

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 214 of 2022 (S.B.)**

Sopan S/o Pandhari Sapkal,  
Aged about 61 yrs, Occ. Retired, R/o Plot No. 30, Shree Nagar,  
Patre Layout, Godhni Road, Zingabai Takli, Nagpur.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
Through Secretary, Home Department,  
Mantralaya, Mumbai-32.
- 2) Special Inspector General of Police,  
Motor Transport, Maharashtra State, Aundh, Pune.
- 3) Deputy Superintendent of Police, Centre Motor Transport,  
Workshop Nagpur.

**Respondents.**

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**Shri M.R. Khan, Advocate for the applicant.**  
**Mrs. Shweta Khobragade, learned P.O. for respondents.**

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

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

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**J U D G M E N T**

Heard Shri M.R. Khan, learned counsel for the applicant  
and Mrs. Shweta Khobragade, learned P.O. for the respondents.

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

The applicant was working as a Store Keeper / Assistant  
Sub Inspector, Centre Motor Transport Workshop, Nagpur. The  
applicant retired on 30/06/2019 from the said post. The respondents

have issued recovery order dated 13/01/2022 in respect of excess payment of Rs.4,12,188/- in respect of 5<sup>th</sup> Pay Commission, 6<sup>th</sup> Pay Commission and 7<sup>th</sup> Pay Commission. Therefore, applicant approached to this Tribunal for the following reliefs –

*“(9) i) quash and set aside the impugned order issued by the Special Inspector General of Police, Motor Transport, Pune on 13.1.2022 (Annexure-A1) wherein the excess payment made in respect of 5th Pay Commission, 6th Pay Commission & 7th Pay Commission amounting to Rs. 4,12,188/- (Rs. Four Lac Twelve Thousand One Hundred Eighty eight only) are likely to be recovered from the retiral benefits of the applicant, in the interest of justice;*

*(ii) issue an appropriate order or direction to the respondent authorities decide to the representation made by the applicant on 10.2.2021 (Annexure-A4), 2.6.2020 (Annexure- A5) and 31.12.2020 (Annexure-A6), in the interest of justice.*

*(10) Stay the effect and operation of the impugned order issued by the Special Inspector General of Police, Motor Transport, Pune on 13.1.2022 (Annexure-A1) wherein the excess payment made in respect of 5th Pay Commission, 6th Pay Commission & 7th Pay Commission amounting to Rs. 4,12,188/- (Rs. Four Lac Twelve Thousand One Hundred Eighty-eight only) are likely to be recovered from the retiral benefits of the applicant till the decision of original application, in the interest of justice.”*

3. Respondent nos.2 and 3 have filed their reply. It is submitted that earlier granted benefit of Assured Career Progression Scheme (ACPS) to the applicant was cancelled and therefore there was excess payment. Hence, the recovery order was issued. The

recovery order is legal and correct and hence the O.A. is liable to be dismissed.

4. During the course of submission, the learned counsel for applicant has pointed out the Judgment of this Tribunal in O.A.No.992/2022 and 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).

5. Heard learned P.O. Mrs. Khobragade. She has submitted that as per the recovery order, the applicant was paid excess payment in respect of ACPS which was cancelled lateron. Therefore, the O.A. is liable to be dismissed.

6. In view of the Judgment of the Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** (*cited supra*), recovery cannot be made from Class-III and Class-IV employees and also from the retired employees. The applicant is retired in the year 2019 and recovery order is dated 13/01/2022, i.e., after three years from the date of retirement.

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 view of guideline no.(i), recovery cannot be made from Class-III and Class-IV employees. As per the guideline no.(ii), recovery cannot be made from retired employees or who are about to retire within one year from the date of recovery order.

9. As per the submission of learned counsel for applicant, the applicant was a Group-C employee, i.e., Class-III employee. The applicant retired in the year 2019 and recovery order is issued in the year 2022, i.e., after retirement. Hence, in view of the guideline nos.(i) and (ii) of the Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** (*cited supra*), recovery order issued by the respondents is liable to be quashed and set aside. Hence, the following order –

**ORDER**

(i) The O.A. is allowed.

(ii) The impugned recovery order dated 13/01/2022 is hereby quashed and set aside.

(iii) The amount if recovered, shall be refunded to the applicant within a period of two months from the date of receipt of this order along with interest @ 6% p.a. from the date of recovery till the actual payment.

(iv) 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 P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 11/07/2024.