

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 419/2020****APPLICANTS:-**

- 1) Gajanan Shamrao Bhowate, Aged about : 66 Years,
R/o Bhejapur, Post : Bela, Tahsil & Distt. :
Bhandara-441904
- 2) Balkrishna Mahadeo Deshmukh,
Aged about : 67 Years;
R/o Near Zilla Parishad, Kaduli, Marartoli,
Gondia : 441601
- 3) Hiralal Budhaji Yede, Aged about : 64 Years,
R/o At Post : Ambatoli, Fulchur, Gondia.
Tahsil & District : Gondia-441601
- 4) Ramesh Hiranman Kolhe, Aged about : 65 Years,
R/o At Post : Fulchur, Amgaon Road, Ward No.4,
Shivaji Chowk, Fulchur, Distt.: Gondia-441601
- 5) Bhaurao Markandrao Yedne, Aged about : 67 Years;
R/o Sai Mauli Colony, Near Sales Tax Colony,
Fulchurpeth, Post : Fulchur, Distt : Gondia-441601

-- V E R S U S --

RESPONDENTS:-

- 1) State of Maharashtra,
Through the Secretary, Department of Home,
Mantralaya, Mumbai-400032
- 2) Director General of Police, Maharashtra State,
Bhagatsingh Marg, Culaba, Mumbai-400001.
- 3) The Deputy Inspector General of Police,
Gadchiroli Range, Near Administrative Buildings,
Civil Lines, Nagpur-440001.
- 4) The Superintendent of Police,
Gondia-441601
- 5) Accountant General (Accounts & Entitlements)-II,
Maharashtra, Pension Branch, Civil Lines,
Nagpur-440001.

- 6) Treasury Officer, Bhandara-441904.
 - 7) Treasury Officer, Gondia-441601.
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ORIGINAL APPLICATION NO. 426/2020

APPLICANTS:-

- 1) Ramkrishna Urkuda Mahule,
Aged about : 64 Years,
R/o Treasury Colony, Sahakar Nagar,
Ravindranath Tagore Ward, Near Balaji Temple,
Bhandara-441904.
- 2) Udal Indal Lihare, Aged about : 64 Years;
R/o Subhash Ward, Near Govt. Food & Drugs
Godown, Post : Warthi,
Tahsil & District : Bhandara-441904.
- 3) Ramratan Karuji Bhure, Aged about : 66 Years,
R/o Nehru Ward, Post : Bela,
Tahsil & District : Bhandara-441904.

-- V E R S U S --

RESPONDENTS :-

- 1) State of Maharashtra,
Through the Secretary, Department of Home,
Mantralaya, Mumbai-400032
- 2) Director General of Police, Maharashtra State,
Bhagatsingh Marg, Culaba, Mumbai-400001.
- 3) The Deputy Inspector General of Police,
Gadchiroli Range, Near Administrative Buildings,
Civil Lines, Nagpur-440001.
- 4) The Superintendent of Police,
Gondia-441601
- 5) Accountant General (Accounts & Entitlements)-II,
Maharashtra, Pension Branch, Civil Lines,
Nagpur-440001.
- 6) Treasury Officer, Bhandara-441904.
- 7) Treasury Officer, Gondia-441601.

ORIGINAL APPLICATION NO. 498/2020

APPLICANT:-

Nandkumar Nagorao Channawar,
Aged about : 65 Years,
R/o Plot Nos. 48-49, Flat No. 201,
1st Floor, Tirupati Apartment, Manishnagar,
Somalwada Road, Nagpur-440025.

-- V E R S U S --

RESPONDENTS :-

- 1) State of Maharashtra,
Through the Secretary, Department of Home,
Mantralaya, Mumbai-400032.
- 2) Director General of Police, Maharashtra State,
Bhagatsingh Marg, Culaba, Mumbai-400001.
- 3) The Deputy Inspector General of Police,
Gadchiroli Range, Near Administrative Buildings,
Civil Lines, Nagpur-440001.
- 4) The Superintendent of Police,
Gondia-441601.
- 5) Accountant General (Accounts & Entitlements)-II,
Maharashtra, Pension Branch, Civil Lines,
Nagpur-440001.
- 6) Treasury Officer, Gondia-441601

ORIGINAL APPLICATION NO. 229/2021

APPLICANT:-

Barku Suka Uike,
Aged about : 66 Years, R/o Vinoba Bhave Nagar,
Tumsar, Distt. : Bhandara-441912.

