

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 85 OF 2019**

**DISTRICT : AURANGABAD**

Mahadeo s/o Pandharinath Ghuge, )  
Age : 59 years, Occu. : Retired, )  
R/o Row House No. 141-B, )  
Dawarkapuri, Eknath Nagar, )  
Osmanpura, Aurangabad. ) **...APPLICANT**

V E R S U S

1) The State of Maharashtra, )  
Through its Secretary, )  
Home Department, Mantralaya, )  
Mumbai-32. )

2) The Superintendent of Police, )  
(Rural), T.V. Centre Road, )  
CIDCO N-10, Aurangabad, )  
431 003. ) **...RESPONDENTS**

-----  
**APPEARANCE** : Shri H.A. Joshi, learned counsel for  
applicant.

: Shri I.S. Thorat, learned Presenting  
Officer for respondent authorities.

-----  
**CORAM** : **JUSTICE P.R. BORA, VICE CHAIRMAN.**

-----  
**DECIDED ON** : **25.04.20223**  
-----

**O R A L O R D E R:**

1. Heard Shri H.A. Joshi, learned counsel for the applicant  
and Shri I.S. Thorat, learned Presenting Officer for the  
respondent authorities.

2. By filing the present Original Application the applicant has sought quashment of the order dated 18.4.2018 issued by the Superintendent of Police (Rural), Aurangabad and also sought directions against respondent no. 2 for refund of amount of Rs. 1,26,105/- in favour of the applicant with interest thereon at the rate of 6% per annum. The applicant came to be appointed as Police Constable w.e.f. 5.3.1986. In the year 1989-90 he was confirmed in the service. On 6.1.1995 the applicant was promoted to the post of Police Naik in the pay scale of Rs. 950-20-1150-EB-25-1500. The applicant thereafter was promoted to the post of Police Head Constable by order dated 5.8.1996 in the pay scaler of Rs. 1320-30-1560-EB-40-2040. It is the case of the applicant that annual increment of Rs. 100/- was released in his favour on 1.3.1996 and thereafter one more increment of Rs. 100/- came to be granted by the respondents because of his promotion to the post of Police Head Constable. Subsequently the applicant was promoted to the post of Police Sub Inspector (Dog Squad) w.e.f. 17.12.2007. The applicant retired on 31.5.2018 on attaining the age of superannuation. Before a month of his retirement i.e. on 18.4.2018 the respondent no. 2 issued an order of recovery from the applicant to the tune of Rs. 1,26,105/-.

3. In the present matter it is the grievance of the applicant that his pay was rightly fixed when he was promoted to the post of Police Naik and thereafter on promotion to the post of Police Hawaldar. It is his further contention that on the basis of certain objections raised by the Pay Verification Unit, Aurangabad the respondents have issued the impugned order without any application of mind.

4. The learned counsel for the applicant submitted that 5<sup>th</sup> Pay Commission was made applicable w.e.f. 1.1.1996 and accordingly on the said date pay of the applicant was fixed in the pay scale of Rs. 4,000 and the next increment of Rs. 100/- was granted from the next year. According to the applicant, on an assumption that the post of Police Naik and Police Hawaldar are equivalent posts, the increment granted in his favour on his promotion to the post of Police Hawaldar perhaps is not considered by the respondents. The learned counsel invited my attention to the letter dated 17.3.2022 from the Government to the Director of Treasuries and Accounts wherein it is clarified that having compared the duties of the post of Police Naik and Police Hawaldar it is apparent that after a person is promoted on the post of Police Hawaldar the duties and responsibilities of

the person promoted gets increased. In the circumstances, according to learned counsel, the pay fixation done as per rule 11(1)(a) of the Maharashtra Civil Services (Pay) Rules, 1981 is correct.

5. The learned counsel then invited my attention to the order passed by the principal seat of this Tribunal at Mumbai in the case of **R.B. Pingle Vs. the state of Maharashtra & Ors., M.A. No. 90/2021 in O.A. No. 164/2021** decided on 29.3.2022, wherein a categorical finding is recorded that where there is promotion from the post of Police Naik to Police Hawaldar there is higher responsibility, and therefore pay is required to be fixed in terms of rule 11(1)(a) of M.C.S. (Pay) Rules, 1981. The learned counsel thereafter invited my attention to the defense taken by the respondents in their affidavit in reply. In the affidavit in reply the respondents have come out with a case that since the applicant failed in giving option for deciding the date of his next increment, the pay fixation could not be rightly done and the said mistake is rectified vide order dated 18.4.2018.

6. The learned counsel pointed out that the reason which has been assigned in the affidavit in reply is not borne out in the impugned order. If the impugned order is read it nowhere

whisper about non exercise of option by the applicant and resultant wrong pay fixation on that count. The learned counsel, in the circumstances, relying on the judgment in the case of **East Coast Railway and Anr. Vs. Mahadev Appa Rao and Ors. with K. Surekha vs. Mahadev Appa Rao and Ors, AIR 2010 SC 2794** submitted that in view of the law laid down in the cited judgment, impugned order cannot be supported by the respondents by giving some different reasons in the reply. In the circumstances, according to learned counsel such an order cannot be sustained.

