

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.828/2018

DISTRICT:- AURANGABAD

Subhash s/o. Dashrath Langade,
Age : 54 years, Occu. : Retired,
R/o. Sangharsh Nagar, Mukundwadi,
Aurangabad, Tq. & Dist. Aurangabad. ...APPLICANT

V E R S U S

- 1) The State of Maharashtra,
Through the Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) The Police Commissioner,
Mill Corner, Dr. Babasaheb Ambedkar Road,
Aurangabad.
3. The Drawing and Disbursing Officer,
Police Commissioner Office,
Aurangabad.
4. Administrative Officer,
Police Commissioner Office,
Aurangabad. ...RESPONDENTS

APPEARANCE :Smt. Pooja V. Langhe Advocate for the
applicant.

Smt. Priya Bharaswadkar Presenting
Officer for the respondents.

CORAM : B. P. Patil, Acting Chairman

Reserved on : 25-02-2020

Pronounced on : 27-02-2020

ORDER

1. The applicant has challenged the order dated 28-08-2018 issued by the respondent no.3 directing recovery of amount of Rs.5,77,599/- (Rs. Five lacs seventy seven thousand five hundred and ninety nine only) from him on account of excess payment made to him by filing the present O.A. and also prayed to direct the respondents to refund the said amount recovered from him.

2. The applicant was serving as a Police Naik with the respondents during the period from 20-03-1993 to 31-03-2018. He served for 25 years and 8 months with the respondents. On 15-11-2013, he received paralytic attack while in service when he was serving with the Police Station CIDCO. He was admitted in Dande Hospital at Aurangabad and was under treatment in the said hospital. The applicant was on leave since then. Respondents granted earned leave to the applicant from 15-11-2013 to 06-10-2015 and thereafter earned leave was extended up to 01-06-2017.

3. Respondent no.1 called the opinion of the Dean, Government Hospital, Aurangabad. The Dean by his

communication dated 23-03-2015 opined that the paralysis comes under the notified disease as per the Government Resolution. Respondent no.3 called the opinion of the expert i.e. Dean, Government Hospital, Aurangabad and granted the earned leave to the applicant. Medical Board, Government Medical College & Hospital, Aurangabad issued certificate and certified that the applicant was unfit to join the duty. The applicant was on leave during the period from November, 2013 to 2015. Thereafter, he extended leave up to the year 2018. On 23-01-2016, the Police Inspector, Cidco Police Station had relieved the applicant and directed him to join at Police Headquarter at Aurangabad. Accordingly, the applicant joined service in 2016 at Police Headquarter, Aurangabad but due to paralytic attack, he was unable to perform the duty. Therefore, he again prayed for leave on medical ground. As the applicant was suffering from paralysis, he opted for voluntary retirement on 31-01-2018. Respondent no.1 sanctioned his application and permitted him to take retirement voluntarily w.e.f. 31-01-2018. Respondent no.2 thereafter directed the applicant to submit necessary documents for processing his pension papers. Accordingly, pension papers were processed. Respondent authority

granted pensionary benefits to the applicant in the month of June, 2018. While disbursing the GPF amount respondents deducted amount of Rs.5,77,599/- towards salary paid to him during the leave period. The respondent no.3 issued letter dated 28-08-2018 and directed to recover the said amount from the applicant. It is contention of the applicant that respondent has granted earned leave to him during the period of his illness. It is his contention that as per the provisions of Rule 11 of Appendix III of Maharashtra Civil Services Leave Rules, 1981, Sub Rule (3) of Rule 3 of the rules and Rule 7 of the said Rules, he is entitled to get full pay since he was suffering from paralysis but the respondent has not considered the said Rules and illegally recovered the said amount from him. Therefore, the applicant filed the present O.A. and prayed to quash and set aside the impugned order dated 28-08-2018 and to direct the respondents to refund the amount of Rs.5,77,599 recovered from him.

4. Respondent nos.2 to 4 filed their affidavit in reply and resisted the contentions of the applicant. They have not disputed the fact regarding joining of service by the applicant and service rendered by him. They have admitted

the fact that the applicant was serving on the post of Police Naik from 20-03-1993 to 31-01-2018. They have admitted that the applicant took voluntary retirement from service w.e.f. 31-01-2018. They have not denied the fact that the applicant was suffering from paralysis and he was unfit to discharge the duty, and therefore, he proceeded on leave w.e.f. 15-11-2013 till his retirement. They have admitted the fact that they granted commuted leave to the applicant from the period 15-11-2013 to 31-03-2014, earned leave from 01-04-2014 to 31-12-2014, special leave for paralysis from 01-01-2015 to 16-10-2015 and leave for paralysis from 17-10-2015 to 30-12-2015. It is their contention that they granted extraordinary leave to the applicant from 31-12-2015 to 24-10-2016, 25-10-2016 to 02-02-2017 and 03-02-2017 to 30-01-2018. It is their contention that the applicant was unfit to perform his duty due to paralysis. He produced medical certificate to that effect accordingly and thereby applied for voluntary retirement from service by filing an application dated 16-01-2018. He joined the service on 30-01-2018. It is their contention that the applicant was permitted to take voluntary retirement from service in view of the provisions of Maharashtra Civil Services (Pension) Rules, 1982 w.e.f. 31-01-2018 and

accordingly the applicant took voluntary retirement w.e.f. 31-01-2018.

