

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 554 OF 2016

DISTRICT: - AHMEDNAGAR.

Shri Ramdas Nagoji Sangle,

Age : - 59 years, Occu: Pensioner,

R/o. Savitribai Phule Nagar,

Batwal Mala, Dholewadi,

Sangamner, Tq. Sangamner,

Dist. Ahmednagar.

.. APPLICANT.

V E R S U S

01. The Superintendent of Police,

Ahmednagar.

.. RESPONDENT

APPEARANCE : Shri V.B. Wagh – learned Advocate
for the applicant.

: Shri M.P. Gude – learned Presenting
Officer for the respondent.

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

DATE : **12TH OCTOBER, 2017.**

O R D E R

1. In the present Original Application, the applicant has challenged the impugned order dated 17.07.2015 issued by the respondent directing recovery of an amount of Rs.

87,200/- on account of excess payment made to him towards increment granted to him though he was not entitled. The applicant has initially sought the direction to release his salary for the period from 01.12.2013 to 30.06.2015 and also prayed to direct the respondent to grant medical leave w.e.f. 12.12.2012 to 19.06.2015 and to grant encashment of leave for the period of 300 days'. During the course of hearing the applicant has not pressed the prayer clauses 'B' to 'D' and pressed the prayer clause 'E' only.

3. The applicant was appointed in the Home Department on the post of Police Constable on 19.09.1977. Thereafter, he was promoted on the post of Police Head Constable in the year 2001. In the year 2005 he was promoted as Assistant Sub Inspector. On 11.12.2012 he was on duty and that time he met with an accident. He sustained head injury. He was admitted in Wockhardt Hospital, Nashik. After recovery from the injury he was advised to join duty. Accordingly, the applicant joined his duty on 20.06.2015. On 30.06.2015

he retired from the Government service on superannuation. It is his contention that the respondents granted leave to him during the period in which he was taking treatment under three different heads without considering the rules 75 & 76 of the Maharashtra Civil Services (Leave) Rules, 1981. It is further contention of the applicant that he had not received the salary for the period from 01.12.2013 to 30.06.2015. Therefore, he made several representations to the respondents, but they have not disbursed the salary to him.

4. It is his further contention that after his retirement, the pension papers were prepared by his office and forwarded to the Accountant General, Mumbai for sanction. The Accountant General has sanctioned the pension vide Pension Payment Order and directed to recover the amount of Rs. 87,200/- paid to him towards excess payment of pay made to him vide Pension Pay Order dated 28th September, 2015. The respondents have not issued the notice to him to give his explanation before ordering the recovery. Therefore, the said order is issued

in violation of the principles of natural justice. Therefore, he approached this Tribunal and challenged the said order.

5. It is his further contention that he was retired as Assistant Sub Inspector in Group 'C' cadre and, therefore, the said recovery cannot be made after his retirement. Therefore, he filed the present Original Application and prayed to quash and set aside the impugned order issued by the Accountant General directing recovery of Rs. 87,200/- from his pension.

6. Respondent No. 1 has filed affidavit in reply and resisted the contentions raised by the applicant. He has not disputed the fact that the applicant has appointed in the year 1977 as Police Constable, but he has denied that the applicant was promoted as Police Head Constable in the year 2001 and as Assistant Sub Inspector in the year 2005. According to him, the applicant was promoted as Police Head Constable on 16.03.1999 and as Assistant Sub Inspector on 03.05.2008. The respondent has denied that it has wrongly granted order granting leave to the

applicant under three different heads without considering the Rule 75 of the Maharashtra Civil Services (Leave) Rules, 1981.

7. It is contention of the respondent that the applicant was promoted on 16.03.1999 as Police Head Constable. At that time two increments were given to him. The post of Police Naik and Police Constables are of the same rank and, therefore, while giving the promotion on the post of Naik increment is not available. The Pay Verification Unit, Nashik has raised the said objection while making verification of the pay scale of the applicant. On the basis of the objection raised by the Pay Verification Unit, Nasik, the salary of the applicant has been revised by an order dated 31.08.2015. Accountant General, Mumbai, by an order dated 28.09.2015 ordered to recover the overpayment amount of Rs. 87,200/- from D.C.R.G., as the said amount has been paid in excess to the salary admissible to the applicant. It has denied that no notice, in respect of revised salary, was given to the applicant. It is contented by the respondent that copy of the notice was

served on the applicant through Kopargaon Taluka Police Station and it was also published in District Gazette. Not only this, but the fact of recovery was also intimated to the applicant while submitting the forms for the pension.

