

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

ORIGINAL APPLICATION NO.85 OF 2018

(Subject :- Recovery)

DISTRICT : HINGOLI

Shri Rangrao Dattadrao Devare)
Age-58 Years, Occ- Retired (Pensioner),)
R/o. Bahirji Nagar, Vasmant Tq. Vasmat,)
Dist. Hingoli)...**Applicant**

V E R S U S

1. **Superintendent of Police,**)
Hingoli, Tq. & Dist. Hingoli.)

2. **District Treasury Officer,**)
Treasury Office,)
Tq. & Dist. Hingoli.) **...Respondents**

Shri P.S. Dighe, learned Advocate for the Applicant.

Shri N.U. Yadav, learned Presenting Officer for the Respondents.

CORAM : B.P. Patil, VICE CHAIRMAN

DATE : 19.06.2019.

ORAL ORDER

1. The Applicant has challenged the order dated 24.11.2016 passed by the Respondent No.1 directing recovery of amount of Rs.4,17,080/- from this pensionary benefit on account of excess salary paid to him due to wrong fixation of pay and also prayed to direct the Respondents to refund the amount of Rs.4,17,080/- recovered from the pensionary benefit in pursuance of the said order by filing the Original Application.

2. The Applicant was initially appointed on the post of Police Constable on 30.07.1979 in the pay scale of Rs.1,110/-. On 30.01.1991, he was promoted as Police Head Constable with CID Crime Department. On 11.06.1999, he was posted on the post of Police Naik in the pay scale of Rs.4,800/-.

3. It is contention of the Applicant that the Respondent No.1 on 24.11.2016 re-fixed his pay stating that the Applicant was promoted on the post of Police Head Constable with CID Crime Department during the period of 03.01.1991 to 10.06.1999. But thereafter, he was brought to his original post of Police Naik and therefore, his pay scale was re-fixed

accordingly. The Respondent No.1 calculated the excess amount paid to the Applicant due to wrong fixation and directed recovery of Rs.4,17,080/- from the Applicant. It is contention of the Applicant that on the basis of order of recovery issued by the Respondent No.1, the amount of Rs.4,17,080/- has been recovered from his pensionary benefit. It is contention of the Applicant that the impugned order has been passed by the Respondents No.1 without giving him an opportunity of hearing and therefore, it is in violation of principles of natural justice. It is his further contention that he retired from the post of Assistant Sub Inspector (ASI) which is group 'C' post. The recovery has been made from his pensionary benefit and therefore, such type of recovery is impermissible in view of the guidelines given by the Hon'ble Apex Court in a group of cases **bearing No. Civil Appeal No.11527/2014 arising out of SLP (C) No.11684 of 2012 & Ors.** in the case of ***State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc. decided on 18.12.2014.*** It is his further contention that the Respondents illegally recovered the said amount from him and therefore, he challenged the impugned order dated 24.11.2016 directing recovery by filing the present Original Application and also prayed to direct the Respondents to

refund the amount recovered from his pensionary benefits illegally.

4. The Respondent No.1 has filed affidavit-in-reply and resisted the contention of the Applicant. The Respondent has not disputed the fact that the Applicant was initially appointed as Police Constable on 30.07.1979. It is contended by him that the Applicant was promoted on the post of Police Head Constable in CID Crime Department on 03.01.1991 by giving him one step promotion. He was reverted from one step promotional post of Police Head Constable in CID Department on his original post as a Police Naik on 11.06.1999. The Respondent has not disputed the fact that the Applicant was thereafter promoted on the post of A.S.I. in the year 2008. It is contention of the Respondent No.1 that the Applicant was appointed as a Police Constable on 30.07.1979 on the pay scale of Rs.220-5-250-7-285-10-325 extension 10-325. On 03.01.1991, one step promotion as Police Head Constable in Crime Department in the pay scale of Rs.1320/- was given to the Applicant but he was reverted from the post of one step promotion on 11.06.1999 and brought to his original post as Police Naik in the pay scale of Rs.4800/-.

Infact, the Applicant was entitled to get pay scale of Rs.4300/- on the post of Police Naik, but the Applicant received excess payment in the pay scale of Rs.4800/- from 11.06.1999 and accordingly he had drawn the scale in that pay scale for the period from 11.06.1999 to November, 2016.

