

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**T.A.NO. 10 OF 2022 (W.P.NO. 4726 OF 2022)
(Subject:- Refund of Recovered Amount)**

DISTRICT:-AURANGABAD

Prakash s/o Rambhau Ghorpade)

Age: 53 years, Occ.: Pensioner,)

R/o. Shiral, Tq. Pathardi,)

Dist. Ahmednagar.)

APPLICANT NO.3

Vishwanath s/o Dhondiba Kolkar)

Age: 58 years, Occu.: Pensioner,)

R/o. Ganesh Niwas, Nalegaon,)

Ahmednagar, Tq. & Dist. Ahmednagar)

APPLICANT NO. 5

Trimbak s/o Dhondiram Labade)

Age: 65 years, Occu.: Pensioner,)

R/o. Bhatodi (Pargaon), Tq. Nagar,)

Dist. Ahmednagar)

APPLICANT NO. 6

Anilkumar s/o Maruti Dusunge)

Age: 65 years, Occu.: Pensioner,)

R/o. Kapurwadi, Tq. Nagar,)

Dist. Ahmednagar)

APPLICANT NO. 7

Manik s/o Raghuji Pimpale)

Age: 67 years, Occu.: Pensioner,)

R/o. Ralegaon Mhasoba, Tq. Nagar,)

Dist. Ahmednagar)

APPLICANT NO. 8

Sham s/o Bhausahab Gaikwad)

Age: 58 years, Occu.: Pensioner,)

R/o. Shrirampur, Tq. Shrirampur,)

Dist. Ahmednagar)

APPLICANT NO. 10

Uttam s/o Laxman Panmand)

Age: 60 years, Occu.: Pensioner,)

R/o. Wagh Mala, Nagar,)

Tq. Nagar, Dist. Ahmednagar)

APPLICANT NO. 12

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 Police)
Directorate, Mumbai.)
 3. **The Special Inspector General**)
of Police Nashik Range, Nashik.)
 4. **The Superintendent of Police,**)
Ahmednagar.)
 5. **Principal Accountant General (A & E),**)
Maharashtra Mumbai -20.)
-)RESPONDENTS**

APPEARANCE : Shri A.G. Ambetkar, learned counsel
for the applicants.

: Shri B.S. Deokar, learned Presenting
Officer for the respondent authorities.

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

DATE : **22.02.2024.**

O R A L - O R D E R

Heard Shri A.G. Ambekar, learned counsel for the
applicants and Shri B.S. Deokar, learned Presenting Officer
for the respondent authorities.

2. Initially there were total 12 applicants in this T.A. They all have a common prayer that on the ground of wrong fixation of pay the respondents have illegally and unaut recovered the amounts as is mentioned in the chart annexed with the T.A. and thus sought refund of the said amount. In the affidavit in reply submitted by the respondents it is admitted that excluding the applicants No. 3,5,6, 7, 8, 10 & 12, the other applicants at Sr. Nos. 1, 2, 4, 9 & 11 are entitled for the refund and the respondents are ready to refund the amount which has been recovered from them.

3. By order dated 19.04.2023, this Tribunal has directed that the respondents shall refund the recovered amounts to the applicants at Sr. No. 1, 2, 4, 9 & 11 within 3 weeks from the date of the order and partly allowed the T.A.No. 10/2022 to the extent of as above. This Tribunal has further observed that the remaining applicants may prosecute the O.A. further.

4. Learned counsel for the applicants submits that the applicant Nos. 1, 2,4, 9 & 11 and 10 to 22 have received the refund as agreed by the respondents and recorded by this Tribunal in the order dated 19.04.2023 as aforesaid.

5. Learned counsel for the applicants submits that applicants were appointed in the Home Department and stood retired from the Home Department on attaining the age of superannuation. Learned counsel for the applicants submits that after retirement while giving the retiral benefits to the applicants, the respondent authorities directed to recover the amount on account of excess payment made to them.

