

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 51 OF 2018

DIST. : JALNA

1. David s/o Shamual Ganthur,)
Age. 65 years, Occ. Nil,)
R/o Suvarna Nagar,)
Near Ramnagar Colony, Jalna.)
2. Bhagwan s/o Karbhari Mante,)
Age. 65 years, Occ. Nil,)
R/o Aggression Nagar,)
House No. 40, Jalna,)
Tq. & Dist. Jalna.)
3. Bhagwan s/o Janardhan Maghade,))
Age. 65 years, Occ. Nil,))
R/o Sukhshanti Nagar, Jalna,))
Tq. & Dist. Jalna.))

-- **APPLICANTS**

VERSUS

1. The Dist. Superintendent of Police,))
R/o Jalna, Tq. & Dist. Jalna.))
2. The Deputy Superintendent of))
Police, R/o Jalna,))
Tq. & Dist. Jalna.))
3. The State of Maharashtra,))
Through Desk Officer,))
Home Department, Mantralaya,))
Mumbai, Second floor, Main Building,))
Madam Kama Road,))
Hutatma Rajguru Chowk,))
Mumbai – 400 032.))

-- **RESPONDENTS**

APPEARANCE :- Shri K.M. Nagarkar, learned Advocate for
the applicants.

: Shri V.R. Bhumkar, learned Presenting
Officer for the respondents.

CORAM : **Hon'ble Shri V.D. Dongre, Member (J)**
DATE : **25.10.2021**

ORDER

1. This Original Application is filed under section 19 of the Administrative Tribunals Act, 1985 seeking quashment and setting aside the impugned order dated 23.6.2017 issued by the Superintendent of Police, Jalna based on the impugned letter / order dated 3.6.2017 issued by the State of Maharashtra denying the benefit of Assured Career Progression Scheme (for short A.C.P. scheme) to the applicants.

2. The applicant nos. 1 to 3 in O.A. no. 51/2018 were appointed as Police Constables on 23.3.1972, 1.1.1975 & 26.4.1974 respectively. The Government resolution dated 31.8.2009 (Annex. A-1 page 15 of O.A. No. 51/2018) was issued by the Finance Department of the State of Maharashtra, thereby giving benefits of Assured Career Progression Scheme (for short A.C.P. scheme) and fixing revised pay scale from 1.1.2006. Pursuant to that the respondent no. 1 issued the order dated 16.11.2010 (Annex. A-2 page 18 of O.A. no. 51/2018) granting benefits of A.C.P. scheme and placing the applicants in the pay scale of Rs. 9300-34800 Grade Pay Rs. 4300/- respectively.

Accordingly the applicants got the benefits of A.C.P. scheme w.e.f. 2.8.2010 each. Thereafter the applicant nos. 1 & 3 retired on 31.8.2011 and the applicant no. 2 retired on 31.7.2011. They were paid regular salary as per the rules.

3. It is further submitted that after about 4 years' of their retirement, the respondent no. 2 i.e. the Deputy Superintendent of Police, Jalna issued the order dated 17/18.12.2015, thereby directing recovery against the applicants in respect of amount they received towards the benefits of A.C.P. scheme after completion of requisite service of 12 years stating that the applicants had not passed the departmental examination. The applicants challenged the said order dated 17/18.12.2015 by filing Original Application No. 374/2016. It was disposed of by passing the order dated 29.11.2016 (Annex. A-3 page 20 of O.A. no. 51/2018) and thereby the respondents therein were directed to decide the issue in respect of passing the departmental examination within 4 weeks from the date of receipt of representations from the applicants. In the said order liberty was granted to the applicants of making comprehensive representations to the Superintendent of Police, Jalna and they were directed to file such representations within 4 weeks from the date of the said order. Accordingly, the applicants made

representation on 13.12.2016 in the office of the respondent no. 1 i.e. the District Superintendent of Police, Jalna and requested relief as per the judgment and order dated 21.11.2017 of the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in the case of P.K. Ghuge & Ors. Vs. the State of Maharashtra & Ors. (Annex. A-16), wherein it is held that the person, who had completed 45 years of his age is not required to pass the Departmental Examination. It was also pointed out that as per the decision of the Hon'ble Supreme court in **Civil Appeal No. 11527/2014 arising out of S.L.P. (C) No. 11684/2012 & Ors. (State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.)** reported at **AIR 2015 SC 596** in para 12 it was laid down that the recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service) and the recovery from retired employees, or employees who are due to retire within one year, of the order of recovery, cannot be made. 04 weeks time granted by the Tribunal to decide the representation of the applicants was expired on 3.1.2017. By that date the respondents did not decide the representation of the applicants. The applicants, therefore, filed C.P. St. no. 570/2016 in O.A. no. 374/2016. In the said C.P. this Tribunal passed order on 11.12.2017 (Annex. A-4 page 31 of O.A. no. 51/2018, thereby said C.P. was dismissed in view of the copy of communication

