

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD.

REVIEW APPLICATION NO. 5 OF 2017
IN
ORIGINAL APPLICATION NO. 754 OF 2012

DIST. : NANDED.

- (1) Dr. Ansari Majid,
Age. 40 years,
Occupation : Assistant Professor.
- (2) Dr. Barde S.B.,
Age. 38 years,
Occupation : Assistant Professor.
- (3) Dr. Bhosale S.H.,
Age. 34 years,
Occupation : Assistant Professor.
- (4) Dr. Bhurke D.P.,
Age. 41 years,
Occupation : Assistant Professor.
- (5) Dr. Chaudhari Swati S.,
Age. 46 years,
Occupation : Assistant Professor.
- (6) Dr. Dake M.D.,
Age. 37 years,
Occupation : Assistant Professor.
- (7) Dr. Degaonkar A.S.,
Age. 46 years,
Occupation : Assistant Professor,
- (8) Dr. Deshmukh J.B.,
Age. 44 years,
Occupation : Assistant Professor.

- (9) Dr. Dimple Vijay,
Age. 37 years,
Occupation : Assistant Professor.
- (10) Dr. Dube S.P.,
Age. 35 years,
Occupation : Assistant Professor.
- (11) Dr. Dulewad S.S.,
Age. 39 years,
Occupation : Assistant Professor.
- (12) Dr. Fasiha Tasneem,
Age. 40 years,
Occupation : Assistant Professor.
- (13) Dr. Fayyaz Ali,
Age. 36 years,
Occupation : Assistant Professor,
- (14) Dr. Gadekar R.D.,
Age. 41 years,
Occupation : Assistant Professor.
- (15) Dr. Ghadlinge M.S.,
Age. 37 years,
Occupation : Assistant Professor.
- (16) Dr. Gujar V.M.,
Age. 42 years,
Occupation : Assistant Professor.
- (17) Dr. Gujrathi A.B.,
Age. 36 years,
Occupation : Assistant Professor.
- (18) Dr. Hanumante R.D.,
Age. 36 years,
Occupation : Assistant Professor.

- (19) Dr. Humera Khan,
Age. 44 years,
Occupation : Assistant Professor.
- (20) Dr. Inamdar Ismail,
Age. 41 years,
Occupation : Assistant Professor.
- (21) Dr. Kapse V.R.,
Age. 39 years,
Occupation : Assistant Professor.
- (22) Dr. Karandkhedkar S.S.,
Age. 46 years,
Occupation : Assistant Professor.
- (23) Dr. Kelkar V.P.,
Age. 46 years,
Occupation : Assistant Professor.
- (24) Dr. Kulkarni Sonali,
Age. 35 years,
Occupation : Assistant Professor.
- (25) Dr. Kulkarni M.B.,
Age. 45 years,
Occupation : Assistant Professor.
- (26) Dr. Mane U.W.,
Age. 35 years,
Occupation : Assistant Professor,
- (27) Dr. More Kapil,
Age. 38 years,
Occupation : Assistant Professor.
- (28) Dr. Manoorkar G.S.,
Age. 44 years,
Occupation : Assistant Professor,

- (29) Dr. Muddamwar V.G.,
Age. 41 years,
Occupation : Assistant Professor.
- (30) Dr. Mudholkar V.G.,
Age. 37 years,
Occupation : Assistant Professor.
- (31) Dr. Muley P.S.,
Age. 56 years,
Occupation : Assistant Professor.
- (32) Dr. Mungal S.U.,
Age. 39 years,
Occupation : Assistant Professor.
- (33) Dr. Nagrik Arun,
Age. 34 years,
Occupation : Assistant Professor.
- (34) Dr. Najma Y. Memon,
Age. 39 years,
Occupation : Assistant Professor.
- (35) Dr. Potulwar M.P.,
Age. 37 years,
Occupation : Assistant Professor.
- (36) Dr. Rathod K.G.,
Age. 39 years,
Occupation : Assistant Professor.
- (37) Dr. Rathod Pralhad,
Age. 39 years,
Occupation : Assistant Professor.
- (38) Dr. Santre M.S.,
Age. 41 years,
Occupation : Assistant Professor.

