

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 1071 OF 2022  
(Subject:- Refund of Recovered Amount)**

**DISTRICT:-OSMANABAD**

**Pratap S/o Shekba Sontakke,** )  
Age 66 years, Occu. Retired, )  
R/o. Plot No. 133, Datta Nagar, )  
Near Terna College, )  
Osmanabad, Tq. and )  
Dist. Osmanabad. ) **APPLICANT**

**V E R S U S**

**The Dist. Superintendent of Police,** )  
S.P. Office, Osmanabad. ) **RESPONDENTS**

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**APPEARANCE** : Shri G.J. Kore, learned Counsel  
for the applicant.  
: Shri I.S. Thorat, learned Presenting  
Officer for the respondent authority.

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**CORAM** : **Hon'ble Justice Shri V.K. Jadhav, Member (J)**

**DATED** : **18.01.2024.**  
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**O R A L - O R D E R**

Heard Shri G.J.Kore, learned counsel for the applicant and Shri I.S. Thorat, learned Presenting Officer for the respondent authorities.

2. By filing this Original Application the applicant is seeking quashing and setting aside the impugned order dated 02.08.2013 thereby directing the recovery of certain amount from the retiral benefits of the applicant and also seeking refund of the said deducted amount of Rs. 83,139/-.

3. Brief facts giving rise to the Original Application are as follows:-

(i) The applicant was serving in the Police Department. He was initially appointed on 01.01.1993 as Constable. The applicant came to be retired on superannuation on 31.05.2012. At that time he was working as a Police Naik which comes under Class-III category.

(ii) It is the further case of the applicant that the respondent has issued letter on 08.04.2012 and on 02.08.2013 to the accountant and directed to deduct the amount of Rs. 83, 139/- from the final retirement amount. It has been stated in the said letters that during service time the aforesaid excess payment has been wrongly paid to the applicant. Hence, this Original Application.

4. Learned counsel for the applicant submits that due to wrong fixation of pay excess payment amounting to Rs.

83,139/- during the period from 01.01.1993 to 01.07.2011 was paid to the applicant. Learned counsel for the applicant submits that the applicant was in Class-III category at the time of his retirement. Learned counsel for the applicant submits that similarly situated employees of the said department have approached to this Tribunal by filing Original Application No. 404/2019 and O.A.No. 48/2019 respectively. This Tribunal has allowed the said O.As. and directed the respondents to repay the deducted amount to the applicants. The copies of the said orders are annexed to the present Original Application. Though the applicant has submitted the representation on 02.03.2020, the respondent has not considered the same.

5. Learned counsel for the applicant in order to substantiate his contention placed reliance in the case law of Hon'ble Apex Court in **Civil Appeal No. 11527/2014 arising out of S.L.P. (C) No. 11684/2012 & Ors. (State of Punjab and others etc. Vs. Rafiq Masih (White Washter) & Ors.** reported at **AIR 2015 SC 596.**

6. The respondents has filed the affidavit in reply and on the basis of it the learned P.O. submits that while in service

there was an excess payment amounting to Rs. 83, 139/- due to wrong fixation of pay from 01.01.1993 to 01.07.2011. Learned P.O submits that in the proposal dated 08.04.2012 submitted to the Accountant General -II, Nagpur for the sanction of pension to the applicant, the excess payment of Rs. 83, 139/- was shown.

7. Learned P.O. submits that the case of the applicant pertains to the year 2013 and the Director General of Police's circular is dated 05.09.2018 and therefore, the recovery has been correctly made. Learned P.O. submits that the applicant is neither entitled for the amount nor interest on the amount deducted from his pensionary benefits towards the recovery of overpayment. There is no substance in the Original Application and the same is liable to be dismissed.

8. The applicant while serving as a Police Naik retired on 31.05.2012 on attaining the age of superannuation. The applicant is not responsible for the wrong fixation of pay nor has misled the facts in any manner in this regard. The applicant is a Class-III employee at the time of his retirement and in view of ratio laid down by the Hon'ble Apex court, the recovery from the pensionary benefits of the applicant that

too after his retirement is illegal and impermissible. Admittedly, the pay fixation was done on 01.01.1993 and so called excess amount has been paid to the applicant from the period of 01.01.1993 to 01.07.2011.

9. In case of **State of Punjab & Ors. Vs. Rafiq Masih, in Civil Appeal No.11527/2014 decided on 18.12.2014.** In the said decision, the Hon'ble Apex Court has observed 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, 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."*

In view of the aforesaid judgment of the Hon'ble Apex Court, the case of the applicant is squarely covered by circumstances (i) to (iii) mentioned in the above paragraphs.

10. It appears that the amount has been recovered from the pensionary benefits of the applicant though it is impermissible. However, it is to be noted that the Special Inspector General of Police has issued circular dated 05.09.2018 and directed not to recover the excess payment paid to the employees from the pensionary benefits or retiral benefits in view of the judgment and directions given by the Hon'ble Apex Court as reproduced herein above. Thus the action on the part of respondent is illegal.

11. In view of above, the impugned order dated 02.08.2013 issued by the respondent directing recovery of Rs. 83,139/- from the pensionary benefits of the applicant is illegal and it is required to be quashed and set aside. It further appears that the respondent has recovered the said amount illegally from the pensionary benefits of the applicant.

In view of same the applicant is entitled for the refund of the said amount recovered from the pensionary benefits of the applicant. Hence, the following order:-

**ORDER**

The Original Application No. 1071 of 2022 is hereby allowed with the following terms:-

- (A) The impugned order dated 02.08.2013 issued by the respondent is hereby quashed and set aside.
- (B) The respondent is directed to refund the amount of Rs. 83,139/- to the applicant within three months from the date of receipt of certified copy of this order with interest @ 9% p.a. from the date of actual recovery till the date of refund.
- (C) In the circumstances there shall be no order as to costs.
- (D) The Original Application stands disposed of in aforesaid terms.

**MEMBER (J)**

**Place:-Aurangabad**

**Date : 18.01.2024**

SAS O.A. 1071/2022 (S.B.) VKJ Refund of Recovered Amount.