

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 810 OF 2019
(Subject – Monetary Benefits of Yearly Increments)**

DISTRICT : AURANGABAD

Shamsunder s/o Manikaro Choudhari,

Age : 53 years, Occu. : Service (as Police)
Inspector, R/o. Plot No. 80/A, Bharat)
Residency, Saint Xavier School, N-1,)
A Sector, Cidco, Aurangabad.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through Its Addl. Chief Secretary,)
Home Department, M.S.,)
Mantralaya, Mumbai-32.)
2. **The Director General of Police,**)
Shahid Bhagat Singh Road,)
Colaba, Mumbai-05.)
3. **The Commissioner of Police,**)
Aurangabad City, Mill Corner,)
Aurangabad.)

...RESPONDENTS

APPEARANCE : Shri Avinash Deshmukh, Advocate for the
Applicant.

: Shri V.R. Bhumkar, Presenting Officer for
Respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**

DATE : **03.01.2023.**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the applicant has filed the present Original Application being aggrieved by the impugned order dated 22.03.2019 (Annexure A-3) issued by the respondent No. 3 i.e. the Commissioner of Police, Aurangabad City to the extent of it says that he would get the actual monetary benefit of yearly increments sanctioned to him under that order only from the date he reports back to duty from leave and thereby consequently seeking direction to the respondents in general and respondent No. 3 in particular to forthwith release in his favour all the actual monetary benefits flowing from sanctioning of yearly increments to him under that order for the period of 01.07.2014 to 01.07.2018 without the condition of his reporting back to duty.

2. The facts in brief giving rise to this Original Application can be stated as follows :-

(a) The applicant entered into service of the Government of Maharashtra in its Police Department as a directly recruited Police Sub-Inspector (PSI) in the year 1991. In due course of time, he was promoted from the cadre of PSIs

to the cadre of Assistant Police Inspectors (APIs) and then in the year 2008 to the cadre of Police Inspector (PIs). Since then he worked in the said cadre of PIs till a tragedy befell him as narrated in the present Original Application.

(b) In the year 2013, when the applicant was posted at Manikpur Police Station under Superintendent of Police, Thane (Rural), he was suffered from an attack of paralysis on 06.07.2013. Due to which, right side of his body was fully paralysed and he suffered from the said attack of paraysis while on duty.

(c) The applicant could not recover for the said tragedy. Therefore, he was constrained to submit an application in the year 2015 to the respondent No. 2 i.e. the Director General of Police, Mumbai urging for grant of benefit under of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act of 1995) then prevail. There was no response for his said application from the competent authority. The applicant therefore, filed the O.A. bearing No. 136 of 2016 inter-alia praying for directions to issue necessary orders extending him the benefits of Section 47

of Disabilities Act, 1995. The said O.A. came to be decided by the order dated 20.03.2018 (Annexure A-1) in following terms :-

“26. Consequently, the O.A. is allowed. The respondents are directed to extend the service benefits including financial benefits to the applicant in view of the provisions of Section 20 (4) of the Rights of Persons with Disabilities Act, 2016. The respondents are directed to release the salary of the applicant w.e.f. March, 2015 immediately. There shall be no order as to costs.”

(d) It is submitted that during pendency of the above-said O.A. No. 136/2016, the Act of 1995 was repealed by the Central Government by enacting The Rights of Persons with Disabilities Act, 2016, which was brought to effect from 19.04.2017. The synonymous provision is that of Section 47 of old Act of 1995 was made in Section 20(4) of 2016 Act.