8. It is contention of the respondent that the applicant had not raised any objection at that time. Not only this, but the Accountant General, Mumbai had also informed the applicant by letter dated 28.09.2015 about the recovery of an amount of Rs. 87,200/- from gratuity amount. The applicant has not challenged the order dated 28.09.2015 issued by the Accountant General, Mumbai. Therefore, the present Original Application is not maintainable. It is his contention that the applicant met with an accident on 11.12.2012 and since 12.12.2012 he was on medical leave. He had not appeared before the Sasoon Hospital for medical examination though ordered on several occasions, after his promotion on the post of Police Sub Inspector on temporary basis. As he had not appeared before the Sasoon Hospital for medical examination and he had not discharging duty as Police

Sub Inspector, he was reverted back and posted as Assistant Police Sub Inspector from 10.01.2013 by cancelling his temporary promotion. The applicant exhausted all his leaves, which were in balance when he was on leave. It is his contention that the provisions of Rule 75 of Maharashtra Civil Services (Leave) Rules, 1981, is not applicable to the applicant's case, as it provides that if any Government servant has met with an accident while travelling for his duty his leave cannot be considered as disablement leave, in view of the letter issued by the Government dated 09.01.2000. It is his contention that there is no illegality in the impugned order. Therefore, he prayed to reject the present Original Application.

9. The applicant has filed rejoinder affidavit and contended that objection taken by the Pay Verification Unit is against the provisions of Rules and Government Resolutions. No show cause notice was given to him before passing the impugned order directing the recovery of Rs. 87,200/-. It is his contention that the increment was released to him by the respondents and it was not his

fault. He never made representation or played fraud on the respondents while getting increment. Therefore, he is not liable to pay amount. On this ground, he prayed to allow the present Original Application.

10. I heard Shri V.B. Wagh, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents. I have perused the application, affidavit, affidavit in reply filed by the respondent. I have also perused the documents placed on record by both the parties.

11. Learned Advocate for the applicant has submitted that the applicant was initially appointed as a Police Constable on 19.09.1977. Thereafter, he was promoted on the post of Police Head Constable in the year 2001. In the year 2005 he was promoted as Assistant Sub Inspector. He has submitted that while promoting him on the post of Police Head Constable two increments were granted to him by the respondents. He has submitted that the applicant had never made any representation in that regard and accordingly he received the salary till his

retirement. He has submitted that when the pension papers have been sent to the Pay Verification Unit, Pay Verification Unit raised objection and reduced his pay and on the basis of the said, the respondents re-fixed the pay of the applicant w.e.f. March, 1999 and passed the impugned order directing recovery of Rs. 87,200/- by its order dated 31.08.2015. On the basis of it the Accountant General issued Pension Payment Order dated 28.02.2015 and directed to recover an amount of Rs. 87,200/- from the pensionary benefits of the applicant. He has submitted that the applicant neither practiced fraud nor misrepresented the respondents while grating increment to him. He has submitted that the applicant is Group 'C' employee. Therefore, the said recovery is not permissible. Not only this, but the said amount has been given to the applicant since the year 1999 and, therefore, the recovery exceeding 5 years cannot be made.

12. In support of his submissions, the learned Advocate for the applicant has placed reliance on the latest judgment delivered by Hon'ble the Apex Court in a group

of cases bearing No. Civil Appeal No.11527/2014 arising out of SLP (C) No.11684 of 2012 & ors. in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** Hon'ble the Apex Court in its judgment 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."

13. Therefore, he prayed to quash the impugned order directing the recovery of an amount of Rs. 87,200/- from the pension of the applicant by allowing the present Original Application considering the guidelines given by the Hon'ble Apex Court in the above cited decision.

14. Learned Presenting Officer has submitted that the applicant was initially promoted as Police Naik and thereafter he was promoted as Police Head Constable. He has submitted that the post of Police Naik and Police Head Constable are of equal rank and pay scale of both the posts is Rs. 4000-6000 as per the 5th Pay Commission and it was rose in the pay band of Rs. 5200-20200 + G.P. Rs. 2400/-. In support of his submissions he has relied on the Maharashtra Civil Services (Revised Pay) Rules, 2009, issued by the Government of Maharashtra, Finance

Department, in which relevant portion regarding the Home Department is on page No. 178, which is as follows: -

“(11) Home Department – Contd. (Amount in Rs.)”

