

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.157 OF 2017
(Subject – Recovery)**

DISTRICT: AURANGABAD

Dadasaheb S/o Pandurang Satdive)
Age: 59 years, Occu. :Retired,)
R/o Plot No. 264, Sudhakarnagar)
Police Society, StataraParisar,)
Aurangabad)

.. APPLICANT

V E R S U S

- 1) **The State of Maharashtra,**)
Through :The Secretary,)
Home Department,Mantralaya,)
Mumbai-32.)
- 2) **The Police Commissioner,**)
Commissioner Office,)
Aurangabad.)
- 3) **The Commandant,**)
State Reserve Police Force,)
Group No. 3, Jalna.)
- 4) **The Account Officer,**)
Pay Verification Unit, Aurangabad)
- 5) **The Accountant General-II,**)
Nagpur.)

.. RESPONDENTS

APPEARANCE : ShriKakasaheb B. Jadhav,learned Advocate
for theApplicant.

: Shri I.S. Thorat, PresentingOfficer for the
Respondents.

CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J)

O R A L O R D E R
(Delivered on this 3rd day of January, 2018.)

1. Heard Shri Kakasaheb B. Jadhav, learned Advocate for the applicant and Shri I.S. Thorat, learned Presenting Officer for respondents.

2. The applicant has challenged the order dated 11.02.2016 issued by the respondent No. 2 re-fixing his pay and prayed to quash and set aside it. The applicant has also prayed to direct the respondents to refund the amount of Rs. 66,762/- recovered from him towards excess payment made to him on account of wrong pay fixation of salary by filing the present Original Application.

3. The applicant was appointed as a Constable on 02.02.1986 and posted at SRPF, Jalna. He was promoted on the post of Assistant Sub-Inspector in the year 2008 and thereafter, he was transferred in the office of respondent No. 2 on 31.11.2009. The applicant retired on superannuation w.e.f. 31.07.2016. It is contention of the applicant that at the time of retirement, his service record has been verified by the respondent No. 4 and that time respondent No. 4 raised objection regarding wrong pay fixation of the applicant. Thereafter, respondent No. 2 verified the documents and re-fixed the pay of the applicant w.e.f. 1.1.1996 to 1.7.2015. In pursuance of the re-fixation of pay scale

of the applicant, the impugned order has been issued by the respondent No. 2 on 11.02.2016 directing the recovery of the excess amount paid to the applicant due to wrong fixation of pay scale, to which he was not entitled. Accordingly, the excess amount of Rs. 50,082/- has been recovered from the applicant from his salary from the month of February 2016 to July, 2016. The balance amount of Rs. 16,690/- has been recovered from the gratuity amount payable to the applicant. It is contention of the applicant that the recovery has been made by the respondents against the guidelines given by the Hon'ble Apex Court in case of **State of Punjab and Others Vs. RafiqMasih (White Washer) Etc. in Civil Appeal No. 11527 of 2014 (Arising Out of SLP (C) No. 11684 of 2012)** on 18.12.2014.

4. It is contention of the applicant that he was retired as A.S.I. and he was a Group-C employee. The recovery was made by the respondents when he was on the verge of the retirement and therefore, it is not permissible. It is his contention that there was no fault on his part while fixation of his pay and the mistake has been committed by the respondents, for which he is not responsible. It is his contention that the respondents illegally recovered the amount of Rs. 66,762/- from his salary and gratuity amount and therefore, he prayed to quash and set aside the impugned order dated 11.02.2016 re-fixing his pay and also

prayed to direct the respondents to refund the amount of Rs. 66,762/- by filing the present Original Application.

5. The respondent Nos. 1, 2, 4, & 5 have filed their affidavits in reply and resisted the contention of the applicant. They have not disputed the fact that the applicant was initially appointed as a Police Constable in the year 1986 and thereafter, he was promoted as A.S.I. in the year 2008. They have not disputed the fact that they recovered the amount of Rs. 66762/- from monthly salary and gratuity amount of the applicant. It is their contention that the pay scale of the applicant has been wrongly fixed and therefore, excess payment has been made to him towards salary since the year 1996. The said mistake has been noticed by the respondent No. 4 while preparing the pension papers of the applicant. Therefore, directions were given to the respondent No. 2 by the respondent No. 4 to re-fix the pay scale of the applicant. Accordingly, the Respondent No. 2 re-fixed the pay of the applicant and directed recovery of an amount of Rs. 66,762/- from the applicant. It is their contention that the respondents have power to recover the amount, which was paid to the applicant, though he was not entitled in view of Rule 134 A of the Maharashtra Civil Services (Pension) Rules, 1982 and therefore, the said recovery has been done. It is their contention that the recovery has been made in view of the Government