(e) It is further submitted that while passing the order dated 20.03.2018 (Annexure A-1) in the said O.A. No. 136/2016, the Tribunal was pleased to take note of the fact that during pendency of said O.A. orders were already issued extending the benefits of Section 47 of the old Act of

1995 to the applicant. On the said backdrop and also by taking into consideration the judgment of the Hon'ble Apex Court in the case of **Kunal Sing Vs. Union of India and another** reported in **2003 SCC (L&S) 482** and two orders previously passed by this Hon'ble Tribunal in applicant's O.A. following specific findings were recorded by this Tribunal, which are quoted verbatim as follows :-

“24. In view of the above-said discussion, the applicant is entitled to get all the service benefits attached to the post as he has acquired disability during his service and he is found not suitable for the post, which he was holding i.e. the post of Police Inspector. Therefore, he is entitled to receive all the service benefits as provided under proviso to sub section 4 of Section 20 of the Act (Section 47 of the Act of 1995).

25. Considering the above discussion the applicant is entitled to get financial benefits and service benefits attached to the post on which he was serving in view of the provisions of Section 20 (4) of the Rights of Persons with Disabilities Act, 2016. Therefore, the Original Application deserved to be allowed.”

(f) It is further submitted that while recording the above findings, this Tribunal in para No. 22 of it's order was

pleased to specifically deal with the submission raised on behalf of respondents that the applicant's salary from March 2015 onwards was not released on the ground that he had not joined his duty. While discarding said ground raised by the respondents, this Tribunal was pleased to observe that there was nothing in Section 20 (Section 47 of the old Act of 1995) which provided that the person acquiring disability had to discharge his duties for getting the benefit under that section. After further elaborate discussion this Hon'ble Tribunal was pleased to hold that by denying payment of salary to applicant from March 2015 onwards on the ground of his not joining duty the respondents had acted in contravention of Section 20 of the Act of 2016. Therefore, this Tribunal was pleased to hold that the applicant was entitled to get all the financial benefits like salary etc.

(g) In view of above referred findings of this Tribunal, it is submitted that the attempt of respondents to insist upon his joining back duty for getting service benefits including financial benefits flowing from Section 20 of the 2016 Act was not successful. On the contrary, this Tribunal was pleased to direct the respondents to extend all service

benefits including financial benefits to the applicant in view of the provisions of Section 20(4) of the Act of 2016. Needless to say that, the reason for issuance of those directions by this Hon'ble Tribunal was to see that the basic purpose and intention with which above referred Acts of 1995 or 2016 were introduced fulfilled in their totality.

(h) It is further submitted that in spite of the aforesaid clear directions issued by this Tribunal while allowing the O.A. No. 136/2016 filed by him, as the respondents did not extend consequential financial benefits to the applicant that he was constrained to file a Contempt Petition in this Tribunal in 2nd half of 2018. It is a matter of record that during pendency of said C.P. filed by the applicant as the respondents released most of the financial benefits due to him, said Contempt Petition was disposed of by this Tribunal on 11.10.2018. Annexure A-2 is the order dated 30.08.2018 is the order issued by the respondent No. 2 thereby treating the period from 01.03.2015 onwards till 23.04.2017 as his duty period for all purposes with further direction to the respondent No. 3 to release all the pay and allowances to the applicant from March 2015 onwards.

(i) After issuance of above-said order dated 30.08.2018 (Annexure A-2), the respondent No. 2 was pleased to regularize certain periods of his absence from duty, the respondent No. 3 issued impugned order dated 22.03.2019 (Annexure A-3) sanctioning yearly increments to the applicant from 01.07.2014 onwards till 01.07.2018 in the light of provisions of Rules 36 & 39 of the MCS (Pay) Rules, 1981 and Rule 10 of the MCS (Revise Pay) Rules, 2009. The said order certainly extended to the applicant the benefit of yearly increments for the period of 01.07.2014 to 01.07.2018 to which he was entitled. However with a rider that he would not be entitled for the same only from the reports back to duty from leave. In view of that action taken by the respondent No. 3 of making payment of actual financial benefits flowing from order dated 22.03.2019 to him contingent / condition upon his reporting back to duty is absolutely unsustainable and untenable, but even it is contemptuous and in defiance of this Tribunal's order dated 20.03.2018, thereby the applicant is deprived of the actual service benefits flowing therefor, because in the first phase there was no question of the applicant reporting back to duty much-less from leave and secondly he having

suffered from the disability as contemplated under the aforesaid Act of 2016 that imposing the said condition in itself was pre-se wrong and incorrect on the part of respondent No. 3 apart from being contemptuous to the order dated 20.03.2018 in O.A. No. 136/2016.