7. Insofar recovery is concerned learned counsel submitted that admittedly the order of recovery came to be passed when few months for retirement of the applicant were remained. The learned counsel submitted that the amount has been recovered from the amount of gratuity of the applicant. The learned counsel submitted that in view of the law laid down by the Hon'ble Supreme Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) etc., AIR 2015 SC 596** such recovery is wholly impermissible. According to the learned counsel, it is not the case of the respondents that in the impugned wrong pay fixation the applicant has played any active role or such pay was wrongly fixed at the instance of the

applicant. The learned counsel further submitted that recovery is claimed from the year 1996 onwards till year 2018 of the wages allegedly paid in excess than the entitlement of the applicant. According to the guidelines laid down by the Hon'ble Supreme Court in the case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.** (cited supra) such recovery is not permissible.

8. The learned counsel submitted that without giving any opportunity of hearing the impugned order has been passed by the respondents and huge amount of Rs. 1,26,105/- has been unilaterally recovered by the respondents from the gratuity of the applicant. Recovery so made is illegal and unsustainable in view of the guidelines laid down by the Hon'ble Supreme Court in the aforesaid case. The learned counsel in the circumstances has prayed for setting aside the impugned communication and directions against the respondents to refund Rs. 1,26,105/- recovered from his amount of gratuity immediately with interest at the rate of 6% per annum.

9. The respondents have resisted the contentions raised and the prayers made in the O.A. it is the contention of the respondents that the applicant did not exercise his right to give

option in regard to the date of increment while he was promoted on the post of Head Constable and in the circumstances his pay has been wrongly fixed and excess amount of Rs. 1,26,105/- has been paid to the applicant beyond his entitlement. It is the contention of the respondents that the pay, which was liable to be fixed in the scale of Rs. 4100/- was fixed in the scale of Rs. 4200/- and the said mistake has been corrected subsequently vide the impugned order. It is further contended that the increment of Rs. 100/- was not permissible after promotion of the applicant to the post of Police Head Constable. The respondents have supported the impugned order and have prayed for rejection of the O.A. filed by the applicant.

10. I have duly considered the submissions advanced on behalf of the applicant, as well as, the respondents. I have also gone through the documents filed on record. First I would like to deal with the issue of recovery made from the gratuity amount of the applicant of the amount allegedly paid in excess to the applicant on account of wrong fixation of his pay after he was promoted to the post of Police Head Constable. Admittedly the applicant was to retire on 31.5.2018. It is thus evident that before one month of his retirement the impugned order has been passed by the respondents. In the case of **State of Punjab**

**and others Vs. Rafiq Masih (White Washer)** (cited supra) the Hon'ble Supreme Court has held recovery from the retiral benefits of the Government employee impermissible in the following circumstances:-

*“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, summarize 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 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 employees, 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."*

11. It is not in dispute that the recovery was directed when one month was remained for retirement of the applicant. It is not in dispute that entire amount has been recovered from the gratuity amount of the applicant. It is not the case of the respondents that in wrong fixation of pay the applicant has played any active role or wrong pay fixation has been done at the instance of the applicant. In the circumstances, insofar as recovery is concerned, I am convinced that in view of the judgment of the Hon'ble Supreme Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer)** (cited supra) it was impermissible. The applicant is, therefore, entitled for refund of said amount from the respondents.

12. Insofar as the pay fixation issue is concerned, it appears that there is some confusion on part of the respondents. Had the respondents given notice to the applicant before making any pay revision, perhaps the applicant would have explained everything to the respondents. The decision has been unilaterally taken by the respondents. It is the contention of the applicant that Rs. 100/- increment was rightly granted to him when he was promoted to the post of Police Naik, whereas

the respondents have taken a stand that pay scales for the post of Police Naik and Police Hawaldar are similar and therefore no such increment was liable to be granted to the applicant. In my view, insofar as the alleged wrong pay fixation is concerned the applicant needs to be given an opportunity to explain the circumstances to the respondents and the respondents shall take a decision thereafter. After having considered the facts and circumstances involved in the present matter I deem it appropriate to pass the following order :-

### **ORDER**

- (i) The order directing recovery of amount of Rs. 1,26,105/- from the retiral benefits of the applicant is quashed and set aside.
- (ii) Respondents are directed to refund said amount to the applicant within 8 weeks from the date of this order.
- (iii) Order dated 18.4.2018 passed by respondent no. 2 is quashed. The respondents are directed to give opportunity of hearing to the applicant on the issue of pay fixation on the basis of objection raised by the Pay Verification Unit and then to pass a reasoned order. The entire exercise is to be carried out within 8 weeks from the date of this order. Thereafter also if any grievance remains, it would be open for the applicant to challenge the said order.

(iv) It is clarified that ultimately if it is found that the pay was wrongly fixed and needs revision, even in that event no recovery shall be directed against the applicant. The pension, however, would be liable to be revised prospectively.

(v) Original Application is allowed in the aforesaid terms without any order as to costs.

**VICE CHAIRMAN**

**PLACE : Aurangabad.**

**DATE : 25.4.2023.**

ARJ O.A.NO.85-2019 (RECOVERY – REFUND OF RECOVERED AMOUNT)