6. Learned counsel for the applicants submits that till their retirement, the applicants worked in the Group 'C' category and after retirement, the amount which has been paid in excess to them, recovered from their gratuity amount.

7. Learned counsel for the applicants submits that so far as other applicants are concerned, though respondent authorities took policy decision to refund their amount in the light of G.R. dated 17.03.2022, however, the present applicants were not given the said refund for the reason best known to the respondents.

8. Learned counsel for the applicants submits that in terms of the ratio laid down by the Hon'ble Apex Court in the case of **State of Punjab and Ors. Vs. Rafiq Masih (White Washer) reported in 2015 (4) SSC 334**, the recovery from

the employees from their retiral benefits is impermissible under certain conditions.

9. Learned P.O. submits that the applicant No.3 was consistently remained absent from his duty successively between 03.09.2011 to 18.10.2018 for about 821 days and granted extraordinary leave of 115 days between 21.06.2018 to 10.10.2018 and he had taken voluntary retirement on 17.05.2021. In terms of the objection raised by the Pay Verification Unit, the excess payment is to be deducted as per norms and rules of 5th and 6th Pay Commission.

Learned P.O. submits that the applicant No.5 has been paid excess payment between 01.09.2001 to 01.07.2012 and as per the objection of Pay Verification Unit, Nashik, the excess payment is required to be deducted as per norms and rules of 5th and 6th Pay Commission. The applicant was supposed to give payment of Rs. 4600 but actually he was given Rs. 4900 p.m. during his tenure. Thus the said amount was necessary to be recovered.

Learned P.O. submits that the applicant No. 6 has been paid excess payment between 26.09.2000 to 01.07.2014 and as per the objection of Pay Verification Unit, Nashik, the excess payment is required to be deducted as per norms and

rules of 5th and 6th Pay Commission. He was supposed to give payment of Rs. 4500 but actually he was given payment of Rs. 4600 p.m. during his tenure. Thus the said amount was necessary to be recovered.

Learned P.O. submits that the applicant No. 7 has been paid excess payment between 29.09.2000 to 01.07.2014 and as per the objection raised by the Pay Verification Unit, Nashik, the excess payment is required to be deducted as per norms and rules of 5th and 6th Pay Commission. He was supposed to give payment of Rs. 4500 but he was actually given payment of Rs. 4700 Rs. p.m. during his tenure. Thus the said amount was necessary to be recovered.

Learned P.O. submits that the applicant No. 8 has been paid excess payment between 29.09.2000 to 01.07.2013 and as per the objection raised by Pay Verification Unit, Nashik, the excess payment is required to be deducted as per the norms and rules of 5th and 6th Pay Commission. He was supposed to give payment of Rs. 4500 but he was actually given payment of Rs. 4700 p.m. during his tenure. Thus the said amount was necessary to be recovered.

Learned P.O. submits that the applicant No. 10 has been paid excess payment between 01.01.1996 to 01.07.2021

and as per the objection raised by the Pay Verification Unit, Nashik, the excess payment is required to be deducted as per the norms and rules of 5th, 6th and 7th Pay Commission. He was supposed to give payment of Rs. 3285 but he was actually given payment of Rs. 3370 p.m. during his tenure. Thus the said amount was necessary to be recovered.

Learned P.O. submits that the applicant No.12 has been paid excess payment between 02.09.2003 to 01.01.2006 and as per the objection raised by Pay Verification Unit, Nashik, the excess payment is to be deducted as per the norms and rules of 5th, 6th and 7th Pay Commission. He supposed to given payment of Rs. 5200 but he was actually given payment of Rs. 8750 p.m. during his tenure. Thus the said amount was necessary to be recovered. Learned Presenting Officer submits that there is no substance in the Original Application and the same is liable to be dismissed.

10. Learned Presenting Officer submits that the Finance Department has given consent for refund of the recovered amount to the other employees. However, the present applicants at Sr. No. 3, 5, 6, 7, 8, 10 and 12 are not entitled for the refund of the said amount.

