

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
AURANGABAD BENCH, AURANGABAD**

ORIGINAL APPLICATION NO. 223 OF 2014

DISTRICT : AURANGABAD

1. Kakasaheb s/o Bhanudas Zalte,)
Occ : Sales Tax Inspector)
R/o: Sai Krupa Apartment,)
Ramkrishna Nagar, Garkheda,)
Aurangabad.)
2. Sunanda Rajesh Jadhav,)
Occ : Service, R/o: Kasliwal Classic)
Tapdiya Nagar, Dargah Road,)
Aurangabad.)
3. Dnyaneshwar s/o Damodhar Badak)
Occ : Service, R/o Plot no. 14,)
Shivneri Colony, Vijay Chowk,)
Aurangabad.)
4. Vivek s/o Ratnakar Mungikar,)
Occ : Service, R/o Ellora Book Stall)
Paithan Gate, Aurangabad.)
5. Popat s/o Patilba Salunke,)
Occ : Service, R/o: c/o B.B Shelke)
Plot no. 19, Moreshwar Housing Soc.)
Garkheda, Aurangabad.)
6. Rajendra s/o Babulal Jadhav,)
Occ ; Service, R/o Near Ganpati)

- Mandir, Ulkanagari, Aurangabad.)
7. Subash s/o Fulchand Rajput,)
 Occ : Service, R/o: Walujwadi,)
 Tal-Gangapur, Dist-Aurangabad.)
8. Datta s/o Kamluba Tangade,)
 Occ : Service, R/o: N-9, HUDCO,)
 Aurangabad.)...**APPLICANTS**

VERSUS

1. The State of Maharashtra,)
 (Copy to be served on C.P.O.)
 Maharashtra Administrative Tribunal,)
 Bench at Aurangabad.)
2. The Secretary,)
 Sales Tax Department, Mantralaya,)
 Mumbai 400 032.)
3. The Special Commissioner for)
 Sales Tax, Maharashtra State,)
 Mumbai 400 010.)
4. The Joint Commissioner of Sales)
 Tax, [VAT Administration], 1st floor)
 Sales Tax Office, Opp. Railway Station)
 Aurangabad Region, Aurangabad.)
5. The Additional Commissioner of)
 Sales Tax, Nasik Zone, Nasik.)

6. The Assistant Commissioner of)
Sales Tax, Office of Joint)
Commissioner, Aurangabad.)
7. The Establishment Officer,)
Office of Joint Commissioner of Sales)
Tax, Aurangabad Division,)
Aurangabad.)..**RESPONDENTS**

Shri S.D Joshi, learned Advocate for the Applicant.

Mrs R.S Deshmukh, learned Presenting Officer for the Respondents

**CORAM : Shri Rajiv Agarwal, (Vice-Chairman)
Shri B.P Patil (Member) (J)**

DATE : 08 .03. 2017

PER : Shri Rajiv Agarwal, (Vice-Chairman)

ORDER

1. Heard Shri S.D Joshi, learned Advocate for the Applicant and Mrs R.S Deshmukh, learned Presenting Officer (P.O) for the Respondents.

2. The Applicants have challenged Rule 13 of the Maharashtra Civil Services (Revised Pay) Rules, 2009 as unconstitutional stating that it is arbitrary and discriminatory and is thus violative of Article 14 of the

Constitution of India. They have also prayed that notices issued on 28.1.2013 by the Respondent no. 5 on the basis of G.R dated 31.8.2009 may be quashed and set aside.

3. Learned Counsel for the Applicants argued that the Applicants joined the Sales Tax Department as Clerk-cum-typists in the year 1994 and 1995. They were given Time Bound Promotion/benefit of Assured Career Progression Scheme (ACP) Scheme after 12 years of service with effect from various dates in the year 2006. Recommendations of the 6th Pay Commission were implemented in Maharashtra by G.R dated 31.8.2009. Maharashtra Civil Services (Revised Pay) Rules, 2009 were notified on 22.4.2009. Learned Counsel for the Applicants argued that Rule 13 of the Revised Pay Rules differentiates between those who were given benefit of A.C.P Scheme before 1.1.2006 and those who were given the benefit after 1.1.2006. The pay fixation for direct recruits is also different and they are given higher initial pay. Those who were given benefit of A.C.P scheme before 1.1.2006 have their pay fixed in the Pay Band of Rs. 9300-34800 at Rs. 10,230/- with grade pay of Rs. 4300/-. For the Applicants, it was fixed at Rs. 10,100/- and it is sought to be reduced to Rs. 9300/- by notices dated 28.1.2013. The service details of the Applicants are given at Annexure A-4 (page 39 of the Paper Book). The Pay Band for the post of Sales Tax Inspectors is Rs. 9300-34800 with grade pay of Rs. 4300/-. Initially, the Applicant's pay was fixed at Rs. 10,100/-. However, the same has been

reduced to the minimum of the scale of Rs. 9300/- from the date of granting Time Bound Promotion, and recoveries have been ordered against the Applicant. Learned Counsel for the Applicants stated that different criteria has been applied to those who were given Time Bound Promotion before 1.1.2006 and their pay has been fixed at a higher level in the Pay Band of Rs. 9300-34800. This Rule 13 of Revised Pay Rules is thus discriminatory and has to be struck down. As the pay of the Applicants was correctly fixed, notices dated 28.1.2013 may be quashed and set aside.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicants were given Time Bound Promotion in the pre revised Pay Scale of Rs. 5500-9000 from the following dates:

