

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 689 OF 2019

DISTRICT: - NANDED.

Wahab Baig S/o. Mansab Baig,
Age-59 years, Occu. : Retired Police
Inspector, R/o: Parvana Nagar,
Sana Colony, Nanded – 431 602

.. APPLICANT.

V E R S U S

- 1) The State of Maharashtra,**
Through its Secretary,
Home Department,
Mantralaya, Mumbai – 32.
- 2) The Director General of Police
Maharashtra State,**
Sahid Bhagatsingh Road, Kolaba,
Mumbai – 01.
- 3) The Special Inspector General of
Police, Aurangabad Range,**
Aurangabad – 431 005.
- 4) The Superintendent of Police,**
Dist. Nanded – 431 601.
- 5) The Superintendent of Police,**
Dist. Beed-431122.

.. RESPONDENTS.

APPEARANCE : Shri. Omprakash D. Mane, learned
Advocate for the applicant.

: Mrs. Priya R. Bharaswadkar – learned
Presenting Officer for the respondents.

CORAM : **B.P. PATIL, ACTING CHAIRMAN**
RESERVED ON : **14.01.2020**
PRONOUNCED ON : **16.01.2020**

ORDER

By filing the present Original Application the applicant has challenged the order dated 02/03.05.2019 passed by the Superintendent of Police, Beed, and prayed to direct the respondent No. 4 to refund the amount of Rs. 5,52,611/- recovered from him after his retirement.

2. The applicant was recruited as Police Constable in Osmanabad District on 13.01.1981. He rendered his service at various Police Stations in in Osmanabad District. In the year 1982 he was promoted as Police Sub Inspector and posted at Police Station Degalur at Nanded District. Thereafter, on 26.05.2011 he was promoted as Assistant Police Inspector. Thereafter, on 28.07.2017 he was promoted as Police Inspector and posted at Police Station, Majalgaon, DIst. Beed. On attaining the age of superannuation he retired from the post of Police Inspector on 31.12.2018. It is his contention that he rendered unblemished service during his

service tenure. He served at various districts i.e. Osmanabad, Latur, Nanded, Parbhani and Beed. The competent authority of the concerned post was duty bound to fix the pay scale of the applicant on the promoted post and to make entries in the service book from time to time. The competent authorities were duty bound to send the service book of the applicant to the Pay Verification Unit for verification of pay from time to time, but they did not send it to the Pay Verification Unit for verification of pay. In the year 2018, Superintendent of Police, Nanded made the pay fixation of the applicant from the post of the Head Constable to Police Inspector by order dated 26.10.2018 when the applicant was on the verge of retirement. The applicant served in the Nanded District for the period of 2001 to 2009. The Superintendent of Police, Beed, carried out pay fixation one day before his retirement and passed the pay fixation order dated 28/29.12.2018. After four months of his retirement, the Superintendent of Police, Beed issued an order and directed the recovery of excess payment of Rs. 5,52,611 made to him from his pensionary benefits and the said amount has been recovered from the amount of his earned leave encashment. It is his contention that the Superintendent of

Police, Beed, has not issued any notice before passing the said order. It is his contention that after recovery he approached to the higher authority and narrated his grievances, but concerned higher authority showed the copy of the Circular in which it is mentioned that the recovery of excess payment is banned only for the post of Police Constable to A.S.I. and it has misconstrued the judgment of Hon'ble Apex Court in the case of **STATE OF PUNJAB AND OTHERS etc. Vs. RAFIQ MASIH (WHITE WASHER) etc. reported in Civil Appeal No. 11527/2014 arising out of SLP (C) No. 11684/2012 & OTERS.** It is his contention that the respondents had not followed the guidelines given by the Hon'ble Apex Court in the case of STATE OF PUNJAB AND OTHERS etc. Vs. RAFIQ MASIH (WHITE WASHER) (Supra). It is his contention that this Tribunal has also granted relief to the similarly situated person in case of **OMPRAKASH DHONDIRAM MANE VS. THE STATE OF MAHARASHTRA AND OTHERS (O.A. NO. 711/2016) decided on 28.12.2016.** It is contention of the applicant that recovery made by the respondents from his pensionary benefits is against the guidelines given by the Hon'ble Apex Court in case of **STATE OF PUNJAB AND OTHERS etc. Vs. RAFIQ**

MASIH (WHITE WASHER) (Supra) and, therefore, it is illegal. The respondent has illegally made recovery of the excess payment made to him from his pensionary benefits and, therefore, he approached this Tribunal and prayed to direct the respondents to refund the amount of Rs. 5,52,611/- recovered from him by quashing the impugned order.