dated 23.6.2017 issued by the respondent no. 1 (Annex. A-5 page 34 of O.A. no. 51/2018) observing that the representation of the applicants is decided by the concerned authority by the order dated 23.6.2017 (Annex. A-5). The said order of respondent no. 1 dated 23.6.2017 (Annex. A-5) is based on the letter dated 3.6.2017 issued by the respondent no. 1. Initially the applicants challenged the said impugned order dated 23.6.2017 (Annex. A-5) issued by the respondent no. 1, however, subsequently by seeking amendment in O.A. the applicants have challenged the order dated 3.6.2017 issued by the respondent no. 1 whereby it is stated that the exemption from passing the departmental enquiry is not applicable to the Unarmed Police official seeking promotional benefits to the post of Police Sub Inspector.

4. The applicants have assailed both the said orders contending that the respondents have not taken into consideration the various citations of the Hon'ble Bombay High Court and Hon'ble Supreme Court in that regard. Moreover, it is not explained as to how the letter dated 3.6.2017 issued by the respondent no. 3 is applicable to the applicants, who retired long back in the year 2011. In view of the same the applicants have sought quashment and setting aside the said impugned order

dated 23.6.2017 issued by the respondent no. 1 and the letter / order dated 3.6.2017 issued by the respondent no. 3.

5. Affidavit in reply is filed on behalf of the respondent no. 1 by Shri S. Chaitanya, Superintendent of Police, Jalna. There is no dispute regarding filing of the previous litigation by the applicants in respect of recovery. It is specifically contended that as per the order of the Tribunal in O.A. no. 374/2016 the said respondent considered the representations of the applicants and granted them opportunity of hearing on 22.12.2016 and after hearing the case of the applicants, the said respondent wrote a letter dated 24.12.2016 (Exhibit R-1 page 62 of O.A. 41/2018) to the Director General of Police, M.S. and sought guidelines about granting relaxation to the Police officials from passing the departmental examination, who attains the age of 45 years. However, in the affidavit in reply, it is stated that this respondent sought guidelines from the Secretary, Home Department, Mantralaya, Mumbai through the Director General of Police, M.S. Mumbai.

6. It is further submitted that this respondent also took into consideration the order passed by the Hon'ble High Court in the case of R.K. Ghuge & Ors. Vs. the State of Maharashtra & Ors. However, the said matter was in respect of persons working in the cadre of Sr. Clerks. On 3.6.2017 (Exhibit R-2 page 64 of O.A. no.

51/2018), the Desk Officer, Home Department, Mantralaya, Mumbai gave a letter to the office of this respondent as well as the Director General of Police, Mumbai stating that the present applicants are not entitled for promotion on the post of P.S.I. as they have not passed the departmental examination. It is further submitted that the respondent no. 3 has issued G.R. dated 21.4.2009 (Exhibit R-3 page 65 of O.A. no. 51/2018) laying down the quota for promotion i.e. 25% by the departmental examination and 75% by competitive examination. As per the Schedule (A) thereof and more particularly as per clause (3) & (17) thereof the applicants have to pass the departmental examination for getting the promotion or benefit of A.C.P. scheme. In view of the same, when the specific rules are framed by the Home Department for the departmental examination and as the applicants have not passed the departmental examination, the exemption is not applicable to them and consequently they are not entitled for benefit of time bound promotion scheme / A.C.P. scheme.

7. In view of above, it is the contention of the respondents that the contentions raised by the applicants in this regard are devoid of merits. It is further submitted that the order of Hon'ble High Court in writ petition no. 3643/2009 is in respect of the persons belonging to Wireless Inspector, Radio Mechanic and, therefore,

the said ratio is not applicable in the present case. Therefore, the respondents prayed for dismissal of the present O.A.

