

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 354 of 2023 (S.B.)**

SHRIMATI MANGAL PRASAD PANDEY,  
 Aged About 61 years, Occ.: Household  
 R/o. 40, Chakrapani Nagar, Shyam Nagar, Pipla Road,  
 NAGPUR (M.S.).

**Applicant.****Versus**

- 1) The State of Maharashtra,  
 through its Additional Chief Secretary,  
 Home Department, Mantralaya, Mumbai-32.
- 2) Deputy Inspector General of Prison,  
 East Zone, Nagpur.
- 3) Superintendent Nagpur Central Prison, Nagpur.
- 4) Superintendent Akola District Prison Class-I, Akola.

**Respondents.**


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**Shri S.C. Deshmukh, Advocate for the applicant.**  
**Shri V.A. Kulkarni, learned P.O. for respondents.**

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

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**Date of Reserving for Judgment : 13<sup>th</sup> June, 2024.**

**Date of Pronouncement of Judgment : 11<sup>th</sup> July, 2024.**

**JUDGMENT**

**(Delivered on this 11<sup>th</sup> day of July, 2024)**

Heard Shri S.C. Deshmukh, learned counsel for the  
 applicant and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

Husband of applicant was working as a Subedar. He was transferred on promotion at Akola. He was relieved from Nagpur on 02/03/2017. The Government Quarter at Akola was not allotted to husband of applicant and even the HRA was not paid. The husband of applicant time to time made request to respondent nos.2 and 3 for keeping quarter at Nagpur. The representations dated 14/06/2017 and 16/06/2017 are filed with this O.A. The husband of applicant has stated valid reason for keeping quarter at Nagpur. The respondents have not taken any decision on the said representation and nothing has been communicated to the husband of applicant. The quarter has been vacated on 18/06/2018. The respondents have issued recovery of Rs. 2,08,662/-. Again on 21/09/2018 for the same period recovery of Rs. 7,47,177/- was directed against husband of applicant.

3. It is submitted by applicant that respondent no.2 in pursuance of order of recovery directed to deduct amount of Rs.5,000/- from monthly salary. In view of the order dated 11/09/2018, the recovery was started and respondents have recovered Rs.5,000/- p.m. Husband of applicant stood retire in the month of May,2019. He died on 15/09/2019.

4. The applicant approached to respondent no.4 for retiral benefits of her husband. But after one and half years letter dated 29/12/2020 has been sent by respondent no.4 stating therein that

GPF amount of Rs.11,90,785/- of her husband is entitled, however recovery amount of Rs.7,37,637/- is liable to be recovered on account of house rent.

5. It is submitted by the applicant that the respondents have recovered Rs.7,37,637/- from the GPF amount and balance amount of Rs. 4,53,148/- was given to the applicant by Cheque. It is submitted that as per the Rule 132 of the Maharashtra Civil Service (Pension) Rules,1982, dues cannot be recovered from GPF. As per rule 134-A of the M.C.S. (Pension) Rules, reasonable opportunity was to be given for recovering the amount. The respondents have violated the rules and illegally recovered the amount. Therefore, applicant filed this O.A. for the following reliefs –

*(i) Direct the respondents to immediately pay the amount of Rs. 7,37,637/- i.e. amount of GPF to the applicant along with 18% interest.*

*(ii) Quash and set aside the order dated 11/04/2018, 21/09/2018 and letter dated 29/12/2020.*

6. The O.A. is opposed by the respondents. It is submitted that many notices were given to the husband of applicant to vacate the quarter at Nagpur. Show cause notice was also issued to the husband of applicant. Husband of applicant was working as Subedar. He was transferred to Akola from Nagpur. After the transfer, he was directed to vacate Govt. quarter, but he did not vacate the same.

Show cause notices were issued to the husband of applicant dated 10/11/2017 and 3/4/2018 to vacate the Govt. quarter. But the husband of applicant not vacated the Govt. quarter.

