

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.886/2018**

**DISTRICT: - NANDED**

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Baliram s/o. Devaba Waghmare,  
Age : 59 years, Occu. : Pensioner,  
R/o. Praful Nagar, Bhokar,  
Tq. Bhokar, Dist. Nanded.

...APPLICANT

**V E R S U S**

- 1) District Malaria Officer,  
Nanded District, Nanded.  
Having office at Anand Nagar,  
Nanded-431 605.
- 2) Accounts Officer,  
Pay and Assessment Unit,  
Aurangabad.  
Having office at District Treasury  
Office, Collector Office Compound,  
Aurangabad-431 002.
3. The Accountant General,  
State of Maharashtra,  
Office at Civil Lines, Nagpur.

...RESPONDENTS

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APPEARANCE :Shri Girish N. Kulkarni Advocate for the  
applicant.

Shri B.S.Deokar Presenting Officer for the  
respondents.

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CORAM : B. P. Patil, Acting Chairman

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Delivered on : 26-08-2019  
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**ORAL ORDER**

1. By filing the present O.A. the applicant has prayed to direct the respondents to refund an amount of Rs.2,47,826/- (Rs. Two lacs forty seven thousand eight hundred and twenty six only) recovered from his pensionary benefits on account of excess payment made to him due to wrong pay fixation.

2. Applicant was appointed as Field Worker with the respondent no.1 on 23-04-1985. He worked on the said post till the year 2003. On 15-11-2003 he was promoted as Multipurpose Worker (MPW) and/or Health Worker by the respondent no.1 and posted at Dhonora Primary Health Centre, Tq. Kinwat, Dist. Nanded, which is a naxalite affected area. He worked there till his retirement. It is his contention that as per the policy of the Government, employees working in the naxalite affected areas are paid special allowance. Respondent no.1 has granted the said benefit to the applicant by order dated 24-03-2006. He was receiving the said allowance since then. Before his retirement, his service record has been sent to Pay Verification Unit for verification.

3. In the year 2016, respondent no.1 without any authority cancelled the benefit of special allowance granted to the applicant on the basis of objection raised by the respondent no.2. It is his contention that the said order has been passed by the respondent no.1 without giving any opportunity of hearing to him. On the basis of revised pay fixation, respondent no.1 recovered the amount of Rs.2,47,826/- from the pensionary benefits of the applicant. It is his contention that the impugned order of respondent no.1 directing recovery of an amount of Rs.2,47,826/- from his pensionary benefits is illegal and against the guidelines given by the Hon'ble Apex Court. It is his further contention that the respondent no.1 has illegally recovered the said amount from the pensionary benefits of the applicant after his retirement. Therefore, he has approached the Tribunal by filing the present O.A. and prayed to direct the respondent no.1 to refund the amount of Rs.2,47,826/- recovered from his pensionary benefits.

4. Respondent no.1 has filed affidavit in reply and resisted the contentions of the applicant. It is his contention that the pay of the applicant has been inadvertently fixed at higher side beyond the limit

prescribed in the G.R. dated 06-08-2002. Said mistake has been noticed at the time of verification of his service record before his retirement. Therefore, the respondent no.1 issued the order dated 25-08-2016 re-fixing his pay and directed recovery of an amount of Rs.2,47,826/- from the applicant. It is his contention that the special allowance was inadvertently granted to the applicant and excess payment was made due to wrong pay fixation. The said illegality cannot be perpetuated. Therefore, corrective steps have been taken by respondent no.1 and the excess payment made to the applicant due to wrong pay fixation has been recovered from the pensionary benefits of the applicant.

5. It is his further contention that on 15-11-2003, the applicant was promoted on the post of Multipurpose Worker / Health Worker. He was eligible to the pay scale of Rs.4000-6000. Therefore, his pay was required to be fixed @ Rs.4200/- on 15-11-2003 but it had been wrongly fixed and excess payment was made to him. Said mistake has been corrected by the order dated 25-08-2016 and there is no illegality in the same. Therefore, he has justified the

impugned order and recovery made from the pensionary benefits of the applicant and prayed to dismiss the O.A.

