

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 707 of 2014 (D.B.)**

- 1) Mrs. Bharti Prakash Maldhure,  
Aged about 58 years, Occ. Advocate
- 2) Valay Prakash Maldhure,  
Aged 36 years, Occ. Advocate
- 3) Aashya Prakash Maldhure,  
Aged 32 years, Occ. Service,  
Legal Heirs Dr. Prakash Harilalji Maldhure

**Applicant.****Versus**

- 1) The State of Maharashtra,  
through the Secretary,  
Department of Public Health,  
The State of Maharashtra, Mantralaya,  
Mumbai-32.
- 2) The Commissioner,  
Employees State Insurance Scheme,  
Government of Maharashtra, Panchdeep Bhavan,  
N.M. Joshi Marg, Lower Parel,  
Mumbai-400 013.
- 3) Indian Audit & Account Department,  
O/o Accountant General,  
Patistha Bhawan, 101, Maharshi Karve Marg,  
Mumbai-400 020.  
[e-mail-agaemum@vsna1.com](mailto:e-mail-agaemum@vsna1.com)
- 4) The Treasury Officer,  
Civil Lines, Nagpur.

**Respondents.**

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**Mrs. Bharti Prakash Maldhure (applicant in person)****Shri A.M. Ghogre, learned P.O. for the respondents.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J) and  
Hon'ble Shri Shree Bhagwan, Member(A).**

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**JUDGMENT**

**PER : V.C. (J).**

**(Delivered on this 19<sup>th</sup> day of September,2018)**

Heard Mrs. B.P. Maldhure, the applicant in person and Shri A.M. Ghogre, learned P.O. for the respondents.

2. The applicants in this case are the legal heirs of deceased Dr. Prakash Harilalji Maldhure (hereinafter referred to as "deceased Prakash").

3. The applicants being aggrieved by the communication dated 10/09/2014 issued by respondent no.3 have filed this application and have claimed that the said communication be quashed and set aside and the pension of deceased Prakash be properly be fixed and the respondents be restrained from recovering the so called amount paid excess to deceased Prakash.

4. Vide impugned communication dated 10<sup>th</sup> September,2014 it was directed to the applicants as under :-

*"Shri Maldhure expired on 27/12/2009. On account of change in the pay, the pensionary benefits of Shri have undergone a **downward revision**. Consequently, the revised benefits admissible to him/ her are as under :-*

*Revised Pension for Rs.10937/- payable from 1/10/2004.*

*EFP for Rs.10937/- payable from the date of death for 7 years or upto 20/9/2011.*

*FP for Rs.6694/- payable from 21/9/2011 for life of till her remarriage.*

*Amount commuted Rs.3645/-.*

*Revised reduced Pension for Rs.7292/-.*

*Commutation amount Rs. (-) 127152/-.*

*You may therefore make necessary arrangement to pay revised pensionary benefits after making due adjustments of the pension already paid. **Excess paid** pension, Family Pension and Commutation amount may be **recovered** in lumpsum or in suitable installments or from relief on pension under intimation to this office. Necessary note of change in the pensionary benefits may be taken on both halves of the PPO.”*

5. It is stated that the impugned communication whereby the pay of deceased Prakash has been revised and recovery is ordered against the applicants is absolutely illegal, arbitrary and same has been done without application of mind and without giving any opportunity to the applicants.

6. The respondent no.3 justified the order of recovery. It is stated that respondent no.2, i.e. the Commissioner (ESIS) had forwarded the pension case of deceased Prakash who retired as Medical Officer on 30/09/2004 to the competent authority vide letter dated 21/06/2004. The pension case was finalised considering the

last pay of deceased Prakash. It is stated in para nos. 2 to 4 as under :-

*“(2) The answering respondent had finalized the pension case taking into account last pay of Rs.15200+25% NPA in the pay scale of Rs.10650-325-15850. Accordingly, pension of Rs.9318/- per month w.e.f.1.10.2004, Gratuity of Rs.2,49,000/- and Commutation Value of Pension Rs.3,89,866/- were authorised under the authorised by Authorization letter dated 12/7/2004. As per the Form no.7 and amount of Rs.84,825/- on account of HBA and Licence fees was shown recovered. Accordingly, an amount of Rs.83,825/- was shown recovered from the Gratuity but subsequently released vide authority issued on 9/12/2005.*

*(3) It is submitted that the Department by letter dated 28/1/2005 forwarded the proposal of Revision of Pension of Dr. Maldhure on account of 50% D.A. merger+ admissible NPA. This office has revised the pension by Authorization letter dated 3/3/2005. The pension case of Dr. Maldhure had undergone another revision as per G.R. dated 14/1/2005 including the D.P. calculation of NPA. A revised pension of Rs.13,976/- w.e.f. 1/10/2004 and difference of commutation of value of pension were authorized by Authorization letter dated 8/7/2005.*

*(4) It is submitted that the Department of Dr. Maldhure vide letter dated 1/1/2014 again sent a proposal for revision of pension, after getting the fixation of pay verified and certified from Pay Verification Unit on the post of Medical Superintendent. In Form-6 submitted along with the said proposal last pay of Rs.14,875/- + DA + NPA has been taken*

*into account for revision of pension in the pay scale of Rs.10650-325-15850. Since the pay of the Government servant has been reduced from the last pay of Rs. 15200/- to 14875/- downward revision of pensionary benefits was initiated in this case. Accordingly, answering respondent office had revised the pension case on the basis of the last pay of Rs.14,875/- and the pensionary benefits were authorized.*