8. Affidavit in rejoinder is filed on behalf of the applicants by Shri Bhagwan Karbhani Manthe (applicant no. 2 in O.A. no. 51/2018) thereby he denied the adverse contentions raised by the respondent no. 1 in the affidavit in reply. It is denied that the ratio laid down in the decision of the Hon'ble High Court relied upon by the applicants is not applicable to the case of the applicants. It is specifically submitted that the impugned order dated 3.6.2017 would not be applicable retrospectively. It was issued after lapse of 7 years after the retirement of the applicants. The basic appointment of the applicants is as Armed Police official and therefore the G.R. dated 21.4.2009 relied by the respondents, which is applicable to the Unarmed Police official, could not be made applicable in the case of the present applicants. The issue as regards the departmental examination is resolved by the decision of the Hon'ble Bombay High Court and the same will be applicable to the applicants.

9. It is further contention of the applicants that the Inspector General of Police, Pune by its letter dated 16.7.2016 (Exhibit A-7 page 78 of O.A. no. 51/2018) granted benefits to the similarly situated candidates, who have not passed the departmental

examination, after attaining the age of 45 years. The applicants have received the documents procured under R.T.I. by one Shri Sunil Chakre from various Commandants, S.R.P.F., Navi Mumbai, Dhule, Jalna mentioning therein that the benefit of A.C.P. scheme was granted to the employees, who were working in cadre of the applicants, however, they have not passed the departmental examination. The said documents are produced at Annex. A-8 collectively. It is further specifically submitted that Shri D.J. Landge and Shri Shaikh Nasir Bismillaha who were working in the office of S.P., Jalna were also drawing pay scale in the Grade pay of Rs. 4300/-. In that regard, one of the applicants sought information under R.T.I. from the respondent no. 2, however, it is not supplied (Annex. A-9 of O.A. 51/2018). In view of the same, the applicants are being harassed by the respondents intentionally causing discrimination to them.

10. Heard Shri K.M. Nagarkar, learned Advocate for the applicants and Shri V.R. Bhumkar, learned Presenting Officer for the respondents, at length.

11. Considering the rival facts of the present case, it reveals that the controversy revolves around withdrawal of benefits of time bound promotion / A.C.P. scheme granted to the applicants and

consequential recovery of the excess payments made to the applicants due to alleged wrong pay fixation.

12. Admittedly, the applicants were working as Assistant Police Sub Inspector at the time of their retirement. The applicant nos. 1 & 3 retired on 31.7.2011, whereas the applicant no. 2 retired on 31.8.2011. Further, admittedly by the order dated 16.11.2010 (Annex. A-2) the applicants were granted higher pay scale of A.C.P. scheme w.e.f. 2.8.2010. As Assistant Police Sub Inspector the applicants were in the pay scale of Rs. 5200-20200 Grade Pay Rs. 2800 and as per the A.C.P. scheme they were granted higher pay scale in the pay scale of Rs. 9300-34800 Grade Pay Rs. 4300. The applicants since beginning till the end have worked as Armed Police. The said higher pay scale was granted to the applicants in view of the G.R. dated 20.7.2001. However, the said higher pay scale was withdrawn by the respondent no. 2. i.e. the Deputy Superintendent of Police, Jalna by the letter dated 17/18.12.2015, thereby directing recovery against the applicants in respect of amount they received towards the benefit of A.C.P. scheme after completion of requisite service of 12 years, thereby it was stated that the applicants have not passed the departmental examination.

13. The applicants challenged the said order by filing O.A. No. 374/2016 before this Tribunal. By the order dated 29.11.2016 passed by this Tribunal in the said O.A. No. 374/2016 the said order dated 17/18.12.2015 was set aside and the matter was remitted to the respondent no. 1 the Superintendent of Police, Jalna to consider representation to be made by the applicants by giving opportunity of hearing to them. Accordingly, the applicants made their representation dated 13.12.2016. However, said representation of the applicants is rejected by the impugned order dated 23.12.2017 (Annex. A-5) in view of the order / guidance communication dated 3.6.2017 received from the office of the Government of Maharashtra. It is stated that the applicants are not entitled for benefits of higher pay scale under the A.C.P. scheme as they have not passed the requisite departmental examination as mentioned in the concerned G.R.

14. As per the order of the Tribunal dated 13.8.2018 the respondent no. 1 filed fresh affidavit. Thereby the respondents have annexed letter dated 3.6.2017 (Exhibit R-2) and requisite G.R. dated 21.4.2009 (Exhibit R-3) to deny the claim of the applicants. In view of the contentions raised therein by the respondents, I have to decide the claim made by the applicants.

