

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI

ORIGINAL APPLICATION NO.331 & 332 OF 2016

DISTRICT : MUMBAI

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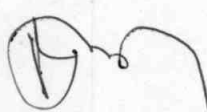
ORIGINAL APPLICATION NO.331 OF 2016

Shri Tanaji S. Lamane. )  
Aged about 57 years, Police Head )  
Constable Driver, Motor Transport Section) )  
Nagpada, Mumbai 400 008 and residing at) )  
Sakinaka Police Quarters, 28/C Wing, ) )  
2<sup>nd</sup> Floor, Room No.206, Chandivali, ) )  
MHADA Colony, Sakinaka, Mumbai 72. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Addl. Chief Secretary, )  
Home Department, )  
Mantralaya, Mumbai - 400 032. )
2. Deputy Commissioner of Police. )  
Motor Transport Division, Nagpada, )  
Mumbai 400 008. )...**Respondents**

**WITH**

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**ORIGINAL APPLICATION NO.331 OF 2016**

Shri Ganpat R. Padwal. )  
 Aged about 57 years, Police Head )  
 Constable Driver, Motor Transport Section)  
 Nagpada, Mumbai 400 008 and residing at)  
 Marol Police Camp, Building No.E-6, )  
 Room No.14, Marol-Maroshi Road, )  
 Andheri (E), Mumbai - 400 059. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
 Through the Addl. Chief Secretary, )  
 Home Department, )  
 Mantralaya, Mumbai - 400 032. )
2. Additional Commissioner of Police. )  
 Motor Transport Division, Nagpada, )  
 Mumbai 400 008. )...**Respondents**

**Shri M.D. Lonkar, Advocate for Applicants.**

**Smt. Savita Suryawanshi, Presenting Officer for Respondents.**

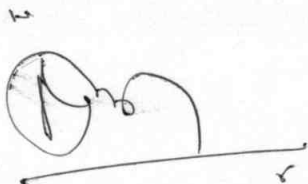
**P.C. : R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 22.09.2016**



## JUDGMENT

1. These two Original Applications (OAs) made by the two retired Police Personnel arising out of substantially the same impugned order can safely be disposed of by this common Judgment.
2. I have perused the record and proceedings and heard Mr. M.D. Lonkar, the learned Advocate for the Applicants and Smt. S. Suryawanshi, the learned Presenting Officer for the Respondents.
3. The Applicants came to be initially appointed as Armed Police Constables on two different dates in 1985. Then, on different dates, they came to be appointed as Police Constable Drivers. In 2000, they came to be promoted as Police Naik Drivers and on 1.5.2007, they came to be promoted as Police Head Constable Drivers. In the first OA, the impugned order was made on 3.12.2015 while in the 2<sup>nd</sup> OA, the impugned order was made on 13.1.2016, thereby the pay of the Applicants came to be revised with consequential action and which would surely entail recovery of amounts from them. Aggrieved, they are up before me by way of these two OAs.

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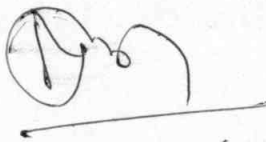
4. In the first OA, the impugned order is at Exh. 'A' (Page 9 of the Paper Book (P.B)) and so also in the second OA. The crux of the matter is that according to the authorities, discrepancies were found in the matter of pay fixation, and therefore, the pay revision was resorted to and the consequences were to ensue as mentioned just now.

5. The relief herein sought is to get the said impugned order quashed and set aside with consequential service benefits and the relief pending OA. Now, that the OAs are being finally disposed of that the interim aspect of the matter will not be much relevant. The Affidavit-in-reply in both the matters has been filed by Mr. Sandip H. Shinde for Respondent No.2. He is an Assistant Commissioner of Police in the Office of the Deputy Commissioner of Police, Motor Transport Department. Before I discuss to the extent necessary, the plea raised in the Affidavit-in-reply, it will be most pertinent to note that the recovery aspect of the matter is in fact fully governed by the authoritative pronouncements of the Hon'ble Supreme Court by a common Judgment disposing of a large number of Civil Appeals. The first one being **Civil Appeal No.11527/2014 arising out of SLP (C) No.11684/2012 (State of Punjab and others Vs. Rafique**

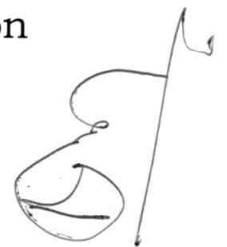


**Masih (white washer), dated 18<sup>th</sup> December, 2014.** In fact, this Judgment of the Hon'ble Supreme Court was relied upon in a Judgment in **OA 923/2015 (Shri Balkrushna B. Nigam Vs. Government of Maharashtra and 3 others, dated 18.2.2016)** by the Hon'ble Vice-Chairman. It was clearly held in so far as this aspect of the matter is concerned that in view of the mandate of the Hon'ble Supreme Court, no recovery could be made.

6. In another OA decided by me presiding over a Single Bench of this Tribunal in **OA 1088/2014 (Shri Vilas N. Patil Vs. The Government of Maharashtra and 3 others, dated 24<sup>th</sup> July, 2015)**. The same case law was followed although the said OA pertained to some other Department. In this context, in the Affidavit-in-reply, it has been clarified that in view of the Judgment of the Hon'ble Supreme Court, the 2<sup>nd</sup> Respondent was considering to withdraw the order for recovery of excess payment. I do not think, much thought is necessary to be spent by the concerned Respondent and by now, they should have done the needful. I, however, clearly find that no recovery could be made in view of the above referred case law.



7. The crux of the matter is with regard to the counting of the earlier service and that aspect of the matter was fully and clearly concluded in Para 5 of the order of the Hon'ble Vice-Chairman in OA 923/2015, and therefore, the plea in the Para 3 of the Affidavit-in-reply, in my opinion, cannot survive the test of the conclusions reached in that OA. In Para 6 of the Affidavit-in-reply, it has been pleaded that the order under challenge was occasioned by the directions of Pay Verification Unit and it did not amount to breach of discipline, and therefore, no show cause notice was issued. There are two aspects of the matter connected herewith. In the first place, the fact that Pay Verification Unit may have opined in a particular manner does not alter the legal position such as it obtains as a result of the above referred case law and secondly, the stand that the show cause notice was not issued because no breach of discipline was there is hardly convincing. After-all, the move culminating into the order has serious repercussions and momentous consequences befalling the Applicant and to say that they were not entitled to the show cause notice was unacceptable. In fact, I might go to the extent saying that on this single aspect of the matter itself, the impugned orders can be quashed. However, in any case, since I have already drawn the conclusions on





the merit of the matter, I make it clear that I have decided to decide these OAs on their own merit.

8. The upshot is that the impugned orders are quashed and set aside and the Original Applications are allowed with directions to the Respondents to act in accordance herewith within a period of two months from today including with regard to recovery aspect, needless to say that the Respondents will also have to pay all the post retiral dues to the Applicants as a result hereof and pay and continue to pay the regular pension as it works out as a result hereof. No order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**22.09.2016**

NE  
22-09-16

Mumbai

Date : 22.09.2016

Dictation taken by :

S.K. Wamanse.

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