

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 53 OF 2018
(Subject : Pay Fixation)**

DISTRICT :- JALGAON

Sopan S/o Eknath Patil,)
Age:- 59 Years, Occ:- Retired as Pharmacist)
R/o Rel, Po. Chandsar, Tq. Erandol, Dist. Jalgaon)... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through the Secretary to the)
Government of Maharashtra,)
Health Department and Secretary of)
Finance Department ,)
Mantralaya, Mumbai-32, Maharashtra.)
2. **The Medical Superintendent Class-1**)
Sub-District Hospital Chopada,)
Dist. Jalgaon.)
3. **The Deputy Director Health Services,**)
Nashik Division, Nashik.)
4. **The Director Health Services,**)
Maharashtra State, Mumbai.)
5. **The Accounts Officer,**)
Pay Verification Department, Nashik.)
6. **The Director,**)
Accounts and Treasury Directorate)
New Government Cottage No.15 and 16)
Free Press Journal Road, Mumbai-21.) ... **RESPONDENTS**

APPEARANCE : Shri H.V. Tungar, Advocate for the
Applicant.

: Shri I.S. Thorat, Presenting Officer for the
Respondents.

CORAM : **Justice Shri P.R. Bora, Member (J)**
AND
Shri Bijay Kumar, Member (A)
DATE : **28.01.2022**

ORDER

(Pronounced on 28th January, 2022)
(Per : Shri Bijay Kumar, Member (A))

1. This Original Application has been filed by the applicant Shri Sopan S/o Eknath Patil, R/o. Rel, P.O. Chandsar, Taluka-Erandol, District- Jalgaon on 23.01.2018 invoking provisions of Section 19 of Administrative Tribunals Act, 1985, thereby, challenging the validity of impugned communication issued by Respondent No.3, the Deputy Director, Health Services, Nashik Division, Nasik vide outward No. उपसंआसे/आस्था रब/श्री.पाटील/सेनिऑनिअ/वेनि/४३८५२-५४/२०१७, dated- 14.12.2017. The said communication is enclosed with the O.A. as Annexure-11, page 48 of paper book, whereby the Respondent No.3 has rejected the representation made by the applicant dated 15.09.2017 demanding revised fixation of his pay in pay band Rs.9300-34800, grade pay of Rs.4300 + additional grade pay of Rs.400 on grant of 1st benefit of Time Bound Promotion and grade pay of Rs.700 on grant of benefit of Modified Assured Career

Progression Scheme and also demanding arrears of pay after revised pay fixation as demanded in the said representation.

2. The Original Application was dismissed in default by the Tribunal vide an order dated 12.12.2019. A Miscellaneous Application St. No.161 of 2020 for restoration of this Original Application was filed by 13 days delay. Therefore, yet another M.A.No.102 of 2020 was also filed for condonation of delay in filing Miscellaneous Application for restoration of O.A. Both the Miscellaneous Applications were allowed by the Tribunal vide order dated 16.02.2021.

3. **The background facts of the matter may be summarized as follows:-**

(a) The applicant joined the service as Pharmacist on 07.09.1985. His pay scale as on 01.06.1996 was Rs. 4500-125-7000. He was granted benefit of Time-Bound Promotion on 07.09.1997 and his pay was fixed in pay scale of Rs. 5500-175-9000 w.e.f. 07.09.1997.

(b) The applicant was granted benefit of Assured Career Progression Scheme (in short, "ACP") with effect from 06.09.2009 and granted Pay Band PB-2 Rs. 9300-3480,

Grade Pay Rs. 4300 and additional grade pay of Rs. 400 to make total grade pay of Rs. 4700. However, his pay fixation was verified by Pay Verification Unit vide order dated 14.12.2011 and the applicant was placed in pay scale of Rs. 5200-20200, grade pay Rs. 3100 and additional grade pay of Rs.450 (total Grade pay of Rs. 3100+450=3550).

(c) The applicant has been paid amount calculated by pay fixation on grant of benefits of Time Bound Promotion as well as that of "ACP" as per pay determined prior to verification by the Pay Verification Unit.

(d) The Medial Officer Group-1, Cottage Hospital Chopada, Dist. Jalgaon vide letter No. उपजिरूचो/लेखा/वसुली/ 273-74/१२, dated 31.01.2012 informed applicant that his grade pay for period ranging from September, 2009 to December, 2011 had been fixed at Rs.4700, which ought have been Rs.3100. Therefore, the grade pay admissible to him will be Rs.3100 w.e.f. January, 2012 and a recovery of Rs.81,632/- has been determined for the period of September, 2009 to December, 2011. The applicant did not respond to this communication for about five years which may amount to acquiescing.

