

ORDER

1. This Original Application is filed by the applicant with a prayer to quash and set aside the impugned order dated 11.10.2020 (Annex. A-3) issued by the respondent no. 3 – the Accountant General (A&E)-II, Maharashtra, Nagpur – to the extent of permitting recovery of an amount of Rs. 1,35,707/- from the pensionary benefits of the applicant and to direct the respondent no. 2 – the Superintendent of Government Railway Police, Aurangabad - not to recover the said amount of Rs. 1,35,707/- from the pensionary benefits of the applicant.

2. The facts in brief giving rise to this application are as follows :-

The applicant came to be appointed as a Constable in the respondent no. 1 Department through Ex-servicemen category on 28.5.2002. He was selected for Railway Wing of the respondent no. 1 Department. The applicant served in the capacity of Constable and later on as a Police Naik for about 18 years. He retired as a Police Naik on 30.4.2020 on attaining the age of superannuation.

3. The service book of the applicant was sent for pay verification and thereupon the Pay Verification Unit, Aurangabad

raised an objection regarding revised pay fixation of the applicant. The said exercise was undertaken subsequently by the respondents. During the said process it was found that initial pay of the applicant came to be fixed as Rs. 4560/- per month instead of Rs. 4390/-. Accordingly, the respondent no. 2 by the communication dated 12.6.2020 (Annex. A-1) requested the Pay Verification Unit to approve the pay fixation of the applicant as shown in the chart accompanied therewith.

4. In view of the same, the office of the respondent no. 2 informed the applicant that due to wrong pay fixation overpayment came to be made to the applicant and the same is required to be recovered from the pensionary benefits of the applicant. As such, the applicant by letter dated 21.8.2020 (Annex. A-2) requested the respondent no. 2 not to recover the said amount from his pensionary benefits. To support his said contentions he relied upon the Circular dated 5.9.2018 (page 13 of paper book) issued by the Special Inspector General of Police (Establishment), thereby directives are issued to take note of the judgment of the Hon'ble Supreme Court in **Civil Appeal No. 11527/2014 arising out of S.L.P. (C) No. 11684/2012 & Ors. (State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.)** reported at **AIR 2015 SC 596.**

5. It is further contention of the applicant that thereafter the applicant was shocked to receive the impugned order dated 11.10.2020 (Annex. A-3) issued by the respondent no. 3 – the Accountant General-II, Maharashtra, Nagpur – permitting the respondent no. 2 to recover an amount of Rs. 1,35,707/- from the D.C.R.G. amount of the applicant towards overpayment of pay and allowances. The said action of the respondent no. 2, according to the applicant, is contrary and inconsistent with the statutory mandate of granting opportunity of hearing before ordering recovery against him as provided in rule 134-A of M.C.S. (Pension) Rules, 1982. No show cause notice as contemplated in proviso to rule 134-A of M.C.S. (Pension) Rules, 1982 is given to the applicant before ordering the recovery. In view of this, it is the contention of the applicant that the alleged overpayment is due to wrong pay fixation of the applicant. Hence, the applicant has filed this Original Application.

6. Shri Dilip Mahadeo Sabale, Police Inspector, Aurangabad Railway Police Station, Aurangabad has filed affidavit in reply on behalf of the respondent no. 1. It is not disputed that the applicant was appointed initially as a Police Constable through Ex-servicemen quota and he retired on 30.4.2020 on attaining the age of superannuation. It is, however, specifically contended that

the scale on retirement of military service of the applicant was Rs. 4300/- per month. He joined present service on scale of Rs. 3050/- per month. Considering that, his pay scale was considered to Rs. 4350/- per month. Upon the objection by the Pay Verification Unit, Aurangabad it was found that the pay fixation of the applicant was wrong. Accordingly, the pay of the applicant was re-fixed in the pay scale of Rs. 4390/- + Rs. 60/- per month instead of Rs. 4560/- per month as fixed earlier. In view of the same, it was noticed that there was overpayment of Rs. 1,35,707/- and the same is sought to be recovered from the applicant. Hence, the order of recovery is in accordance with law.

7. In order to substantiate the contentions raised in the affidavit in reply the respondent no. 1 has placed on record the first page of the service book of the applicant at Annex. R-1, documents regarding the pay fixation at Annex. R-2 to 4, document regarding the objection of Pay Verification Unit at Annex. R-5, document regarding revised pay calculation after objection of Pay Verification Unit at Annex. R-6 and copy of the order of Pay Verification Unit at Annex. R-7.

