

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1199 OF 2022

**DISTRICT : Mumbai
SUB : Recovery**

Shri Kishor Janardan Mhatre, Age-56 Years,)
(DOB : 17.10.1965), Occ. Chaukidar (Group D),)
At Elephanta at RFO Uran Range Gharapuri.)
R/at : Elephanta Island via Nariman Point,)
Mumbai 21.)....**Applicant**

Versus

- 1) Chief Conservator of Forest (Territory), Thane)
Near Microwave Tower, Bara Bungalow Area,)
Krishna Borker Marg, Kopri, Thane East,)
Thane 400 603.)
- 2) The Deputy Conservator of Forest, Alibagh,)
Near Collector Office, at Post Taluka Alibagh,)
Dist. Raigad 402201.)
- 3) The Range Forest Officer, JNPT Township,)
Sector 2, B 58, Room No.2, Uran,)
Dist : Raigad 400 707.)....**Respondents**

Shri K. R. Jagdale, learned Advocate for the Applicant.

Shri A. J. Chougule, learned Presenting Officer for the Respondents.

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

Reserved on : 28.01.2025

Pronounced on : 05.05.2025

JUDGEMENT

Heard Shri K. R. Jagdale, learned Advocate for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

2. Case of the Applicant is as follows. He was appointed to a Group-D post of Chaukidar on 3-3-1993. First Time Bound Promotion was given to him on 9-3-2005 with Grade Pay of Rs.1,800/-. Accordingly, increments were granted to him by order dated 29-12-2010. Second Time Bound Promotion was given to him w.e.f. 9-3-2017 and accordingly his pay was fixed on 10-10-2017. On 6-5-2019 pay of the Applicant was fixed as per Revised Pay Rules, 2019. By order dated 18-2-2020 his pay was fixed as per Sixth Pay Commission.

By order dated 28-10-2022 the Applicant was informed that orders relating to his pay fixation dated 4-2-2020, 20-2-2020 and 15-4-2020 were cancelled and his pay was going to be refixed. By order dated 11-11-2022 he was informed that on account of wrong extension of benefits of Time Bound Promotion w.e.f. 9-3-2005 excess payment was made and to facilitate recovery of the same, he was to execute an undertaking. Reminder dated 24-11-2022 was issued to execute the undertaking. According to the Applicant the impugned recovery is impermissible.

3. Stand of Respondents 1 to 3 is that while giving First Time Bound Promotion w.e.f. 9-3-2005 Grade Pay ought not to have been given, by the time this mistake was noticed pay of the Applicant was wrongly fixed as per Sixth Pay Commission, this resulted in excess payment and by order dated 28-10-2022 recovery was

directed. This amount was quantified at Rs.3,19,608.60 and it was directed to be recovered in 30 monthly instalments.

4. The Applicant has relied on **{State of Punjab & Others Vs. Rafiq Masih (White Washer)}, (2015) 4 SCC 334**, wherein it is held -

“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, summarize 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 services (or Group ‘C’ and Group ‘D’ services).*
- (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.”*

The Applicant is a Group-D employee. For the period from 1-1-2006 to 31-10-2022 excess payment is stated to have been made every month. It is not the case of the Respondents that the Applicant had resorted to deception or fraud to secure unmerited monetary advantage. Though, the Respondents have placed on record undertakings in the years 2009, 2017 and 2019, it is

apparent that clauses (i) and (v) in para 12 of '**Rafiq Masih**' (supra) are attracted rendering the impugned recovery impermissible. The Applicant has not assailed revised pay fixation.

5. For all these reasons, the Original Application is allowed in the following terms. The impugned recovery is held to be impermissible. Amount recovered, if any, pursuant thereto shall be refunded to the Applicant within 2 months from today failing which the unpaid amount shall carry interest @ 6 % p.a. from today till repayment. No order as to costs.

Sd/-
(M. A. Lovekar)
Vice-Chairman

Place: Mumbai
Date: 05.05.2025
Dictation taken by: V. S. Mane
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