11. It appears that none of the applicants have submitted an undertaking for the excess payment to be recovered, if paid to them and it is the case of the department that the excess payment is required to be deducted as per the norms and rules of 5th, 6th and 7th Pay Commission and it is done accordingly. The applicants had been given excess payment for the period more than 5 years and the recovery is sought only after the objection is raised by the Pay Verification Unit, Nashik in this regard after retirements of the applicants.

12. The chart exhibiting the post held by the present applicants at the time of their retirement and amount deducted from the applicants from their retiral benefits is as below.

Petitioner No.	Petitioner Name	Post held at the time of retirement	Date of Retirement	Amount deducted (in Rs.)
3.	Prakash Rambhau Ghorpade	H.C. (Head Constable)	17.05.2021	2,12,626/-
5.	Vishwanath Dhondiba Kolhar	A.S.I. (Assistant Sub Inspector)	30.06.2013	73,246/-
6.	Trimbak Dhondiram Labade	A.S.I. (Assistant Sub Inspector)	31.08.2015	85,068/-
7.	Anilkumar Maruti Dusunge	A.S.I. (Assistant Sub Inspector)	31.05.2015	46,634/-
8.	Manik Raghu Pimpale	A.S.I. (Assistant Sub Inspector)	31.05.2014	1, 49,935/-

9.	Sambhaji Savleram Thosar	A.S.I. (Assistant Sub Inspector)	31.12.2021	1,56,732/-
10.	Sham Bhausahab Gaikwad	A.S.I. (Assistant Sub Inspector)	30.11.2019	2,30,173/-
12.	Uttam Laxman Panmand	A.S.I. (Assistant Sub Inspector)	31.05.2020	1,80,342/-
Total Amount:-				16,64,690/-

13. It appears from the chart that the present applicants came to be retired from Group 'C' post. The amounts allegedly paid in excess to the applicants have been recovered from their retiral benefits. The applicants are retired as a Group 'C' employee and the applicants are certainly not at fault for the wrong pay fixation, if any, by the department. Further it is not the case of respondents that the applicants have misled the authorities in any manner for wrong fixation of pay. It appears that in view of the wrong pay fixation, the applicants have been paid the salary as per revised pay.

14. In the background of the facts, the ratio laid down by the Hon'ble Apex Court in the case of **State of Punjab and Ors. Vs. Rafiq Masih (White Washer), reported in 2015 (4) SSC 334** is squarely applicable to the facts and circumstances of the present case. In the case **State of**

Punjab and Ors. Vs. Rafiq Masih (White Washer), (supra),

the Hon'ble Apex Court in paragraph No. 12 has made the following observations:-

“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.”

15. It is thus clear that the circumstances (i) to (iii) are squarely applicable to the applicants and as such, the recovery from their retiral benefit is impermissible.

16. Thus considering the entire facts of the case, this application deserves to be allowed. Hence, the following order:-

ORDER

- (A) The T.A.No. 10 of 2022 is hereby allowed.
- (B) The respondents are hereby directed to refund the said recovered amount of Rs. 2,12,626/- to the applicant viz. Prakash Rambhau Ghorpade, amount of Rs. 73,246/- to the applicant viz. Vishwanath Dhondiba Kolhar, amount of Rs. 85,068/- to the applicant viz. Trimbak Dhondiram Labade, amount of Rs. 46,634/- to the applicant viz. Anilkumar Maruti Dusunge, amount of Rs. 1,49,935/- to the applicant viz. Manik Raghu Pimpale, amount of Rs. 1,56,732/- to the applicant viz. Sambhaji Salveram Thosar, amount of Rs. 2,30,173/- to the applicant viz. Sham Bhausahab Gaikwad and amount of Rs. 1,80,342/- to the applicant viz. Uttam Laxman

Panmand which is deducted from their retial benefits within three months from the date of receipt of 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 T.A. is accordingly disposed of.

MEMBER (J)

Place:-Aurangabad

Date : 22.02.2024

SAS T.A. 10/2022 (S.B.)Refund of Recovered Amount