(e) However, the applicant submitted representation to the Medical Officer, Sub District Hospital, Chopada, District Jalgaon vide his letter dated 16.12.2016 that his pay on grant of benefits of "ACP" has been rightly fixed in pay scale of Rs.9300-34800, grade pay of Rs.4300 and additional grade pay of Rs.400. He further asserted that his additional grade pay after granting benefit of MACP has also been rightly fixed at Rs.700. Thus the applicant disagreed from communication received from the Medical Officer as mentioned in preceding para 3(d), though with unexplained delay.

(f) In the meantime, Pay Verification Unit took objection to the pay fixation done by the respondent, vide their communication dated 17.01.2017. Upon this, the applicant responded to the stand taken by the Pay Verification Unit by submitting a representation dated 06/07.04.2017 addressed to the Director, Account and Treasury, Maharashtra State requesting him to direct the Pay Verification Unit to complete verification of his pay and accept the pay fixation already done by the respondent No.3. However, as per revised pay fixation, recovery of

Rs.1,97,268 had been determined by Medical Officer, Chopada.

(g) The applicant retired on superannuation on 31.05.2017 and therefore, the amount of Rs.1,97,268 was recovered on 07.06.2017 from DCRG amount payable to the applicant.

(h) The applicant made yet another representation dated 15.09.2017 through the Medical Officer, Chopada and addressed to the Deputy Director, Health Services, Nashik Division, Nashik, who in turn, issued impugned communication, dated 14.12.2017.

(i) Being aggrieved by the impugned communication dated 14.12.2017 issued by the respondent No.3 addressed to the applicant; the applicant has filed this Original Application.

4. The relief prayed for by the applicant in terms of prayer clause is reproduced as below :-

“A] This original application may kindly be allowed.

B] By issuing appropriate order or direction, the communication dated 14/12/2017 issued by the respondent The Deputy Director Health Services, Nashik Division, Nashik

vide outward No. Upa.Sa.A.Se./Astha/RB/Shri.Patil/Se.Ni. Au.Ni.A./Ve.Ni/43852-54/2017, may kindly be quashed and set aside and the respondent Nos.3 to 6 may kindly be directed to fix the pay scale of the applicant in pay scale of Rs.9300-34800 plus grade pay Rs.4300/- plus additional grade pay Rs.400/- plus 700/-.

C] By issuing appropriate order or direction, the respondent authorities may kindly be directed to repay the amount of Rs.81,632 recovered vide letter dated 31/01/2012 and Rs.1,97,268/- recovered vide challan dated 07/06/2017 with interest to the applicant.

D] The Cost of original application may kindly be awarded to the applicant.

E] Any other relief in law and equity to which the applicant is entitled, may kindly be granted.

INTERIM RELIEF:-

F] Pending the hearing and final disposal of this original application, the respondent Nos.3 to 6 may kindly be directed to fix the pay scale of the applicant in pay scale of Rs.9300-34800 plus grade pay R.4300/- plus additional grade pay Rs.400/- plus Rs.700/- and accordingly pay the pension to the applicant.”

No interim relief was granted to the applicant.

5. After the respondents were duly noticed, joint affidavit in reply on behalf of respondent Nos.1 to 4 dated, 03.05.2008 was

filed, a copy of which was provided to the other side on 03.08.2018. Affidavit in reply on behalf of respondent Nos.5 and 6 was filed on 03.08.2018. The learned Counsel for the applicant submitted that filing of rejoinder to affidavit in reply was not required. The matter was admitted for final hearing with consent of the two sides which took place on 18.01.2021. Thereafter, the matter was reserved for order.

6. Analysis of claims of applicant and response of the respondents and conclusion :-

[A] Facts which are admitted by the two contesting sides are as follows:-

(a) It is admittedly that the applicant had completed 12 years of regular service on 07.09.1997 and no substantive promotion was given to him till date of approval of Time Bound Promotion i.e. till date 03.11.2001.

(b) The applicant was at the time of granting benefits of Time-Bound Promotion Scheme, in pay scale of Rs.4500-125-7000 as per recommendations of the 5th Pay Commission. The pay of applicant under pay-scale of Rs. 4500-125-7000, as on 01.01.1996,

was Rs.5250.00 and accordingly, his pay as on 01.01.1997 with one annual increment of Rs. 125 was Rs.5250+125=5375 which eventually remained at same level on 01.09.1997 i.e. just before granting benefits of Time-Bound Promotion on 07.09.1997.