5. It is contention of the Respondent No.1 that the Applicant retired on 31.1.2017. At the time of preparing pension papers of Applicant, it was noticed by the Respondent No.1 that the excess payment was made to the Applicant due to wrong pay fixation and therefore, the Respondent No.1 re-fixed pay of the Applicant and directed to recover the said excess amount of Rs.4,17,080/- from the Applicant. It is his contention that the Applicant had received excess pay though he was not entitled and therefore, he is liable to pay the said amount. There is no illegality in the impugned order directing recovery from the Applicant. The Respondent No.1 has not disputed the fact that amount of Rs.4,17,080/- has been recovered from pensionary benefits of the Applicant. It is his contention that there is no illegality in the impugned order and therefore, he prayed to reject the Original Application.

6. Learned Advocate for the Applicant has filed affidavit-in-rejoinder to the affidavit-in-rely filed by the Respondent No.1 and resisted the contention of the Respondent No.1. He raised the similar contentions to that of the contentions raised in the Original Application and prayed to allow the Original Application.

7. I have heard Shri P.S. Dighe, learned Advocate for the Applicant and Shri N.U. Yadav, learned Presenting Officer for the Respondents. I have perused the documents on record.

8. Admittedly, the Applicant was appointed on the post of Police Constable on 30.07.1979 on the pay scale of Rs.220-5-250-7-285-10-325 extension 10-325. On 03.01.1991, he was appointed as Police Head Constable in CID Crime Department by giving one step promotion in the pay scale of Rs.1320/-. On 11.06.1999, the Applicant was reverted and he was sent back to his original post as Police Naik in the pay scale of Rs.4800/-. Infact, pay scale of the Applicant on the post of Police Naik was Rs. 4300/-. But the Applicant received pay in the pay scale of Rs.4800/- instead of Rs.4300/- and he received the pay accordingly till November, 2016. Because of the wrong fixation of pay, the Application received excess payment during the period

from 11.06.1999 to November, 2016. Admittedly, the Applicant retired on 31.07.2017. At the time of retirement, his service record has been verified by the Respondent No.1 and that time mistake regarding wrong fixation of pay of the Applicant since 11.06.1999 has been notice by the Respondent No.1. He therefore, re-fixed the pay of the Applicant and passed the impugned order and directed the Applicant to deposit the amount of Rs.4,17,080/-. On the basis of said order, the said amount has been recovered from the pensionary benefit of the Applicant. Admittedly, the Applicant retired as A.S.I. The post of A.S.I. falls under group 'C' category.

9. Learned Advocate for the Applicant has submitted that the wrong pay fixation has been made by the Respondent No.1 when the Applicant was reverted back to his original post of Police Naik and he was granted pay scale of Rs.4800. Thereafter, the Applicant was promoted on the post of ASI. The Applicant never misrepresented the Respondent for getting wrong pay scale. The excess amount of Rs.4,17,080/- has been paid to the Applicant during the period from 11.06.1999 to November 2016 due to wrong fixation made by the Respondent No.1. The said amount has been recovered from the pensionary benefit of the

Applicant after retirement of the Applicant. He has further submitted that the case of the Applicant is squarely covered by the guidelines given by the Hon'ble Apex Court in case of ***State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc. decided on 18.12.2014.*** He has submitted that the recovery from the pensionary benefits of the Applicant regarding excess payment made to him due to wrong pay fixation is not permissible in law in view of the guidelines given by the Hon'ble Apex Court. Therefore, he has prayed to quash and set aside the impugned order issued by the Respondent No.1 directing recovery of the excess amount paid to the Applicant and also prayed to direct the Respondent No.1 to refund the amount of Rs.4,17,080/- recovered from the Applicant from his pensionary benefit.

10. Learned Advocate for the Applicant has also placed reliance on the order of this Tribunal passed in **O.A.No.554 of 2016 in case of Shri Ramdas Nagoji Sangle Vs. The Superintendent of Police, dated 12.10.2017.** He has submitted that facts in the above cited case and facts in present case are identical and therefore, the case of the present Applicant

is squarely covered by the decision in above cited case. On that ground also he prayed to allow the Original Application.