-- V E R S U S --

RESPONDENTS :-

- 1) State of Maharashtra,
Through the Secretary, Department of Home,
Mantralaya, Mumbai-400032
- 2) Director General of Police, Maharashtra State,
Bhagatsingh Marg, Culaba, Mumbai-400001.
- 3) The Deputy Inspector General of Police,
Gadchiroli Range, Near Administrative Buildings,
Civil Lines, Nagpur-440001.
- 4) The Superintendent of Police,
Gondia-441601.
- 5) Accountant General (Accounts & Entitlements)-II,
Maharashtra, Pension Branch, Civil Lines,
Nagpur-440001.
- 6) The Treasury Officer,
Maharashtra State Govt. Treasury,
Bhandara-441904.

Respondents

Shri P.S.Verma, Id. Advocate for the applicants.

Shri M.I.Khan, Id. P.O. for the Respondents.

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

JUDGMENT

Judgment is reserved on 07th Oct., 2022.

Judgment is pronounced on 13th Oct., 2022.

Heard Shri P.S.Verma, Id. counsel for the applicants and Shri M.I.Khan, Id. P.O. for the Respondents.

2. Undisputed facts leading to these Original Applications are as follows. The applicants in this batch of four Original Applications retired on superannuation. At the time of retirement they were holding the post of Assistant Sub Inspector and they were posted in Naxal Area. Their pension was fixed on the basis of last pay drawn by them which

included special allowance paid by way of one step promotion as an incentive. The pension ought to have been fixed on the basis of actual salary drawn which did not include the amount of special allowance/ incentive. Due to such wrong fixation excess payment was made to the applicants. By the impugned orders the amount paid in excess was sought to be recovered. The applicants objected to such recovery from their retiral benefits on the ground that they had retired and in view of the ratio laid down in **State of Punjab and Ors. Vs. Rafiq Masih (White Washer) and Ors. (2015) 4 SCC 334**, it was impermissible. Thus, the common point for determination in this batch of O.As. is whether the impugned recoveries are sustainable in law. The respondents have contended that the impugned recoveries are clearly permissible and authorized under Rule 134-A of the Maharashtra Civil Services (Pension) Rules, 1982. Since the point for determination in these O.As. is common, the same are being decided by this common Judgment.

3. The details of the applicants which are necessary to decide these O.As. are as follows:-

O.A. No.	Sr. Nos.	Name	Date of Birth	Date of Appointment	Date of Retirement
419/20	1	G.S.Bhowate, Asst. Sub Inspector	01.07.1954	01.07.1974	30.06.2012
	2	B.M.Deshmukh, Asst. Sub Inspector	19.04.1953	08.08.1977	30.04.2011
	3	H.B.Yede, Asst. Sub Inspector	11.07.1956	04.08.1977	31.07.2014
	4	H.K.Kolhe, Asst. Sub Inspector	14.04.1955	17.07.1979	30.04.2013
	5	B.M.Yedne, Asst. Sub Inspector	11.04.1953	1975	30.04.2011

O.A. No.	Sr. Nos.	Name	Date of Birth	Date of Appointment	Date of Retirement
426/20	1	R.U.Mahule, Asst. Sub Inspector	25.07.1956	02.08.1977	31.07.2014
	2	U.I.Lilhare, Asst. Sub Inspector	10.09.1956	08.08.1977	30.09.2014
	3	R.K.Bhure, Asst. Sub Inspector	01.04.1954	11.02.1978	31.03.2012

O.A. No.	Sr. No.	Name	Date of Birth	Date of Appointment	Date of Retirement
498/20	1	N.N.Channawar, Asst. Sub Inspector	11.02.1955	01.07.1977	28.02.2013

O.A. No.	Sr. No.	Name	Date of Birth	Date of Appointment	Date of Retirement
229/21	1	Barku Suka Ukey, Asst. Sub Inspector	17.09.1955	01.11.1978	30.09.2013

4. In all these O.As. the impugned communications are at A-1 & 2. By these communications respondent no. 4 proposed to recover from the applicants the amount of gratuity and commutation paid in excess to them from relief of pension, due to removal of one step promotion. Communications marked A-2 collectively, issued by respondent no. 4 are dated 01.02.2020 and 20.02.2020.

5. The impugned communication at A-2 states as under:-

“उपरोक्त विषयांकीत संदर्भीय पत्राला अनुसरून कळविण्यात येते की, आपण अतिप्रदान झालेल्या रकमेची वसुली न करण्याबाबत या कार्यालयास विनंती केलेली आहे. सदरची कार्यवाही हि शासन निर्णयानुसार करण्यात आलेली आहे.

