

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 430 of 2021 (S.B.)

Samadhan S/o Tukaram Bodade,
a/a 69 yrs., Occ.- Pensioner,
r/o House no. 629 Friends Housing Society,
Sai Baba Nagar, Chandrapur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary, Home Department,
Mantralaya, Mumbai- 32.
- 2) The State of Maharashtra,
Through its Secretary, Finance Department,
Mantralaya, Mumbai- 32.
- 3) The Superintendent of Police,
Chandrapur, Dist.- Chandrapur.
- 4) The Additional Treasury Officer,
District Treasury Office, Chandrapur.
- 5) The Accountant General-II (A & E), Pension Branch Office,
Nagpur, Dist.- Nagpur.

Respondents.

Shri V.R. Borkar, Advocate for the applicant.
Mrs. S.R. Khobragade, learned P.O. for respondents.

WITH

ORIGINAL APPLICATION No. 431 of 2021 (S.B.)

Harendrasingh S/o Ramnageshwarsingh Thakur,
a/a 70 yrs., Occ. Pensioner,
r/o Nandafata, New Church,
Tah. Korpana / Gadchandur, Dist. Chandrapur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary, Home Department,
Mantralaya, Mumbai- 32.

- 2) The State of Maharashtra,
Through its Secretary, Finance Department,
Mantralaya, Mumbai- 32.
- 3) The Superintendent of Police,
Chandrapur, Dist.- Chandrapur.
- 4) The Additional Treasury Officer,
District Treasury Office, Chandrapur.
- 5) The Accountant General-II (A & E), Pension Branch Office,
Nagpur, Dist.- Nagpur.

Respondents.

Shri V.R. Borkar, Advocate for the applicant.
Shri V.A. Kulkarni, learned P.O. for respondents.

WITH

ORIGINAL APPLICATION No. 432 of 2021 (S.B.)

Shankar S/o Jagganath Gowardipe,
a/a 68 yrs., Occ. Pensioner,
r/o At & Post Rajura Taluka Rajura, Dist. Chandrapur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary, Home Department,
Mantralaya, Mumbai- 32.
- 2) The State of Maharashtra,
Through its Secretary, Finance Department,
Mantralaya, Mumbai- 32.
- 3) The Superintendent of Police,
Chandrapur, Dist.- Chandrapur.
- 4) The Additional Treasury Officer,
District Treasury Office, Chandrapur.
- 5) The Accountant General-II (A & E), Pension Branch Office,
Nagpur, Dist.- Nagpur.

Respondents.

Shri V.R. Borkar, Advocate for the applicant.
Shri A.M.Khadatkar, learned P.O. for respondents.

WITH

ORIGINAL APPLICATION No. 433 of 2021 (S.B.)

Manoranjan S/o Namdeo Meshram,
a/a 67 yrs., Occ. Pensioner,
r/o Wankhede Wadi, Raut Layout
De. Gaon Tukum, Dist. Chandrapur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary, Home Department,
Mantralaya, Mumbai- 32.
- 2) The State of Maharashtra,
Through its Secretary, Finance Department,
Mantralaya, Mumbai- 32.
- 3) The Superintendent of Police,
Chandrapur, Dist.- Chandrapur.
- 4) The Additional Treasury Officer,
District Treasury Office, Chandrapur.
- 5) The Accountant General-II (A & E), Pension Branch Office,
Nagpur, Dist.- Nagpur.

Respondents.

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

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

Dated :- 26/07/2024.

COMMON JUDGMENT

Heard Shri V.R. Borkar, learned counsel for all the applicants in all O.As. and Mrs. S.R. Khobragade, learned P.O. (in O.A.430/2021), Shri V.A. Kulkarni, learned P.O. (in O.A.431/2021),

Shri A.M. Khadatkar, learned P.O. (in O.A.432/2021) and Shri S.A. Sainis, learned P.O. (in O.A.433/2021) for the respondents.

2. All the applicants were working in the naxalite area. They were granted promotional pay as per the G.R. dated 06/08/2002. The respondents while calculating the pension amount taken those amount and paid the pension. The respondents have issued notices for the recovery of amount as per the recovery orders. The applicants are retired employees. They were retired before issuing the recovery orders. As per the submission of the learned counsel for applicants recovery cannot be made from the retired employees. The following Chart shows the appointment, retirement, recovery orders and recovery amount issued by the respondents.

Sr.No.	O.A.No.	Date of appointment	Date of retirement	Date of recovery order	Recovery amount
1.	430/2021	31/04/1975	31/08/2009	22/09/2020 07/10/2020 06/05/2021	Rs.3,60,306/-
2.	431/2021	21/07/1972	01/07/2010	14/09/2020 24/09/2020 01/04/2021	Rs.3,07,710/-
3.	432/2021	13/02/1978	31/12/2012	20/10/2020 02/11/2020 01/06/2021	Rs.3,09,212/-
4.	433/2021	15/03/1982	31/03/2012	11/11/2020 11/12/2020 12/05/2021	Rs.3,11,908/-

3. All the applicants were working in the naxalite area, they were given benefit of promotional pay as per the G.R. dated 06/08/2002. After their retirement, pension were paid calculating the higher pay scale, therefore, there was excess payment. Hence, the respondents have issued recovery orders as stated above.

4. During the course of submission, the learned counsel for applicants has submitted that the reference was made by this Tribunal is decided by the Larger Bench (M.A.T., Aurangabad Bench) dated 18/06/2024. As per the Judgment of the Larger Bench, recovery is not permissible from the retired employee eventhough he was / is working in the naxalite area and the amount which was granted was in respect of the promotional pay.

5. The learned counsel for applicants has submitted that all the applicants were working in the naxalite area, they were granted promotional pay. The applicants are retired employees. As per the submission of learned counsel for applicants all the applicants were working on Class-III post and therefore as per the guidelines given by the Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer) reported in AIR 2015 SC 696**, the recovery cannot be made.

6. Heard the learned P.Os. for the respondents. They have supported the impugned recovery orders.

7. All the applicants were working in the Chandrapur district. They were granted promotional pay as per the G.R. dated 06/08/2002. The respondents have calculated the pension amount by taking into consideration the promotional pay paid to the applicants as per the G.R. dated 06/08/2002. The respondents have now corrected the pension of the applicants. The respondents are at liberty to correct the pension, but they cannot recover the excess amount paid to the applicants after their retirement.

8. 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."

9. As per guideline no. (i), recovery cannot be made from Class-III and Class-IV employees. All the applicants were working as Class-III employees, therefore, recovery is not permissible.

10. All applicants were retired employees before the recovery orders, therefore, recovery is not permissible as per guideline no. (ii) in the Judgment of the Hon'ble Supreme Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** (*cited supra*). Hence, the following order –

ORDER

(i) All the O.As. are allowed.

(ii) The impugned recovery orders issued by respondent nos.3,4 and 5 in O.A.No.430/2021 dated 22/09/2020, 07/10/2020 and 06/05/2021, in O.A.No.431/2021 dated 14/09/2020,24/09/2020 and 01/04/2021, in O.A.No.432/2021 dated 20/10/2020, 02/11/2020 and 01/06/2021 and

in O.A.No.433/2021 dated 11/11/2020, 11/12/2020 and 12/05/2021 are hereby quashed and set aside.

(iii) The amount if recovered, shall be refunded to the applicants within a period of three months from the date of receipt of this order.

(iv) No order as to costs.

Dated :- 26/07/2024.

(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 : 26/07/2024.