6. Respondent no.3 has also filed his separate affidavit in reply and resisted the contentions of the applicant. It is contended by the respondent no.3 that the Comptroller & Auditor General of India discharges his duties through field officers, i.e. Accountant General Offices in accordance with the provisions of Article 149 of the Constitution of India read with the Comptroller and Auditor General (Duties, Powers and Conditions of Service), Act, 1971. Its role is only in respect of pension cases and limited to scrutiny of proposals received from Heads of Offices of the Government of Maharashtra / Pension Sanctioning Authorities in respect of persons who retired from various State Government Offices situated in Vidarbha and Marathwada Regions with reference to Maharashtra Civil Services (Pension) Rules, 1982 and other G.Rs. issued by the State Government from time to time. It authorizes pensionary benefits if found admissible as per rules. It is further submitted by the respondent that it does not act on its own volition but authorizes pensionary benefits only on receipt of proper pension papers duly attested by the Head of Office

/ Pension Sanctioning Authority of the State Government.

This respondent is not in a position to authorize benefits if either the proposal is not received from the Head of the Office / Pension Sanctioning Authority in the prescribed format with requisite documents or if it is found not conforming to any of the provisions of Maharashtra Civil Services (Pension) Rules, 1982 and other G.Rs. issued from time to time.

7. It is further contention of the respondent no.3 that applicant has retired on 30-06-2016. Applicant is challenging recovery order dated 25-08-2016 passed by the respondent no.1 recovering an amount of Rs.2,47,826/- from his pensionary benefits which was paid to him on account of wrong pay fixation and in view of the objection raised by the respondent no.2. He submits that the recovery is made by respondent no.1 on the objection raised by the respondent no.2. The respondent no.3 has no role to play for the same.

8. The pension proposal in respect of the applicant was forwarded to the respondent no.3 by the Pension Sanctioning Authority i.e. District Malaria Officer, Nanded on 21-11-2016 vide letter dated 07-11-2016 along with

Form No.7 [in column no.2 (b)] showing recovery of an amount of Rs.2,47,826/- towards the overpayment of the pay and allowances. The applicant had furnished undertaking for recovery of overpayment of pay allowances to be effected from his pensionary benefits. Applicant is bound by the written consent furnished with his own signature. On the basis of said pension proposal sent by the respondent no.1, he had put a caution in the GPO Authority for recovery of Rs.2,47,826/- from Gratuity Payment Order and relief on pension of the applicant in terms of Rules 134(A) of Maharashtra Civil Services (Pension) Rules, 1982. He has submitted that the action taken by him is as per the proposal given by the Pension Sanctioning Authority and with due consent of the applicant. Therefore, he has justified the order of recovery.

9. I have heard Shri Girish N. Kulkarni Advocate for the applicant and Shri B.S.Deokar Presenting Officer for the respondents. I have perused the documents placed on record by both sides.

10. Admittedly, the applicant was initially appointed as Field Worker by the respondent no.1 on 23-04-1985 and he worked on the said post till the year 2003. On 15-11-2003,

he was promoted as Multipurpose Worker (MPW) or Health Worker. He retired on the same post on attaining the age of superannuation on 30-06-2016. There is no dispute about the fact that after promotion his pay was fixed and accordingly the said pay has been given to him till his retirement. There is no dispute about the fact that on 25-08-2016, respondent no.1 revised the pay of the applicant on the basis of objection raised by the respondent no.2 regarding wrong pay fixation made by the respondent no.1. On the basis of the order dated 25-08-2016 issued by the respondent no.1, recovery of an amount of Rs.2,47,826/- has been ordered. Admittedly, the said amount has been recovered from the pensionary benefits i.e. DCRG of the applicant after his retirement on 06-03-2017 and 17-03-2017. Admittedly, the applicant was serving as Multipurpose Worker/Health Worker which is a Group-C post at the time of his retirement.

11. Learned Advocate for the applicant has submitted that the applicant was serving as Multipurpose Worker / Health Worker at the time of his retirement. He retired as Group-C employee. An amount of Rs.2,47,826/- has been recovered from his pensionary benefits after his retirement.



He has argued that the respondent no.1 revised the pay of the applicant on 25-08-2016 on the basis of objection raised by the respondent no.2 Pay Verification Unit when the service record of the applicant was sent to it for verification. It was argued on behalf of the applicant that the wrong pay was fixed by respondent no.1 in the year 2003 and it was mistake on the part of the respondent no.1. The applicant had played no role in getting the excess pay. Not only this but the applicant has also not practiced any fraud on the respondent no.1 in getting excess pay. Therefore, the applicant cannot be blamed for the same. He has submitted that the respondent no.1 has recovered an amount of Rs.2,47,826/- without issuing any notice to the applicant and in violation of the principles of natural justice. Therefore, it is illegal in view of the guidelines given by the Hon'ble Apex Court in the case of **State of Punjab V/s. Rafiq Masih** decided on 18-12-2014 reported in [**AIR 2015 SC 696**]. He has submitted that as the respondent no.1 has recovered the said amount illegally. The applicant is entitled to get refund of the said amount. Therefore, he has prayed to direct the respondent no.1 to refund the said amount by allowing the present O.A.

