07/1987 and was posted at various places. He was promoted as Naik Police Constable in January,2003 and thereafter as Head Constable in December,2012. He got retired on superannuation on 30/04/2015. The respondent no.5 issued an order dated 9/1/2015 (Annex-6,P-32) whereby it has been directed that the amount of Rs. 65,477/- has been recovered from the applicant from DCRG account since same was paid in excess. The said order has been challenged in this O.A. and the applicant has claimed that the said amount recovered be refunded to him since the same has been recovered illegally and arbitrarily.

3. In the reply-affidavit the respondent no.4 justified the order. It is stated that the applicant completed 12 years' of service and was granted promotional scale w.e.f. 06/08/1999. On 17/07/2001 an offence was registered against the applicant in crime no.99/2001 under Sections 385,294,323 r/w 34 of IPC and he was kept under suspension. The said suspension came to be revoked on 09/07/2002 and because of such prosecution regular promotion of Police Naik was not given to the applicant. Subsequently, he was acquitted on 18/08/2008. His suspension period was treated as duty period vide order dated 04/08/2008 and thereafter he was promoted notionally to the post of Police Naik from 01/03/2009. However, by virtue vide order dated 03/04/2012 issued by the Special Inspector General, Nagpur deemed date of promotion was granted to the applicant w.e.f. 01/03/2003. Thereafter, his pay scale was revised w.e.f. 01/01/2006. The applicant's pay was revised on two occasions as a result of which he was paid excess amount of Rs.65,477/- and therefore vide order dated 02/11/2014 his pay scale has been revised and excess amount has been recovered. It is stated that the respondents are entitled to recover the amount as per provisions

of Rule 132 of the Maharashtra Civil Services (Pension) Rules, 1982.

4. The learned P.O. has invited my attention to Rule 132 of the Maharashtra Civil Services (Pension) Rules, 1982 which reads as under :-

^132- 'kkI ukyk ; sksvl yY ; kjdephol gho I ek; ktu &
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jdekæcr [kk=h d#u ?skso R; k fu/Mj r dj .ksgsdlk; kÿ; i æi [kkpsdrD]; vl sy-
¼2½ dk; kÿ; i æi [kkus [kk=hi øD fu/Mj r dY ; ki æk.ks 'kkI ukyk ; sksvl yY ; k T; k
jdek 'kkI dh; deþk& ; kP; k I dkfuorRhp; k rkj [ki ; r f'kYyd jkgrhy] R; k jdek
R; kyk ns gskk& ; k ¼1 dkfuorR mi nkukP; k½ jdes kh I ek; k ftr dj. ; kr ; rhy-
¼3½ 'kkI uktk ; sksvl yY ; k jdek ; ke/ ; s&
¼, ½ yk; I UI Qhph dskrgh vl Y; kI Fldcdh /k#u 'kkI dh; fuokl LFkkuk' kh
I æi/kr ; sksjDde%
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*otkrhph jDde ; kpk I ekos k gkks ***

5. It is stated that in view of the aforesaid rule, the excess amount has been recovered.

6. The learned counsel for the applicant placed reliance on the Judgment in the case of **State of Punjab & Others etc. Versus Rafiq Masih (White Washer) etc. in Civil Appeal**

No.11527/2014 (arising out of SLP (c) No.11684 of 2012). In

para no.12 of the said Judgment the Hon'ble Apex Court has observed as under :-

“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, summarise 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 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.”

7. In the present case the applicant has got retired on 30/04/2015 and the impugned order has been passed after his

retirement on 27/09/2016. The so called revision of the pay and alleged excess amount paid to the applicant is since the year,1999 for which the applicant was not at all responsible. In view of this, the Judgment of the Hon'ble Apex Court as referred above, the respondent authorities should not have recovered the amount from the applicant. Hence, the following order :-

ORDER

The O.A. is allowed. The respondents particularly respondent no.4 is directed to refund the amount of Rs. 65,477/- to the applicant which was recovered vide order dated 27/09/2016 (Annex-A-6). The amount shall be refunded within three months from the date of passing of this order, failing which, the applicant will be entitled to claim interest as per the rules from the date of recovery till the amount is actually paid. No order as to costs.

Dated :- 08/08/2018.

**(J.D. Kulkarni)
Vice-Chairman (J).**

dnk.