

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.798 OF 2022**

**DISTRICT : PUNE  
SUB : Recovery**

Shri Anil Bhimrao Londhe, Age-59 Years, )  
Retired Assistant Commissioner, )  
Office of the Commissioner of )  
State Intelligence Department, Mumbai )  
Residing at- Sollama Housing Society, )  
A-Wing, 403 Thergaon, Pune. )

**Versus**

1) State of Maharashtra, Through Additional )  
Chief Secretary, Home Department, )  
Mantralaya, Mumbai - 400 032. )  
  
2) The Director General of Police, Maharashtra )  
State, Mumbai, Maharashtra Police Headquarter,)  
Shahid Bhagat Singh Marg, Colaba, )  
Mumbai - 400 001. )  
  
3) The Commissioner of State Intelligence )  
Department (SID), Mittal Towars, B Wig )  
Nariman Point, Maharashtra State, Mumbai )  
PIN-400 021. )....Respondents

Smt. Punam Mahajan, learned Advocate for the Applicant.

Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Hon'ble Shri M. A. Lovekar, Vice-Chairman

Reserved on : 23.01.2025

Pronounced on : 28.01.2025

**JUDGEMENT**

Heard Smt. Punam Mahajan, learned Advocate for the Applicant  
and Smt. Kranti Gaikwad, learned Presenting Officer for the  
Respondents.

2. Relevant facts are as follows :-

The Respondent No.2 fixed seniority of the Applicant in the cadre of Sub Inspector from 22.03.2000 by order dated 31.08.2015. However, by order dated 22.05.2019, he cancelled it and directed that excess payment made because of erroneous fixation be recovered. The Applicant retired as 'Assistant Commissioner (One Step Promotion) from the office of Commissioner of State Intelligence Department, Mumbai on 31.01.2021. Pursuant to the objection of Pay Verification Unit, the Respondent No.2 re-fixed pay of the Applicant by order dated 27.04.2022. The amount of excess payment made to the Applicant on account of wrong pay fixation was quantified at Rs.6,79,485/-. This amount was recovered from the amount of leave encashment of the Applicant. According to the Applicant, the impugned recovery is not permissible in law. His further stand is that the department chose not to recover the amount of excess payment from seven similarly situated persons which is clearly discriminatory. Hence, this Original Application.

3. In his reply, the Respondent No.2 has given the chronology of events which necessitated re-fixation of pay of the Applicant. It may be stated at the outset that in the instant Original Application, the Applicant has confined his challenge to order of recovery only, and not re-fixation.

4. The Respondent No.2 has raised following contentions :-

By Order dated 20.07.2017, fixation of seniority of the Applicant in the cadre of Police Sub Inspector from 22.03.2000 was cancelled. This was followed by order dated 27.09.2018 whereunder directions were issued to do the needful. Thereafter, communication dated 22.05.2019 was issued which *inter-alia* stated that excess payment found to have been made at the time of re-fixation was to be recovered. The Applicant chose not to challenge any of these orders. Under these circumstances, laches and acquiescence can be attributed to him. He would be estopped from challenging subsequent order/s by which recovery was directed.

5. The Respondent No.2 also raised objection of limitation. It may be stated that application for condonation of delay filed by the Applicant was allowed.

According to Respondent No.2, the impugned recovery was consistent with following rules :-

*“ (a) Rule 132 (1) (2) and sub clause (b) of the Sub Rule (3) of the Rule 132 of the Maharashtra Civil Services (Pension) Rules, 1982.*

*(b) Rule 133 (3) of the aforesaid Rules.”*

6. The Respondent No.3 has also resisted the Original Application. To the Reply of Respondent No.3, letter dated 02.03.2022 written by the Applicant and addressed to Respondent No.3 is attached. This letter reads as under :-

“उपरोक्त विषयान्वये अर्ज सादर करतो कि मी श्री. अनिल भिमराव लोंढे, सहायक आयुक्त, दिनांक ३१.०१.२०२१ रोजी सेवानिवृत्त झालो आहे. माझे सेवापुस्तकात वेतन पडताळणी पथकाकडून वेळोवेळी आक्षेप नोंदविलेले जात असून, सदर आक्षेपीत नोंदी या इतरत्र कार्यालयाचे आस्थापनेवरील आहेत, असे मला समजले आहे. सदर आक्षेपाची पुर्तता करण्याकरीता सेवापुस्तक संबंधीत कार्यालयात पाठविल्यास प्रचलीत कार्यालयीन कामकाजातील पत्रव्यहारात दिर्घ कालावधी व्यतीत होऊ शकतो त्यामुळे मला निवृत्तीउपदानापासून दिर्घकाळापर्यंत वंचित राहव लागेल, त्याअनुषंगाने आम्हास सेवानिवृत्ती उपदानाचे फायदे विहीत मुदतीत मिळावेत, तसेच आम्हास दिर्घ काळापर्यन्त प्रतीक्षा करावी लागु नये, म्हणून आमचे सेवापुस्तकातील सध्याच्या (तफावत झालेल्या/चुकीच्या) नोंदविलेल्या वेतनवाढीचे अवलोकन करून, यामध्ये मा. आयुक्त, रागुवि, मुंबई या कार्यालयाकडूनच वेतननिश्चिती/वेतनवाढी सुधारित करून अतिप्रदान रक्कम सरकारी नियमाप्रमाणे देय रकमेतुन वसुल करण्यास विनंती आहे. याबाबत माझी तक्रार राहणार नाही अशी मी हमी देत आहे.”

