

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.843 OF 2017

DISTRICT : THANE

Shri Arvind Ramchandra Ambekar.)
Age : 78 Yrs., Occu.: Nil, Retired as Office)
Superintendent from I.T.I., Wagle Estate,)
Thane and R/o. C/1003, Canosa CHS Ltd.,)
Hiranandani Estate, Ghod Bunder Road,)
Thane (W).)...**Applicant**

Versus

1. The Additional Treasury Officer in)
District Treasury Office, Thane)
having office in the Campus of)
District Collector, Thane, Court)
Naka, Thane (W).)
2. The Principal.)
Industrial Training Institute,)
Wagle Estate, Thane.)
3. The Joint Director of Vocational)
Education & Training, Regional)
Office, 49, Kherwadi, Mumbai - 51.)
4. The Accountant General,)
Maharashtra-1, Having Office at)
Pratistha Bhawan, M.K. Marg,)
Mumbai - 20.)
5. The State of Maharashtra.)
Through Principal Secretary,)
Higher & Technical Education Dept.,)
Mantralaya, Mumbai - 400 032.)...**Respondents**

M. S.

Mr. G.A. Bandiwadekar, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 01.01.2020

JUDGMENT

1. The Applicant has challenged the impugned communications dated 13.06.2017 as well as 07.07.2017 whereby the application made by the Applicant for refund of Rs.81,051/- deducted from his monthly pension was rejected.

2. Shortly stated facts giving rise to this application are as under:-

The Applicant is pensioner. He contends that he was in receipt of regular pension till April, 2013. In April, 2013, he got monthly pension of Rs.16,827/-. However, in the month of May, 2013, he received monthly pension of Rs.10,625/- only. As such, there was deduction in pension. The Applicant, therefore, made complaint to Respondent No.1 – Additional Treasury Officer, Thane on 14.06.2013 and raised grievance on receipt of less pension. Then again, he made another representation on 26.06.2013, but it was not responded. He learnt that sum of Rs.81,051/- was to be deducted from his pension and accordingly, same was recovered in monthly installment of Rs.7,000/- starting from May, 2013 with last installment of Rs.4,051/- from the pension of the month of April, 2014. The Applicant has challenged this action of recovery of Rs.81,051/- from his pension on the ground that it was made without issuance of Show Cause Notice to him. He further contends that the recovery from the pension is not permissible in view of decision of Hon'ble Supreme Court in **(2015) 4 SCC 334 (State of Punjab and others Vs. Rafiq Masih (White Washer))**. Later, he came to know about one decision

rendered by this Tribunal in **O.A.342/2016 (Prakash L. Hotkar Vs. Principal, Industrial Training Institute, Mumbai) dated 09.03.2017** wherein directions were issued by the Tribunal to refund the amount recovered from pension. Therefore, on the basis of decision in **Prakash Hotkar's** case, he again made representation to Respondent No.1. However, the Respondent No.1 by letter dated 13th June, 2017 informed the Applicant that the decision in **Prakash Hotkar's** case is not applicable to him and rejected his request for refund of Rs.81,051/-. On this background, the Applicant has filed the present O.A. and requested to set aside the communications dated 13.06.2017 as well as 07.07.2017 and for direction to refund the amount of Rs.81,051/- recovered from his pension.

3. The Respondents resisted the application by filling Affidavit-in-reply on behalf of Respondent No.1 *inter-alia* denying the entitlement of the Applicant for the relief claimed. The Respondents sought to contend that at the time of retirement, the Applicant had received Rs.1,24014/- as Commutation Pension which was to be recovered from his total pension for the next 15 years from the date of payment of Commutation. However, Rs.81,051/- has not been deducted while releasing the monthly pension. Therefore, after noticing the same, it was necessary to recover the amount of Rs.81,051/- from the Applicant and accordingly, the same was recovered in monthly installment from pension from May, 2013 to April, 2014. The Respondents thus sought to justify the recovery of Rs.81,051/- from the pension of the Applicant. In this behalf, the Respondents sought to place reliance on the G.R. issued by Finance Department dated 18.08.2008 which *inter-alia* provides for recovery of excess payment from the pension, subject to Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules 1982' for brevity). With this pleading, the Respondents prayed to dismiss the O.A.

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4. Heard Shri G.A. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

5. The short question posed for consideration in the present O.A. is whether the Applicant is entitled for refund of Rs.81,051/- recovered from his pension in between May, 2013 to April, 2014.