7. He had preferred appeal before the Competent Authority. The Deputy Inspector General of Prisons, Nagpur i.e. the Competent Authority has issued letters on 14/02/2018 and 23/03/2018 and directed respondent no.3 to issue show cause notice to the said employee with intimation to vacate the Govt. quarter within a month and send a compliance report. The said employee preferred appeal before the Special Inspector General of Prison, M.S., Pune. On 10/05/2019 Special Inspector General of Prison, M.S., Pune has passed the order directing that as per prevailing rules laid down by Government from time to time, the concerned Superintendent has power to allot the Govt. quarter. The concerned Superintendent of Prison has power to impose the penal house rent and take action of exoriated Govt. quarter. It is submitted that the respondents have calculated the amount on unauthorized occupation of Govt. quarter at Nagpur till the date of vacating Govt. quarter. The penal interest as per the G.R. was imposed. The amount of DCRG was less and therefore amount of recovery of Government rent with penal interest of Rs.7,37,637/- was recovered from GPF amount of Rs. 11,90,785/- After deducting the amount, the amount of Rs. 4,53,148/- was paid to

the applicant. It is submitted that the recovery is legal and proper. Hence, the O.A. is liable to be dismissed.

8. During the course of submission, the learned counsel for applicant has submitted that as per the Rules 132 to 134 A of the M.C.S. (Pension) Rules, 1982, the respondents cannot recovered the amount from GPF. No any reasonable opportunity was given to the husband of applicant. In support of his submission pointed the decision of the Hon'ble Bombay High Court in the case of **N.C. Sharma Vs. Union of India**, decided on 10/02/2004.

9. The learned counsel for applicant submitted that amount of pension and gratuity cannot be withheld. No any opportunity was given to the husband of applicant for the recovery. Therefore, the recovery order shall be quashed and set aside. At last submitted that the recovery made by the respondents is illegal and prayed to allow the O.A.

10. Heard the learned P.O. He has submitted that as per the Rule 134 of the M.C.S. (Pension) Rules, the recovery can be adjusted from retirement gratuity. The DCRG amount was less and therefore recovery was made from GPF amount. The respondents have calculated the amount as per the G.R. The penalty for unauthorized occupation was imposed. The recovery was legal and proper. Hence, the O.A. is liable to be dismissed.

11. From the rules of 132,134 and 134 A of the M.C.S. (Pension) Rules, it is clear that excess amount or recovery can be made from the amount of DCRG, but amount cannot be deducted from the GPF amount. As per the Rule 134-A of the M.C.S. (Pension) Rules, 1982, the Government shall give reasonable opportunity to the pensioner to show cause as to why amount should not be recovered from him/ her. No any such opportunity was given to the applicant.

12. As per the Judgment cited by the side of applicant, it is clear that opportunity should be given to the employee. Para-22 of the Judgment is reproduced below –

*“(22) Therefore, it is obvious that principles of natural justice have to be adhered to and an opportunity will have to be given to the concerned employee before recoveries or adjustments are effected by the Railway or Government. In the instant case, in our view, merely addressing the letters as noted above, would not by any stretch of imagination mean compliance with the principles of natural justice. There is nothing in the order dated 31st October 1996 which would indicate that prior opportunity was given to the petitioner before adjustments were made from the terminal dues/benefits admissible to him. In this view of the matter, the conclusion of the Tribunal that opportunity was given or that there was no dispute about the dues is contrary to the material placed on record and wholly erroneous. It is difficult to agree with the conclusion of Tribunal on this aspect.*

13. In view of 134 A of the M.C.S. (Pension) Rules and cited Judgment, the respondents should have given opportunity to the

applicant / deceased employee for the recovery. Hence, the following order -

**ORDER**

(i) The O.A. is partly allowed.

(ii) The impugned orders dated 11/4/2018, 21/9/2018 and letter dated 29/12/2022 are hereby quashed and set aside.

(iii) The respondents are directed to give opportunity to the applicant as provided under Rule 134-A of the M.C.S. (Pension) Rules before the recovery order is passed.

(iv) The respondents shall complete the procedure within a period of six months from the date of receipt of this order.

(v) No order as to costs.

**Dated** :- 11/07/2024.

**(Justice M.G. Giratkar)**  
**Vice Chairman.**

\*dnk.

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

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 11/07/2024.