Resolutions Dated 22.04.2009 and 29.04.2009 and there is no illegality in it. It is their contention that the applicant was appointed as Armed Police Constable on 02.02.1982 in the pay scale of Rs. 220-375. As per the 4th Pay Commission the pay scale of the applicant was revised to Rs. 825-1200 w.e.f. 1.1.1986. The pay scale of the applicant further revised to Rs. 9500-1400 w.e.f. 1.1.1986. On 1.1.1994 the applicant was promoted to the post of Police Naik in the pay scale of Rs. 1200-1800 as per 4th Pay Commission. As per 5th Pay Commission the pay scale of the applicant was revised to Rs. 4000-6000 and the pay of the applicant was fixed at Rs. 4000/- on 1.1.1996. As per Rule 7(1) of the Maharashtra Civil Services (Revised Pay) Rules, 1998, the pay of the applicant was to be fixed at Rs. 4100/-. The applicant was promoted to the post of Police Hawaldar (Head Constable) in the pay scale of Rs. 4000-6000. The pay scale of the existing post i.e. Police Naik and promotional post i.e. Police Head Constable/Hawaldar is one and the same and therefore, the pay of the applicant was required to be fixed as per the provisions of Rule 11(2)(A) of the Maharashtra Civil Services (Pay) Rules, 1981 and the pay of the applicant was required to be fixed at Rs. 4100/-. However, the office of the applicant fixed the pay of the applicant at Rs. 4200/- on 10.08.1996 as per Rule 11 (1)(A) of the Maharashtra Civil Services (Pay) Rules, 1981. It is their contention that in the 4th Pay Commission the pay scale of both

post i.e. Police Naik and Police Head Constable/Hawaldar is one and the same i.e. Rs. 4000-6000 and therefore, fixation of the applicant on his promotional post should have been done as per Rule 11(2)(A) of the Maharashtra Civil Services (Pay) Rules, 1981. The wrong pay fixation has been done by the office of the applicant on 1.8.1996 and therefore, excess amount has been paid to the applicant. The said mistake has been noticed at the time of preparing pension papers of the applicant and therefore, recovery has been directed by the respondent No. 2 from the salary and gratuity amount from the applicant and there is no illegality in the impugned order and respondents have rightly recovered the excess amount paid to the applicant and therefore, they prayed to reject the present Original Application.

6. Admittedly, the applicant was appointed as a Police Constable on 2.2.1986 and posted at SRPF, Jalna. He was promoted as Police Naik on 1.1.1994. He was further promoted as Police Head Constable on 10.08.1996. In the year 2008, he was promoted on the post of Assistant Sub-Inspector and transferred on the establishment of respondent No. 2 on 31.11.2009. Admittedly, the applicant retired on superannuation w.e.f. 31.07.2016. Admittedly, mistake occurred while fixing his pay when he was promoted as Police Head Constable and his pay was fixed at Rs. 4200/- instead of Rs. 4100/-. The applicant received

salary on account of wrong fixation made by the respondents. Admittedly, the mistake has been committed by the respondents and no role was attributed to the applicant. Admittedly, the said mistake has been noticed by the respondent No. 4 while making scrutiny of the pension papers of the applicant and the directions were given by the respondent No. 4 to the respondent No. 2 to revise the pay scale of the applicant. Accordingly, the respondent No. 2 re-fixed the pay scale of the applicant by impugned order dated 11.02.2016 and directed to recover the excess amount of Rs. 66,762/- paid to the applicant on account of wrong fixation of pay.

7. Learned Advocate for the applicant has submitted at this juncture that the applicant has not pressed prayer clause-B to quash and set aside the impugned order dated 11.02.2016 issued by the respondent No. 2, as he has no grievance regarding re-fixation of pay scale of the applicant.