6. Indisputably, at the time of retirement, the Applicant had received sum of Rs.1,24,014/- as Commutation of Pension which was to be recovered from his monthly pension for the next 15 years from the date of payment of commutation. If the Applicant had not availed lump sum amount of commutation of pension, his monthly pension would have been Rs.1,450/-. However, because of commutation of pension, there was deduction of Rs.483/- p.m. and net pension payable was Rs.967/- at the time of retirement. As per Rule 5 of Maharashtra Civil Services (Commutation of Pension) Rules, 1984, the Government servant shall be entitled to commute for lump sum payment of fraction not exceeding $1/3^{\text{rd}}$ of his pension. As such, the Applicant having obtained Commutation of Pension, he was to get less pension for the next 15 years and after 15 years, the pension is to be restored in terms of Government G.R. dated 30.05.1988. Suffice to say that the Applicant having obtained Commutation of Pension, he was to get less pension after deducting the amount paid towards commutation. However, the sum of Rs.81,051/- was found not deducted from his monthly pension towards Commutation of Pension for the period from April, 2001 to December, 2011 mistakenly. Thus, in effect, the Applicant was paid full pension despite of commutation during that period. Therefore, having noticed the same, the recovery of Rs.81,051/- was done in monthly installment from the pension of May, 2013 to April, 2014. Material to note that the Applicant has not disputed this fact of non-deduction of amount towards commutation which he received in lump sum.

7. All that the Applicant sought to contend that the amount was recovered without issuance of Show Cause Notice as contemplated under Rule 134-A of 'Pension Rules 1982' and secondly, the recovery is not permissible in view of decision of Hon'ble Supreme Court in **Rafiq Masih's** case.

8. Here, it would be apposite to reproduce Rule 134-A of 'Pension Rules 1982', which is as follows :-

"134(A). Recovery and adjustment of excess amount paid.

[If in the case of a Government servant, who has retired or has been allowed to retire,-

(i) it is found that due to any reason whatsoever an excess amount has been paid to him during the period of his service including service rendered upon re-employment after retirement, or

(ii) any amount is found to be payable by the pensioner during such period and which has not been paid by or recovered from him, or

(iii) it is found that the amount of licence fee and any other dues pertaining to Government accommodation is recoverable from him for the occupation of the Government accommodation after the retirement,

then the excess amount so paid, the amount so found payable or recoverable shall be recovered from the amount of pension sanctioned to him];

Provided that, the Government shall give a reasonable opportunity to the pensioner to show cause as to why the amount due should not be recovered from him:

Provided further that, the amount found due may be recovered from the pensioner in instalments so that the amount of pension is not reduced below the minimum fixed by Government.]"

9. The perusal of Rule 134-A as reproduced above, clearly reveals that it is not attracted to the present situation. Clause (i) is applicable where the excess payment is made to the Government servant during the period of his employment or re-employment after

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retirement which is not the case here. Clause (ii) is attracted where any amount is found to be payable by the pensioner during such period and which has not been paid by or recovered from him. In other words, it applies to the situation where certain amount is found to be payable by the pensioner but not paid. Whereas, in the present case, the amount is not found to be payable by the pensioner so as to attract Clause (ii). This is a case where certain amount (Rs.81,051/-) was not deducted while releasing the pension which ought to have been deducted monthly in view of Commutation of Pension admittedly obtained by the Applicant. In so far as Clause (iii) is concerned, it pertains to recovery of dues of the Government accommodation and not relevant here. As such, it is only in a situation falling within Clause Nos.(i) to (iii), Show Cause Notice of reasonable opportunity is required to be given to the pensioner as to why the amount should not be recovered from him. This is not a case where certain amount was payable by the Applicant but this is a case where the Applicant had already received more pension than his entitlement in view of mistake on the part of Department to release more pension. As the Applicant had already availed Commutation of Pension, that lump sum amount was to be recovered from his monthly pension in next 15 years. However, for certain period referred to above, the regular monthly pension was released without deducting the amount towards Commutation of Pension. As such, the Applicant had received Rs.81,051/- twice. Suffice to say, the Applicant was not at all entitled to receive Rs.81,051/-, and therefore, it was recovered in monthly installments. This being the position, in my considered opinion, Rule 134(A) have no application and the Applicant was not at all entitled to retain Rs.81,051/- otherwise it was amounting to grant of double benefit.

10. As discussed above, Rule 134-A of 'Pension Rules 1982' is not attracted to the present situation, and therefore, the impugned action of recovery cannot be termed unjust and illegal.

11. In this behalf, it would be apposite to refer Clause No.13 of G.R. dated 18th August, 2008 which *inter-alia* empowers the Treasury Officer to recover the excess amount, which is as follows :-

