

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.518/2020(S.B.)**

Bhaurao s/o Kishana Matale
Aged about 72 Yrs., Occ.- Retired
R/o. Laxmi Nagar, Gurudwara Road,
Chandrapur Dist.-Chandrapur.

... **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 its Secretary,
Finance Department,
Mantralaya, Mumbai- 32.
- 3] The Conservator of Forest and Field Director
Tadoba-Andheri Tiger Project,
District- Chandrapur.
- 4] The Additional Treasury Officer,
District Treasury Office, Chandrapur.
- 5] The Accountant General (A & E) II,
Pension Branch Office,
Nagpur, Dist.- Nagpur

... **RESPONDENTS**

Shri V. R. Borkar, learned Advocate for the Applicant.

Shri V. A. Kulkarni, learned P.O. for the Respondents.

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

Dated :- 19/11/2024.

J U D G M E N T

Heard Shri V.R. Borkar, learned counsel for the applicant and Shri V.A. Kulkarni, learned P.O. for the Respondents.

2. At the request of learned counsel Shri V. R. Borkar, permission is granted to correct the date of recovery order in relief clause in the O.A.

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

The Applicant was initially appointed as a Forest Guard on 07/04/1970. Thereafter, he was promoted on the post of Forester, i.e., Group -C Post, in the Year 2000. During his service period, he was transferred to various places. The applicant came to be retired from the service on attaining the age of superannuation on 30/11/2006 from Chandrapur District. The Respondent authorities have issued recovery order of Rs.9,92,628/- on 09/01/2020 and 30/07/2020 issued by respondent

nos.4 & 5. Hence, the applicant approached to this Tribunal for the following relief:-

“(7) (i) That, by issue of suitable writ, order or direction, the order of recovery of total amount of Rs. 9,92,628/-(i.e. Rs. 8,95,443 + 97,185) from pension by orders dt.9.1.2020 & 30.7.2020 produced at Annexure- A4 & 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 refund the recovered amount with interest as per law.”

4. The O.A. is strongly opposed by the respondents on the ground that the applicant was granted promotional pay as per G.R. dated 06/08/2002. The promotional pay was wrongly taken into consideration for calculation of the pension of the applicant. As per G.R. dated 06/08/2002, the promotional pay was to be paid till the actual working of the applicant in the naxalite area. After retirement, the promotional pay was not permissible. Hence, the recovery orders issued by the respondents are perfectly legal and correct. Hence, Original Application is liable to be dismissed.

5. There is no dispute that the applicant is retired in the year 2006. The recovery orders are issued in the Year 2020.

The applicant was working on Class-III Post. The recovery orders are in respect of the amount for more than 5 years from the date of recovery order. Hence, as per Guideline nos.(i), (ii) and(iii) of the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab & Ors VS. Rafiq Masih (White Washer) reported in AIR 2015 SC, 696*** recovery is not permissible. 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 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. In view of the Guideline nos.(i), (ii) and (iii) of the Hon'ble Supreme Court in the case of ***State of Punjab & Ors VS. Rafiq Masih (White Washer) (cited supra)***, the impugned recovery orders dated 09/01/2020 and 30/07/2020 are liable to be quashed and set aside. Hence, the following Order:

O R D E R

- (i) The O.A. is allowed.
- (ii) The impugned recovery orders of Rs.9,92,628/- dated 09/01/2020 and 30/07/2020 issued by respondent nos.4 and 5 are hereby quashed and set aside.
- (iii) If the amount is recovered, the said amount shall be refunded to the applicant within a period of

three months from the date of receipt of this order, failing which the amount shall carry interest @6% p.a. from the date of recovery till the date of refund.

(iv). No order as to costs.

(Justice M.G.Giratkar)
Vice Chairman

Dated :-19/11/2024

PRM.

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

Name of Steno : Piyush R. Mahajan.

Court Name : Court of Hon'ble Vice Chairman

Judgment signed on : 19/11/2024

Uploaded on : __/11/2024