

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 151/2020(S.B.)**

Yogiraj Vishnuji Ingole,  
Aged 59 years, Occu. Retired,  
R/o Konark Colony, Kathora Road,  
Amravati, Tah, & Dist. Amravati.

**Applicant.**

**Versus**

1. The State of Maharashtra,  
through its Secretary,  
Water Resource Department,  
Mantralaya, Mumbai -32.
2. Superintending Engineer,  
Vigilance Cell, Amravati Region,  
Water Resource Department,  
Amravati Tah. & Dist. Amravati.
3. Senior Account Officer,  
Office of the Accountant General, (A and E)  
Nagpur - 44001.

**Respondents**

---

Shri S.N.Gaikwad, Ld. counsel for the applicant.  
Shri A.M.Khadatkar, Ld. P.O. for the respondents.

---

**Coram:-Hon'ble Shri Justice M.G.Giratkar, Vice Chairman.**  
**Dated: - 7<sup>th</sup> December 2022.**

---

**JUDGMENT**

Heard Shri S.N.Gaikwad, learned counsel for the applicant and Shri A.M.Khadatkar, learned P.O. for the Respondents.

1. The case of the applicant in short is as under-  
  
The applicant was appointed as a Junior Engineer in the establishment of respondent no.2 as per order dated 20.10.2018. The applicant came to be retired on superannuation on 31.10.2018. Vide communication dated 30.01.2019 the respondent no.1 has informed the applicant that the amount of Rs.1,99,470/- is proposed to be recovered from the gratuity of the applicant .
2. The respondent no.2 has issued a letter to the applicant that the arrears of recovery is proposed to be made on the basis of no due certificate forwarded by the respondent no.2. But the fact is that at the time of retirement, the certificate issued by respondent no.2 did not show any alleged recovery and therefore, the recovery of Rs.1,99,470/- is not legal and proper. It is submitted that no any opportunity was given to the applicant to show cause for the recovery of the said amount. Hence, he has filed the present O.A. for declaration that the action of respondent no.2 i.e. the Superintendent Engineer in respect of recovery of Rs.1,99,470/- is

illegal and bad in law. The applicant also prayed to refund the said amount of recovery Rs.1,99,470/- along with an interest at the rate of Rs.18% per annum.

3. The O.A. is strongly opposed by the respondents. The material contention of the respondent is that the applicant had given undertaking to reply about the recovery of any excess amount, therefore, the recovery from the amount of gratuity is legal and proper, therefore, the O.A. is liable to be dismissed.
4. Heard advocate Shri S.N.Gaikwad, learned counsel for the applicant. He has pointed out Rule 134-A of MCS of (Pension Rules), 1982 and submitted that without any reasonable opportunity the amount of Rs.1,99,470/- was recovered from the amount of gratuity. He has pointed out proviso of Section 134-A of the Pension Rules and submitted that the recovery if, any, shall be made from the amount of pension and not from the amount of gratuity. It was submitted that the impugned recovery order / recovery is illegal and therefore, the applicant is entitled for refund of the said amount.
5. Heard the learned P.O. Shri A.M.Khadatkar. As per his submission, the applicant had given undertaking at the time of fixation of pay

stating that amount if any, excess amount is received by him, may be deducted from his pensionary benefits.

6. Nothing is on record to show that any notice was issued to the applicant for recovery of the amount of Rs.1,99,470/-. The respondents have filed undertaking given by the applicant at the time of pay fixation. As per this undertaking he has agreed to recover the amount from him. In the undertaking it is not mentioned that the recovery should be made from gratuity.
7. Rule 134-A of the Pension Rules reads as under-

***“134-A-Recovery and adjustment of excess amount paid – If in the case of a Government servant, who has retired or has been allowed to retire, it is found that due to any reason whatsoever an excess amount has been paid to him during the period of his service including Service rendered upon re-employment after retirement or any amount is found to be payable by the pensioner during such period and which has not been paid by , or recovered from him, then the excess amount so paid or the amount so found payable shall be recovered from the amount of pension sanctioned to him: Provided that, the Government shall give a reasonable opportunity to the pensioner to show cause as to why the amount due should not be recovered from him : Provided further that, the amount found due may be recovered from the pensioner in installment so that the amount of pension is not reduced below the minimum fixed by Government.”***

8. The learned Advocate Shri S.N.Gaikwad, for the applicant has pointed out the judgment of this Tribunal in O.A.934/2017. In paras 10 and 12 this Tribunal has recorded its finding that

without any show cause notice as provided under Rule 134-A of the Pension Rules, recovery cannot be made, therefore, directed the respondents to refund the amount within three months.

9. In view of Rule 134-A of the Pension Rules, the excess amount is to be adjusted from the amount of Pension. This Rule does not show that adjustment of amount / recovery can be made from the amount of gratuity. The respondents have recovered the amount of Rs.1,99,470/- from the amount of gratuity. Moreover no any show cause notice or opportunity was given to the applicant. It is a mandatory provision in Rule 134-A of the Pension Rules, to give reasonable opportunity to the Petitioner to show cause as to why the amount should be recovered from the pension.
10. In view of Rule 134-A of the Pension Rules, the following order is passed.

### **ORDER**

- 1) The O.A. is allowed.
- 2) The respondents are directed to refund the amount of Rs.1,99,470/-to the applicant within a period of three months.

3) The respondents are at liberty to recover this amount from the applicant after following the procedure under Rule 134-A of the M.C.S. (Pension Rules) 1982.

4) No order as to costs.

(Justice M.G.Giratkar)  
Vice Chairman

Dated – 07/12/2022

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde  
Court Name : Court of Hon'ble Vice Chairman.  
Judgment signed on : 07/12/2022.  
Uploaded on : 22/12/2022.