

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.428/2020 (S.B.)**

Mohammad Shafi s/o Mohammad Shami Sheikh,
Aged about 66 yrs., Occ.- Retired,
R/o Bhiwapur Ward, Near Nurani Maszid,
R.K. Chowk, Bhiwapur, Tah. Chandrapur,
Dist.- Chandrapur.

... **APPLICANT**

// V E R S U S //

- 1] **The State of Maharashtra,**
Through its Secretary,
Home Department,
Mantralaya, Mumbai- 32.
- 2] **The State of Maharashtra,**
Through its Secretary,
Finance Department,
Mantralaya, Mumbai- 32.
- 3] **The Superintendent of Police,**
Chandrapur, Dist.- Chandrapur.
- 4] **The Additional Treasury Officer,**
District Treasury Office, Chandrapur.
- 5] **The Accountant, General-II (A & E),**
Pension Branch Office,
Nagpur, Dist.- Nagpur.

... **RESPONDENTS**

Shri V.R. & R.K. Borkar, Ld. counsel for the Applicant.

Shri M.I. Khan, Learned P.O. for the Respondents.

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

Dated :- 05/03/2025.

J U D G M E N T

Heard Shri V.R. Borkar, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. The case of the Applicant in short is as under :-

Applicant was initially appointed as Constable on 01/05/1975. Thereafter, he was promoted to the post of Assistant Sub-Inspector (A.S.I.) in the Group-C category on 26/01/2003. Applicant came to be retired upon attaining the age of superannuation on 30/06/2013. Respondent No.5 issued letter to the Respondent No.3, directed to recover the amount of Rs.2,39,461/- from the amount of pension. Thereafter, respondent No.3 issued letter to Respondent No.4 on 23/12/2019. Therefore, applicant approached to this Tribunal for the following reliefs:-

“7.i) That, by issue of suitable writ, order or direction, the order of recovery of amount of Rs. 2,39,461/- from pension by orders dt. 26.11.2019, 23.12.2019 & 6.7.2020 produced at Annexure-A4, A5, A1 respectively issued by the Respondent nos. 3 to 5 may kindly be quashed and set aside in the interest of justice.

ii) That, by issue of suitable writ, order or direction the respondents may kindly be directed to refund the recovered amount with interest as per law.

iii) That, any other relief which this Hon'ble Tribunal deems fit under the circumstances of this case be also awarded to the applicant in the interest of justice.”

3. O.A. is strongly opposed by the Respondents by filing reply. Respondent Nos.3, 4 & 5 have filed their reply and submitted that applicant was granted with the benefit of promotional pay as per the G.R. dated 06/08/2002. As per the conditions mentioned in the G.R., applicant was entitled to get promotional pay only during his tenure of actual work in the Naxalite area. After retirement, applicant is no longer entitled to get benefit of promotional pay. Respondents have wrongly calculated the last pay drawn by taking into account the promotional pay of the applicant. The pension of the applicant was wrongly fixed by the respondents. This mistake was noticed by the respondents and, therefore, the excess amount which was

wrongly paid to the applicant is proposed to be recovered, after re-fixation. Hence, the O.A. is liable to be dismissed.

4. There is no dispute that applicant was working in the Naxalite Area. As per the G.R. dated 06/08/2002, promotional pay was paid to the applicant. One of the conditions in the G.R. specifies that promotional pay is to be paid to the employee working in the Naxalite Area, till his actual working in that area. Applicant cannot get promotional pay by taking into account the promotional pay as per the G.R. dated 06/08/2002, but at the same time the respondents cannot recover the said amount without issuing notice under Rule 134-A of the Maharashtra Civil Services (Pension) Rules, 1982. No such notice was issued to the applicant.

5. Learned counsel for the applicant has pointed 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*. He has pointed out Guideline Nos.(i), (ii) and (iii) and submitted that applicant was Group-C and retired employee. Amount proposed to be recovered is in respect of more than 5 years. Therefore, in view of the Guideline Nos.(i), (ii) and (iii) of

the Judgment of the Hon'ble Supreme Court in the case of **Rafiq Masih** (*cited supra*), impugned recovery order is liable to be quashed and set aside. The material portion of the Judgment in the case of **Rafiq Masih** (*cited supra*) 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 hereinabove, 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."

6. There is no dispute that applicant was granted promotional pay as per the G.R. dated 06/08/2002. Applicant cannot get that amount after the retirement. Promotional pay is to be paid till the actual working of the employee in the Naxalite area. Therefore, respondents can very well re-fix the pension of applicant by not taking into account promotional pay, but at the same time as per Guidelines of the Hon'ble Supreme Court in the case of *Rafiq Masih (cited supra)*, that excess amount cannot be recovered. Hence, the following order:

O R D E R

- (i) O.A. is allowed;
- (ii) The impugned recovery orders dated 26/11/2019, 23/12/2019 and 06/07/2020 of Rs.2,39,461/- issued by respondent nos.3 to 5 are hereby quashed and set aside;
- (iii) It is made clear that respondents are at liberty to re-fix the pay / pension by not taking into account the promotion pay as per G.R. dated 06/08/2002;

- (iv) Amount, if any, recovered by the respondent shall be refunded within a period of three months from the date of receipt of this order to the applicant;
- (v) No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman.

Dated :-05/03/2025.
PRM.

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

Name of Steno : Piyush R. Mahajan.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 05/03/2025.