15. Upon perusal of letter dated 3.6.2017 (Exhibit R-2) addressed from the Home Department, Maharashtra State to the Director General of Police, Maharashtra State, it is evident that, in order to give promotion to the post of unarmed Police Sub Inspector the requisite departmental examination for promotion to the said post is required to be passed by the feeder cadre employee in view of the provisions of G.R. dated 21.4.2009. Clauses (2), (3) & (17) of Annexure – A of the said G.R. dated 21.4.2009, which are as follows, are relied upon by the respondents :-

“(२) पोलीस विभागातील तांत्रिक कर्मचारी वर्ग उदा. बिनतारी संदेश, मोटार परिवहन इत्यादी शाखेतील कर्मचारी व सशस्त्र कर्तव्य करणारा वर्ग उदा. पोलीस चालक, बॅडस्मन, ब्युगलर इ. सदर परीक्षेस बसण्यास पात्र राहणार नाहीत.

(३) ही नियमावली अंमलात आल्याच्या तारखेनंतर पोलीस विभागातील नियम-२ मध्ये नमूद कर्मचारी वर्ग वगळता प्रत्येक पोलीस हवालदार / सहाय्यक पोलीस उपनिरीक्षक, यांनी निशस्त्र पोलीस उपनिरीक्षक पदावर पदोन्नती मिळण्याकरीता अर्हता परीक्षा उत्तीर्ण होणे आवश्यक आहे.

(१७) पोलीस हवालदार / सहाय्यक पोलीस उपनिरीक्षक यांना विभागीय परीक्षा उत्तीर्ण केल्याखेरीज निशस्त्र पोलीस उपनिरीक्षक यापदावर पदोन्नती देण्यात येणार नाही. परंतु ३ महिन्यापेक्षा कमी कालावधीकरीता स्थानिक व तात्पुरत्या पदोन्नतीसाठी सदर अट लागू राहणार नाही.”

16. Perusal of the said G.R. dated 21.4.2009 (Exhibit R-3) would show that same is issued in the background of earlier concerned G.R. dated 5.7.1994 and more particularly in view of the directions given by the M.A.T., Aurangabad Bench while disposing

of O.A. No. 739/2006 to frame a policy and requisite rules and regulations for filling up the promotional posts of Police Sub Inspector. In view of this, I have to necessarily refer to the G.R. dated 5.7.1994. Perusal of said G.R. dated 5.7.1994 would show that passing of departmental examination was one of the stipulations for giving promotion to eligible candidates from amongst the Police Head Constable and Assistant Police Sub Inspector.

17. However, in this background learned Advocate for the applicants strenuously urged before me that while passing the impugned order dated 23.6.2017, the respondents have not taken into consideration the exemption granted to the Government employees of passing the requisite departmental examination either for continuance, confirmation or promotion.

18. In this regard it would be just and proper to refer G.R. dated 1.11.1977 and 28.11.1979 issued by the G.A.D., Government of Maharashtra. G.R. dated 1.11.1977 refers to departmental examination both for continuance and confirmation as well as qualifying for promotion to the higher post. The Government servants after attaining the 45 years of age are thereby exempted from passing such departmental examinations. In the said G.R. it was further provided that Departments at Mantralaya level should

be instructed to amend the rules regarding the departmental examinations in consultation with the M.P.S.C., wherever necessary.

19. Further G.R. dated 28.11.1979 is issued by the General Administration Department clarifying furthermore 2 categories as below :-

“(a) In the case of the Departmental examinations prescribed for continuance and confirmation in the existing posts, the exemption is applicable to all Government servants; excepting those, who under the recruitment rules applicable to them, are liable to be discharged for not passing the departmental examination during the period of probation; and

(b) In the case of the Departmental Examination for qualifying for promotion to the higher posts, the exemption is applicable to all Government servants.”

There is further clarificatory G.R. dated 17.5.1980 issued after G.R. dated 18.11.1979.

20. In the case in hand it is not contended on behalf of the respondents that the Police Department / Home Department has issued any Circular or Notification exempting Governments Servants of the said Department from passing the requisite departmental examination. In the absence of that, above said clause (b) of the G.R. dated 28.11.1979 would be applicable in the instant case.

21. In view of above, in my considered opinion, the G.R. dated 21.4.2009 (Exhibit R-3) relied upon by the respondents is not altogether new guidelines for departmental examination. The condition of passing departmental examination is also found in earlier G.R. dated 5.7.1994.