(j) In view of above, the applicant submitted detailed representation dated 07.06.2019 (Annexure A-4) to the respondent No. 3 seeking to reconsider the order dated 22.03.2019 and to extend him actual financial benefits without imposing any condition upon him. But in vain. Therefore, the applicant again made representation dated 23.07.2019 (Annexure A-5). However, even said request application that did not bare any fruits. Hence, the present Original Application.

3. (i) The affidavit in reply is filed on behalf of respondent No. 3 by one Dipak Sopanrao Pawar, working as Assistant Commissioner of Police (Admin), in the office of Commissioner of Police, Aurangabad City, thereby he denied all the adverse contentions raised in the O.A. It is undisputed that earlier O.A. No. 136/2016 filed by the applicant was decided by this Tribunal by the order dated

20.03.02018 (Annexure A-1) and C.P. was taken out by the applicant arising from alleged disobedience of the order. The said C.P. was also disposed of in view of the compliance of the order made by the respondents.

(ii) It is denied that the impugned order issued by the respondent No. 3 is not legal and proper and it is stated that the condition put under the impugned order of joining the duties back the applicant from leave is in accordance with law that is so in view of Section 20 of the Act of 2016 itself it provides that if the Government servant is capable to do certain kind of work, then he must be given the said work without reducing the posts. The applicant suffered from paralysis attack, which is recoverable and hence, it cannot be termed as permanent disability. The applicant is continuously avoiding to remain present at the office of respondent and claiming only benefits as per the Act. He must remain present at the office of respondent and such letter has been issued to the applicant to produce his disability certificate as per the format to claim benefits under the Act. It is submitted that the applicant has not produced the disability certificate issued by the competent authority and the applicant is not willing to do any kind of

work, which will be suitable for him, but only claiming service benefits. That is not permissible. The applicant is deliberately and intentionally avoiding to fulfill his duty i.e. to join his duty and to produce disability certificate as per the Government Notification. The respondents have annexed the copy of G.R. dated 17.10.2017 (Annexure R-1) issued by the Public Health Department, Maharashtra State and a copy of letter dated 12.12.2019 (Annexure R-2) issued by the respondent No. 3 for production of disability certificate. In the circumstances, there is no merit in the present O.A. and the same is liable to be dismissed.

4. The applicant has filed rejoinder affidavit denying the adverse contentions raised in the affidavit in reply reiterating the contentions raised in the O.A. and submitted that there is no question of again submitting disability certificate, when the respondents have already extended the benefits of Section 20 of the Act of 2016 to the applicant. Asking for disability certificate amounts to contempt of this Tribunal in as much as the applicant was already declared medically unfit for discharging duty by the Medical Board.

5. The affidavit in-sur- rejoinder to the rejoinder affidavit filed by the applicant is filed by one Shri Balaji s/o Raghunath Sontakke working as Assistant Commissioner of Police (Admn.) in the office of Commissioner of Police, Aurangabad City, Aurangabad, thereby denying the adverse contentions raised in the rejoinder affidavit. It is submitted that in view of Rule 36 and 39 of the Maharashtra Civil Services (Pay) Rules, 1981 and Rule 10 of the Maharashtra Civil Services (Revise Pay) Rules, 2009, the applicant is not entitled for any relief as claimed by him.

6. I have heard the arguments advanced at length by Shri Avinash Deshmukh, learned Advocate for the applicant on one hand and Shri V.R. Bhumkar, learned Presenting Officer for respondents on the other hand.