12. Learned P.O. has submitted that the applicant was appointed as Multipurpose Worker/ Health Worker on promotion. At the time of his promotion on the said post, respondent no.1 has fixed his pay wrongly. In fact, the applicant was entitled to get pay scale of Rs.4000-6000 and his pay requires to be fixed @ Rs.4200 from 15-11-2003 but his pay has been fixed wrongly at that time and therefore, the excess payment has been made from him from 2003 till his retirement. He has argued that during the said period excess amount of Rs.2,47,826/- has been paid to the applicant. He has argued that the said mistake has been noticed by the respondent no.2 when the service record of the applicant was sent for verification at the time of his retirement. Respondent no.2 raised objection in that regard. Therefore, the respondent no.1 revised the pay of the applicant and re-fixed his pay and corrected the mistake and issued the order dated 25-08-2016. On the basis of said order, the respondent no.1 directed recovery of the excess amount paid to the applicant and accordingly an amount of Rs.2,47,826/- has been recovered from the pensionary benefits of the applicant. He has submitted that there is nothing illegal in the impugned order and

recovery is made from the applicant. Therefore, he has justified the recovery of the excess amount made from the pensionary benefits of the applicant. Accordingly, he has prayed to dismiss the O.A.

13. On perusal of record, it reveals that initially, the applicant was appointed as Field Worker in the year 1985. On 15-11-2003, he was promoted as Multipurpose Worker/Health Worker. Respondent no.1 fixed his pay on his promotion w.e.f. 15-11-2003. According to the respondent no.1 wrong pay fixation has been made on 15-11-2003. Therefore, excess payment has been made to him from 15-11-2003 till the date of issuance of order directing recovery of the excess payment made to him. The mistake regarding wrong pay fixation has been noticed by the respondent no.2 when the service record was sent to his office for verification at the time of retirement of the applicant. Respondent no.2 raised objection in that regard. Therefore, the respondent no.1 issued the order dated 25-08-2016 and re-fixed the pay of the applicant from 15-11-2003 and directed to recover excess payment of Rs.2,47,826/- made to the applicant. These facts show that the mistake has been committed by the respondent

no.3 in fixing pay of the applicant to which the applicant was not entitled. Respondent no.1 fixed his pay on 15-11-2003 on his own accord. The applicant neither misled nor practiced fraud on the respondent no.1 while getting excess pay. Therefore, the applicant cannot be blamed for the same. Excess payment was made to the applicant from 15-11-2003. Total amount of Rs.2,47,826/- has been paid to the applicant due to wrong pay fixation. Said amount has been recovered from DCRG amount of the applicant after his retirement.

14. The applicant was serving as Group-C employee at the time of his retirement. The recovery of the excess amount has been made by respondent no.1 illegally and in violation of the guidelines given by the Hon'ble Supreme Court in the case of **State of Punjab V/s. Rafiq Masih** decided on 18-12-2014 reported in [**AIR 2015 SC 696**]. In paragraph 12 of the said judgment, it has been observed by the Hon'ble Apex Court as under:

*“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."*

15. Case of the applicant is squarely covered by the guidelines, particularly guidelines (i), (ii) and (iii) given in the abovesaid judgment of the Hon'ble Supreme Court. Recovery regarding excess payment made from the Government employee due to wrong pay fixation cannot be made after his retirement. Therefore, the recovery of an amount of Rs.2,47,826/- made from the pensionary

benefits of the applicant is illegal. Hence, the applicant is entitled to get refund of the said amount. Therefore, the O.A. deserves to be allowed.

16. In view of the discussion in the foregoing paragraphs, O.A. is allowed. Respondent no.1 is directed to refund an amount of Rs.2,47,826/- to the applicant within 3 months from the date of this order. If the amount is not paid in the stipulated period, it shall carry interest @ 9% per annum till realization of the amount. There shall be no order as to costs.

**(B. P. PATIL)**  
**ACTING CHAIRMAN**

**Place : Aurangabad**  
**Date : 26-08-2019.**