

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 874/2022(S.B.)**

Shri Bhaurao s/o Gomaji Sakhare,  
Aged about 59 yrs. Occu. : Retired,  
R/o. Navegaon Bandh,  
Tah. : Arjuni Morgaon, Distt. : Gondia.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through its Secretary,  
Department of Forest and Revenue,  
Mantralaya, Mumbai - 32.
- 2) The Chief Conservator of Forest,  
(Territorial), Nagpur.
- 3) The Deputy Conservator of Forest,  
Bhandara Division, Bhandara.
- 4) The Range Forest Officer,  
Lendazari Range, Bhandara Division, Bhandara.

**Respondents**

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Shri G.G.Bade, Ld. Counsel for the applicant.  
Shri S.A.Sainis, Ld. P.O. for the respondents.

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**Coram:- Hon'ble Shri M.A.Lovekar, Member (J).**

**Dated: - 14<sup>th</sup> September 2023.**

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**JUDGMENT**

**Judgment is reserved on 7<sup>th</sup> September, 2023.**

**Judgment is pronounced on 14<sup>th</sup> September, 2023.**

Heard Shri G.G.Bade, learned counsel for the applicant and Shri S.A.Sainis, learned P.O. for the respondents.

2. The applicant was appointed as Vanmazoor on 01.11.1994, he passed departmental examination and joined as Forest Guard in 2001, he was promoted as Forester on 11.09.2019 and retired on superannuation on 31.08.2021. On 09.08.2021 the impugned order (Annexure A-1) was issued which reads as under-

उपरोक्त संदर्भिय पत्राचे अनुषंगाने सविनय कळविण्यात येत आहे की, श्री.बी.जी. साखरे, वनपाल यांचे गोंदिया वनविभागात वनरक्षक पदावर असतांना त्यांना दि.१९/६/२०१३ ते ३०/६/२०१२ पर्यंत एकस्तर मधील अतिप्रदान झालेली रक्कम विवरणपत्रानुसार त्यांचे सेवानिवृत्तीनंतर त्यांचे सेवा नि उपदानातून एकस्तर मधील रक्कम वसूल करण्यात यावी.

Hence, this O.A..

3. To his reply respondent no.3 has attached extract of service book of the applicant (Annexure R-1), communication dated 04.08.2021 (Annexure R-2) received by respondent no.4 to recover amount of

excess payment from the applicant, calculations (Annexure R-3) of amount to be recovered made by respondent no.4 which were forwarded to respondent no.3, "No objection" certificate issued by respondent no.4 (Annexure R-4) to recover amount of excess payment from the applicant, and approval for recovery (Annexure R-5) accorded by A.G. as per G.R. dated 17.12.2013 (Annexure R-6) which states as follows-

३. या संदर्भातील शासनाचा निर्णय प्रलंबित असल्यामुळे अशा सूचना देण्यात येत आहेत की, आदिवासी व नक्षलग्रस्त भागातून दि.०१.०१.२००६ रोजी किंवा त्यानंतर सेवानिवृत्त झालेल्या अधिकारी / कर्मचारी यांना निवृत्तीच्या दिनांकास ते ज्या मूळ पदावर कार्यरत आहेत (एकस्तर पदोन्नतीचे पद वगळून), त्या पदाच्या पे- बँड मध्ये ते घेत असलेले वेतन + अनुज्ञेय ग्रेड वेतनावर निवृत्तीवेतनाची परिगणना करावी. ज्या कर्मचाऱ्यांना परिगणनेनुसार अनुज्ञेय निवृत्तीवेतनापेक्षा जास्त निवृत्तीवेतन अदा करण्यात आले आहे, त्या निवृत्तीवेतनधारकांकडून जास्त अदा केलेले निवृत्तीवेतन महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम १९८२ मधील नियम १३४ (ए) (दि.३०.०७.२००७ नुसार केलेली सुधारणा) नुसार वसूल करण्याची कार्यवाही या नियमातील परंतुकानुसार करण्यात यावी.

4. To assail the recovery the applicant has relied on **the State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others (2015) 4 Supreme Court Cases 334** wherein it is held-

*18. 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 hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*

*(1) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).*

*(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.*

*(iii) Recovery from the 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.*

5. The applicant was holding a Class III post. The impugned order was issued on 09.08.2021 to recover excess payment for the

period 19.06.2013 to 30.06.2019, and the applicant retired on superannuation on 31.08.2021. Thus, Clauses (i), (ii) and (iii) of Rafiq Masih (supra) are attracted and recovery would be impermissible. Hence, the order.

**ORDER**

- A. The O.A. is allowed.
- B. The impugned recovery is held to be impermissible in law.
- C. The respondents are directed to refund the amount so recovered, to the applicant.
- D. The recovered amount shall carry interest @ 6% p.a. from the date of recovery till the date of refund.
- E. No order as to costs.

(M.A.Lovekar)  
Member (J)

Dated – 14/09/2023  
rsm.

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 Member (J).  
Judgment signed on : 14/09/2023.  
and pronounced on  
Uploaded on : 15/09/2023.