

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.544/2020 (S.B.)**

Waman s/o Laxman Mandade,
Aged about 69 yrs., Occ.- Retired,
At & Post. Mul, Ward No.17,
Near Hanuman Mandir, Mul Road,
Chandrapur, Dist.- Chandrapur.

... **APPLICANT**

// V E R S U S //

- 1] **The State of Maharashtra,**
Through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai- 32.
- 2] **The State of Maharashtra,**
Through its Secretary,
Finance Department,
Mantralaya, Mumbai- 32.
- 3] **The Deputy Director (Buffer),**
Tadoba-Andheri Tiger Project,
District- Chandrapur.
- 4] **The District Treasury Officer,**
District Treasury Office, Chandrapur.
- 5] **The Accountant General (A & E)-II,**
Pension Branch Office,
Nagpur, Dist.- Nagpur.

... **RESPONDENTS**

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

Smt. A.D. Warjekar, Learned P.O. for the Respondents.

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

Dated :- 13/03/2025.

J U D G M E N T

Heard Shri V.R. Borkar, learned counsel for the applicant and Smt. A.D. Warjekar, learned P.O. for the respondents.

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

Applicant was initially appointed as Forest Guard on 13/03/1976. Thereafter, he was promoted to the post of Forester i.e. Group-C post on 07/01/2004. During his service, he served at various places. Applicant was lastly posted in Chandrapur Forest Division. Applicant came to be retired from service upon attaining the age of superannuation on 30/06/2007. Respondent No.5 issued letter dated 09/12/2019 directing Respondent No.3 to recover the excess payment made to the applicant from gratuity amount and pension amount. Thereafter, respondent No.3 directed respondent

No.4 to act accordingly as per the letter of respondent No.5. Respondent No.4 proposed recovery by its order dated 28/05/2020 of the excess amount of Rs.8,28,197/- paid to the applicant. Hence, 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. 8,28,197/- from pension by orders dt. 09.12.2019 & 28.5.2020 produced at Annexure-A2 & 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 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. Reply is not filed by the respondents. There is no dispute about the working of applicant with the respondents. It is submitted that applicant was working in the Naxalite Area, therefore, 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, 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 granted to the applicant. One of the conditions in the G.R. specifies that promotional pay is to be paid to the employees 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.

5. Learned counsel for applicant has submitted that applicant is retired from service in the year 2007 and the recovery order was issued on 28/05/2020 i.e. after 13 years. Applicant was working as a Class-III employee. Therefore, recovery is not permissible as per 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 is retired in the year 2007 and the recovery order was issued on 28/05/2020. As per the Guideline Nos.(i), (ii) and (iii) of the Judgment of the Hon'ble Supreme Court in the case of ***Rafiq Masih (cited supra)***, recovery is not permissible from Class-III and Class-IV employee. Recovery is not permissible after the retirement or from the employees who are about to retire within one year from the date of recovery. In view of the Guideline Nos.(i), (ii) and (iii), the respondents cannot recover the excess amount paid to the applicant because applicant was Class-III and retired employee. Hence, the following order:

ORDER

- (i) O.A. is allowed;
- (ii) The impugned recovery orders dated 09/12/2019 and 28/05/2020 of Rs.8,28,197/- issued by respondent nos.4 and 5 are hereby quashed and set aside;
- (iii) It is made clear that respondents are at liberty to refix 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 :-13/03/2025.
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 : 13/03/2025.