

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO.994/2022(S.B.)**

Shankar s/o Karnuji Rode,  
a/a 73 yrs., Occ.- Pensioner,  
r/o At Near Ganpati Agriculture Centre, Bhatali,  
Tah. & Dist.- Chandrapur-442907.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through its Secretary,  
Revenue and Forest Department,  
Mantralaya, Mumbai- 32.
- 2) The Deputy Director (Buffer),  
Tadoba-Andhari Tiger Project,  
District- Chandrapur.
- 3) The District Treasury Officer,  
District Treasury Office, Chandrapur.
- 4) The Accountant General (A & E)-II,  
Pension Branch Office,  
Nagpur, Dist.- Nagpur.

**Respondents**

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Shri V.R.Borkar, Ld. Counsel for the applicant.  
Shri V.A.Kulkarni, Ld. P.O. for the respondents.

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**Coram:- Hon'ble Shri M.A.Lovekar, Member (J).**

**Dated:- 01<sup>st</sup>August, 2024.**

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**JUDGMENT**

**Judgment is reserved on 30<sup>th</sup> July, 2024.**

**Judgment is pronounced on 01<sup>st</sup> August, 2024.**

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

2. At the time of his retirement on superannuation on 30.04.2007 the applicant was holding a Group – C post of Forester. As per order of respondent no.1 dated 19.01.2007 (Annexure A-3) which reads as under, pension of the applicant was fixed-

उपरोक्त विषयावरील आपल्या दि.28/11/2006 च्या पत्राच्या संदर्भात असे कळविण्यात येते की, महाराष्ट्र नागरी सेवा (निवृत्तिवेतन) नियम 1982 च्या नियम 9 (38) व नियम 60 (1) नुसार निवृत्तिवेतनार्थ वेतन म्हणजे शासकीय कर्मचा-यांने त्याच्या शेवटच्या दहा महिन्यांच्या सेवेत प्रत्यक्ष अर्जित केलेले सरासरी वेतन असे आहे. त्यामुळे आदिवासी व नक्षलग्रस्त क्षेत्रात काम करण्यासाठी नियुक्त करण्यात आलेल्या कर्मचा-यांना सेवानिवृत्तीपूर्वी शेवटच्या दहा महिन्यात त्यांनी प्रत्यक्ष अर्जित केलेल्या वेतनाच्या आधारे निवृत्तिवेतन मंजूर करण्यात यावे.

By the impugned order dated 02.12.2020 (Annexure A-1) which was based on order dated 09.12.2019 (Annexure A-2) recovery was directed as follows-

**विषय:- अतिप्रदानाची वसुली बाबत.**

**संदर्भ:-** १. कार्यालय महालेखाकार लेखा व हक्कदारी २ महाराष्ट्र नागपूर यांचे पत्र क्र. PR-७/१५१९२२४६४९/२/P/१९/१५/६०२६०५२ DT. ०९/१२/२०१९.

महोदय,

उपरोक्त विषयाच्या अनुषंगाने आपणास कळविण्यात येते की, संदर्भ क्र. १ अन्वये आपले निवृत्तीवेतन सुधारीत करण्यात आलेले आहे. आपल्याकडे शासनाचे रुपये ११५८४२१/- एवढी रक्कम अतिप्रदान झाल्यामुळे आपल्याकडून दरमहा ५०००/- रुपये प्रमाणे हप्ते २३१ आणि ३४२१/- रुपये प्रमाणे १ हप्ता असे एकुण २३२ हप्त्यात रक्कम माहे डिसेंबर २०२० पासून आपल्या निवृत्तीवेतनातून कपात करण्यात येणार आहे. याबाबत आपले काही मत असल्यास या कार्यालयास १५ दिवसांच्या आत कळविण्यात यावे.

सबब आपले माहितीस्तव अग्रेषित.

अप्पर कोषागार अधिकारी,  
चंद्रपूर

According to the applicant, the impugned recovery is impermissible. Hence, this O.A..

3. Stand of respondent no.3 is that due to wrong fixation of pension on the basis of salary drawn for last 10 months which was calculated by taking into account one step promotion scale as the applicant was serving in Naxal area, excess payment was made, it was contrary to G.Rs. dated 17.12.2013 and 18.10.2014 which mandated fixation of pension without taking into account benefits of one step promotion scale, and hence impugned recovery is proper.

4. The applicant has relied on the Judgement of the Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer) decided on 18 December, 2014**, wherein it is held-

*"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."*

In the instant case, the applicant was holding a Group – C post. Recovery of payment stated to have been made in excess was directed after his retirement. The starting point of the recovery was 01.05.2007. Thus, Clauses (i) to (iii) quoted above would be attracted rendering the impugned recovery impermissible. In the result, the impugned recovery is held to be unsustainable in law and the O.A. is allowed in the following terms-

The impugned order dated 02.12.2020 (Annexure A-1) is quashed and set aside. Recovered amount, if any, shall be refunded to the applicant within three months from today failing which the unpaid amount shall carry interest @6% p.a. from today till payment. No order as to costs.

(M.A.Lovekar)  
Member (J)

Dated – 01/08/2024  
rsm.

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

Name of Steno : Raksha Shashikant Mankawde  
Court Name : Court of Hon'ble Member (J).  
Judgment signed on : 01/08/2024.  
and pronounced on  
Uploaded on : 01/08/2024.