3. Respondent Nos. 1 to 3 & 5 have filed their affidavit in reply and resisted the contention of the applicant. They have denied that the competent authority had not fixed the pay of the applicant from time to time. It is their contention that the pay of the applicant has been fixed when he was promoted on the post of PSI/API/PI from time to time by the concerned authority. The applicant never raised any grievance regarding pay fixation during the period from 1982 to till his retirement. It is their contention that in view of the Circular dated 29th April, 2009 the Government servant has to give undertaking in writing that as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed will be refunded to the Government either by adjustment against future payment. The applicant had given undertaking accordingly and he had undertaken to refund

the amount if he gets excess amount. It is their contention that the applicant was posted at Beed district on his promotion on the post of Police Inspector. At the time of preparing his pension proposal, service book was verified by the respondents and that time it was found that his pay fixation made from the other districts had not been verified by Pay Verification Unit. Without pay verification of the pay fixed from the pay verification unit pension cannot be granted by the Accountant General, Nagpur. Therefore, the service book of the applicant was sent to the Pay Verification Unit for verification. At the time of verification of the service book, Pay Verification Unit raised objection and sent the service book to the respondent No. 5, the Superintendent of Police, Beed. Accordingly, the service book was sent to the Superintendent of Police, Nanded i.e. respondent No. 4 for compliance of the objection raised by the Pay Verification Unit and Superintendent of Police, Nanded re-fixed his pay and again sent it to the respondent No. 5. The office of the respondent No. 5 recovered the excess amount paid to the applicant and issued revised order of pay fixation as per the direction given by the Pay Verification Unit. They have denied that the pay of the applicant has been wrongly fixed and the

recovery has been made illegally. It is their contention that the recovery is made in view of the provisions of Sub-Rule (1) (2) (3) (b) Rule 132 of the Maharashtra Civil Services (Pension) Rules, 1982. It is their contention that recovery has been made in view of the provisions of the M.C.S. (Pension) Rules, 1982 and there is no illegality. Therefore, they prayed to dismiss the Original Application.

4. I have heard the arguments advanced by Shri Omprakash D. Mane, learned Advocate for the applicant and Mrs. Priya R. Bharaswadkar, learned Presenting Officer for the respondents. I have perused application, affidavit, affidavit in reply filed by respondent Nos. 1 to 3 & 5. I have also perused the documents placed on record by both the parties.

5. Admittedly, the applicant was initially appointed as Police Constable in Osmanabad District on 13.01.1981. Admittedly, in the year 1982 he was promoted as Police Sub Inspector and posted at Police Station Degalur in Nanded District. Thereafter, on 26.05.2011 he was promoted as Assistant Police Inspector. Thereafter, on 28.07.2017 he was promoted as Police Inspector and posted at Police Station,

Majalgaon, Dist. Beed. Admittedly, on attaining the age of superannuation he retired from the post of Police Inspector on 31.12.2018. Admittedly, at the time of verification of his service book, Pay Verification Unit raised objection. On the basis of the said objection, respondent No. 5 sent the service book of the applicant to the Superintendent of Police, Nanded for compliance of the objection raised by the Pay Verification Unit. The respondent No. 4 accordingly re-fixed the pay of the applicant. On the basis of the pay fixation order issued by the respondent No. 4 i.e. Superintendent of Police, Nanded, the respondent No. 5 i.e. Superintendent of Police, Beed, passed the impugned order directing recovery of excess payment made to the applicant and accordingly recovered the said amount from his pensionary benefits.

