

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 1136 of 2024 (S.B.)**

Rupchand S/o Mahadeoji Gaidhane,  
Aged about 69 years, Occupation Retired,  
R/o Sales Tax Colony, Fulchurpeth, Behind Hanuman Mandir,  
Gondia, Tah. and District - Gondia.

**Applicant.**

**Versus**

- (1) The State of Maharashtra,  
through its Secretary, Home Department,  
Mantralaya, Mumbai - 400 032.
- (2) The Principal Accountant General (A&E) - II, Maharashtra,  
Civil Lines, Nagpur.
- (3) The Superintendent of Police, Gondia,  
Tah. & District - Gondia.
- (4) The Treasury Officer,  
Collectorate Compound,  
Gondia, Tah. And District - Gondia.

**Respondents.**

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**Shri I.N. Choudhari, Advocate for the applicant.**

**Smt. S.R. Khobragade, learned P.O. for respondents.**

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**Coram :- Hon'ble Shri Justice M.G. Giratkar,  
Vice Chairman.**

**Dated :- 20/02/2025.**

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**JUDGMENT**

1. Heard Shri I.N. Choudhari, learned counsel for applicant and  
Smt. S.R. Khobragade, learned P.O. for respondents.
2. The learned P.O. filed reply of respondent no.2. It is taken on  
record. Copy is given to the applicant.

3. The case of the applicant in short is as under-

The applicant was appointed on the post of Constable on 03/06/1982. He came to be superannuated from service on the post of Assistant Sub Inspector on 31/01/2013. The respondents have issued recovery order on 17/10/2024 thereby reducing monthly pension from Rs.8,585/- to Rs.7,645/- and started recovery towards alleged excess paid pension @ Rs.940/- p.m., w.e.f. 01/04/2013 onwards and excess paid DCRG Rs.28,670/- to the applicant.

4. The applicant was working in the naxalite area. He was granted promotional pay as per G.R. 06/08/2002. The respondents have paid the pension, but now the respondents have issued recovery order dated 17/10/2024. Hence, prayed to quash and set aside the order dated 17/10/2024.

5. In the reply, the respondents have denied the contention of the applicant. It is submitted that excess payment was made to the applicant and therefore recovery order was issued. Respondent no.2 has denied the contention and submitted that it is for respondent no.3 to issue notice to the applicant in respect of pay fixation. Hence, the O.A. is liable to be dismissed.

6. During the course of submission, the learned counsel for applicant has relied on the Judgment of the Hon'ble Supreme Court in

the case of ***State Of Punjab & Ors vs. Rafiq Masih (White Washer)*** reported in ***AIR 2015 SC 696*** and submitted that recovery is not permissible after the retirement. The applicant is retired on 31/01/2013 and recovery order is issued on 17/10/2024 therefore recovery order is liable to be quashed and set aside.

7. The learned P.O. has submitted that the applicant was working in the naxalite area. He was paid promotional pay as per the G.R. dated 06/08/2002. The office has wrongly fixed the pension of applicant by taking into account of promotional pay and therefore it was found that excess payment was made to the applicant than his entitlement, therefore, recovery order was issued. There is nothing wrong on the part of respondents. Hence, the O.A. is liable to be dismissed.

8. There is no dispute that applicant was working in the naxalite area. The Govt. has issued G.R. dated 06/08/2002. As per the said G.R., promotional pay was paid to the applicant. As per the condition mentioned in the said G.R., the promotional pay is to be paid to the employees who are working in the naxalite area till they actually work in that area. After the retirement, there is no question of any actual work of the applicant in the naxalite area. Hence, pay fixation by taking into account of promotional pay is absolutely wrong and therefore the recovery order was issued.

9. In view of the Judgment of the Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer) reported in AIR 2015 SC 696** (cited supra), recovery is not permissible from the retired employee. The Hon'ble Supreme Court in the case of the **State Of Punjab & Ors vs. Rafiq Masih** (cited supra) has given following guidelines. Para-12 of the Judgment is reproduced below –

*“(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, summarise 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 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 employee, 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."*

10. As per guideline (ii) of the said Judgement, recovery cannot be made from the retired employee. The applicant was retired on 31/01/2013 and recovery order was issued by the respondents on 17/10/2024. Therefore, in view of the Judgement of the Hon'ble Supreme Court in the case of the **State Of Punjab & Ors vs. Rafiq Masih** (cited supra), the impugned recovery order dated 17/10/2024 is liable to be quashed and set aside. However, the respondents are at liberty to re-fix the pension of the applicant by taking into account the condition mentioned in the G.R. and as per the Rules 134 of the Maharashtra Civil Services (Pension) Rules, 1982. Hence, the following order-

### **ORDER**

1. The O.A. is Allowed.
2. The impugned order dated 17/10/2024 is hereby quashed and set aside. The respondents are directed to refund the recovered excess amount to the applicant within a period of 3 months from the date of receipt of this order.
3. The respondents are at liberty to re-fix the pension of the applicant as per the amended Rules 134 A of the of the Maharashtra Civil

Services (Pension) Rules, 1982 by taking into consideration the condition mentioned in the G.R. dated 06/08/2002.

4. No order as to costs.

**Dated** :- 20/02/2025.

**(Justice M.G. Giratkar)**  
**Vice Chairman.**

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 20/02/2025.