8. It is admitted by the respondents that the applicant by his application dated 21.8.2020 requested not to recover the excess amount from his pensionary benefits. According to his letter the

report was sent to the respondent no. 3 - the Accountant General (A&E)-II, Maharashtra, Nagpur, but no reply is received from the said authority in that regard. The respondents have produced on record the letters of the respondent no. 3 - the Accountant General-II, Nagpur - at Annex. R-8, R-9 & R-10. The copy of the order of the respondent no. 3 regarding recovery is produced at Annex. R-11, whereas the letter dated 24.8.2020 addressed by the respondent no. 2 to the respondent no. 3 is produced at Annex. R-12.

9. Separate affidavit in reply is filed on behalf of the respondent no. 3 - the Accountant General - II, Maharashtra, Nagpur wherein it is stated that the said respondent does not issue the recovery order on its own and it acts upon the communications made by the concerned Head of the Department wherefrom the concerned Government servant of the State Government is retired, and therefore, the respondent no. 3 has no role to play for fixing the liability of recovery of overpayment.

10. I have heard the arguments advanced by Shri Rhshikesh A. Joshi, learned Advocate for the applicant and Shri N.U. Yadav, learned Presenting Officer for the respondents, at length.

11. Learned Advocate for the applicant has strenuously urged before me that the impugned excess payment is worked out in view of wrong pay fixation done by the respondent no. 2 and there was no any misrepresentation or fraud committed by the applicant in fixing his pay wrongly. The applicant belongs to Group-C category, and therefore, as per the ratio laid down by the Hon'ble Supreme Court in the case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.** (supra), the recovery of amount of overpayment from the retired employee beyond 05 years is impermissible. The recovery against the applicant sought for in the present case is beyond 05 years from the date of his retirement as it is shown from the date of inception of the applicant in service from the year 2002.

12. On the other hand, the learned P.O. for the respondents submitted that upon objection taken by the Pay Verification Unit, Aurangabad before the retirement of the applicant, his pay was re-fixed, and therefore, recovery sought for is justifiable.

13. After having considered the facts of the present case and the documents on record it is evident that the present applicant came to be appointed w.e.f. 20.5.2002 on the post of Police Constable. The copy of revised pay fixation order produced at Annex. A-1 & Annex. R-6 would show that the basic pay of the applicant was

fixed at the rate of Rs. 4560/- per month instead of Rs. 4390/- + Rs. 60/- per month. The said revised pay order is passed on 11.6.2020 i.e. on retirement of the applicant on superannuation and that was done in view of the objection raised by the Pay Verification Unit, Aurangabad. As per the record, the Pay Verification Unit raised the objection regarding pay fixation of the applicant on 18.1.2020, copy of which is produced on record by the respondents at Annex. R-5. In view of the same, the entire record would show that the excess payment was made to the applicant due to wrong pay fixation made by the respondents. There is nothing on record to show that the said excess payment was made to the applicant at his behest on account of any misrepresentation or fraud. The period of recovery is beyond 05 years of the retirement date of the applicant. In view of the same, the recovery sought for from the applicant is not permissible in view of the guidelines given by the Hon'ble Supreme Court in the case of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.** (supra), wherein in para 12 the Hon'ble Supreme Court has observed 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."

14. The case of the applicant is squarely covered by clauses (i), (ii) & (iii) of guidelines given by the Hon'ble Apex Court in para 12 of the above cited judgment, and therefore, the said recovery is impermissible. Hence, the impugned recovery cannot be done from the applicant as it is impermissible in the eyes of law. In view of the same, the impugned order dated 11.10.2020 (Annex. A-3) issued by the respondent no. 3 – the Accountant General (A&E)-II, Maharashtra, Nagpur – to the extent of permitting recovery of an amount of Rs. 1,35,707/- from the pensionary

benefits of the applicant suffers from illegalities. Therefore, I proceed to pass the following order :-

ORDER

- (i) Original Application no. 455/2020 is allowed and disposed of.
- (ii) The impugned order dated 11.10.2020 (Annex. A-3) issued by the respondent no. 3 – the Accountant General (A&E)-II, Maharashtra, Nagpur – to the extent of permitting the respondent no. 2 to recover an amount of Rs. 1,35,707/- from the pensionary benefits of the applicant is hereby quashed & set aside. Consequently the respondents are directed not to recover an amount of Rs. 1,35,707/- from the applicant.

There shall be no order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place : Aurangabad

Date : 30.09.2021