

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 18 /2014**

Jagannath S/o Mukunda Kawade,  
Aged about \_\_\_ years,  
Occupation – Ex-X-Ray Technician and  
retired Junior Clerk from General Hospital  
Chandrapur, R/o Near Boys Chokhameda  
Hostel, Behind Shende Kirana Stores,  
Chandrapur – 442402, District- Chandrapur.

**Applicant.**

**Versus**

- 1) State of Maharashtra through  
Secretary, Health Department,  
Mantralaya, Mumbai-400 032.
- 2) Joint Director of Health Services,  
(Health) Pune.
- 3) The Deputy Director of Health  
Services, Nagpur Division, Nagpur.

**Respondents**

---

**Shri V.N.Mahajan, Advocate for the applicant.**

**Shri V.A.Kulkarni, Id. P.O. for the respondents.**

---

**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J).**

---

**JUDGMENT**

**(Delivered on this 04<sup>th</sup> day of August, 2017)**

None for the applicant. Shri V.A.Kulkarni, learned P.O. for the respondents.

2. The applicant Jagannath S/o Mukunda Kawade was appointed as X-Ray Technician in the year 1974. On 01/04/1976 his pay scale was Rs. 385-15-500-20-660-20-760.

3. The applicant met with paralytic attack during his service in September, 1984 and therefore, he proceeded on long leave from 23/09/1984 till 23/08/1987. He was referred to Medical Board and the Medical Board suggested that the light work shall be given to him.

4. According to the applicant, he was pressurised to give the consent for change of cadre and therefore, he submitted a letter to that effect on 27/05/1986. The applicant, however, stated that he requested that his initial pay be protected. On 08/10/1987, the Deputy Director of Health Services, Nagpur i.e. Respondent No. 3 issued a letter of changing the cadre of the applicant from X-Ray Technician to Junior Clerk w.e.f. 24/08/1987 and the applicant was posted in the vacant post in General Hospital, Chandrapur. However, his pay scale was not protected and on the contrary, it was reduced to Rs. 260-10-390-15-420-EXT-15-495. The applicant filed representation for protection of his pay scale, but same

was not considered and hence this O.A.. The applicant has claimed that the continuation of his pay scale w.e.f. 24/08/1987 vide order dated 08/10/1987 be declared illegal and therefore the said continuation was a wrong pay scale and the same be quashed and set aside. He is also claiming continuation of correct pay scale and arrears of the differences.

5. The reply affidavit has been filed on behalf of Respondent No. 3. It seems from the reply affidavit that the applicant himself applied for change of his post, since he was unable to perform his duty properly due to paralytic attack. The Medical Board certified that the applicant was fit for duty, provided, he has been given work such as writing with right hand and therefore, the applicant was asked whether he was ready to accept the post of Clerk vide communication dated 16/05/1986. The applicant was asked to give his consent and accordingly the applicant gave consent for Clerical post. There was absolutely no reason for protection of his pay scale, since the applicant was accommodated instead of his being denied the post; which is seen from the service book. Neither the applicant nor his counsel remained present for arguing the matter on merits. In fact, they remained absent on various dates and particularly on 25/07/2017 and 28/07/2017 and therefore, after hearing the Id. P.O., the matter was closed for order.

6. Perusal of the reply affidavit shows that the applicant has joined the post of Junior Clerk on 24/08/1987 in the pay scale of Rs. 260-495 as already stated. After completion of 12 years of services in the cadre of Clerk, the applicant was granted time bound promotion in the pay scale of Senior Clerk in the year 1999 and the applicant received the salary of Senior Clerk till he attained the age of superannuation i.e. 31/10/2005. He has also received entire benefits. His cadre was changed from the post of X-Ray Technician to the post of Clerk in the year 1987 and till 2012 the applicant never objected for his post of Junior Clerk and for the pay scale which he was receiving as the Junior Clerk.

7. The order of change of cadre is placed on record at exh. (A-7), and dated 20/12/1989 vide which the Government sanctioned change of the cadre of the applicant from X-Ray Technician to the post of Clerk as per Rule 27 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981. Perusal of Rule 27 of the said rules shows that a person can be transferred or posted to a post carrying less pay in certain circumstances the said Rules reads as under:-

***When transfer to a post carrying less pay is permissible:-***

- (1) A Government servant may be transferred from one post of another, provided that, except-
  - (a) On account of inefficiency or misbehaviour, or

- (b) *On his written request, or*
- (c) *In anticipation of the abolition of the post on which he holds a lien, or*
- (d) *Where, the medical certificate granted under Maharashtra Civil Services (Pension) Rules, certifies the person to be fit for service of a less laborious character than that which he has been performing.*

*A Government servant shall not be transferred substantively to, or except in a case covered by Rule 56 of Maharashtra Civil Services (Pay) Rules, 1981, appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien, or would hold a lien, had his lien not been suspended under Rule 23.*

*(2) Nothing contained in sub-rule (1) of this rule or in sub-rule (30) of Rule 9 shall operate to prevent the re-transfer of a Government servant to the post on which he would hold a lien, had it not been suspended in accordance with the provision of sub-rule (1) of Rule 23.*

8. The applicant has given written consent for changing of post and the Medical Board also suggested for his change of work. The applicant, therefore, cannot reiterate the issue of pay scale. In fact the applicant was shown mercy and instead of retiring the applicant on medical ground, an opportunity was given to him to serve in the Government. The applicant exhausted that opportunity and after

retirement i.e. after nine years from the date of change of post and almost after thirty years after change of post, he is claiming that his pay scale was not properly fixed. There is absolutely no merit in the said contention. Hence the following orders:-

**ORDER**

1. O.A. stands dismissed.
2. No order as to costs.

**(J.D. Kulkarni)**  
**Vice-Chairman (J).**

aps