

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 1099 OF 2019
(Subject – Arrears of Difference of Pay)**

DISTRICT : OSMANABAD

Ramraje s/o Ganpatrao Pawar,)
Age : 52 years, Occu. : Service,)
R/o C/o Superintendent of Police,)
Osmanabad, Dist. Osmanabad.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Home Department, Maharashtra State,)
Mantralaya, Mumbai -32.)
2. **The Special Inspector General of**)
Police (Administration),)
Maharashtra State, Shahid Bhagatsing)
Marg, Kulaba, Mumbai-400001.)
3. **The Superintendent of Police,**)
Osmanabad, Dist. Osmanabad.)

...RESPONDENTS

APPEARANCE : Shri K.G. Salunke, Advocate for the applicant.

: Shri S.K. Shirse, Presenting Officer for
Respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**

DATE : **02.05.2022.**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed challenging the impugned communication dated 21.01.2019 (Annexure A-12) issued by the respondent No. 1 i.e. the State of Maharashtra, thereby refusing to sanction dues on account of grant of deemed date of promotion to the applicant and the impugned communication dated 10.12.2019 (Annexure A-13) consequently issued by the respondent No. 2 and seeking direction to the respondent authorities to modify the order dated 08.02.2018 (Annexure A-4) by holding that the applicant is entitled for difference in pay scale and arrears towards it from the post of Senior Clerk to Head Clerk i.e. from 11.09.2015 to 07.10.2017 (wrongly mentioned from 11.09.2015 to 17.02.2017) and to pay him the same from 11.09.2015.

2. The facts in brief giving rise to this Application are as follows:-

(a) Undisputedly the applicant belongs to Pardhi caste, which is recognized under Scheduled Tribes category. The applicant initially was appointed in the year 1989 in the Class-IV cadre. He was given promotion as Junior Grade

Clerk on 24.07.2000 (wrongly mentioned in the O.A. as “24.03.2013”). He passed P.R.T. examination on 09.08.2006. He was granted promotion to the post of Senior Grade Clerk on 27.09.2012. The applicant made representation dated 24.12.2012 seeking deemed date of promotion w.e.f. 10.08.2006. Upon considering his representation, the respondent No. 2 granted him deemed date of promotion from 10.08.2006 but only for seniority and fixation of pay. Arrears of pay and allowances, however thereby were granted from 27.09.2012.

(b) Thereafter, the applicant made representation dated 14.10.2016 (Annexure A-2) to the respondent No. 2 requesting for grant of difference of arrears towards pay scale of the post of Senior Clerk from 10.08.2006 to 27.09.2012. By letter of February, 2017 (Annexure A-3), the respondent No. 2 granted him arrears of pay and allowances for that period. Accordingly, the applicant received the arrears towards difference of pay for the post of Senior Clerk from 10.08.2006.

(c) It is further stated that the applicant was granted deemed date of promotion to the post of Head Clerk by the

order dated 08.02.2018 (Annexure A-4) issued by the respondent No. 2. He was given the said promotion with deemed date of promotion in that cadre w.e.f. 11.09.2015. However, pay scale of Head Clerk was made applicable only from 07.10.2017, the date on which he had taken charge of the post of Head Clerk as per earlier order of promotion dated 30.05.2017. The applicant has taken the charge of the post of Head Clerk.

(d) In view of above, the applicant made representations dated 21.02.2018 and 14.03.2018 (Annexure A-5 collectively) seeking arrears towards the pay scale of Head Clerk from 11.09.2015 to 07.10.2017. The respondent No. 2 did not decide the said representations. However, the respondent No. 2 in similar case issued order dated 30.06.2016 (Annexure A-6) in favour of one Shri Bhagwat Purushottam Hisobe, who was granted deemed date of Senior Clerk from 09.08.1999 and also recommended to fix his pay and grant him arrears from deemed date of the post of Senior Clerk. Accordingly the said Shri Bhagwat Purushottam Hisobe has received arrears of pay and allowances from the deemed date. Similarly by another order dated 14.03.2018 (Annexure A-7) the respondent No.

2 has granted deemed date of promotion to Shri Sangle and arrears towards pay scale of Head Clerk w.e.f. 16.11.2016.

(e) In the circumstances as above, it is stated that the respondent No. 2 is not considering the legitimate claim of the applicant, though such relief is granted to other similarly situated employees. It is stated that the applicant is entitled to get the arrears of pay scale of Head Clerk from 11.09.2015 to 07.10.2017 in view of the Government Circular dated 25.02.1965 in terms of tentative chart at annexure A-8 prepared by the applicant.