6. Learned Advocate for the applicant has submitted that the applicant has retired as Police Inspector w.e.f. 31.12.2018. He has submitted that at the time of his retirement the service book of the applicant has been sent to the Pay Verification Unit. That time Pay Verification Unit raised the objection regarding the pay fixation of the applicant w.e.f. 1.7.2001 and, therefore, Superintendent of Police,

Nanded re-fixed the pay of the applicant on the basis of the objection raised by the Pay Verification Unit and on the basis of it the Superintendents of Police, Nanded and Beed, i.e. respondent Nos. 4 & 5 re-fixed the pay of the applicant and thereafter respondent Nos. 4 & 5 directed to recover excess amount paid to the applicant and accordingly the amount of Rs. 5,52,611/- has been recovered by the respondent No. 5 from his pensionary benefits. He has submitted that the pay of the applicant has been wrongly fixed by the respondents and for that the applicant cannot be blamed. He has submitted that the applicant never misrepresented the respondents or never practiced fraud on them for getting excess pay. He has submitted that the recovery has been made when the applicant was on the verge of the retirement and amount has been recovered from his pensionary benefits. He has submitted that the said act on the part of the respondents is illegal 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) etc.** reported in [**AIR 2015 SC 696/(2015) 4 SCC 334**], wherein it is 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, 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.”

He has submitted that the respondents have illegally recovered the said amount from the pensionary benefits of the applicant and, therefore, the applicant is entitled to get refund of the said amount.

7. Learned Advocate for the applicant has further submitted that similar issue has already been dealt with and decided by this Tribunal in case of **OMPRAKASH DHONDIRAM MANE VS. THE STATE OF MAHARASHTRA AND OTHERS [O.A. NO. 711/2016] decided on 20th December, 2016.** He has submitted that the case of the applicant is squarely covered by the aforesaid decision and, therefore, the applicant is entitled to get refund of Rs. 5,52,611/- recovered from his pensionary benefits. Therefore, he has prayed to quash and set aside the impugned order dated 02/03.05.2019 passed by respondent No. 5, the Superintendent of Police, Beed, by allowing the Original Application and to direct them to refund the said amount to the applicant.

8. Learned Presenting Officer for the respondents has submitted that the applicant retired as Police Inspector. The said post of Police Inspector falls under Group 'B' category. Therefore, the applicant cannot take benefit of guidelines given by the Hon'ble Apex Court in case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** (supra), as the Hon'ble Apex Court has given guidelines in

case of Group 'C' & 'D' category only. She has submitted that the pay of the applicant has been wrongly fixed when he was serving at Nanded & Beed. At the time of retirement of the applicant his service book has been sent to the Pay Verification Unit and that time Pay Verification Unit raised the objection. On the basis of the objection raised by the Pay Verification Unit, Superintendent of Police, Nanded and Superintendent of Police, Beed, passed the order dated 26.10.2018 and 29.12.2018 re-fixing the pay of the applicant. He has submitted that the excess amount has been paid to the applicant due to wrong fixation of pay. Therefore, the excess amount of Rs. 5,52,611/- has been paid to the applicant during that period. She has submitted that the applicant has executed undertaking and undertook to refund the excess amount, if any, paid to him at the time of fixation of pay when he was serving as PSI. She has attracted my attention towards undertaking given by the applicant, which is at page No. 50. She has submitted that since the applicant had executed undertaking to refund the amount, if any paid to him due to wrong pay fixation, the applicant is bound to repay the amount to the Government. The respondents have made recovery of the excess amount paid to the applicant due

to wrong fixation of pay on the basis of the said undertaking and there is no illegality in it. She has submitted that the Hon'ble Apex Court has considered the said facts and the judgment in case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** (supra) and effect of the undertaking given by the Government servant in the case of **HIGH COURT OF PUNJAB & HARYANA & ORS. VS. JAGDEV SINGH [CIVIL APPEAL NO. 3500 OF 2006]** **decided on 29th July, 2016** and observed as follows: -

“11. The principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking.