22. In the facts and circumstances the relevant factor for deciding the matter is as to on which date the respective applicants attained the age of 45 years. The applicant nos. 1 & 3 attained the age of 45 years in August, 1998 and the applicant no. 2 in July, 1998. The G.R. dated 21.4.2009 is issued after about lapse of 11 years of attaining the age of 45 years by the applicants. The said G.R. will be applicable prospectively when it does not speak about retrospective effect thereof. The said G.R. dated 21.4.2009 is based on the earlier G.R. dated 5.7.1994 and it is so mentioned in the said G.R. itself. In fact, the applicants were granted the benefit of higher pay scale by the order dated 16.11.2010 (Annex. A-1). No doubt, there is no specific mention of exemption from passing of the departmental examination on attaining the age of 45 years by the applicants. However, there was no change in the circumstances as on the date of passing the order dated 16.11.2010 (Annex. A-2) and thereby granting benefit of higher pay scale under A.C.P. scheme and subsequently while

issuing the order dated 23.6.2017 (Annex. A-5), withdrawing the said benefits. In the impugned order dated 23.6.2017 (Annex. A-5) it is mentioned that the applicants have not passed the requisite departmental examination, however, this impugned order does not speak of any reasons as to why the exemption from passing of departmental examination is not applicable to the applicants. In these circumstances, the impugned order dated 23.6.2017 as well as the communication / order dated 3.6.2017 on the basis of which the impugned order dated 23.6.2017 came to be passed are not sustainable in the eyes of law for the reasons stated hereinabove.

23. The learned Advocate for the applicants has placed reliance on the following judgments of Hon'ble High Court in which the aspect of exemption from passing the departmental examination on completion of 45 years is considered :-

- (1) Madhukar Pandurang Gadade Vs. State of Maharashtra through Secretary, Department of Rural Development & Ors. reported at 2009 (6) MAH L.J. 562.
- (2) Ramesh s/o Channapa Kompalli Vs. State of Maharashtra through its Secretary, Water Supply and Sanitation Department & Ors. reported at 2015 MCR 847.
- (3) Judgment and order dated 21.11.2017 passed by the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in writ petition No. 3643/2009 (Mukund

s/o Shankarlal Daima Vs. State of Maharashtra & Ors.)

24. In the circumstances as above, in my considered opinion, the respondents have sought to justify their action of withdrawal of benefits of higher pay scale granted to the applicants under the A.C.P. scheme without just and reasonable cause. The contentions raised by the respondents in that regard are not maintainable in the eyes of law.

25. Moreover, the learned Advocate for the applicants has relied upon the judgment of the Hon'ble Supreme Court in the case of **Civil Appeal No. 11527/2014 arising out of S.L.P. (C) No. 11684/2012 & Ors. (State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.)** (supra), wherein the Hon'ble Supreme Court has observed as under :-

“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, summarize 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 the 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 employees, 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.”

26. In the case in hand the applicants are belonging to Group-C category. They all are retired from the service. They were granted the benefit of higher pay scale under A.C.P. scheme at the instance of respondents, who allegedly gave the said benefit by way of wrong pay fixation. There is nothing on record to show that the applicants made any application or misrepresentation for getting the benefit of higher pay scale under A.C.P. scheme. In these circumstances, granting benefit of higher pay scale under A.C.P. scheme to the applicants by the respondents cannot be said to be have been granted on the misrepresentation or by committing any fraud by the applicants. In view thereof the case of the applicants would be covered under clauses (i) or (ii) & (iii) of para 12 of **State of Punjab and others etc. Vs. Rafiq Masih (White Washer) etc.** (supra). In view of the same, the excess amount paid to the applicants could not be recovered from them.

27. In view of the discussion in foregoing paragraphs, the impugned order dated 23.6.2017 (Annex. A-5) issued by the respondent no. 2 - the Deputy Superintendent of Police, Jalna - and the communication / order dated 3.6.2017 issued by the State of Maharashtra on the basis of which the impugned order dated 23.6.2017 (Annex. A-5) came to be passed thereby the benefits of higher pay under the A.C.P. scheme are denied to the applicants, are liable to be quashed and set aside. Therefore, I proceed to pass the following order :-

ORDER

- (i) Original Application No. 51/2018 stands allowed and disposed of.
- (ii) The impugned order dated 23.6.2017 (Annex. A-5) issued by the respondent no. 2 - the Deputy Superintendent of Police, Jalna - and the communication / order dated 3.6.2017 issued by the State of Maharashtra on the basis of which the impugned order dated 23.6.2017 (Annex. A-5) came to be passed thereby the benefits of higher pay under A.C.P. scheme to the applicants are denied, are hereby quashed and set aside.

There shall be no order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place : Aurangabad

Date : 25.10.2021

ARJ-O.A. NO. 51 OF 2018 VDD (BENEFIT OF ACP SCHEME)