

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**COMMON ORDER IN ORIGINAL APPLICATION NOS. 626 &  
627 BOTH OF 2015**

**1. ORIGINAL APPLICATION NO. 626 OF 2015**

**DISTRICT :- LATUR**

Dr. Anagha d/o Anil Jinturkar,  
Age: 41years, Occupation - Assistant Professor,  
Government Medical College and Hospital, Latur,  
R/o-Bungalow No. 27, Tulsidham, Phase-2, Kokate  
Nagar, Latur, District- Latur. **.. APPLICANT**

**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. Government Medical College and Hospital,  
Latur, district - Latur.  
Through The Dean.
4. B.J. Government Medical College, Pune,  
Through its Dean. **.. RESPONDENTS**

**W I T H**

**2. ORIGINAL APPLICATION NO. 627 OF 2015**

**DISTRICT :- AURANGABAD**

Dr. Santoshkumar S/o Ankushrao Dope,  
Age: 38 years, Occupation - Assistant Professor,  
Government Medical College and  
Hospital, Aurangabad,  
R/o-Government Medical College and  
Hospital campus, Aurangabad,  
Tq. and District Aurangabad. **.. APPLICANT**

**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. Government Medical College and Hospital,  
Latur, district - Latur.  
Through The Dean.
4. B.J. Government Medical College, Pune,  
Through its Dean.

**.. RESPONDENTS**

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**APPEARANCE** : Shri D.A. Mane, Advocate holding for Shri  
Milind Patil, Advocate for the Applicants in  
both O.As.

: Shri S.K. Shirse, Presenting Officer for  
Respondents in both the O.As.

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**CORAM** : **SHRI V.D. DONGRE, MEMBER (J)**  
**AND**  
**SHRI BIJAY KUMAR, MEMBER (A)**

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**RESERVED ON** : **02.02.2023**

**PRONOUNCED ON** : **17.02.2023**

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**O R D E R****[Per : Hon'ble Shri Bijay Kumar, Member (A)]**

1. Original Application No. 626 of 2015 has been filed by one  
Dr. Anagha A. Jinturkar on 16.09.2015 invoking provisions of

Section 19 of the Administrative Tribunals Act, 1985, being aggrieved by the provisions of impugned Government Resolution issued by Medical Education & Drugs Department, bearing No. वैद्यकीय शिक्षण व औषधी द्रव्ये विभाग, मंत्रालय, मुंबई-४०० ०३२, दिनांक- 24.07.2012 and the impugned communication dated 01.09.2015 issued by the respondent No. 3 requiring refund of excess amount paid to her during period from 10.11.2009 to February 2012.

2. Original Application No. 627 of 2015 has been filed by one Dr. Santosh Kumar A. Dope on 16.09.2015 invoking provisions of Section 19 of the Administrative Tribunals Act, 1985, being aggrieved by the provisions of impugned Government Resolution issued by Medical Education & Drugs Department, bearing No. वैद्यकीय शिक्षण व औषधी द्रव्ये विभाग, मंत्रालय, मुंबई-४०० ०३२, दिनांक-24.07.2012 and the impugned communication dated 24.08.2015 issued by the respondent no. 3 requiring refund of excess amount paid to him during period from 01.11.2009 to 27.02.2012.

3. A common order is being passed in Original application No. 626 of 2015 and Original Application No. 627 of 2015, as the two applications have similar cause of action; the applicants in both of them are seeking similar reliefs from the same set of respondents and no prejudice is likely to be caused to any of the contesting parties.

4. The two applicants have been working as regular Assistant Professors in Government Medical College and Hospital, Latur. Some important dates in respect of their entry into service etc. are tabulated for ready reference as follows:

**TABLE - 1**

<b>Item</b>	<b>Applicant in O.A. No. 626 of 2015</b>	<b>Applicant in O.A. No. 627 of 2015</b>
Date of regular appointment as Lecturer, Obstetrics & Gynecology/Assistant Professor	08.01.2010	26.08.2009
Date of Order of temporary promotion as Associate Professor	26.08.2015	20.08.2015
Date of issue of Impugned Communication by Respondent No. 3	01.09.2015	24.08.2015

5. By Government in Medical Education and Drugs Department issued impugned Government Resolution bearing No. वैद्यकीय शिक्षण व औषधी द्रव्ये विभाग, मंत्रालय, मुंबई-४०० ०३२, दिनांक- 24.07.2012 main operating points about which the applicants have grievance may be put as follows :-

Director, Joint Director, medical qualification holder Lecturers, Associate Professors, Professors and Dean of Government Medical Colleges/ Dental Colleges/ Aurvedic Colleges will be eligible to get revised pay scale in a manner that Basic Pay + Grade Pay+ Non Practicing Allowance is

not more than Rs. 85,000/ per month. This will be applicable from 01.07 2012.

6. In view of above, respondent no. 3 had issued impugned communication to the applicants regarding refund of the excess amount paid to the before 01.07.2012.