Designation	Existing scale of pay and Special Pay, if any	Revised Pay Structure	
		Pay Band	Grade Pay
(2)	(3)	(4)	(5)

1. Director General of Police – Contd.

18. Head Constable (Armed) .. 4000-6000	5200-20200	2400
Plus Spl. Pay Rs.100 for 8734 posts. Rs. 60 for 930 posts.		
19. Head Constable (Unarmed) .. 4000-6000	5200-20200	2400
Plus Spl.Pay Rs. 500		Plus Spl.Pay Rs. 500
20. Police Head Constable (Writer) .. 4000-6000	5200-20200	2400
Plus Spl.Pay Rs. 500		Plus Spl.Pay Rs. 500
21. Head Constable (Writer) .. 4000-6000 (Technical)	5200-20200	2400
Plus Spl.Pay Rs. 500		Plus Spl.Pay Rs. 500
22. Police Naik .. 4000-6000	5200-20200	2400
Plus Spl.Pay Rs. 200		Plus Spl.Pay Rs. 200

15. Learned Presenting Officer has further submitted that as one additional increment was wrongly granted to the applicant on his promotion as Police Head Constable w.e.f. 1999 and, therefore, the excess payment was made to him. The fact of recovery was intimated to the applicant, while verifying the service record at the time of his pension. Learned Presenting Officer has further submitted that at that time applicant had not taken any objection to the same. Therefore, Accountant General, Mumbai informed the applicant accordingly by letter dated 28.09.2015. Thereafter A.G. Mumbai passed the impugned order dated 28.09.2015 while issuing the Pension Payment Order of the applicant. He has submitted that the increment was granted to the applicant though he was not entitled and, therefore, the same requires to be recovered from the applicant. He has submitted that there is no illegality in the order passed by the A.G. Mumbai. Therefore, he prayed to reject the present Original Application.

16. There is no dispute about the fact that the applicant was promoted as Police Head Constable on 16.03.1999

prior to that he was serving as Police Naik and getting salary in the pay scale of Rs. 4000-6000. On his promotion as Police Head Constable he was granted one more increment and accordingly his pay has been raised. The provisions of Maharashtra Civil Services (Pay) Rules, 2009 shows that the post of Police Naik and Police Head Constable are having same pay scale i.e. in the pay scale of Rs. 4000-6000 in the 5th Pay Commission and pay scale of the said posts was revised in the 6th Pay Commission in the pay scale of Rs. 5200-20200 with G.R. of Rs. 2400/-.

17. On going through the record, it seems that the applicant was getting the same pay scale when he was appointed as Police Naik. One advance increment has been granted to him on the post of Police Head Constable though he was not entitled after his promotion on the post of Police Head Constable on 16.3.1999. The said increment has been granted by the respondents. No representation has been made by the applicant in that regard. Not only this, but the applicant has not practiced fraud on the respondents in getting the said increment.

He received the salary accordingly since the year 1999 till his retirement in the year 2016. The applicant is a Group 'C' employee. Therefore, the recovery as ordered by the respondent No. 2 cannot be said to be legal in view of the guidelines given by the Hon'ble Apex Court in case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer)** (supra). The case of the applicant is squarely covered by the principles laid in the said decision of the Hon'ble Apex Court in case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer)** (supra). The recovery of the amount of salary paid to the applicant though he was not entitled to it, was not outcome of the fraud or misrepresentation made by the applicant. Moreover, the recovery of excess amount paid to the applicant for more than 5 years' period was ordered by the impugned order and the same cannot be recovered. Not only this, but the recovery cannot be made from the applicant, who is Group 'C' employee. The case of the applicant is covered by the situations (i), (ii) & (iii) mentioned by the Hon'ble Apex Court in the decision in case of **State of Punjab and others etc. V/s. Rafiq Masih**

(White Washer) (supra). In case of recovery of the amount from the pension of the applicant, who is retired employee, it would cause hardship to the applicant and it would be iniquitous and arbitrary to seek refund of the payments mistakenly made to the applicant. Therefore, the said recovery is impermissible. Therefore, the same cannot be recovered from the applicant. The impugned order issued by the respondent directing the recovery of an amount of Rs. 87,200/- was arbitrary and in violation of the guidelines given by the Hon'ble Apex Court. No opportunity of hearing was given to the applicant by the respondents before issuing the said order. It violates the principles of natural justice. On this count also the said order requires to be quashed and set aside. Such type of recovery is impermissible in view of the guidelines given by the Hon'ble Apex Court in the case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer)** (supra). Therefore, the same cannot be recovered. The impugned order is illegal one and, therefore, it required to be quashed and set aside by allowing the present Original Application.

18. In view of the aforesaid discussion, the Original Application is allowed. The impugned order dated 28.09.2015 issued by the Accountant General directing recovery of an amount of Rs. 87,200/- from the pensionary benefits of the applicant is hereby quashed and set aside.

The respondents are directed to refund the amount of Rs. 87,200/-, if recovered from the applicant within a period of four weeks' from the date of order, failing which the amount shall carry interest @ 9% p.a. from the date of this order till payment of the amount.

There shall be no order as to costs.

MEMBER (J)

O.A.NO.554-2016(SB)-HDD-2017-
recovery