9. Learned Presenting Officer has submitted that since the applicant has given undertaking he is bound by the said undertaking and, therefore, recovery made by the respondents on the basis of undertaking given by the applicant is legal. Therefore, she has justified the impugned order.

10. I have gone through the documents placed on record. On perusal of the record it reveals that excess payment was made to the applicant during his tenure as PSI, API and PI due to wrong pay fixation. The said mistake has been noticed by the respondents when Pay Verification Unit raised objection in that regard at the time of verification of the service book of the applicant. On the basis of the objection raised by the Pay Verification Unit, the respondent Nos. 4 & 5 re-fixed the pay of the applicant and directed recovery of the excess payment made to the applicant. Accordingly, amount of Rs. 5,52,611/- has been recovered from the pensionary benefits of the applicant. It is material to note here that the applicant has given undertaking, a copy of which is at page-50 of paper book of O.A., when he was serving as P.I. and undertook to refund the excess amount paid to him, if any, due to the incorrect pay fixation to the Government. The said undertaking reads as follows:-

“वचनपत्र

UNDERTAKING

मी असे वचन देतो की, चुकीच्या वेतन निश्चिती मुळे किंवा पुढे वेतन निश्चिती मध्ये विसंगती आढळून आल्यामुळे मला अतिप्रदान झाल्याचे निदर्शनास आल्यास ते भविष्यात मला प्रदान करण्यात येणा-या रकमेतून समायोजित करून किंवा इतर प्रकारे मी शासनास परत करीन.

I, hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies notice subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise.”

11. The said undertaking has been given by the applicant in view of the Circular dated 29th April, 2009 issued by the Government and on the basis of the said undertaking the respondents have recovered the said amount from the applicant.

12. The applicant was serving as Police Inspector at the time of his retirement. The post of Police Inspector falls under Group 'B' category. The amount of Rs. 5,52,611 has been recovered from the applicant in view of the undertaking given by him and at the time of retirement he was serving on the post of Police Inspector, which falls under Group 'B' category. Therefore, the guidelines given by the Hon'ble Apex Court in case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** (supra) are not attracted in the instant case as the post held by the applicant at the time of his retirement does not fall under the category mentioned therein. Therefore, the applicant cannot take benefit of the

decision of the Hon'ble Apex Court in case of **State of Punjab and others etc. V/s. Rafiq Masih (White Washer) etc.** (supra).

13. On the contrary, the principle laid down by the Hon'ble Apex Court in the case of **HIGH COURT OF PUNJAB AND HARYANA AND OTHERS VS. JAGDEV SINGH** (supra) is most appropriately applicable in the present case. In this case the respondent authorities recovered excess amount paid to the applicant due to wrong pay fixation on the basis of undertaking given by the applicant. Therefore, it cannot be said to be illegal.

14. It is also material to note here that the applicant has not challenged the order of the respondent Nos. 4 & 5 re-fixing his pay and without challenging the re-fixation order he has approached this Tribunal claiming refund of the amount, which has been recovered from his pensionary benefits. Therefore, on that count also the present Original Application cannot be allowed.

15. Considering the above said fact in my opinion the recovery of amount of Rs. 5,52,611/- made by the

respondents from the pensionary benefits of the applicant on the basis of the re-fixation of the pay of the applicant and on account of excess payment made to him due to wrong pay fixation is legal. The said amount has been recovered on the basis of undertaking given by the applicant. Therefore, I find no illegality in it. Hence, no interference is called for in the impugned order dated 02/03.05.2019. Since the amount has been recovered on the basis of the undertaking given by the applicant, there is no illegality in it and hence no question of making refund of the said amount arises. There is no merit in the Original Application. Hence, it deserves to be dismissed.

16. In view of the discussion in foregoing paragraphs, the present O.A. stands dismissed. There shall be no order as to costs.

ACTING CHAIRMAN

PLACE : AURANGABAD.

DATE : 16.01.2020

O.A.NO.689-2019(SB-Recovery)-HDD-2020