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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.5670/2013

Dr.Martin Roy Edward s/o Fedrick George
Martin.

...Petitioner..

Versus

The Union of India & others.

...Respondents...

.....

Shri S.B. Talekar, Advocate for petitioner.

Shri S.B. Deshpande, Assistant Solicitor General for
respondent no.1.

Shri K.B. Choudhari, Advocate for respondent nos.2 to 5.

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**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATE: 26.09.2016

ORDER :

1] Learned counsel for the petitioner submits that the petitioner would restrict the present writ petition to the extent of recovery claimed on account of pay fixation. The learned counsel submits that in fact the respondents have reduced the pay of the petitioner even below the scale which the petitioner was drawing initially. The learned counsel submits that even

otherwise, the respondents could not have made recovery beyond period of five years. The learned counsel relies on the judgment of the Apex Court in the case of *State of Punjab & others v. Rafiq Masih (White Washer)* reported at **(2015)4 SCC 334**.

2] As the present writ petition is restricted to the extent of recovery being claimed, we are not entering into the debate as to whether the pay fixation was wrongly done or in accordance with the order passed by the appellate authority.

3] Even according to the respondents, excess pay was drawn in the year 2006 and the said recovery is claimed in the year 2011. The ground agitated by the respondents is that while fixing the pay, the punishment imposed has not been considered.

4] As the petitioner is already given liberty to approach the Tribunal assailing the order passed by the appellate authority in the disciplinary proceedings, the Tribunal would consider the aspect of punishment being imposed so also the petitioner can agitate in respect of his pay fixation before the Tribunal. All these aspects can be raised by the petitioner before the Tribunal.

5] In view of the above, it is not necessary for us to debate upon the contentions with regard to the validity of the pay fixation or otherwise.

6] The interim order is operating in the present matter since the year 2013 granting stay to the recovery. The same shall continue for a period of six weeks from today so as to enable the petitioner to make necessary application before the Tribunal. Needless to state that on lapse of six weeks, the interim protection granted by this Court shall come to an end.

7] With the aforesaid observations, writ petition is disposed of. No costs.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)