

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 779 OF 2022
WITH
MISC. APPLICATION NO. 506 OF 2022**

DISTRICT : AURANGABAD

Machindra s/o Namdeo Kanade,
Age: 57 years, Occu: Service as Jr. Engineer,
R/o; Plot No. 52/53, New S.T. Colony,
N-2, Mukundwadi, Aurangabad,
Dist. Aurangabad.

.. APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Secretary,
Public Work Department,
Mantralaya, Mumbai-32
2. The State of Maharashtra,
Through its Secretary,
Finance Department,
Mantralaya, Mumbai-32
3. The Superintending Engineer,
Public Work Division,
Bandhkam Bhavan,
Near Government Rest House
Aurangabad Road, Ahmednagar.
4. The Executive Engineer,
World Bank Project Division (PWD)
In front of Ashoka Hotel,
Aurangabad Road, Ahmednagar.
5. The Account Officer,
Pay Verification Unit Nashik,
Tq. and Dist. Nashik.

.. RESPONDENTS

APPEARANCE : Shri Avinash Khedkar, Advocate for Applicant.

: Shri M.P. Gude, P.O. for respondents.

CORAM : **Shri V.D. Dongre, Member (J)**
and
Shri Bijay Kumar, Member (A)
Reserved on : **10.02.2023**
Pronounced on : **16.03.2023**

O R D E R

(Per : Shri Bijay Kumar, Member (A))

1. This Original Application has been filed by one Shri Machindra Namdeo Kanade, r/o Aurangabad City, District-Aurangabad on 30.08.2022 invoking provisions of Section 19 of the Administrative Tribunals Act, 1985. Applicant had been aggrieved by the impugned order dated 17.06.2022 issued by respondent No. 4 lowering down the pay of the applicant as per recommendation of the 'Pay Verification Unit' of Directorate of Accounts & Treasuries, Government of Maharashtra.

2. The Original Applicant has prayed for relief in the Original Application in terms of para 16 (A) to (D) of the O.A., which is at page Nos. 8 and 9 of the paper-book and is reproduced verbatim for ready reference as follows :-

“16. PRAYERS:
IN VIEW OF THE ABOVE CIRCUMSTANCES, THIS
HON’BLE TRIBUNAL SHALL BE GRACIOUSLY PLEASD,

(A) *By a suitable order/ direction, this Hon’ble Tribunal may please be quash and set aside the impugned revised pay fixation order dated 17.06.2022, thereby, reducing the pay*

of applicant from 10100 to 9300, issued by the Executive Engineer, World Bank Project Division, Ahmednagar.

- (B) To hold and declare that applicant was rightly granted pay band of 10100-34800, Grade Pay 4300 in the pay scale of 9300-34800.*
- (C) Pending hearing and final disposal of the Original Application the execution, implementation and operation of the impugned revised pay fixation order dated 17.06.2022, issued by the Executive Engineer, World Bank Project Division, Ahmednagar may kindly be stayed.*
- (D) To grant any other relief to which the applicant are entitled in the peculiar facts and circumstances of the present case.”*

3. Affidavit in reply on behalf of respondent Nos. 1, 3 and 4 was filed on 30.11.2022. A separate affidavit in reply on behalf of Respondent No. 5 too, was filed on 30.11.2022.

4. After the respondent No. 4 had passed order of recovery dated 16.11.2022, that the applicant filed a Miscellaneous Application No. 506 of 2022 on 21.11.2022 making prayer in terms of para 8 of the M.A., which is reproduced verbatim for ready reference as follows :-

“8. THIS APPLICANT THEREFORE PRAYS THAT:-

- A) The Misc. Application may kindly be allowed.*
- B) Pending hearing and final disposal of the Original Application No. 799/2022 the execution, implementation and operation of the recovery order dated 16.11.2022 issued by the respondent No. 4 viz. The Executive Engineer, World Bank Project Division, Ahmednagar, arising out of impugned pay fixation order dated 18.05.2022, may be stayed.*

C) *Any other suitable relief to which the applicant is entitled may kindly be granted in favour of the applicant.”*

5. Pleadings and Final Hearing :- As the pleadings in the Original Application were complete, it was decided to take up the Miscellaneous Application No. 506 of 2022 in O.A. No. 779 of 2022 and O.A. No. 779 of 2022 be heard and decided together. Accordingly, the two sides were heard on 16.01.2023 during final hearing as scheduled by Oral Order passed by this Tribunal dated 07.12.2022. Thereafter, the matter was closed for orders on 16.01.2023. However, the matter had to be reopened for further consideration vide oral order dated 08.02.2023 in view of the fact brought to our notice by the two sides of the dispute that a new Notification dated 03.02.2023 had been issued by the Finance Department which is considered to be material for adjudication of the present matter.

6. Analysis of Facts and oral submissions made by the contesting parties :- The two sides advanced their arguments on 16.01.2023 revolving around provisions of the Maharashtra Civil Services (Revised Pay) Rules 2009 and the Government Resolution issued by Finance Department, Government of Maharashtra bearing No. वेपुर १२१०/प्र.क. १२४(भाग-१)/सेवा-९, Mantralaya, Mumbai-32, dated 09.02.2016. A copy of said Maharashtra Civil

Services (Revised Pay) Rules, 2009 is enclosed at page Nos. 62 to 72 of the paper book and a copy of G.R. dated 09.02.2016 is at page No. 79 of paper book. However, upon detailed examination of the impugned order regarding revised pay fixation, in the light of relevant provisions of the Maharashtra Civil Services (Revised Pay) Rules 2009 and G.R. dated 09.02.2016, the revised pay fixation had been found to be in order and the matter was reserved for orders.

