

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 875/2021 (S.B.)

Bhaiyalal s/o Pandurang Motghare
 aged about 69 yrs., Occ.- Pensioner
 r/o Pahuni, Post.- Khat (S.E.Railway),
 Tah.- Mohadi, Dist.- Bhandara

APPLICANT.

// V E R S U S //

- 1) The State of Maharashtra,
 Through its Secretary, Revenue and Forest Department,
 Mantralaya, Mumbai- 32.
- 2) The State of Maharashtra through the Secretary,
 Finance Department, Manatralaya Mumbai-32.
- 3) The Dy. Conservatory of Forest,
 Gondia, Dist.- Gondia.
- 4) The Additional Treasury Officer,
 District Treasury Office, Bhandara.
- 5) The Accountant General (A & E)-II,
 Pension Branch Office, Nagpur, Dist.- Nagpur.
- 6) The Pay Verification/Fixation Unit, Nagpur
 Tah. & Dist.- Nagpur.

... RESPONDENTS.

Shri V.R. Borkar, learned counsel for the applicant.
Shri S.A. Sainis, learned P.O. for respondents.

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

Dated :- 22/11/2024.

J U D G M E N T

Heard Shri V.R. Borkar, learned counsel for the applicant and Shri S.A. Sainis, learned P.O. for the respondents.

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

The applicant was initially appointed as a Forest Guard on 10/02/1972. Thereafter, he was promoted to the post of Forester i.e. Group – ‘C’ Post in year 2000. The Applicant is retired from the service on attaining the age of superannuation on 30/06/2007. Applicant was paid promotional pay. The respondents have issued impugned recovery orders dated 14/01/2020 and 13/08/2021 by which the respondent Nos.4 & 5 are recovering the amount of Rs.7,62,915/-. Hence, the applicant has approached to this Tribunal for the following reliefs:-

“(7) (i) That, by issue of suitable writ, order or direction, the order of recovery of amount of Rs. 7,62,915/- from pension by orders dt. 14.1.2020 & 13.8.2021 produced at Annexure- A2 & A1 respectively issued by the Respondent nos. 4 & 5 may kindly be quashed and set aside in the interest of justice.

ii) That, by issue of suitable writ, order or direction the respondents may kindly be directed to verify and refix the pension and the gratuity and pay the same with arrears along with interest.

iii) That, by issue of suitable writ, order or direction the respondents may kindly be directed to refund the recovered amount with interest as per law.

(8) (i) That, by ad-interim relief further recovery of amount from pension by order dtd. 13.8.2021 produced at Annexure-AI may kindly be stayed and ad-interim direction to pay the pension as earlier paid till the decision of this original application.”

3. The respondent No.5 has filed reply. It is submitted that, applicant was working in the naxalite area. As per G.R. dated 06/08/2002 promotional pay was paid. As per the condition in the G.R. the said promotional pay was to be paid till the actual working of the employee in the Naxalite area. After retirement, the said amount cannot be taken into consideration for the purpose of pension. The respondents have wrongly taken that amount while calculating the amount of pension. Hence, the recovery is proper and legal and therefore the O.A. is liable to be dismissed.

4. During the course of submission, the learned counsel Shri V. R. Borkar has pointed out the judgment of Hon'ble Supreme Court in the case of ***State of Punjab & Ors VS. Rafiq Masih (White Washer) reported in AIR 2015 SC,696*** and submitted that in view of the guideline nos.(i), (ii) and (iii), recovery is not permissible. As per his submission, the applicant was working as a Class-III employee. The applicant is a retired employee. The amount which is to be recovered is more than five years from the date of recovery order and therefore guideline Nos.(i), (ii) and (iii) are applicable. Hence, prayed to allow the O.A.

5. The learned P.O. Shri S.A. Sainis has submitted that the applicant was wrongly granted excess amount by taking into consideration of promotional pay as per the G.R. dated 06/08/2002. Hence, the O.A. is liable to be dismissed. The material portion of the Judgment of the Hon'ble Supreme Court in the case of **State of Punjab & Ors VS. Rafiq Masih (White Washer) (cited supra)** is reproduced below:-

“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, 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."*

6. There is no dispute that, the applicant was working as a Class-III employee. The applicant is a retired employee. The amount which was to be recovered is more than five years from the date of recovery order. Hence, in view of guideline nos.(i), (ii), and (iii) of the Judgment of Hon'ble Supreme Court in the case of ***State of Punjab & Ors VS. Rafiq Masih (White Washer) (cited supra)***, the recovery order is illegal. Therefore, following order is passed :-

ORDER

- i. O.A. is allowed.
- ii. The impugned recovery orders of Rs.7,62,915/- dated 14/01/2020 & 13/08/2021 issued by respondent Nos.4 and 5 are hereby quashed and set aside.
- iii. Amount, if any, recovered by the respondents authorities, shall be refunded to the applicant within a period of three months from the date of receipt of this order.

- iv. If the amount is not refunded within a stipulated period of three months, then amount shall carry interest @ 6% p.a. from the date of recovery till the actual refund.
- v. No order as to costs.

Dated :- 22/11/2024.

(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 : 22/11/2024.