

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.69 OF 2018**

**(Subject :- Recovery)**

**DISTRICT : JALGAON**

**Ajabrao Rambhau Patil,** )  
Age: 58 years, Occ: Junior Engineer (Retired) )  
R/o. Plot No.15A Sharda Colony, )  
Near Mahabal Stop, Jalgaon. )...**Applicant**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through the Secretary, Water Resources )  
Department, Mantralaya, )  
Mumbai-400 032. )
2. **The Superintending Engineer,** )  
Jalgaon Irrigation Project Circle, )  
Girna Bhavan, Opp: Akashwani Kendra, )  
Akashwani Chowk, Jalgaon. )
3. **The Executive Engineer,** )  
Waghur Dam Division, Jalgaon. )...**Respondents.**

-----  
**Shri A.D. Sugdare, learned Advocate for the Applicant.**

**Shri B.S. Deokar, learned Presenting Officer for the Respondent Nos.1 and 2.**

**Shri S.D. Dhongde, learned Advocate for the Respondent No.3.**  
-----

**CORAM** : **B.P. Patil, ACTING CHAIRMAN**  
**RESERVED ON** : **16.10.2019.**  
**PRONOUNCED ON** : **05.11.2019.**

-----

**ORDER**

1. The Applicant has challenged the order dated 24.01.2018 issued by the Respondent No.3 directing recovery of amount of Rs.2,58,711/- (Rupees Two lacks fifty eight thousand and seven hundred eleven) from him by filing the present Original Application and also prayed to direct the Respondent No.3 to refund the amount recovered from him.

2. The Applicant belongs to Other Backward Class (OBC). He was appointed as Technical Assistant in the office of the Respondent No.3 on 16.2.1982. The post of the Technical Assistant was abolished under the absorption scheme and the Applicant came to be absorbed on the post of Civil Engineering Assistant w.e.f. 01.01.1989. The Applicant passed Sub Overseer examination on 18.05.1985. Thereafter he was promoted on the post of Sub Overseer by order dated 03.08.2004 and deemed date of promotion was given as on 18.5.1985. The Applicant rendered more than twelve years continuous service from the date of his

appointed on 16.02.1982. He was found eligible for promotion, but for want of vacancy, he was given benefit of time bound promotion from 01.10.1994. After completion of 24 years satisfactory service his case was considered for grant of benefit of second time bound promotion and accordingly benefit was extended to him w.e.f. 1.10.2006. The Applicant was promoted to the post of Junior Engineer, Group B Non Gazetted post by order dated 02.07.2007. On attaining the age of superannuation, he retired from the service on 31.08.2017 from the office of Respondent No.3 as Junior Engineer.

3. After his retirement, the Respondent No.3 submitted his pension papers to the Accountant General, Mumbai for grant of pensionary benefits. The Accountant General, Mumbai returned his pension papers with remarks that the Respondent No.3 has to verify the dates of time bound promotion correctly. Accordingly, the Respondent No.3 has verified the paper and decided to recover excess amount paid to the Applicant as per the communication dated 24.01.2018. The Respondent No.3 directed to recover the amount of Rs.2,58,711/- from the pensionary benefits of the Applicant on account of excess payment made to the Applicant towards time bound promotion granted in the year 1994 and 2006 respectively.

4. It is contention of the Applicant that the benefit under time bound promotion has been extended to him not on his request but as per the scheme framed by the Government. Such benefit has been granted to several other similarly situated employees in the office. It is contention of the Applicant that the said amount cannot be recovered from his pensionary benefits that too after his retirement in view of the guidelines given by the **Hon'ble Apex Court in case of State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc, in Civil Appeal No.11527/2014 decided on 18.12.2014.**

5. It is his contention that this Tribunal has decided several cases involving similar issue and the order of this tribunal upheld by the Hon'ble Apex Court. It is his contention that the impugned order issued by the Respondent No.3 is illegal and therefore, he has prayed to quash and set aside the impugned communication dated 24.1.2018 directing recovery of amount of Rs.2,58,711/- by allowing the Original Application and also prayed to direct the Respondent No.3 to refund the amount of Rs.2,58,711/- recovered from his pensionary benefits.

6. The Respondent No.1 has resisted the contention of the Applicant by filing his affidavit-in-reply. It is his contention

that the Applicant stood retired on 31.8.2017 on attaining the age of superannuation. His pension case was submitted to Accountant General, I, Mumbai. The Accountant General raised certain objections as regards fixation of pay of the Applicant. Thereafter, the pay of the Applicant was re-fixed on the basis of objection raised by the Accountant General and the matter was submitted to Pay Verification Unit, Nasik for verification about correctness of pay fixation. Accordingly, the amount paid in excess was determined at Rs.2,58,711/-. The last pay of the Applicant was approved by the Accountant General, I, Mumbai at Rs.20950+4400/- which was less than the pay fixed by the Pay Verification Unit, Nasik. As per the finalization of the last pay by the Accountant General, the pay of the Applicant was required to be re-fixed. Hence, the amount paid in excess to the Applicant was determined at Rs.2,62,837/-. Since the Original Application is pending before this Tribunal, the amount paid in excess is required to be recovered subject to orders of this Tribunal. On 26.2.2018, the Applicant had submitted an application to the authorities to keep the said amount with the department till the decision of this Tribunal.