- (39) Dr. Shirure P.A.,
Age. 40 years,
Occupation : Assistant Professor.
- (40) Dr. Siddiqui Mubashir,
Age. 40 years,
Occupation : Assistant Professor.
- (41) Dr. Sohail Khan,
Age. 44 years,
Occupation : Assistant Professor.
- (42) Dr. Sonkar V.K.,
Age. 37 years,
Occupation : Assistant Professor.
- (43) Dr. Tambe Salim,
Age. 44 years,
Occupation : Assistant Professor.
- (44) Dr. Tilak M.R.,
Age. 34 years,
Occupation : Assistant Professor.
- (45) Dr. Totawar S.R.,
Age. 37 years,
Occupation : Assistant Professor.
- (46) Dr. Md. Ubaidulla,
Age. 41 years,
Occupation : Assistant Professor.
- (47) Dr. Umrajkar H.G.,
Age. 45 years,
Occupation : Assistant Professor.
- (48) Dr. Sirsam S.S.,
Age. 44 years,
Occupation : Associate Professor.

- (49) Dr. Bharat B. Chavan,
Age. 52 years,
Occupation : Associate Professor.
- (50) Dr. Kusumkumar S. Ghorpade,
Age. 51 years,
Occupation : Associate Professor.
- (51) Dr. Vivek M. Sahasrabudhe,
Age. 55 years,
Occupation : Professor.
- (52) Dr. Mohan Kondiba Doibale,
Age. 56 years,
Occupation : Professor.
- (53) Dr. Sharmila S. Raut,
Age. 51 years,
Occupation : Professor.
- (54) Dr. Shubha A. Deshpande,
Age. 61 years,
Occupation : Professor.
- (55) Dr. Deelip G. Mhaisekar,
Age. 57 years,
Occupation : Professor.
- (56) Dr. Milind B. Kamble,
Age. 49 years,
Occupation : Professor.
- (57) Dr. Hemant V. Godbole,
Age. 52 years,
Occupation : Professor.
- (58) Dr. Rajesh K. Ambulgekar,
Age. 48 years,
Occupation : Professor.

- (59) Dr. Vijaylaxmi K. Ambulgekar,
Age. 52 years,
Occupation : Professor.
- (60) Dr. Wakode Shyam Ramji,
Age. 56 years,
Occupation : Professor.
- (61) Dr. Nandkumar R. Aswar,
Age. 54 years,
Occupation : Associate Professor.
- (66) Dr. Sanjauy Kumar R. More,
Age. 50 years,
Occupation : Associate Professor.
- (63) Dr. Anjali R. Wasadikar,
Age. 50 years,
Occupation : Associate Professor.
- (64) Dr. Vaishali V. Inamdar,
Age. 41 years,
Occupation : Associate Professor.
- (65) Dr. Mohammed A. Sameer,
Age. 41 years,
Occupation : Associate Professor.
- (66) Dr. Saleem B. Tamboli,
Age. 42 years,
Occupation : Associate Professor.
- (67) Dr. Ashish Sham Motewar,
Age. 44 years,
Occupation : Associate Professor.
- (68) Dr. Shridhar D. Yennawar,
Age. 61 years,
Occupation : Associate Professor.

- (69) Dr. Anuja G. Deshmukh,
Age. 41 years,
Occupation : Associate Professor.
- (70) Dr. Suvernakar Suparna Vishwanath,
Age. 45 years,
Occupation : Associate Professor.
- (71) Dr. Prasad P. Deshpande,
Age. 44 years,
Occupation : Associate Professor.
- (72) Dr. Zanjad Naresh Prabhakarrrao,
Age. 41 years,
Occupation : Associate Professor.
- (73) Dr. Vijay B. Gaikwad,
Age. 52 years,
Occupation : Associate Professor.
- (74) Dr. Meenakshi G. Narkhede,
Age. 46 years,
Occupation : Associate Professor.
- (75) Dr. Atul S. Raut,
Age : 50 years,
Occupation : Associate Professor.

All,

Employed at,

Dr. SHANKARRAO CHAVAN GOVERNMENT MEDICAL
COLLEGE, Nanded.

--- **APPLICANTS**

V E R S U S

- (1) The State of Maharashtra,

Through
The Secretary,
Department of Medical Education & Drugs
Department,
Mantralaya, Mumbai.

- (2) The Director of Medical Education,
Government Dental College and
Hospital Building, St. George's
Hospital Compound,
Mumbai- 400 001.

Through
The Director.

- (3) Dr. SHANKARRAO CHAVAN GOVERNMENT MEDICAL
COLLEGE, Nanded.

Through
The Dean.

-- **RESPONDENTS**

APPEARANCE : Shri Milind Patil, Learned Advocate for the
Applicants.

: Smt. Sanjivani Deshmukh-Ghate, Learned
Presenting Officer for the respondents.

**CORAM : JUSTICE M.T. JOSHI, VICE CHAIRMAN
AND
: ATUL RAJ CHADHA, MEMBER (A)**

DATE : 19TH JULY, 2018.

