

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 134/2021 (S.B.)**

Applicant: - Shammi Ahemed s/o Sheikh Ahemed
a/a 71 yrs., Occ.- Retired,
r/o Near Rajasthan Soap Factory,
Samascal Darga Ward, Khanki Chal,
Chandrapur, Dist.- Chandrapur.

-//Vs.//-

- Respondents:-**
- 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 Deputy Director (Buffer)
Tadoba-Andheri Tiger Project,
District- Chandrapur.
 - 4) The District Treasury Officer,
District Treasury Office,
Chandrapur.
 - 5) The Accountant General (A & E)-II,
Pension Branch Office,
Nagpur, Dist.- Nagpur.

Shri V.R.Borkar, Id. Advocate for the applicant.

Shri V.A.Kulkarni, Id. P.O. for the respondents.

Coram :- Hon'ble Shri Justice Vinay Joshi, Member (J).
Dated :- 04.07.2025

ORAL JUDGMENT

Heard finally with the consent of both learned counsel.

2. The applicant has invoked the jurisdiction of this Tribunal in terms of Section 19 of the Administrative Tribunal's Act 1985 seeking to quash the order of recovery and consequently for refund of recovered amount of Rs. 5,64,660/-.
3. The facts in brief are that, the applicant was initially appointed as a Forest Guard in the year 1972. He was promoted and later retired by superannuation on 31.12.2008 while working on the post of Forester which is a Group-C post. Vide impugned communications dated 18.08.2020 and 06.01.2021, respondents sought recovery of Rs. 5,64,660/- on account of excess payment. By relying on the decision of Hon'ble Apex Court in case of **State of Punjab & Ors. Vs. Rafiq Masih & Ors., (2015) 4 SCC, 334**, the applicant has challenged the recovery stating that applicant is working in Group-C post, as well as after retirement recovery is sought.
4. The respondents resisted this Original Application by filing affidavit-in-reply. So far as factual aspect is concerned, there is no

dispute, however, it is contended that due to wrong fixation excess payment has been made. The recovery was initiated inconsonance with the rules and G.R. and thus, action of recovery is well sustainable.

5. The law regarding recovery of monetary benefits paid in excess of entitlement has now stands concluded with the decision of Hon'ble Supreme Court in case of Rafiq Masih (supra). It is desirable to quote para 18 of said decision hereinbelow: -

"18. 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. It is not in dispute that the applicant retired from the service while holding Group-C post and the recovery is sought from the employee after retirement by superannuation. It is not the case that excess payment was made at the instance of fraud/misrepresentation made by the applicant. The applicant's case is well governed by Clause (i) and (ii) of the guidelines laid in above decision. Therefore, the action of recovery is unsustainable in the eyes of law. Inconsequence, Original Application deserves to be allowed. Hence, following order:-

ORDER

- A. The Original Application is allowed.
- B. The impugned orders dated 18.08.2020 and 06.01.2021 for recovery of sum of Rs. 5,64,660/- are hereby quashed and set aside.
- C. Amount, recovered if any by the respondents, it shall be refunded to the applicant within the period of three months from today, failing which the amount shall carry interest @ 6% per annum from the date of default till its full realization.

Member (J)

Dated :- 04/07/2025

aps

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

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 04/07/2025
and pronounced on