5. It is their further contention that they granted the leave admissible to the applicant under different heads i.e. earned leave, half pay leave and special paralysis leave for the period from 15-11-2013 to 30-12-2015. Thereafter, there was no leave at the credit of the applicant, therefore, the extraordinary leave has been granted to the applicant for the period from 31-12-2015 to 30-01-2018. During the said period, the applicant received salary regularly though he was not entitled to get it. Therefore, excess payment of Rs.5,77,599/- was made to the applicant during that period. The employer has to recover the excess amount paid to the employee in view of the provisions of Maharashtra Civil Services (Leave) Rules, 1981 and therefore the respondents recovered the said amount from the salary and GPF amount of the applicant. It is their contention that they recovered the amount of Rs.4,25,188/- through Challan and Rs.1,52,411/- from gratuity amount. It is their contention that recovery has been made as per the Rules and there is no illegality in it. Therefore, they

have justified the action taken by them and prayed to dismiss the O.A.

6. I have heard Smt. Pooja V. Langhe Advocate for the applicant and Smt. Priya Bharaswadkar Presenting Officer for the respondents. I have perused the documents placed on record by both sides.

7. Admittedly, the applicant was serving with the respondents as Police Naik during the period from 20-03-1993 to 31-03-2018. He rendered total service of 25 years and 8 months in the police department. On 15-11-2013, he received paralytic attack while in service. He took voluntary retirement w.e.f. 31-01-2018. There is no dispute about the fact that the applicant suffered paralytic attack on 15-11-2013 while on duty. Thereafter, he was admitted in the hospital and he was under treatment since then till his retirement. Admittedly, the applicant has applied for leave admissible to him during that period. There is no dispute about the fact that the respondents granted leave to the applicant for the period from 15-11-2013 to 30-12-2015. They granted earned leave, half pay leave, commuted leave and special leave for paralysis during that period. They granted extraordinary leave to the applicant from 31-

12-2015 to 30-01-2018 as no leave of any kind was at the credit of the applicant. There is no dispute about the fact that the applicant received salary regularly during his leave period. Admittedly, excess payment of Rs.5,77,599/- was made to the applicant during the period from 31-12-2015 to 30-01-2018 though extraordinary leave was granted to the applicant during the said period. Admittedly, the applicant took voluntary retirement w.e.f. 31-01-2018. After his retirement, respondents recovered amount of Rs.4,25,188/- from the salary payable to the applicant and Rs.1,52,411/- from the gratuity amount.

8. Learned Advocate for the applicant has submitted that the applicant suffered paralytic attack on 15-11-2013, and therefore, he proceeded on leave from 15-11-2013 onwards. She has submitted that the applicant could not able to join duty due to his ill-health and therefore he applied for grant of leave to the respondents from time to time on the basis of medical certificate issued by the concerned medical officer. She has submitted that as the applicant was unfit to discharge his duty, he took voluntary retirement w.e.f. 31-01-2018. She has argued that the respondents granted leave to the applicant from time to

time. Respondents granted commuted leave to the applicant from 15-11-2013 to 31-03-2014, earned leave for the period from 01-04-2014 to 31-12-2014 and special leave for paralysis from 01-01-2015 to 30-12-2015. Respondents have granted extraordinary leave to the applicant from 31-12-2015 to 30-01-2018. She has submitted that the applicant is entitled to receive pay during the leave period and accordingly respondents granted salary to him. She has argued that the applicant took voluntary retirement on 31-01-2018 and thereafter pension papers were processed but the respondent no.3 directed recovery of Rs.5,77,599/- by issuing the impugned order to recover amount of Rs.4,25,188/- from salary and amount of Rs.1,52,411/- from gratuity payable to the applicant. She has submitted that the applicant was serving as Police Naik at the time of retirement. The post of Police Naik falls under Group-C category. She has submitted that excess payment made to the applicant on account of salary has been recovered from the salary and gratuity of the applicant after his retirement. She has submitted that the said recovery is impermissible in view of the guidelines given by the Hon'ble Apex Court in case of **State of Punjab V/s. Rafiq Masih** decided on 18-12-2014

reported in [**AIR 2015 SC 696**]. Therefore, she has prayed to quash the impugned order and to direct the respondents to refund the amount recovered from salary and pensionary benefits of the applicant.