“निवृत्तीवेतनधारकास सेवेत असताना किंवा सेवानिवृत्त झाल्यानंतर निवृत्तवेतनद्वारे, कोणत्याही कारणास्तव जादा रक्कम देण्यात आल्याचे व त्याची वसूली करावयाची आहे असे आढळल्यास अशी रक्कम, म.ना.से. (निवृत्तिवेतन) नियम १९८२ मधील तरतूदीच्या अधिन, त्याला मंजूर करण्यात आलेल्या निवृत्तीवेतनातून वसूल करता येते. निवृत्त होणा-या शासकीय कर्मचा-याच्या निवृत्तीच्या दिनांकास शासनास देय असलेल्या वसूलपात्र रक्कमांची माहिती कार्यालयप्रमुखाने निवृत्तीवेतन प्रकरणासोबत महालेखापालास कळविण्याची असते. शासनास येणे असलेल्या अशा वसूलपात्र रक्कमांची माहिती महालेखापाल यांचेकडून निवृत्तीवेतन प्रदान आदेशामध्ये नमूद करण्यात येते व तदनुषंगाने निवृत्तीवेतनधारकाच्या निवृत्तीवेतनाभातून ती वसूली करण्याची जबाबदारी संबंधित कोषगाराची असते.”

12. In so far as the decision of Hon'ble Supreme Court in **Rafiq Masih's** case is concerned, it pertains to the excess payment made to the employee on account of wrong fixation of pay scale during their service. As per this decision, the recovery of such amount from the pensioner is held impermissible in law. Whereas, in the present case, the recovery does not pertain to the excess payment on account of wrong fixation of pay scale but it pertains to non-deduction of certain amount towards Commutation of Pension already availed by the Applicant. Therefore, in my considered opinion, with due respect, the decision in **Rafiq Masih's** case is quite distinguishable and is of no assistance to the Applicant in the present situation.

13. In so far as the applicability of the decision rendered by this Tribunal in **Prakash Hotkar's** matter is concerned, the perusal of decision in **Prakash Hotkar's** matter reveals that it was pertaining to downward revision, gratuity and pension. It is in that context, the Tribunal referred Rule 131 of 'Pension Rules 1982' which *inter-alia* prohibits revision of pension to the disadvantage of Government servant unless such revision is necessary on account of detection of clerical error within two years from the date of authorization of pension and further provides that no revision of pension to the disadvantage of the pensioner shall be ordered without concurrence of Finance Department, if clerical error is detected after a period of two years from the date of authorization of pension. Whereas, in the

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present case, issue pertains to non-deduction of Rs.81,051/- towards Commutation of Pension already availed by the Applicant. Therefore, the decision in **Prakash Hotkar's** case is not relevant here and the Applicant cannot be said similarly situated person as canvassed by the learned Advocate for the Applicant.

14. For the aforesaid discussion, I have no hesitation to sum-up that the impugned action of recovery cannot be faulted with. The Applicant was found not entitled to retain the sum of Rs.81,051/- which was paid to him because of non-deduction of amount towards Commutation of Pension. Therefore, the recovery cannot be said unjust or illegal. It is Government money to which the Applicant was not entitled to retain in law and facts, and therefore, the recovery can hardly be assailed.

15. Furthermore, there are lapses on the part of Applicant in approaching the Tribunal. The amount was recovered from monthly pension in between May, 2013 to April, 2014. However, the O.A. is filed on 08.09.2017, which is apparently not filed within limitation. In the present case, the Applicant has made representation on 26.06.2013, but no order was passed on his representation, and therefore, the O.A. ought to have been filed within eighteen months from the date of representation as contemplated under Section 21 of Administrative Tribunals Act, 1985. The Applicant will not get fresh cause of action on the basis of order dated 13.06.2017, which is sought to be assailed in the present O.A. Needless to mention that, once cause of action accrued and period of limitation expires, the mere filing of subsequent reminders or representation will not revive the period of limitation. Suffice to say, the O.A. is also not within the limitation.

16. In this behalf, it would be apposite to refer the decision of Hon'ble Supreme Court in **Civil Appeal No.1322/2007 (State of**

Tripura & Ors. Vs. Arabinda Chakraborty & Ors.) decided on 21.04.2014 where in Para No.13 on the point of effect of representation vis-à-vis law of limitation, the Hon'ble Supreme Court held as follows :-

"13. It is a settled legal position that the period of limitation would commence from the date on which the cause of action takes place. Had there been any statute giving right of appeal to the respondent and if the respondent had filed such a statutory appeal, the period of limitation would have commenced from the date when the statutory appeal was decided. In the instant case, there was no provision with regard to any statutory appeal. The respondent kept on making representations one after another and all the representations had been rejected. Submission of the respondent to the effect that the period of limitation would commence from the date on which his last representation was rejected cannot be accepted. If accepted, it would be nothing but travesty of the law of limitation. One can go on making representations for 25 years and in that event one cannot say that the period of limitation would commence when the last representation was decided. On this legal issue, we feel that the courts below committed an error by considering the date of rejection of the last representation as the date on which the cause of action had arisen. This could not have been done.

17. The totality of aforesaid discussion leads me to conclude that the challenge to the impugned order holds no water and O.A. deserves to be dismissed. Hence, the following order.

ORDER

The Original Application is dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 01.01.2020
Dictation taken by :
S.K. Wamanse.