Sr No	Name	Date
1.	K.B Zalte	18.05.2006
2.	S.R Jadhav	08.03.2006
3.	D.D Badak	02.09.2006
4.	V.R Mungikar	05.08.2006
5.	P.P Salunkhe	04.08.2006
6.	R.B Jadhav	07.03.2006
7.	D.K Tangade	09.03.2006

[Date of grant of Time Bound Promotion of Shri S.F Rajput is given as 27.3.2007 by the Applicants at AnnexureA-4, for Shri R.B Jadhav, it is 7.6.2006 and for Shri D.K Tangde it is 9.3.2007]. As per para 2(1) of G.R dated 18.5.2009, the Applicant's pay was required to be fixed on the basis of pay

in the lower Pay Band and grade pay plus 3% as increment and pay in the Pay Band in the promoted post is fixed accordingly. In the case of the Applicants the Applicants were working as Junior Clerks, whose Pay Band was Rs. 5200-20200 + grade pay of Rs. 1900/-. Taking example of the Applicant no. 8, he was getting pay in the scale of Rs. 3050-4590. The corresponding Pay Band was Rs. 5200-20200. He was getting pay of Rs. 6897/-. His pay in the Pay Band was fixed at Rs. 7070/- and with grade pay of Rs. 1900/- it came to Rs. 8970/-. The pay on grant of Time Bound Promotion should have been fixed at Rs. 9300/-, i.e. minimum of Pay Band. By mistake it was fixed at Rs. 10,100/- under Rule 8, which is applicable to direct recruits. This mistake has been corrected. Those who were granted Time Bound Promotion before 1.1.2006, the Pay was fixed as per Rule 14 of Revised Pay Rules, while for those appointed as fresh recruits on or after 1.1.2006, their pay was fixed as per Rule 8. Rule 13 of the Revised Pay Rules is regarding fixation of pay on promotion on or after 1.1.2006 (the date on which Sixth Pay Commission was made applicable). This rule 13(A) is for regular promotion and it is the same as para 2(1) of G.R dated 31.8.2009 for Time Bound Promotion. On this basis, the Applicants pay should have been fixed at Rs. 9300/-. The Pay of the Applicants was fixed as per Rule 8 of the Revised Pay Rules taking their grade pay at Rs. 4300 and their pay was fixed at Rs. 10,100/- as per Annexure-III below Rule 8. However, Rule 8 is applicable to

fresh recruits after 1.1.2006 and the Applicants are not covered by the said rule.

5. In O.A no 626/2014 and 646/2014, before the M.A.T, Mumbai Bench, this issue of granting higher pay in the Pay Band to direct recruits was examined. This Tribunal by judgment dated 21.3.2016 has held rule 8 to be valid. The Applicants are seeking pay fixation as per Rule 8, though, their pay was fixed on Time Bound Promotion/benefit of Assured Career Progression Scheme on completion of 12 years of service as Clerk-cum-typist. Even if they were given regular promotion, this rule 8 will not apply to them. The only exception would be if the Applicant had appeared for limited Departmental Competitive Examination held by M.P.S.C and were promoted. There is nothing on record to suggest that they were actually promoted. Admittedly, they are seeking pay fixation on getting Time Bound Promotion and not regular promotion. The pay of the Applicants were correctly fixed under Rule 13 of the Revised Pay Rules. The challenge to Rule 13 fails as this Tribunal has upheld the right to the Government to give a higher initial start to direct recruits. The relevant extract from the aforesaid judgment of Mumbai Bench is reproduced below:-

“In the present case, the Central Government and State Government have accepted the recommendation of the Sixth Pay Commission as regards the higher initial start to be given to the direct recruits. It is not open for this

Tribunal, either to examine the challenge to the rationale of the recommendation of the Pay Commission or to scrutinize the decision of the State to accept the recommendation of the Pay Commission. This Tribunal cannot sit over judgment over the correctness of the recommendations of an expert body like the Pay Commission.”

The Applicants claim that those given Time Bound Promotion before 1.1.2006 are treated differently. Naturally, that date is crucial. Case of a person given Time Bound Promotion before 1.1.2006 will be considered under rules applicable for promotion under the rules for Fifth Pay Commission. Then in 6th Pay Commission, his pay will have to be fixed. We do not find that the Applicants have made out any case that such an approach is discriminatory. This contention of the Applicant is without any basis.

6. We find that the pay of the Applicants has to be fixed in accordance with Rule 13 of the M.C.S Revised Pay Rules. If any recovery is resulted, we are not inclined to quash the notices dated 28.1.2013 at this stage. It will have to be examined whether the Applicants has sought fixation of pay at Rs. 10,100/- under Rule 8 and whether they had given any undertaking that if there was any wrong fixation, they will be bound to refund excess payment. The Respondents are directed to take action on notices dated 28.1.2013 after considering replies of the Applicants. In case

any adverse order are passed by the Respondents the Applicants will be at liberty to institute appropriate legal proceedings.

7. This Original Application is dismissed with no order as to costs.

**B.P. PATIL
(MEMBER. J)**

**RAJIV AGARWAL
(VICE-CHAIRMAN)**

**Date : 08.03.2017
Place : Aurangabad
Dictation taken by : A.K Nair**

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