

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 923 OF 2015

DISTRICT : MUMBAI

Shri Balkrishna Babu Nikam,)
Retd Head Constable Driver,)
Motor Transport Section, Naupada,)
Mumbai 400 008 and residing at)
4/67 Naigaon Police Head Quarter)
Compound, 4th floor, Naigaon,)
Mumbai 400 014.)...**Applicant**

Versus

1. Government of Maharashtra)
Through Additional Chief)
Secretary, Home Department,)
Mantralaya, Mumbai 400 032.)
2. Commissioner of Police for)
Greater Mumbai,)
Near Crawford Market,)
Dr D.N Road, Mumbai 400001)

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3. Deputy Commissioner of Police)
Motor Transport Section,)
Nagpada, Mumbai 400 008.)
4. Directorate of Accounts &)
Treasuries, through its)
Director, Maharashtra State,)
Government Barracks 15 & 16)
Free Press Journal Road,)
Mumbai 400 021.)... **Respondents**

Shri M.D Lonkar, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 18.02.2016

ORDER

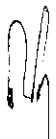
1. Heard Shri M.D Lonkar, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the orders dated 19.1.2015 and 14.10.2015 a total of Rs. 1,10,072/- is sought to be

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recovered from him, as it is said to be paid to him in excess of his entitlement.

3. Learned Counsel for the Applicant argued that the Applicant retired on reaching the age of superannuation on 31.5.2015. He was initially appointed as Armed Police Constable on 15.6.1985 and was appointed as Police Constable Driver on 1.9.1989. He was granted Time Bound Promotion on 15.6.1997. The Applicant was subsequently promoted as Police Naik on 1.10.2000 and Police Head Constable on 1.5.2007. On 19.1.2015, the Respondent no. 3 revised the pay of the Applicant from 1996 without giving him any notice and ordered recovery of Rs. 1,10,072/- on account of excess payment. When the Applicant submitted representation on 3.7.2015 against the recovery, he was informed by letter dated 17.8.2015, that he was not eligible to get Time Bound Promotion in 1997 as he was already promoted as Driver on 1.9.1989 and he would have been due to get Time Bound Promotion only in 2001. Learned Counsel for the Applicant argued that the Police Constable Driver is not a promotional post for an Armed Police Constable. Though, these posts were in different pay scale long time back, the pay scales of both the posts are now identical. The posting as Police Constable Driver cannot be termed as promotion. Learned Counsel for the Applicant argued that impugned orders were issued behind the back of the Applicant and violates principles



of natural justice. The Applicant was not granted Time Bound Promotion on 15.6.1997 due to any misrepresentation or fraud by him. The order dated 19.1.2015 and 14.10.2015 are to recover the so called excess payment from his retiral dues, which is not permissible in view of the judgment of Hon'ble Supreme Court in **CIVIL APPEAL NO 11527/2014 (STATE OF PUNJAB & ORS Vs. RAFIQUE MASIH)**. Learned Counsel for the Applicant relied on the judgment of this Tribunal dated 24.7.2015 in O.A no 1098 of 2014.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant was appointed as Police Constable in the pay scale of Rs. 220-375 on 15.6.1985. This pay scale was revised to Rs.850-1200. He was appointed as Police Constable Driver w.e.f 1.9.1989, which was in the pay scale of Rs. 950-1500. The Applicant was, therefore, eligible to get Time Bound Promotion after 12 years from 1.9.1989. He was mistakenly given Time Bound Promotion 12 years after 15.6.1985. Learned Presenting Officer contended that the Pay Verification Unit has pointed out this mistake and by order dated 19.1.2015, this mistake was rectified. Learned Presenting Officer argued that the Applicant is liable to refund excess amount received by him due to wrong fixation of pay as mentioned above.



5. It appears that there is G.R dated 19.1.2013, which provides that if a person is appointed to a post by nomination, his service prior to such appointment by nomination can be counted for Time Bound Promotion. In para 6.10 of the Original Application, the Applicant has referred to this G.R and claimed that his service before he was appointed as Driver on 1.9.1989, was rightly counted for granting him Time Bound Promotion. The Respondents have claimed that the pay scale of the post of Police Constable was lower than the pay scale of Police Constable Driver and as such, earlier service cannot be counted as per para 3 of the aforesaid G.R. This appears to be correct

6. The Applicant's claim that no recovery could be effected from his pensionary dues is based on the judgment of Hon'ble Supreme Court in RAFIQUE MASIH's case supra. In para 12 of the judgment Hon'ble Supreme Court has held that:-

"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 decision referred to hereinabove, we may, as a ready reference, summarize the following few situations,

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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."

As the Applicant is not alleged to have obtained Time Bound Promotion due to misrepresentation or fraud, no recovery of the excess payment made to him can be effected. The Applicant is admittedly a Group 'C'

employee and had already retired. On these grounds only, the recovery orders are unsustainable. The retirement dues of the Applicant should be paid to him without affecting these recoveries within a period of 3 months from the date of this order.

7. Having regard to the aforesaid facts and circumstances of the case, the orders dated 19.1.2015 and 14.10.2015 are quashed and set aside. This Original Application is allowed accordingly with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 18.02.2016

Dictation taken by : A.K. Nair.