(f) In view of above, as the respondents have not granted arrears of pay from deemed date of promotion in the cadre of Head Clerk, previously the applicant filed O.A. No. 156/2019 (Annexure A-9) seeking direction to the respondent authorities to grant arrears to the applicant towards pay scale and difference of pay from the post of Senior Clerk to the post of Head Clerk i.e. from 11.09.2015 to 17.02.2017 to the applicant, as the respondent No. 2 had already granted such pay scale to other employees namely Shri Hisobe, Sangle and S.M. Quadri, who are working under the said respondent. Notices were issued in the said O.A. The affidavit in reply on behalf of respondent

Nos. 2 & 3 (Annexure A-10) was filed in the said O.A., thereby statement was made that the Director General of Police has submitted the proposal to the State Government on 10.07.2018 and the decision in that regard was awaited. In view of the same, the said O.A. was disposed of by the order dated 09.07.2019 (Annexure A-11) by giving direction to the respondent No. 1 to take appropriate decision on the communication dated 10.07.2018 sent by the respondent No. 2 on merit as per the rules within a period of three months from the date of the order and communicate the decision therein to the applicant in writing.

(g) Thereafter the respondent No. 1 by the impugned letter dated 21.11.2019 (Annexure A-12) addressed to the respondent No. 2 stated that as per the opinion of the General Administration Department, the decision pertaining to grant of reservation in promotion dated 25.05.2004 has been set aside by the Hon'ble High Court on 04.08.2017 and against the said decision, SLP is pending before the Hon'ble Apex Court and as such, no decision can be taken regarding reservation in promotion or any further action in that regard. Consequently, the respondent No. 2 communicated the said decision to the

applicant by the impugned communication dated 10.12.2019 (Annexure A-13).

(h) In the circumstances as above, it is stated that the deemed date of promotion in the cadre of Head Clerk is already granted to the applicant w.e.f. 11.09.2015 by the order dated 08.02.2018 (Annexure A-4), but he was not granted arrears of pay scale of the said post from the said deemed date and it was granted only from the date of taking actual charge i.e. from 07.10.2017. Before that the applicant was granted promotion to the post of Head Clerk by the order dated 30.05.2017. In view of the same, previously the applicant filed O.A. No. 156/2019 only for direction to consider the claim of the applicant towards grant of arrears of pay and allowances for the post of Head Clerk. In these circumstances, according to the applicant the claim of the applicant belongs to the period prior to the decision of the Hon'ble Bombay High Court. The respondents have already granted such relief to the similarly situated persons by the orders dated 30.06.2016 (Annexure A-6) and 14.03.2018 (Annexure A-7). In view of the same, the impugned communications dated 21.11.2019 (Annexure A-12) and 10.12.2019 (Annexure A-13) are not

legal and proper and are required to be quashed and set aside and the applicant is entitled for requisite direction for payment of pay and allowances. Hence, this Original Application.

3. The Original Application is resisted by filing affidavit in reply on behalf of respondent No. 2 by one Shri Hanumant Sambhaji Bhapkar, working as Assistant Commissioner of Police City Division in the office of the Commissioner of Police, Aurangabad City and on behalf of respondent No. 3 by one Shri Anjumara Dastgir Shaikh working as Deputy Superintendent of Police (E.O.W.) in the office of respondent No. 3 i.e. the Superintendent of Police, Osmananabd. Somewhat similar contentions raised in both the affidavits in reply. Thereby they have denied all the adverse contentions raised in the Original Application. It is not disputed that the applicant belongs to ST category and promotion was granted to the applicant from the post of Senior Grade Clerk to Head Clerk from ST category by the order dated 30.05.2017 and the applicant took charge of the said post on 07.10.2017. Thereafter, the respondent No. 2 by the order dated 08.02.2018 (Annexure A-4 in O.A.) granted deemed date of 11.09.2015 to the applicant in the cadre of Head Clerk, but it was granted only for the purpose of fixing seniority, and

pay fixation only and arrears of pay was granted only from 07.10.2017, from which date the applicant was working on the post of Head Clerk. However, according to these respondents no decision can be taken as regards granting benefit of pay and allowances from the deemed date in view of the decision of the Hon'ble High Court dated 04.08.2017, whereby the Government policy decision dated 25.05.2004 regarding reservation in promotion is cancelled and in view of the same, the respondent No. 1 issued communication dated 21.11.2019 to the respondent No. 2 stating that it is not desirable / proper to take any decision of promotion of any reservation and any further decision in that regard. In view of the same, at this stage, the claim of the applicant was denied. Consequently, the respondent No. 2 accordingly by the impugned communication dated 10.12.2019 informed the applicant the said decision. The said decisions are legal and proper. In the circumstances of the development in the matter, the cases of which the applicant is seeking parity of the decision taken by the respondent No. 2 is not relevant and proper, as those instances are on different footing. The impugned communications therefore, legal and proper and the present Original Application is liable to be dismissed.

4. The applicant subsequently filed rejoinder affidavit thereby denied all the adverse contentions raised by the respondent Nos. 2 and 3 in their respective affidavits in reply, to which the sur-rejoinder affidavit on behalf of respondent No. 2 is filed thereby he denied adverse contentions raised in the rejoinder affidavit and reiterated the contentions raised in the affidavit in reply.

5. I have heard the arguments at length advanced by Shri K.G. Salunke, learned Advocate for the applicant on one hand and Shri S.K. Shirse, learned Presenting Officer for the respondents on the other hand.