(c) The applicant was granted Time Bound Promotion w.e.f. 07.09.1997 on completion of 12 years of regular service; as such he was granted pay scale of Rs.5000-175-9000 and pay was fixed at Rs.5675 as on 07.09.1998. After earning annual increments up to 01.01.2006 applicant basic pay was 7075. By adding dearness pay of 3538 and dearness allowance of Rs.2229, his total existing emolument as on 01.01.2006 was Rs.12842/-.

(d) The two contesting sides also agree that fixation of pay as on 01.01.2006 as per recommendation of 6th Pay Commission and subsequent fixation of pay on grant of benefits of MACP will be governed by provisions of The Maharashtra Civil Services (Revised Pay) Rules, 2009 (in short, "Rules, 2009").

(e) It is also undisputed that the post of Pharmacist has no further promotion avenue on substantive basis.

[B] The points of disagreement between the two contesting sides are as follows :-

(a) The applicant who was in pay scale of Rs.4500-125-7000 as per 5th Pay Commission as on 01.01.1996 and was granted pay scale of 5000-175-9000 on grant of benefit of Time Bound Promotion as on 07.09.1997, which continued till 31.12.2006. Therefore, the applicant has been contesting to get a pay band of PB-2, Pay Band of Rs.9300-34800 with grade pay of Rs.4300 and additional grade pay of Rs.400, making total grade pay of Rs.4700/-. This pay band and grade pay was granted to the applicant. First order of recovery of Rs.81,632 was issued to him by the Medical officer vide communication dated 31.01.2012 by taking into account wrong award of grade pay of Rs.4700 which, according to respondents ought have been Rs.3100 only. The recovery was for the period from September, 2009 to December, 2011 as elaborated in preceding para 2(d).

(b) The respondents have contended that the grant of PB-2 to the applicant as on 01.01.2006 was a mistake and the respondents have taken steps for correction of Pay Band and grade pay as on 01.01.2006 as per recommendation of 6th Pay Commission. According to the respondents the applicant was eligible for grant of PB-1, Pay Band 5200-20200, grade pay Rs.2800 and additional grade pay of Rs.300 making the grade pay to Rs.3100. Accordingly, the pay fixation after grant of benefits of MACP also gets revised on lower side.

(c) The stand taken by the respondents has been confirmed by the Pay Verification Unit working under Directorate of Accounts and Treasury, Maharashtra State.

(d) The applicant had not responded to notice of partial recovery of Rs.81,632 issued to him on 31.01.2012 until 16.12.2016 while he was due to retire on superannuation on 31.05.2017 i.e. till about 5 and half months before his superannuation, and he declined to refund any amount as per findings of Pay

Verification Unit therefore, the respondents recovered the amount of total difference in amount paid and revised entitlement of applicant i.e. Rs.1,97,268 from the DCRG amount payable to the applicant.

(e) **Analysis of Facts:-**

[A] On perusal of Rule 14 of the Maharashtra Civil Services (Revised Pay) Rules, 2009 it is evident that there are 3 distinct categories in which fixation of pay of employee who received benefit of Time Bound Promotion or Assured Career Progression Scheme before 1st day of January, 2006 and accordingly there are 3 different manner in which Pay Band, Grade Pay and Additional Grade pay applicable as on 01.01.2006 are to be determined. Following are 3 different categories.

Category -(i) An Employee who got benefit of Time Bound Promotion or Assured Career Progression Scheme prior to 1st day of January, 2006 and got a promotion after that but before the 1st day of January, 2006. In such situation the Pay

Band and Grade Pay are fixed as per normal formulas. The applicant does not fall under the category. As there being no further substantive promotion avenue for Pharmacists, there is no question of the applicant having got substantive promotion before 01.01.2006. However, he has been granted benefit of pay fixation as on 01.01.2006 as per Sixth Pay Commission under this category.

Category -(ii) Under this category fall the employee who got benefit of Time Bound promotion or Assured Career Progression Scheme prior to 1st day of January, 2006, but has not got promotion after that but has promotion opportunity. The applicant does not fall under this category as the post of Pharmacist does not have further promotion avenue.

Category -(iii) Under this category fall such employee who got the benefit of Time Bound Promotion or Assured Career Progression Scheme prior to the 1st day of January, 2006 but has no further promotion opportunities. Therefore, it is inferred that the

case of the applicant falls under this category.

