

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.804/2024 (S.B.)

Rajendra s/o Dayaram Chandrikapure,
Aged about 68 yrs., Occ.- Retired,
R/o Ward no. 5, Risama, Tah.- Amgaon,
Dist.- Gondia

... **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,**
Gondia, Dist.- Gondia.
- 4] **The Additional Treasury Officer,**
District Treasury Office, Gondia.
- 5] **The Principal Accountant, General (A & E)-II,**
Pension Branch Office,
Nagpur, Dist.- Nagpur.

... **RESPONDENTS**

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

Shri A.P. Potnis, 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 A.P. Potnis, learned P.O. for the respondents.

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

Applicant was initially appointed as Constable on 03/11/1978. Thereafter, he was promoted to the post of Assistant Sub-Inspector (A.S.I.) i.e. Group-C post in the Year 2008. Applicant came to be retired upon attaining the age of superannuation on 28/02/2014. Respondent No.5 issued letter / order dated 04/06/2024 for recovery of amount of Rs.34,650/- from DCRG and by order dated 27/08/2024 for recovery of amount of Rs.3,69,626/- to be recovered from the pension. Therefore, applicant has 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. 3,69,626/- & Rs. 34650/- total Rs. 4,04,276/- from pension by orders dt. 4.6.2024 & 27.8.2024 produced

at Annexure A4 & A1 respectively issued by the Respondent nos. 4 & 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 recover amount with interest in the interest of justice.

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. It is submitted that applicant was working in Naxalite Area. The promotional pay was granted to the applicant as per the G.R. dated 06/08/2002. Applicant was not entitled to get pension by taking into consideration promotional pay. Respondents have wrongly granted excess payment by calculating the amount of promotional pay in the pension. Therefore, the amount is rightly recovered by the respondents. Hence, prayed to dismiss the O.A.

4. Heard Advocate Shri V.R. Borkar. He 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.*** As per his submission, applicant is retired in the Year 2014 and excess amount is recovered in the Year 2024. As

per Guideline No.(i) and (ii) of the Judgment of the Hon'ble Supreme Court in the case of ***Rafiq Masih (cited supra)***, recovery cannot be made from the Class-III or Class-IV employee and retired employee. Hence, prayed to allow the Original Application. 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."*

5. There is no dispute that applicant was working in the Naxalite Area. Applicant was entitled to get promotional pay till his actual working in the Naxalite Area. Applicant is not entitled to get promotional pay after his retirement. Respondents have wrongly calculated the pension by taken into account promotional pay as per the G.R. dated 06/08/2002. Respondents have rightly re-fixed the pension of applicant. Respondents cannot recover the excess payment made to applicant from its gratuity. As per Guideline No.(i) and (ii), of the Judgment of the Hon'ble Supreme Court in the case of ***Rafiq Masih (cited supra)***, recovery is not permissible from Class-III or Class-IV employee and retired employee. Applicant was working as a Class-III employee. He is retired employee and was retired in the Year 2014. The excess amount is recovered by the respondents in the Year 2024.

Therefore, in view of the Judgment of the Hon'ble Supreme Court in the case of *Rafiq Masih (cited supra)*, recovery is not permissible. Hence, the following order:

O R D E R

- (i) O.A. is allowed;
- (ii) The impugned orders dated 04/06/2024 and 27/08/2024 of Rs.4,04,276/- issued by Respondent Nos.4 and 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 promotional 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.