11. Learned P.O. for the Respondents has submitted that the Applicant was initially promoted on the post of Police Constable. He was deputed with the Crime Department by giving him one step promotion. But thereafter, he was sent back to his original post of Police Naik and therefore, he was not entitled to get pay scale of one step promotional post. On sending back to his original post, he was entitled to get pay scale of Rs.4300/-. Instead of that, he was granted pay scale of Rs.4800/- wrongly and on the basis of wrong fixation, excess amount was paid to the Applicant during the period commencing from 11.06.1999 to November, 2016. He has argued that the said mistake has been noticed by the Respondent No.1 at the time of verification of the service record of the Applicant at the time of his retirement. Therefore, pay of the Applicant has been re-fixed from 11.06.1999 accordingly. The Respondent directed to recover the excess amount paid to the Applicant due to wrong fixation of pay. He has submitted that the said amount has been recovered from pensionary benefit of the Applicant in pursuance of the said order. He has further submitted that the Applicant was aware

about the said facts and was having knowledge about excess payment made to him. He has submitted that the Applicant had given undertaking to refund the said amount at the time of his retirement. Therefore, the Respondent No.1 has recovered the excess amount paid to the Applicant. He has submitted that the case of the Applicant is not covered by above cited decisions referred by the Applicant and therefore, principles laid down therein are not applicable to the present case. He has submitted that there is no illegality in the impugned order. Therefore, he prayed to reject the Original Application.

12. On perusal of record, it reveals that initially the Applicant was appointed as Police Constable. Thereafter, he was deputed in CID, Crime Department by giving one step promotion. On 11.06.1999, he was sent back to his original post as a Police Naik. At that time, he was entitled to get pay scale of Rs.4300, but pay scale of Rs.4800/- has been wrongly granted to him. Consequences of it, excess amount of Rs.4,17,080/- has been paid to him during the period from 11.06.1999 to November, 2016. Record shows that the excess amount has been paid to the Applicant due to mistake committed by Respondent No.1 while fixing pay of the Applicant. There was no misrepresentation

or fraud practiced by the Applicant on the Respondent No.1 in getting the wrong pay scale and in receiving the excess amount. The Applicant had not played any role in getting the said pay scale. Therefore, the Applicant cannot be blamed for it. The Applicant retired as group 'C' employee on the post of ASI. The excess amount of Rs.4,17,080/- has been recovered from pensionary benefits of the Applicant after his retirement. Such type of recovery is not permissible in view of the guidelines given by the Hon'ble Apex Court in case of **State of Punjab & Ors. Vs. Rafiq Masih (White Washet) etc. decided on 18.12.2014** reported in **2014(4) SCC 334**.

13. The Hon'ble Apex Court in case of **State of Punjab & Ors. Vs. Rafiq Masih (White Washet) etc. decided on 18.12.2014** reported in **2014(4) SCC 334** has 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, 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.”

14. The principle laid down in above cited decision is appropriately applicable in present case also. In view of the guidelines given by the Hon'ble Apex Court, the recovery made from the Applicant from his pensionary benefit after his retirement is impermissible and therefore, it is illegal.

15. I have also gone through the decision rendered by this Tribunal in **O.A.No.554 of 2016 in case of Shri Ramdas Nagoji Sangle Vs. The Superintendent of Police, dated 12.10.2017.** The facts in that case and the facts in present case

are identical. Therefore, the case of the Applicant is squarely covered by the decision rendered in the above said case.

16. The amount has been recovered from the pensionary benefits of the Applicant after his retirement. No opportunity of hearing was given to the Applicant by the Respondents before issuing the impugned order. The impugned order issued by the Respondent No.1 directing recovery of an amount of Rs.4,17,080/- was arbitrary and in violation of the guidelines given by the Hon'ble Apex Court. Hence, it requires to be quashed and set aside by allowing the present Original Application. The amount of Rs.4,17,080/- has been recovered from the Respondent No.1 from the pensionary benefits of the Applicant illegally. Therefore, it is just to direct the Respondent No.1 to refund the said amount to the Applicant.

17. In view of the aforesaid discussion, the Original Application is allowed. The impugned order dated 24.11.2016 issued by the Respondent No.1 directing recovery of an amount of Rs.4,17,080/- from the pensionary benefits of the Applicant is hereby quashed and set aside and the Respondents are directed to refund the amount of Rs.4,17,080/- to the Applicant within

four months from the date of order, failing which the amount shall carry interest @ 9% p.a. from the date of the order till realization of the amount. There shall be no order as to costs.

(B.P. PATIL)
VICE CHAIRMAN

Place:- Aurangabad

Date :- 19.06.2019

Sas.O.A.No.85 of 2018.Recover.BPP(VC)