6. Perusal of the rival facts would show that undisputedly the applicant was granted promotion to the post of Senior Grade Clerk on 27.09.2012. However, subsequently after the applicant made representation dated 24.12.2012, he was granted deemed date of promotion in that cadre w.e.f. 10.08.2006, but only for the purpose of seniority and fixation of pay. The applicant thereafter made representation dated 14.10.2016 (Annexure A-2) and upon considering the said representation, by communication of February, 2017 (Annexure A-3) the respondent No. 2 granted the applicant arrears of pay and allowances for that period.

Admittedly, the same was granted in view of the then prevailing G.R. dated 25.02.1965 (page No. 55 of the paper book).

7. It is pertinent to note here that the applicant met with similar fact, while he was promoted from the post of Senior Grade Clerk to Head Clerk. Perusal of the order dated 08.02.2018 (Annexure A-4) issued by the respondent No. 2, would show that in fact by the order dated 30.05.2017 the applicant was promoted to the post of Head Clerk and he took charge of the said post on 07.10.2017. As per this order dated 08.02.2018 (Annexure A-4), the applicant was granted deemed date of promotion w.e.f. 11.09.2015, but only for the purpose of seniority and pay fixation and not for arrears of pay and allowances from 11.09.2015 to 07.10.2017.

8. Record further shows that in that respect the applicant made representations dated 21.02.2018 and 14.03.2018 (Annexure A-5 collectively) seeking arrears of pay and allowances for the period of 11.09.2015 to 07.10.2017. However, by the impugned communication dated 21.11.2019 (Annexure A-12) issued by the respondent No. 1 and consequently the impugned communication dated 10.12.2019 (Annexure A-13) issued by the respondent No. 2 denied the said claim giving reference of G.A.D.

Circular dated 29.12.2017 and more particularly in view of the decision of the Hon'ble Bombay High Court dated 04.08.2017 cancelling the reservation in promotion, which policy was declared by the Government on 25.04.2004.

9. In the facts and circumstances as above, learned Advocate for the applicant strenuously urged before me that the instructions incorporated in the G.A.D. Circular dated 29.12.2017 that in view of the judgment of the Hon'ble High Court, it would not be appropriate to take any decision in respect of promotion or reservation in promotion and consequential reliefs is subsequent to the grant of deemed date of promotion to the applicant. Hence, it is not applicable to the case of the applicant.

10. On the other hand, learned Presenting Officer opposed the said submissions and stated that when the policy of reservation in promotion is rejected by the Hon'ble High Court and when there is no stay granted by the Hon'ble Apex Court to the same, the impugned communications under challenge are legal and proper.

11. I have given close thought to the rival submissions. From the factual aspect, it can be seen that the decision of the Hon'ble

High Court is dated 04.08.2017 rejecting the reservation in promotion. In the case in hand, however, the applicant was promoted to the post of Head Clerk under the policy of the reservation in promotion before that i.e. by the order dated 30.05.2017, as is reflected in order dated 08.02.2018 (Annexure A-4) issued by the respondent No. 2. According to the applicant, he, however took charge of the said post on 07.10.2017, which was only consequential administrative arrangement.

12. It is true that the order dated 08.02.2018 (annexure A-4) is subsequent, by which the applicant is granted deemed date of promotion w.e.f. 11.09.2015. However, by the said letter, the right already accrued to the applicant of deemed date of promotion is recognized, which ought to have been done at the time of granting promotion by the order dated 30.05.2017. By the said order dated 08.02.2018, the applicant is granted deemed date of promotion only for seniority and promotion, but arrears of pay and allowances of that post from the date of 11.09.2015 to 07.10.2017 were denied. In that regard, relevant document is G.R. dated 25.02.1965 (page No. 55 of the paper book) issued by the G.A.D. Government of Maharashtra. The said G.R. entitles persons for arrears of pay and allowances in cases of deemed date of promotion. In these circumstances, in my considered

opinion, it cannot be said that the implementing the said G.R. dated 25.02.1965 would amount to granting relief to the applicant in contravention of any law. The right of the applicant cannot be denied only on the ground that it would not be appropriate to do that. In such circumstances, in my considered opinion, the impugned communications dated 21.11.2019 (Annexure A-12) and 10.12.2019 (Annexure A-13) issued by the respondent Nos. 1 and 2 respectively are not sustainable in the eyes of law and the applicant would be entitled for requisite pay and allowances in the cadre of Head Clerk for the period from 11.09.2015 to 07.10.2017. I therefore, proceed to pass following order :-

ORDER

The Original Application No. 1099/2019 is allowed in following terms :-

- (A) The impugned communications dated 21.11.2019 (Annexure A-12) and 10.12.2019 (Annexure A-13) issued by the respondent Nos. 1 and 2 respectively are hereby quashed and set aside.

- (B) The respondents are directed to modify the order dated 08.02.2018 holding that the applicant is

entitled for difference of pay and allowances for the post of Head Clerk from 11.09.2015 and 07.10.2017 and to pay him arrears within a period of three months from the date of this order.

(C) There shall be no order as to costs.

PLACE : AURANGABAD.

DATE : 02.05.2022.

(V.D. DONGRE)
MEMBER (J)

KPB S.B. O.A. No. 1099 of 2019 VDD Arrears of Difference of pay