7. Upon perusal of the rival pleadings, documents and submissions advanced on behalf of both the sides, it is pertinent to note here that the present Original Application in fact is arising out of non-compliance of the order of this Tribunal dated 20.03.2018 passed in O.A. No. 136/2016 (Annexure A-1). As per the said order, the respondents were directed to extend the service benefits including financial benefits to the applicant in view of the provisions of Section 20 (4) of the Rights of Persons

with Disabilities Act, 2016. The respondents were directed to release the salary of the applicant w.e.f. March, 2015 immediately. The said Section 20 (4) of the Rights of Persons with Disabilities Act, 2016, is as under :-

“20. Non-discrimination in employment.-

1.

2.

3.

4. No Government establishment shall dispense with or reduce in rank, an employee who acquires a disability during his or her service:

Provided that, if an employee after acquiring disability is not suitable for the post he was holding, shall be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

5. ”

Synonymous provision was there in Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

8. In this Original Application, the applicant has challenged only part of communication dated 22.03.2019 (Annexure A-3)

whereby consequential financial benefits were granted relating to yearly increments from 01.07.2014 to 01.07.2018 in favour of the applicant, but with a rider of “only from the date he reports back to duty from leave”. In view of the same, the applicant is seeking release of the said financial benefits without insisting upon his reporting back to duty.

9. The Original Application is resisted contending that the applicant has not produced the disability certificate as per the format to claim benefits under the Act even though demanded and that releasing of financial benefits would be governed by Rules 36 & 39 of the MCS (Pay) Rules, 1981 and Rule 10 of the MCS (Revise Pay) Rules, 2009 and that the applicant is not doing any work which will be suitable for him. It is further contended that the disability of the applicant cannot be termed as permanent disability. The applicant continuously avoiding to remain present at the office of respondent and claiming only benefits as per the Act.

10. However, upon close scrutiny of affidavit in reply filed on behalf of respondents, it would be evident that it is not disputed that the benefits under Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full

Participation) Act, 1995 and under Section 20 (4) of the Rights of Persons with Disabilities Act, 2016 are already extended to the applicant. The respondents are only asking the applicant to report on duty obviously with fitness certificate.

11. However, perusal of the order dated 20.03.2018 passed in O.A. No. 136/2016 would show that almost all these contentions were raised in the said matter and which have been dealt with in para Nos. 21 to 26 and the said O.A. is disposed of accordingly.

12. In the circumstances as above, once findings are already given as regards reporting back duty by the applicant or about disability certificate, it is not open for the respondents to raise the said submissions again, which is not desirable and will not be in accordance with law. The respondents are required to implement the order dated 20.03.2018 passed by this Tribunal in O.A. No. 136/2016 in its letter and spirit. However, the respondents are raking up the said issue time and again, which is impermissible.

13. It is admitted position that medical certificate was issued by the competent authority certifying that the applicant is unfit to discharge the duties of the post of the Police Inspector and

on the basis of said medical certificate, it can be said that the applicant is a 'person with benchmark disability' as defined under Section 2(r) and "person with disability having high support needs as defined under Section 2(t) of the Rights of Persons with Disabilities Act, 2016. It is crystal clear upon perusal of said Act of 2016 that it does not provide for such disabled person to report on duty for claiming monetary benefits. However, in such circumstances, observations under challenge are made in the impugned communication dated 22.03.2019 (Annexure A-3) to that effect are totally unsustainable in the eyes of law. The applicant shall be entitled for said necessary monetary benefits without condition of his reporting duty back. Hence, the following order :-

ORDER

The Original Application No. 810/2019 is allowed in following terms :-

- (A) The respondent No. 3 is directed to release all the consequential benefits flowing from order dated 22.03.2019 (Annexure A-3) relating to yearly increments from 01.07.2014 to 01.07.2018 in favour of the applicant without insisting upon his

reporting back to duty with a period of two months from the date of this order.

(B) The respondent No. 3 is further directed to continue to extend benefits of all his future yearly increments to the applicant without insisting upon his reporting back to duty.

(C) There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 03.01.2023.

(V.D. DONGRE)
MEMBER (J)

KPB S.B. O.A. No. 810 of 2019 VDD Monetary Benefits of yearly increments