7. Being aggrieved by above decisions, the applicants have prayed for relief in following terms of para 9 of the respective original application which is quoted ad verbatim as follows. It may be observed that prayer clause has been mechanically drafted ignoring details of critical dates applicable in each case, however, the same deserves to be ignored in the interest of justice:-

**“9 Reliefs Sought.**

*In view of the facts stated in para no. 6 herein before, the applicants pray for the following reliefs.*

**Prayers**

A] *The original application may kindly be allowed and the intimation/order dated September 2015 issued by the Dean, Government Medical College and Hospital, Latur, may kindly be quashed and set aside.*

B] *This original application may kindly be allowed and the government decision dated 24th July 2012 thereby restricting payment of the Non- Practicing allowance proportionate to the VI the pay basic and allowances from 1st July 2012 with application of unreasonable ceiling may kindly be quashed and set aside.*

- C] *This application may kindly be allowed and it may kindly be declared that, the applicant is entitled to non-practicing allowance proportionate to her VI revised pay, i.e. @ 50% of her VI revised pay as provided under the prevailing Government policy enumerated in the Government resolutions dated 27th March 2008 and 18th August 2010.*
- D] *This application may kindly be allowed and the respondents may kindly be directed to effect pay fixation of the applicant by including non- practicing allowance payable on revised pay without application of any ceiling thereon.*
- E] *Any other relief to which the applicant is entitled may kindly be granted in their favour.*

10. **Interim reliefs**

- A] *Pending hearing and final disposal of the original application, the effect and operation of the order dated 1st September 2015 issued by the Dean, Government Medical College and Hospital, Latur, may kindly be stayed.*
- B] *Pending hearing and final disposal of the original application, the respondent no.3 may kindly be directed to relieve the applicant to enable her to join the promotional post of Associate Professor with B. G. Medical College at Pune without insisting for payment of difference of non-practicing allowance as directed vide order dated 1st September 2015.*
- C] *Pending hearing and Enel disposal of the original application, the effect, operation. execution of the government decision dated 24 July 2012 thereby restricting payment of the Non- Practicing allowance proportionate to the VI the pay basic and allowances from 1 July 2012 with application of unreasonable ceiling may kindly be stayed.*
- D] *Pending, hearing and final disposal of this Original Application, the respondents may be restrained from effecting any recovery of difference of arrears of the already paid non- practicing allowance to the applicant.*
- E] *Any other relief to which the applicant is entitled may kindly be granted in her favour.”*

**8. Pleadings and Arguments:-** Learned Presenting Officer filed affidavits on behalf of respondent Nos. 1 to 3 in O.A. No. 626/2015 on 22.03.2016. Affidavit in reply on behalf of respondent No. 3 was filed on 29.08.2016. Later on, affidavit in reply on behalf of respondent Nos. 1 to 4 in O.A. No. 627/2015 was filed by learned P.O. on 21.04.2017. Copies of affidavits in replies were supplied to the other side. It was ordered by this Tribunal that the matter may be taken up for final hearing after Division Bench is available. It is noticed from the record that on 29.08.2016 a number of other O.As. such as 21/2016, 618/2016, 619/2016, 1/2015, 635/2015, 488/2013 with M.A. No. 433/2015 in O.A. (St.) No. 318/2015 had been tagged and heard together for some time and thereafter, they have been untagged. It has been brought to Tribunal's notice that final order has been passed by this Tribunal in O.A. No. 488 of 2013 on 01.10.2021.

**9. Analysis of Facts:-**

(a) Learned advocate for the applicant had fairly submitted before this Tribunal in O.A. No. 488 of 2013 the this Tribunal had dismissed earlier O.A. Nos. 753/2012, 754/2012 and 808/2012 vide order dated 15.02.2017 by making following observations:

*“ From this it is clear that 5<sup>th</sup> Pay Commission Recommended that pay plus N.P.A. should not exceed Rs. 29500/- i.e. it should remain below the pay of the Cabinet Secretary in Government of India, who is the highest ranking civil servant in Government of India. It is also recommended that N.P.A. be continued to be counted towards all service and pensionary benefits at present.”*

(b) The Tribunal has quoted the decision of Hon'ble Apex Court in cited case in the body text of order passed by it in O.A. No. 488/2013 which is as follows:-

*“Hon'ble Supreme Court has upheld Office Memorandum dated 07.04.1998, which was issued by the Government of India for implementing recommendations of 5<sup>th</sup> Pay Commission, and which restricted pay + N.P.A. to Rs. 29,500/- (less than the Basic Pay of the Cabinet Secretary) in the Civil Appeal No.s 10640-46 of 2013 (arising out of SLP © Nos. 3358-64 of 2011), K. C. Bajaj Vs. Union of India, judgment dated 27.11.2013. In fact, other Office Memorandum dated 07.06.1999 was held to be invalid as that was not in consonance with Office Memorandum dated 07.04.1998. State Government is not bound to accept the recommendation of the Central Pay Commission in toto.. After 6<sup>th</sup> Pay Commission, Government of India decided by Office Memorandum dated 30.08.2008 (referred to in G.R. dated 24.07.2012) to grant N.P.A. @ 35% of Pay plus Grade Pay subject to limit of 85,000/- p.m. . The Government of Maharashtra was well within its power to apply it from 01.07.2012. Before that date, the old rate as per G.R. dated 18.08.2010 would be applicable. We reject the contention of the Applicants that G.R. dated 29.07.2012 is in conflict with G.R. Dated 10.11.2009. We are unable to accept the demand of the Applicants to apply N.P.A. @ 35% from 01.01.2006. In short, we do not find any merit in those O.As.”*

(c) From above analysis of facts on record, it is admittedly established that the present O.A No. 626 of



2015 and 627 of 2015 are devoid of merit and fit to be dismissed. Maintaining precedent with order passed by this Tribunal in O.A. No. 488 of 2013 dated 01.10.2021 Hence, the following order :-

**ORDER**

- (A) Original Application No. 626 of 2015 and 627 of 2015 are dismissed for reason of being devoid of merit.
- (B) Respondents are directed that if the recovery has not been made by the respondents from the applicants regarding the excess amount of NPA paid, the same shall not be made as the same would be inequitable.
- (C) No order as to Costs.

**MEMBER (A)**

**MEMBER (J)**

**KPB/O.A. No. 626 & 627 both of 2015 (DB) NPA G.R. / recovery**