8. Learned Advocate for the applicant has submitted that the only grievance of the applicant is regarding recovery of Rs. 66,762/- from his salary and gratuity amount on account of wrong pay fixation made by the respondents. He has submitted that the applicant is serving as a Group-C employee on the post of A.S.I. till his retirement, but the recovery has been made by the respondents from his monthly salary for the month of February

2016 to July 2016 and gratuity amount of the applicant. He has submitted that the said recovery has been directed just before the retirement of the applicant and the said amount has been recovered from his monthly salary and pensionary benefits. He has submitted that the recovery made by the respondents is against the guidelines given by Hon'ble Apex Court in case of **State of Punjab and Others Vs. RafiqMasih (White Washer) Etc. in Civil Appeal No. 11527 of 2014 (Arising Out of SLP (C) No. 11684 of 2012)** dated 18.12.2014. He has submitted that this Tribunal has also given reliefs to the similarly situated persons in various cases and directed to refund the excess amount recovered from the employees in view of the guidelines given by the Hon'ble Apex Court. He has attracted my attention to various judgments delivered by this Tribunal. He has submitted that the recovery made by the respondents is not legal one. Therefore, he prayed to allow the present Original Application and direct the respondents to refund the amount recovered from him.

9. Learned Presenting Officer has submitted that the recovery has been made in view of the provisions of G.Rs. dated 22.04.2009 and 29.04.2009 and in view of the provisions of Rule 134 A of the Maharashtra Civil Services (Pension) Rules, 1982 and there is no illegality in the impugned order. He has

submitted that the mistake committed by the respondents while fixing the pay scale of the applicant on his promotion on the post of Police Head Constable has been noticed by the respondent No. 4 at the time of scrutiny of the pension papers of the applicant and therefore, the respondent No. 4 has given directions to the respondent No. 2 accordingly. The respondent No. 2 accordingly re-fixed the pay scale of the applicant and directed to recover the excess payment made to him. He has submitted that there is no fault on the part of the respondents and therefore, he prayed to reject the present Original Application.

10. On going through the submissions advanced by both the parties, it seems that the mistake occurred while fixing the pay scale of the applicant when he was promoted as Police Head Constable in the year 1996. At that time his pay ought to have been fixed at Rs. 4200/- instead of Rs. 4100/- and therefore, excess amount has been paid to him from time to time. The record shows that no role was attributed to the applicant in fixation of his pay scale in the year 1996. Not only this, but the respondents fixed the pay scale of the applicant on their own accord. There was no misrepresentation or fraud on the part of the applicant while fixing his pay scale at the time of promotion on the post of Police Head Constable. Therefore, the applicant cannot be blamed for excess payment made to him due to wrong

pay fixation made by the respondents. The said excess amount paid to him has been recovered from his monthly salary from the month of February 2016 to July 2016 when he was on the verge of retirement. Not only this, but remaining amount of Rs. 16,690/- has been recovered from the gratuity amount of the applicant after his retirement. The said recovery is not permissible in view of the guidelines given by the Hon'ble Apex Court in the case of **State of Punjab and Others Vs. RafiqMasih (White Washer) Etc. in Civil Appeal No. 11527 of 2014 (Arising Out of SLP (C) No. 11684 of 2012)** on 18.12.2014, wherein 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, 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 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 the 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 employees, 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.”

11. The case of the applicant is squarely covered under the guidelines given by the Hon'ble Apex Court. Therefore, the recovery made from the salary of the applicant and his gratuity amount is not permissible.

12. In the various judgments delivered by this Tribunal, the Tribunal has directed to refund the excess amount of payment made to the employees due to mistake of employer. The judgments placed on record by the learned Advocate for the applicant are also applicable to the present case. In view of this, in my opinion, the respondents recovered the amount of the excess payment made to the applicant on account of wrong fixation of pay without following the guidelines given by the Hon'ble Apex Court. The respondents have not considered the fact that there was no misrepresentation or fraud practiced by the applicant while fixation of his pay. There was no fault on the part of the applicant while getting excess payment of salary. Therefore,

the said amount of Rs. 66,762/- recovered from the salary of the applicant and the gratuity amount required to be refunded by the respondents to the applicant. In these circumstances, it is just and proper to allow the present Original Application and to direct the respondents to refund the amount of Rs. 66,762/- to the applicant.

13. In view of the above discussions in foregoing paragraphs, the Original Application is allowed and the respondents are directed to refund the amount of Rs. 66,762/- recovered from the applicant on account of excess payment made to him due to wrong pay fixation of salary, within a period of three months from the date of this order, failing which, the amount shall carry interest @ 9% p.a. from the date of the order. There shall be no order as to costs.

(B.P. PATIL)
MEMBER (J)

PLACE : AURANGABAD.

DATE : 03.01.2018.

KPB/S.B. O.A. No. 157of 2017 BPP 2018Recovery