7. It is his contention that the Applicant was initially appointed on daily wages basis and only after completion of five

years services, in view of the provisions of Kalelkar Settlement, his services were brought on converted regular temporary establishment. The post, obviously was not sanctioned post but after completion of five years service, the Applicant was given certain benefits. The Accountant General has not recognized the services of the Applicant rendered for five years initially. It is his contention that the provisions of Maharashtra Civil Services (Pension) Rules provides for obtaining an undertaking in prescribed form to the effect that if any amount is paid in excess, the concerned employee would repay the same. It is his contention that there is nothing illegal if the amount paid in excess wrongly is proposed to be recovered or adjusted as against the amount payable to the Applicant. It is his contention that there is no illegality in the impugned recovery order issued by the Respondent No.3 and therefore, he has supported the impugned order and prayed to dismiss the Original Application.

8. The Respondent Nos.2 and 3 have filed their affidavit-in-reply and resisted the contention of the Applicant by raising the similar contentions to that of the contentions raised by the Respondent No.1. It is their contention that there is

no illegality in the impugned order and therefore, they have prayed to dismiss the Original Application.

9. I have heard Shri A.D. Sugdare, learned Advocate for the Applicant, Shri B.S. Deokar, learned Presenting Officer for the Respondent Nos.1 and 2 and Shri S.D. Dhongde, learned Advocate for the Respondent No.3. I have perused the documents on record.

10. Admittedly, the Applicant was appointed as Technical Assistant on 16.2.1982. He was absorbed on the post of Civil Engineering Assistant w.e.f. 01.01.1989 in view of the absorption scheme framed by the Government in that regard. After passing of Sub Overseer examination, deemed date of promotion as Sub Overseer was given to him as on 18.5.1985 vide promotion order dated 3.8.2004. On completion of 12 years service, he was given first benefit of time bound promotion w.e.f. 1.10.1994 and after completion of 24 years service, the second time bound promotion was given to him w.e.f. 1.10.2006. He was promoted as Junior Engineer, Group B Non Gazette by order dated 02.07.2007. He retired from service on attaining the age of superannuation w.e.f. 31.8.2017 as Junior Engineer.

Admittedly, the Applicant was group 'B' Non Gazetted Officer at the time of his retirement.

11. Admittedly, at the time of retirement, the pension papers of the Applicant had been submitted to the Accountant General, I, Mumbai wherein Accountant General, I, Mumbai raised objection regarding benefit extended to the Applicant under the time bound promotion Scheme. On the basis of objection raised by the Accountant General, I, Mumbai, the Respondent No.3 re-fixed the pay of the Applicant and directed to recover the amount of Rs.2,58,711/- from his pensionary benefits. Admittedly, the said amount has been withheld and kept with the Respondent vide application of the Applicant dated 26.2.2018 filed during the pendency of the Original Application. Admittedly, the said amount has been recovered because of the excess payment made to the Applicant due to wrong pay fixation because of wrong benefit under time bound promotion extended to the Applicant. As per the objection raised by the Accountant General, I, Mumbai, initial five years' service rendered by the Applicant on daily wages basis could not be considered for counting 12 years service and 24 years service respectively.

12. Learned Advocate for the Applicant has submitted that the first and second time bound promotion has been granted to the Applicant w.e.f. 1.10.1994 and 1.10.2006 respectively by Respondents as per the policy of the Government as the Applicant was eligible for promotion but the promotional post was not vacant.

13. He has argued that the Applicant had played no role in getting said benefits. Because of the fault of the Respondent, the excess payment was made to the Applicant in the tune of Rs.2,58,711/. Therefore, the Applicant cannot be blamed for it. He has submitted that the impugned order of recovery of the said amount from the pensionary benefits of the Applicant has been made after his retirement. It is his further submission that the impugned order is illegal in view of the guidelines given by the **Hon'ble Apex Court in case of the State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc, in Civil Appeal No.11527/2014 decided on 18.12.2014.** He has submitted that the said recovery is impermissible and therefore he has prayed to quash and set aside the impugned order and also prayed to direct the Respondents to refund the amount of Rs.2,58,711/- withheld by him.

14. He has submitted that the case of the Applicant is squarely covered by the various decisions rendered by this Tribunal. He has submitted that the service rendered by the Applicant on temporary basis has to be considered and counted while granting benefit of time bound promotion. But the Respondent has wrongly held that it count not be considered and therefore, he has prayed to quash the impugned order.