The Pay Band, Grade Pay and Additional Grade Pay is fixed for an employee in the category as per Rule 14(3) of the Maharashtra Civil services (Revised Pay) Rules, 2009, which reads as follows :-

“14. Fixation of pay employee who received benefit of Time Bound Promotion or Assured Career Progression Scheme benefit 1st day of January, 2006.-

(1)

(2)

(3) *If an employee who got the benefits of Time Bound Promotion or Assured Career Progression Scheme prior to the 1st day of January 2006 has no further promotion opportunities, his pay band and grade pay will be the one corresponding to the existing pay scale prior to getting the benefits of Time Bound Promotion or Assured Career Progression Scheme and his pay in the revised pay structure shall be fixed in the manner prescribed in the Rule 7 or 11, as the case may be. In addition, he will be entitled to the additional grade pay as mentioned below :*

- (a) *Rs. 200 - if the grade pay corresponding to the pay scale entitled to him prior to getting the benefits of the above scheme is up to Rs.2,000/-;*
- (a) *Rs. 300 - if the grade pay corresponding to the pay scale entitled to him prior to getting the benefits of the above scheme is above Rs.2,000/-, but not more than Rs. 4,000;*
- (c) *Rs. 400 - if the grade pay corresponding to the pay scale entitled to him prior to getting the benefits of the above scheme is above Rs. 4,000/-, but not more than Rs. 5,000/-; and*
- (d) *Rs. 500 - if the grade pay corresponding to the pay scale entitled to him prior to getting the benefits of the above scheme is above Rs. 5,000/-."*

[B] The applicant has made mention in para 14 of the O.A. his entitlement for additional grade pay at revised rate as per provisions of Finance Department G.R. No. आप्रयो १०१४/प्र.क्र.२१/सेवा-३, मंत्रालय, मुंबई, dated 06.09.2014 by which increased rate of additional grade pay payable w.e.f. 06.09.2014 has been prescribed. However, the learned Counsel for the respondents have not responded to this claim of the applicant either in their affidavit in reply or while

making oral submission. We find that the applicant is entitled to be paid additional grade pay at revised rate with effect from the date of issue of Finance Department G.R. dated 06.09.2014.

[C] The applicant has not disputed the manner of fixing pay in a given pay band and arithmetic calculation and therefore, further discussion on fixation of pay in the manner prescribed in Rule 7 or 11, as the case may be, is not considered necessary.

7. **Conclusion:-**

(a) After considering facts on record, oral submissions made by the contesting sides, relevant Government Resolutions and Provisions of the Maharashtra Civil services (Revised Pay) Rules, 2009, we observe that the applicant has made reference to G.R. issued by Finance Department, Government of Maharashtra; No. आप्रयो १०१४/प्र. क्र.२१/सेवा-३, मंत्रालय, मुंबई dated 06.09.2014, in para 14 of the O.A. but, he has not incorporated prayer of grant of additional grade pay as per revised rate in prayer clause of the O.A. On the other hand, the respondents have not responded to the claim of the applicant made in para no.14 of the O.A. Moreover, calculation sheet for pay fixation of

the applicant as per Provisions of the Maharashtra Civil Services (Revised pay) Rules, 2009 prima facie shows that additional grade pay has not been revised as per G.R. dated 06.09.2014 (supra) with prospective effect. This needs to be re-examined by the respondents and corrective action needs to be taken as per Rules in this regard.

(b) Further, we are of considered opinion that the prayer of the applicant for fixing his Pay Band, PB-2 of Rs.9300-34800 plus grade pay of Rs.4300 plus additional grade pay of Rs.400 plus 700 is ill conceived and devoid of merit.

(c) Therefore, in our considered opinion, the Original Application deserves to be partially allowed to the extent of ensuring grant of benefit of G.R. dated 06.09.2014 (supra) only. Hence, we pass the following order:-

ORDER

The Original Application No. 53 of 2018 is partially allowed in following terms :-

[A] The respondents are directed to grant benefit of Government of Maharashtra Finance Department G.R. No. आप्रयो १०१४/प्र.क्र.२१/सेवा-३, मंत्रालय, मुंबई dated 06.09.2014 in respect of additional grade pay as per revised rates with prospective effect, if not already

granted and paid. Compliance of this should be completed within 3 months of date of passing of the order and communicated to the applicant in writing.

[B] No order as to costs.

MEMBER (A)

MEMBER (J)

SAS. O.A.No.53/2018 Pay fixation