

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 883 of 2021 (S.B.)**

Shri Shamrao Chirkutrao Raut,
Aged 68 Years, Occ: Retired
R/o Musani lay-out, Alodi, Satoda Road,
Wardha, Tah. & Dist. Wardha.

Applicant.

Versus

- 1) State of Maharashtra,
through Secretary Ministry of Home,
Mantralaya, Mumbai-32.
- 2) The office of Accountant General (A&E)-II,
Civil Lines, Nagpur.
- 3) The Additional Treasury Officer,
Civil Lines, Wardha.

Respondents.

Shri S.M. Khan, Advocate for the applicant.

Shri A.M. Khadatkhar, learned P.O. for respondents.

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

Dated :- 08/07/2024.

J U D G M E N T

Heard Shri S.M. Khan, learned counsel for the applicant
and Shri A.M. Khadatkhar, learned P.O. for the respondents.

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

The applicant was appointed as Armed Police Constable
at Dhule on 18/07/1974. The applicant was transferred to Nagpur in

the year 1980. Thereafter, the applicant was appointed as a Wireless Operator on 06/11/1982. The applicant retired on 30/06/2012. Respondent no.3 issued order dated 23/09/2019 for recovery of Rs. 1,26,752/-. Hence, the applicant approached to this Tribunal for the following reliefs –

“ (10) (a) Quash and set aside order dated 07/12/2019 issued by the Additional Treasury Officer, Wardha Respondent No. 3 and the order dated 23/09/2019 the office of Accountant General (A&E)-II by which recovery of Rs.1,26,752/- is initiated against the present applicant from his pension account i.e. Rs.5,000/- per month from the month of December 2019;

b) Direct the respondents to make repayment of amount of Rs.5000/- per month with interest which was deducted from the pension account of present applicant from December 2019;

(11) (a) By way of interim order restrain respondents from deduction of amount of Rs.5000/- per month from the pension account of present applicant during the pendency of the present application.

3. The O.A. is strongly opposed by the respondents. In para-5 of the reply, it is submitted that applicant was posted in naxalite area. He was granted promotional pay as per G.R. dated 6/8/2002. The pension was wrongly fixed counting the promotional pay granted to the applicant as per G.R. 6/8/2002. Therefore, there was excess payment. Hence, recovery order was issued.

4. During the course of submission learned counsel for applicant has pointed out the Judgment of the Hon'ble Supreme Court

in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** decided on 18 December, 2014 in Civil Appeal No. 11527 of 2014 (Arising out of SLP(C) No.11684 of 2012) and submitted that recovery from retired employee and also from Class-III and Class-IV employees cannot be made.

5. The learned P.O. has submitted that recovery was made because of the excess payment counting the promotional pay as per G.R. dated 6/8/2002.

6. This Tribunal has made reference and Division Bench of M.A.T., Bench at Aurangabad in O.A.No.882/2021, dated 18/06/2024 has held that recovery cannot be made even the pension was wrongly paid by calculating the promotional pay.

7. The Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** (*cited supra*) has given following guidelines –

“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 herein above, 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."

8. In the guidelines nos. (i) recovery shall not be made from Class-III and Class-IV employees. As per guideline no.(ii) recovery cannot be made from retired employee or who are likely to retire within one year from the date of recovery order. The applicant retired in the year 2012 and recovery order was issued in the year 2019. Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The impugned recovery order dated 23/09/2019 is hereby quashed and set aside.

(iii) The respondents shall refund the recovered amount of Rs.1,26,752/- to the applicant along with interest @ 6% p.a. from the date of recovery till the actual payment is made within a period of four months from the date of receipt of this order.

(iv) No order as to costs.

Dated :- 08/07/2024.

(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 P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 08/07/2024.