*Revised Pension Rs. 10,937/- per month w.e.f. 1/10/2004.*

*EFP Rs. 10937/- payable from the date of death for 7 years or up to 20/9/2011.*

*FP for Rs.6694/- payable from 21/9/2011 for life of till her remarriage.*

*Amount commuted Rs.3645/-.*

*Revised reduced Pension for Rs.7292/-.*

*Commutation amount Rs. (-) 127152/-.*

*As a result of downward revision pensionary benefits due to change in the pay, this office issued a letter dated 10/9/2014 to the Nagpur A.G. wherein it has been requested to make a necessary arrangement for making revised pensionary benefits, after making due adjustment of the pension already paid. Excess paid pension, family pension and commutation amount may be recovered in lump sum or in suitable instalment or from the relief on pension.”*

7. The respondent no.2, the Commissioner (ESIS), Maharashtra State, Mumbai also took similar view and submitted that the salary of the deceased Prakash was fixed from time to time on earlier six occasions and it was re-fixed considering his revised

promotion from 7/10/1995 and because of revision of pay the pension was reduced and therefore excess amount was required to be deducted.

8. Perusal of the communication dated 10<sup>th</sup> September, 2014 clearly shows as to how the pension was calculated in respect of deceased Prakash. It is stated that on account of change in pay, the pensionary benefits of Prakash have undergone a downward revision and therefore the excess amount was required to be recovered. It is pertinent to note that the Prakash died on 27/12/2009 and after his death the pensionary benefits were given to the legal heirs of the applicants, i.e., family pension. All of a sudden vide order dated 10<sup>th</sup> September, 2014 the pension has been reduced and recovery of so called excess amount has been directed against the legal heirs of the deceased i.e. the applicant Smt. B.P. Maldhure, widow of the deceased. All these recoveries pertain to the period from 1995 onwards and for the first time the said recovery is claimed to be towards excess amount vide order dated 10<sup>th</sup> September, 2014. No opportunity has been given to the applicants. Deceased Prakash came to be retired on superannuation in September, 2004 and thereafter the applicants, being legal heirs of the deceased were paid pensionary benefits i.e. family pension. The said family pension was however reduced. It seems that the pension for Rs.9318/- payable from 1/10/2014 is reduced to Rs.6212/-, the revised pension for

Rs. 13,045/- payable from 1/10/2014 is reduced to Rs.8,697/- and the revised pension for Rs. Rs.13,976/- payable from 1/10/2014 is reduced to Rs.9,318/- and it is stated that the revised family now is Rs.7,292/- and it is alleged that an amount of Rs.1,27,152/- was paid in excess to deceased Prakash and therefore the same has been recovered. As already stated the deceased employee has died in 2009 and all of a sudden the recovery has been ordered from the family pension of the applicants that too in the year,2014. Such recovery is absolutely illegal and arbitrary since no opportunity has been given to the applicants before passing such recovery order.

9. The learned counsel for the applicants submits that entire action on the part of respondents is vindictive and it is because the deceased Prakash has filed litigation against the respondents for getting promotion. From the record it seems that the deceased Prakash was, earlier not promoted to cadre of MMIS, Class-I post and therefore he was required to file O.A.No.214/2000. The said O.A. was partly allowed on 27/08/2010 and the State was directed to treat him as regularly promoted w.e.f. 7/10/1995. It was also directed to give consequential benefits to the applicant and his legal heirs. The said order was challenged by the Government by filing Writ Petition No.2332/2012 but it was dismissed and therefore the applicants were required to file Contempt Petition before the Hon'ble High Court which was registered as Contempt Petition No.69/2013.

The said Petition was dismissed by this Tribunal on 20/06/2014 but thereafter the impugned communication dated 10/09/2014 was issued.

10. We are satisfied that the downward revision of pay of deceased Prakash vide order dated 10<sup>th</sup> September, 2014 after the death of employee on 27/12/2009 and after a long period after the employee got retired on superannuation without giving any opportunity to the applicants is absolutely arbitrary, illegal and not sustainable in the eyes of law.

11. The learned counsel for the applicants placed reliance on the Judgment reported in **(2005) 5 SCC,561 in the case of State of Kerala & Ano. Vs. P.V. Neelakandan Nair & Ors.** and also the Judgment reported in (2015) 4 SCC,334 in case of **State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors.** In the present case also the recovery of the so called excess amount is being made from the widow of the deceased employee, it may cause great hardship to her and the same has been ordered without given any opportunity to the applicants and therefore such recovery is not legal. We, therefore, pass following order :-

### **ORDER**

- (i) The O.A. is allowed in terms of prayer clause nos. (a) and (b).



- (ii) The impugned communication dated 10/09/2014 issued by respondent no.3 and consequent recovery of the so called excess amount from the family pension of applicant no.1 is quashed and set aside. The amount if recovered from the family pension of the applicants be refunded to the applicant no.1 forthwith or in any case within two months from the date of this order. If the amount is not re-paid within two months, the applicants will be entitled to get interest at the admissible rate as per the Maharashtra Civil Services (Pension) Rules. No order as to costs.

**(Shree Bhagwan)**  
**Member(A).**

**(J.D. Kulkarni)**  
**Vice-Chairman (J).**

**Dated :- 19/09/2018.**

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