15. He has placed reliance on the judgment of the principal seat of this Tribunal at Mumbai passed **in O.A.NO.238 of 2016 in case of Shri Madhukar A. Patil Vs. State of Maharashtra & Ors. decided on 25.06.2019.** He has also placed reliance on the judgment of this Tribunal passed in **O.A.NO.701 of 2015 in case of Mohan Ramdas Choudhari Vs. The State of Maharashtra & Ors. decided on 22.09.2017 and in O.A.No.878 of 2016, 242 of 2017 and 648 of 2017 in case of Nitinkumar s/o. Tukaram Adhe & Ors. Vs. The State of Maharashtra & Ors. decided on 30.10.2018.** He has submitted that the case of the Applicant is squarely covered by those decisions and therefore, he has prayed to allow the Original Application.

16. Learned P.O. for the Respondent Nos.1 & 2 and learned Advocate for the Respondent No.3 have submitted that the Applicant was serving as Group 'B' employee at the time of his retirement. They have submitted that the Applicant was initially serving on temporary basis on daily wages. He rendered service on daily wages for five years. They have submitted that the service of the Applicant rendered on temporary basis cannot be considered for counting service for 12 years to grant benefit under time bound promotion scheme and this fact has been clarified by the Government by communicated dated 19.5.2014. But the first and second time bound promotions have been wrongly granted to the Applicant w.e.f. 1.10.1994 and 1.10.2006 respectively by counting his service rendered on daily wages. The said mistake committed by the Respondents had been noticed by the Accountant General, Mumbai when the pension paper of the Applicant has been forwarded to the Accountant General, Mumbai. On the basis of objection raised by the Accountant General, Mumbai, the Respondent No.3 re-fixed the pay of the Applicant and directed recovery of amount of Rs.2,58,711/- from the Applicant. They have submitted that there is no illegality in the impugned order and therefore, they supported the impugned order.

17. They have submitted that the principle laid down by the Hon'ble Apex Court in case of **State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc, in Civil Appeal No.11527/2014 decided on 18.12.2014** is not attracted in the case of the Applicant as the Applicant has retired as group 'B' employee. The decision in the above cited case is applicable to group 'C' and group 'D' employees only and therefore, the Applicant cannot take benefit of the said decision. They have submitted that the amount has been withheld as per request of the Applicant and there is no illegality in the impugned recovery order and therefore, they have prayed to reject the Original Application.

18. On perusal of record it reveals that pay of the Applicant has re-fixed in view of the objection raised by the Accountant General, Mumbai when the pension papers of the Applicant had been forwarded to the Accountant General, Mumbai and on the basis of objection raised by the Accountant General, the Respondent No.3 re-fixed the pay of the Applicant.

19. The Applicant has not challenged the order of the re-fixation of the pay made by the Respondent No.3. He is challenging the communication dated 24.1.2018 received by the

Respondent No.3 regarding recovery of the amount of Rs.2,58,711/- by filing the present Original Application. Excess amount was paid to the Applicant due to wrong pay fixation made by the Respondents while granting of benefits under time bound promotion scheme to the Applicant. The Applicant ought to have challenged the order of re-fixation of his pay. But without challenging the order of re-fixation of the pay of the Applicant, he has approached this Tribunal claiming limited relief regarding recovery of the amount on the basis of guidelines given by the Hon'ble Apex Court in case of **State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc, in Civil Appeal No.11527/2014 decided on 18.12.2014.** The Applicant was retired as group 'B' employee. Therefore, the guidelines given by the Hon'ble Apex Court in the above cited case are not attracted in this case. Those guidelines are applicable to group 'C' and 'D' employee only. Therefore impugned order directing recovery of Rs.2,58,711/- from the pensionary benefit of the Applicant cannot be termed as illegal. I find no illegality in the impugned order.

20. I have gone through the various decisions referred by the learned Advocate for the Applicant. The Applicants in those cases approached this Tribunal claiming relief to get

deemed date of their promotion. This Tribunal considered the issue involved in the matters and decided those cases accordingly. The issue involved in the present matter is totally different than the issue involved in those matters. Therefore, the principles laid down in the above referred cases are not attracted in the present case. Therefore, the decisions in the above referred cases are not must useful to the Applicant.

21. In view of the above said facts in my view, there is no merit in the Original Application. There is no illegality in the impugned communication issued by the Respondents directing recovery of excess amount paid to the Applicant due to wrong pay fixation. Therefore, no interference is called for in the impugned order.

22. The Respondent No.3 has withheld the amount from the pensionary benefit of the Applicant as per the request of the Applicant made in his application dated 26.2.2018. There is no illegality in it. Hence, no question of granting refund of the said amount arises. There is no illegality in the impugned order. Hence, no question of making interference in it arises. There is no merit in the Original Application. Therefore, the Original Application deserves to be dismissed.

23. In view of the discussion in the foregoing paragraphs, the Original Application stands dismissed. No order as to costs.

**(B.P. PATIL)**  
**ACTING CHAIRMAN**

**Place:- Aurangabad**

**Date :- 5.11.2019**

Sas. O.A.No.69 of 2018.Recover. BPP