ORDER

[Per- Justice M.T. Joshi, Vice-Chairman]

Heard Shri Milind Patil, learned Advocate for the
applicants and Smt. Sanjivani Deshmukh-Ghate, learned
Presenting Officer for the respondents.

2. The present applicants are seeking review of the judgment dtd. 15.2.2017 delivered by this Tribunal in O.A. no. 754/2012. The basic claim of the applicants in O.A. was as under :-

A] *This Original Application may kindly be allowed and clause 3 of the clarification dated 17th January 2012 issued by the learned Assistant Secretary, Department of Medical Education and Drugs, of the State of Maharashtra thereby directing to pay non-practicing allowance to the applicants on the basic old pay by ignoring the VI revised pay by applying ceiling of Rs. 44,250/- may kindly be quashed and set aside, by declaring the said clarification as ultra-virus to Rule 15 of the MCSR Pay Rules, 1981 and so also to the Clause 9(A)(b)(iii) of the Government Resolution dated 10th November, 2009.*

B] *This Original Application may kindly be allowed and the Government resolution dated 24th July 2012 thereby denying the NPA proportionate to the 6th pay scale from the date of applicability of the 6th pay scale with application of ceiling applied in conflict with the Clause 9(A)(b)(iii) of the Government Resolution dated 10th November 2009, may kindly be declared ultra-virus to that extent.*

C] *This application may kindly be allowed and it may kindly be declared that, the applicants are entitled to non-practicing allowance proportionate to their VI revised pay, i.e. @ 50% of their VI revised pay, free from any ceiling from the date of applicability of the 6th pay scale, i.e. from 1st January 2006.”*

3. The Tribunal vide the impugned judgment dtd. 15.2.2017 dismissed the O.A. no. 752/2012 finding no merit therein.

4. The applicants seek review of the said judgment principally on the ground nos. II & III (page 12 of Review Application), which are as under :-

“II) The order sought to be reviewed is vitiated for non-consideration of the fact that the Government has never treated the Non-practicing allowance as part of pay and allowances payable on pay are not calculated on NPA. Thus, application of ceiling cannot be justified by treating the same as part of pay to prevent the so called pay from crossing the salary payable to the highest government servant of the land. The logic borrowed by the judgment sought to be reviewed, suo-motu, destroys the very purpose

of payment of Non-practicing allowance as compensation for loss of private practice. The logic is not sustainable for the simple reason that an employee not opting for payment of NPA for exploring possibility of earning income from private practice is free to earn without any ceiling and his earnings cannot be restricted.

*III) The judgment and order sought to be reviewed is vitiated for misplaced reliance on the service conditions of the employees in the case of **K.C. Bajaj & others V/S Union of India and others reported in 2013 CJ (SC) 1261** where the non-practicing allowance was treated as part of pay for all benefits and payment of allowance and the application of the ceiling was with an express policy to restrict the same to avoid payment of salary more than payable to the highest civil servant of the land. In applicants' case, the non-practicing allowance is not treated as part of pay for payment of benefit of allowances and its nature is purely of special service condition thereby compensating the employees for loss of their private practice.*

The applicants have placed reliance on the case of K.C. Bajaj as the honourable Supreme Court has confirmed the right to receive NPA as special compensation as per the prevailing policy governing

the policy of payment of NPA. The right is required to be assessed in the light of nature of NPA treated by the prevailing policy and not by applying different policy than that of applied to the applicants. In the case of applicants, the NPA is not treated as Part of pay for extension of benefit of payment of other benefits on NPA and private practice as an option was treated open rendering application of ceiling as totally irrational. The principle confirmed in the case of K.C. Bajaj that the settled policy of payment of NPA cannot be arbitrarily changed to the detriment of the employees is ignored by the judgment sought to be reviewed.”

5. Upon hearing both the sides, it appears that, the contentions raised by the applicants are against the record. The State of Maharashtra since the year 1989 is considering Non Practicing Allowance as a part of pensionable service (Exh. C. page 36 of O.A.). The same is continued vide G.R. dtd. 24.7.2012 (Exh. L page 96 of O.A.) and more particularly para 3 of the said G.R.

6. In the circumstances, no error apparent on the face of the record is found in the judgment of the Tribunal in O.A. Hence, the following order :-

ORDER

The Review Application is dismissed without any order
as to costs.

MEMBER (A)

VICE CHAIRMAN

**PLACE : AURANGABAD.
DATE : 19TH JULY, 2018.**

ARJ R.A.NO.5/2017 IN O.A.754/2012 (D.B.) JUS. M.T. JOSHI