According to Respondent No.3, the Applicant having given an undertaking as above cannot now object to the impugned recovery. Perusal of this letter shows that the Applicant was primarily interested in getting retiral benefits early so as to avoid inconvenience. From the contents of this letter an inference cannot be drawn that the Applicant had given up his right to challenge the recovery on legal grounds available to him.

7. Learned P.O. has placed on record copy of judgment of the Hon'ble Bombay High Court dated 25.01.2024 in **W.P. No.6054/2021 (Ganesh Magar V/s State of Maharashtra & 5 Ors.)**. In this case, the High Court relied on '**Balbir Singh Bhandari V/s Sate of Uttarkhand, AIR Online 2024 SC 18**' wherein, the Hon'ble Supreme Court held :-

*" While dealing with the refund issue, the High Court has held that the appellants, being Ayurvedic Medical Officers, do not belong to a weaker section of the society and, therefore, recovery will not be inequitable."*

The High Court further observed :-

*"Admittedly, the Petitioner does not fall within the ambit of class III or class IV Employee. It is not the case of petitioner that, he did not furnish an undertaking for recovery of payment from his pensionary benefits due to excess payment made to him while granting three non compounded increments. On the other hand, the Petitioner executed an undertaking tendered to the Respondent Authorities agreeing for the deduction of any excess payment, if made to him on account of three non compounded increments wrongly paid to him as on 01.04.2011 as per the GR dated 27.02.2018 regarding wrong pay fixation. Therefore, certainly the principle of estoppel applies and the petitioner is estopped from raising grievance about recovery of excess payment made to him. So also, considering the ratio laid down in cases of **Jagdev Singh and Balbir Singh Bhandari cited (supra)**, the petitioner is not entitled for the relief as prayed."*

In the instant case, there is nothing on record to show that at the time of initial grant of seniority to the Applicant in the cadre of Police Sub-Inspector an undertaking was obtained from him that in the event of excess payment made on account of such fixation, he was liable to refund the amount. The contents of above letter dated 02.03.2022 cannot be equated with an undertaking.

8. The Applicant has relied on the judgment dated 12.03.2022 of the Hon'ble Bombay High Court in **W.P. No.1407/2024 (Smt. Shaheen Fatima Mohsin Ahmed V/s The State of Maharashtra & Others)** wherein it is observed:-

"8. This Court has held in case of **Shaikh Amir Shaikh Kadar vs. The State of Maharashtra and others (Writ Petition No.3320/2023)**, in Paragraph Nos. 6 and 7 as under :-

"6. We have referred to the law laid down by the Hon'ble Supreme Court in **High Court of Punjab and Haryana and others vs. Jagdev Singh (supra)**. However, the record reveals that no undertaking was taken from these Petitioners when the pay scales were revised. The undertakings from some of them were taken at the stroke of their retirement. An undertaking has to be taken from the candidate on the day the revised pay scale is made applicable to him and the payment commences. At the stroke of superannuation of the said employee, asking him to tender an undertaking, practically amounts to an afterthought on the part of the employer and a mode of compelling the candidate to execute an undertaking since they are apprehensive that their retiral benefits would not be released until such undertaking is executed. Such an undertaking will not have the same sanctity of an undertaking executed when the payment of revised pay scale had commenced. We, therefore, respectfully conclude that the view taken in **High Court of Punjab and Haryana and others vs. Jagdev Singh (supra)**, would not be applicable to the case of these Petitioners, more so since the recovery is initiated after their superannuation.

7. Taking into account that these Petitioners were not involved in any mischief, fraud or deceit in orchestrating their wrongful pay revision, the law laid down by the Hon'ble Supreme Court in **Syed Abdul Qadir vs. State of Bihar and others, 2009(3) SCC 475 and State of Punjab and other vs. Rafiq Masih (White Washer) etc. (2015) 4 SCC 334 = AIR 2015 SC 696**, would apply to these cases."

9. The Applicant has further relied on the judgment of the Hon'ble Bombay High Court dated 20.02.2024 in **W.P. No.564/2023 (Smt. Varsha Doshi V/s State of Maharashtra & Anr.)**. In this case, it is held that situations summarized in para 12 of the **{State of Maharashtra & Others Vs. Rafiq Masih (White Washer) in Civil Appeal No.11527/2014}** in so far as Clause 1 is concerned, it is for Class III and Class IV service employees, whereas with respect to the other situations it is applicable to all classes of employees.

10. Admittedly, the recovery of amount of excess payment was effected from the Applicant after his retirement. The excess payment was made for a period in excess of 5 years. Thus, clauses (ii) and (iii) postulated by the Hon'ble Supreme court in **Rafiq Masih's** case (supra) are attracted rendering the impugned recovery unsustainable. Hence, the order :-

**ORDER**

The Original Application is allowed in the following terms -

- (A) The impugned recovery is held to be impermissible.
- (B) The amount recovered from the Applicant shall be refunded to him within 3 months from today failing which it shall carry interest at the rate of 6% per annum from today till payment.
- (C) No order as to costs.

Sd/-

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( M. A. Lovekar )  
Vice-Chairman