7. It is on 08.02.2023, i.e. before order could be passed in the matter that the learned Advocate for the applicant appeared before this Tribunal and mentioned the matter with a request to allow placing on record a Notification issued by Finance Department of Government of Maharashtra, dated 03.02.2023, which is appended at page No. 93 of paper book. The learned Chief Presenting Officer, who was present, consented to taking the copy of the said Notification on record at this stage as the same was material for adjudication of the matter. We are also of the considered opinion that as orders are yet to be passed in the matter, the latest rules brought to our notice must be taken in to account in the interest of justice. The said Notification has been, accordingly, taken on record and a copy thereof was provided to the other side. The matter was reopened for re-hearing on

10.02.2023 which took place as scheduled and the matter was closed for orders.

8. The said Notification dated 03.02.2023 in its entirety is being reproduced as follows for ready reference, being crucial for adjudication :-

“NOTIFICATION

*Finance Department,
Mantralaya,
Madam Cama Marg,
Hutatma Rajguru Chowk,
Mumbai-400032
Dated: 3 February, 2023*

Constitution of India

No. RPS-1122/C.R. 6/Ser-9.- In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, the Governor of Maharashtra is hereby pleased to make the following rules further to amend the Maharashtra Civil Services (Revised Pay) Rules 2009, namely:-

1. These rules may be called the Maharashtra Civil Services (Revised Pay) (Amendment) Rules, 2022

2. In rule 7 of the Maharashtra Civil Services (Revised Pay) Rules, 2009 hereinafter referred to as "the Principal Rules", in sub-rule (l), after clause (C) the following clause shall be added and shall be deemed to have been added with effect from the 1st January 2006, namely:-

“(D) In case of Government Servants appointed, either by nomination or by promotion, prior to the 1st January, 2006 on such posts, the recruitment rules of which contains provisions for appointment by nomination and by promotion, whose pay is fixed in the revised pay structure under clause (4) as on the 1st January 2006, turns out to be lower than entry pay prescribed in Annexure III applicable to the direct recruits on that post, then the pay of such Government Servants shall be stepped up so that it shall not be less than such entry pay.”

3. In rule 13 of the principal Rules after sub-rule (B), the following sub-rule shall be added and shall be deemed to have been added with effect from the January 2006, namely:-

“(C In case of Government Servant, appointed by promotion on or after 1 January 2006, to such post, the recruitment rules of which contains provisions for appointment by nomination and by promotion, whose pay is fixed under sub-rule (A) turns out to be lower than the entry pay prescribed in Annexure III applicable to the direct recruit of that post, then the pay of such Government Servant shall be stepped up from the date of their promotion so that it shall not be less than such entry pay:

Provided that, this sub-rule shall apply to pay fixation on actual promotion only.”

By order and in the name of the Governor of Maharashtra,

*Sd/-
(V.A. Dhotre)
Deputy Secretary to Government.”*

9. **Final Inference drawn:** (a) It is admittedly that the applicant was promoted on the post of Junior Engineer vide Government order No. पदोन्नती-२०१२/प्र.क. ७१/सेवा-३, dated 07.06.2012 and his pay fixation was done by the respondent No. 4 vide office order 59/2012 bearing outward No. 3/1647, dated 13.07.2012 a copy of which is enclosed at page 51 of the paper-book. His pay fixation was done as per provisions of rule 8 (Annexure 3) of Maharashtra Civil Services (Revised Pay) Rules, 2009 dated 22.04.2009. Pay Verification Unit had vide communication dated 19.09.2022 addressed to respondent No. 4 pointed out that the applicant was not a direct recruit Junior Engineer therefore, instead of rule 8 (annexure 3) of the Finance Department Notification dated 22.04.2009, the applicant's pay fixation was to be done as per provisions of rule 13, sub-rule (B) of the said Notification dated 22.04.2009, copy of extract of said Notification

is also at page Nos. 28-30 of the paper book. Copy of the said communication of Pay Verification Unit is at page Nos. 60-61 of the paper-book.

(b) On perusal of clause 3 the said new Notification issued by the Finance Department, dated 03.02.2023, it is clear that pay of a promoted employee who has been appointed by way of actual promotion on or after 01.01.2006, if turns out to be lower than the entry pay prescribed in Annexure III applicable to the direct recruit of that post then the pay of such Government Servant shall be stepped up from the date of their promotion so that it shall not be less than entry pay.

10. Upon considering all the facts before us we infer that the changed rule position notified by the Finance Department requires on 03.02.2023 mandates revision of pay fixation done by the respondent No. 4 by the impugned order in the case of the applicant. Hence, the following order :-

ORDER

(A) Original Application No. 779 of 2022 is allowed in following terms :-

(a) Respondent No. 4 is directed to get the pay of the original applicant re-fixed in view of Notification issued by the Finance Department dated 03.02.2023 and duly verified by the Pay Verification Unit within a period of three months of receipt of this order. The revised pay fixation should be communicated immediately thereafter to the applicant in writing within a period of 15 days.

(b) Any excess amount with respect to freshly revised pay that has been recovered from the applicant, shall be returned to the applicant within a period of six weeks after re-fixation of pay as per (a) above.

(B) Miscellaneous Application No. 506 of 2022 in O.A. No. 779 of 2022 becomes infructuous and therefore, the same stands disposed of.

(C) No order as to cost.

MEMBER (A)

MEMBER (J)

Kpb/D.B. O.A. No. 779/2022 with M.A. 506 of 2022 Pay Fixation