आदिवासी व नक्षलग्रस्त भागातुन दिनांक ०१.०१.२००६ रोजी किंवा त्यानंतर सेवानिवृत्त अधिकारी/ कर्मचारी यांना निवृत्तीच्या दिनांकास ते ज्या मुळ पदावर कार्यरत आहेत. (एकस्तर पदोन्नतीचे पद वगळून) त्या पदाच्या पे बँड मध्ये ते घेत असलेले वेतन व अनुज्ञेय ग्रेड वेतनावर निवृत्ती वेतनाची परिगणना करून अनुज्ञेय निवृत्तीवेतनापेक्षा जास्त निवृत्तीवेतन अदा करण्यात आले आहे, त्या निवृत्ती वेतनधारकांकडुन जास्त अदा केलेले निवृत्तीवेतन म.ना.से. (निवृत्तीवेतन) नियम १९८२ मधील नियम १३४ (ए) नुसार वसुल करण्याची कार्यवाही करणेबाबत शासनाचे स्पष्ट आदेश आहेत.

पोलीस महासंचालक, म.रा.मुंबई यांचेकडील परिपत्रक दिनांक ५/९/२०१८ व ईतर बाबींच्या अनुषंगाने उपरोक्त नियमाला सुधारणा संबंधाने पोलीस महासंचालक, म.रा. मुंबई यांचे कार्यालयाकडुन शासन स्तरावरून योग्य ते आदेश लवकरात लवकर निर्गमित करणेबाबत शासनास विनंती करण्यात आलेली आहे. सदर बाबत शासनाकडुन अद्याप सुधारणा करण्यात आलेली नाही.

महाराष्ट्र शासनाकडुन सुधारीत नियम/परिपत्रक प्राप्त झाल्यानंतर आपण केलेल्या विनंती अर्जावर विचार करण्यात येईल.”

6. Thus, the respondents have relied on Rule 134-A of the Maharashtra Civil Services (Pension) Rules, 1982 to support the impugned recovery. This provision 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 installments so that the amount of pension is not reduced below the minimum fixed by Government.”

7. The applicants have assailed the recovery *inter alia* on the ground that show cause notice as mandated by the first proviso quoted above was not issued to them. Correctness of this submission is borne out by record. It is not the case of the respondents that before passing the impugned orders show cause notice was issued to the applicants as required under the first proviso to Rule 134-A. This lacuna vitiates the impugned orders of recovery.

8. The applicants have also relied on ‘Rafiq Masih (supra)’ wherein it is held:-

“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 hereinabove, 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."*

9. The applicants have further relied on the Judgment dated 09/03/2016 delivered by the **Hon'ble Bombay High Court (Nagpur Bench) (D.B.) in W.P. No. 4212/2015 (Shri Raghunath Tukaram Bhiogade Vs. State of Maharashtra & Ors.)** wherein it is held:-

"2. During arguments learned Government Pleader sought an adjournment to enable her to obtain further instructions, however, we find that the issue is concluded in favour of petitioner by judgment of Hon'ble Apex Court in case of State of Punjab and others vs. Rafiq Masih (2014 (14) Scale 300).

3. 5 principles to be kept in mind while considering the recovery from an employee are laid down by the Hon'ble Apex Court there. Here the petitioner, a State

Government employee has reached his age of superannuation on 28.02.2009. At that time, he was working in Naxal affected area, and therefore getting special allowance. While working out his last pay for computation of pension, this special allowance has been taken into account. Accordingly his pension was fixed on a higher side and he continues to receive it till today.

4. *The State Government has in the meanwhile applied its mind to this aspect and found that allowance paid to such employees could not have been treated as part of their emoluments, and therefore, their pension could not have been calculated by including the special allowance. Accordingly petitioner has been informed on 10.06.2015, that he has been paid extra amount towards pension and it needs to be recovered.*

5. *Petitioner has not challenged the correctness or otherwise of the policy decision. According to the petitioner, he was not at fault in the matter and as he is retired, in meagre pension he and his dependents are managing his household, hence, if recovery is allowed, it will be cruel.*

6. *In this connection, the Hon'ble Supreme Court has in the above judgment considered the issue and we find that present facts are covered by principle nos. (ii) and (iii) of the said judgment.*

7. *Thus, recovery for amount already paid to the petitioner as part of his pension is not legally open. It is open to respondents to scale down his pension after*

revising his last pay, by deleting the allowances paid to him, and thereafter refix his monthly pension and pay it in future. Hence, with said directions, we quash and set aside the recovery for amounts paid to the petitioner in past. Writ Petition is disposed of accordingly. No costs.”