9. Learned Advocate for the applicant has further submitted that the recovery cannot be made from the pensionary benefits, gratuity and provident fund amount and the recovery made by the respondents from pensionary benefits of the applicant is illegal. In support of her submissions, she has placed reliance on the judgments in case of **Union of India V/s. Jyoti Chit Fund and Finance & Ors. reported in [AIR 1976 SC 1163]**, in case of **Dinkar Tippanna Mirajkar V/s. Bank of India & Ors. reported in [2006 (6) Bom. C.R. 535]**, in case of **Ankush Keshavrao Davkar V/s. The State of Maharashtra & Ors. in W.P.No.6958/2014 decided by the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad on 03-07-2015** and in case of **John B. Braganza, V/s. Hon'ble Chief Justice through the Registrar & Ors. reported in [2002 (5) Bom. C.R. 387]**. Learned Advocate for the applicant has argued that the respondents have illegally recovered the amount from the pensionary benefits of the

applicant. Therefore, the applicant is entitled to get the refund of the recovered amount. Therefore, she has prayed to allow the O.A.

10. Learned P.O. has submitted that the applicant was ill during the period from 15-11-2013 to 30-01-2018 as he was suffering from paralysis. She has submitted that the applicant could not able to join the duty due to his ill-health. He applied for leave during the period and respondents granted leave admissible to him during the period from 15-11-2013 to 30-12-2015. Thereafter, there was no leave of any kind at the credit of the applicant therefore the respondents granted extraordinary leave to the applicant for the period from 31-12-2015 to 30-01-2018. During that period, the salary was paid to the applicant regularly. During the period from 31-12-2015 to 30-01-2018 extraordinary leave was granted to the applicant. Therefore, the applicant was not entitled to get salary but the respondents paid salary to the applicant during that period also, and therefore, excess payment was made to the applicant. Salary in the tune of Rs.5,77,599/- was paid to the applicant during that period though the applicant was not entitled to get the same. The applicant

took voluntary retirement on 31-01-2018 and thereafter the respondents processed pension papers of the applicant. At that time, it was disclosed to the respondents that excess payment was made to the applicant. Therefore the respondents issued the impugned order and directed recovery of Rs.5,77,599/- from the applicant and the same has been recovered from the salary payable to the applicant and gratuity amount. He has submitted that the said recovery has been made as per the Maharashtra Civil Services (Pension) Rules, 1982 and there is no illegality in the same. Therefore, she has justified the impugned order.

11. On perusal of record, it reveals that the applicant suffered paralytic attack on 15-11-2013 and therefore he proceeded on leave from that date. He could not able to join service till 30-01-2018. He took voluntary retirement from 31-01-2018. He remained absent during the period from 15-11-2013 to 30-01-2018. Respondents sanctioned commuted leave to the applicant for the period from 15-11-2013 to 31-03-2014, earned leave from 01-04-2014 to 31-12-2014, special leave for paralysis from 01-01-2015 to 30-12-2015. After 30-12-2015 there was no balance of any kind of leave to his credit and therefore extraordinary leave

was granted to the applicant from 31-12-2015 to 30-01-2018. The applicant was not entitled to get salary during the period of extraordinary leave but the salary was disbursed to him and therefore excess payment of Rs.5,77,599/- has been made to him. Salary was paid to the applicant during that period though he was not entitled to it. Therefore, recovery has been directed by the respondent no.3 by the impugned order dated 28-08-2018. There is no illegality in the impugned order. The recovery has been made in view of the provisions of the Maharashtra Civil Services (Leave) Rules, 1981. Therefore, I find no fault on the part of respondent no.3 in issuing the impugned order dated 28-08-2018.

12. In pursuance of the said order, an amount of Rs.4,25,188/- has been recovered from the salary of the applicant and Rs.1,52,411/- has been recovered from the gratuity amount of the applicant. There is no illegality in the action taken by the respondents in that regard. Therefore, no interference is called for in the impugned order.

13. I have gone through the decision referred to by the learned Advocate for the applicant. I have no dispute

regarding the settled legal principles laid down in the above cited judgments cited by the learned Advocate for the applicant. Facts of the said cases are different than the facts in the present case. Therefore, principle laid down in the aboveresferred decisions are not attracted in the present case. Therefore, said decisions are not much useful to the applicant in the instant case.

14. Respondents have rightly recovered the amount from the salary and pensionary benefits of the applicant as excess salary was paid to the applicant during the period of extraordinary leave enjoyed by the applicant. Recovery has been made as per the Rules and there was no illegality in the said order. Therefore, no interference is called for in the impugned order. There is no merit in the O.A. Hence, it deserves to be dismissed.

15. In view of the discussion in the foregoing paragraphs, O.A. stands dismissed with no order as to costs.

(B. P. PATIL)
ACTING CHAIRMAN

Place : Aurangabad
Date : 27-02-2020.