10. The applicants have also relied on the Judgment dated 12.02.2018 delivered by the **Bombay High Court (Aurangabad Bench) (D.B.) in W.P. No. 695/2016 (Prabhakar S/o Ramdas More & 20 Ors. Vs. State of Maharashtra & 4 Ors.)** wherein it is observed:-

“In the present matter also, from the perusal of the documents placed on record it reveals that all the petitioners were working in Group-C category. No document is placed on record by the respondents showing that an undertaking was furnished by the petitioners at the time of fixation of their pay, that in the event of excess payment paid to them they would refund the same. From careful perusal of the documents placed on record, it reveals that recovery of excess payment is made from the retirement dues payable to the petitioners.”

11. These two rulings of Parent High Court squarely apply to the facts of the cases. In these rulings Judgment of the Hon’ble Supreme Court in Rafiq Masih (supra) was considered to hold that the petitioners were entitled to relief against recovery. Both these rulings are binding precedents. In the latter ruling the applicants were also Assistant Sub Inspector and Police Head Constables. It was re-iterated that these were Group-C posts.

12. The respondents, on the other hand, have relied on the Judgment delivered by this Bench in **O.A. No. 285/2020 (Manohar Jairam Sonowane Vs. State of Maharashtra & 5 Ors.)** on 28.07.2022.

In this case *inter alia* reliance was placed on the Judgment of the **Hon'ble Bombay High Court (Nagpur Bench) (D.B.) delivered on 21/22.06.2017 (The Principal Secretary, Department of Finance and 2 Ors. Vs. Ashok Janannathrao Aknurwar)**. In the opening part of the Judgment the issue that fell for determination was articulated as follows:-

“By this petition, the petitioners-State of Maharashtra & Ors. challenge the order of the Maharashtra Administrative Tribunal, dated 11.04.2014 allowing the original application filed by the respondent and directing the petitioners to calculate the pensionary benefits payable to the respondent by taking into consideration that he was lastly drawing the pay in the pay scale of Rs. 15,600 – 39,100/- when he retired from service.”

Thus, the issue in the case was not of recovery of amount paid in excess. The issue was of calculating pensionary benefits i.e. whether special allowance given by way of an incentive could be considered as part and parcel of last pay drawn for calculating the amount of pension. This question was answered in the negative after considering definitions of “Pay” in Rule 9 (36) and “Pensionable Pay” in Rule 60 (1) of the Maharashtra Civil Services (Pension) Rules, 1982. It was held:-

“On a reading of the provisions of rules 60 (1) and 9 (36) of the Rules and the government resolution dated 06.08.2002, it is clear that the intention of the government was not to grant considerably higher pension to a government servant, who has worked in the tribal area or the naxalite affected area in the last year of his service, vis-à-vis a government servant,

who has worked in a non-naxalite affected area during the last year of his service.”

13. The issue involved in this batch of original applications is whether the impugned recovery is permissible. I have referred to the binding precedents of the **Hon’ble Supreme Court and the Hon’ble Bombay High Court**. These rulings are squarely applicable to the facts of the cases in hand. All the applicants before this Tribunal are Group-C employees. Contingencies covered by clauses (i) (ii) (iii) in Rafiq Masih (supra) are attracted in these cases. The applicants have not challenged the policy decision holding that special allowance paid by way of an incentive in the form of extending pay of one step promotional post is not part of emoluments and hence pension cannot be calculated by including the special allowance. Similar was the case in W.P. No. 4212/2015 (supra). In the said Judgment this aspect was dealt with in paragraphs 4 – 5 which I have reproduced above.

14. The respondents have also relied on the Judgment of this Bench dated 01.04.2022 in **O.A. No. 1023/2019 (J. Manoharan S/o K. Jegatheesan Vs. State of Maharashtra & 3 Ors.)**. In this case relief against recovery was declined by relying on “**High Court of Punjab and Haryana and Ors. Vs. Jagdev Singh 2016 AIR (SCW) 3523**” on the ground that recovery was legal because the applicant had executed an undertaking authorizing such recovery. This ruling will not be applicable to these cases since it is not the stand of the respondents that the applicants had executed such undertaking.

15. For the reasons discussed hereinabove all the O.As. are allowed. All the impugned orders of recovery are quashed and set aside. **The amounts recovered, if any, pursuant the impugned orders shall be refunded within 90 days from today, failing which the unpaid**

amount shall carry interest @ 7% per annum. It would be open to the respondents to scale down pension of the applicants after revising their last pay by deleting the allowances paid to them and thereafter re-fix their monthly pension and pay it in future. No order as to costs.

(Shri M.A.Lovekar)
Member (J)

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

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 13/10/2022.
and pronounced on

Uploaded on : 17/10/2022.