

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 285 of 2020 (S.B.)

Mr. Manohar Jairam Sonowane,
aged about 60 years, Occ. Retired,
R/o Ravi Shankar Ward, near Darga, Civil Lines,
Gondia-441 601.

Applicant.

Versus

- 1) The State of Maharashtra,
Finance Department (Accounts and Treasury),
through its Secretary, Mantralaya, Mumbai-400 032.
- 2) The Directorate of Accounts and Treasuries (Secretariat),
Post office, J.N. Heredia Road, off Kamani Road, Ballard Estate,
Blair Pier, Thakersy House, 3rd floor, Estate, Mumbai-400 001.
- 3) The Joint Directorate of Accounts and Treasuries,
Lekha Kosh Bhavan, Civil Lines, near Collector Premises,
Civil Lines, Nagpur Maharashtra-440 001.
- 4) Pay Verification Unit, Accounts and Treasuries, Lekha Kosh
Bhavan, Civil Lines, Near Collector Premises, Civil Lines,
Nagpur, Maharashtra-440 001 through its Accounts Officer.
- 5) District Treasury Officer, Treasury Officer, Collector Premises,
Patanga Ground, Collector Premises, Amgaon Road,
District Gondia-441 601.
- 6) Assistant Accounts Officer,
Office of Accountant General (A&E)-II, Maharashtra,
Civil Lines, Nagpur-440 001.

Respondents.

Ku. K.K. Pathak, Advocate for the applicant.
Shri S.A. Sainis, learned P.O. for respondents.

Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.

Date of Reserving for Judgment : 7th July,2022.

Date of Pronouncement of Judgment : 28th July,2022

JUDGMENT

(Delivered on this 28th day of July,2022)

Heard Ku. K. K. Pathak, learned counsel for the applicant and Shri S.A. Sainis, learned P.O. for the respondents.

2. The case of the applicant in short is as under –

The applicant was appointed on the post of Junior Clerk w.e.f. 27/11/1998. He was posted to work at Sub Treasury Office, Goregaon, District Gondia. Subsequently, the applicant came to be promoted as Senior Clerk w.e.f. 26/04/2005 by the respondent department and was posted to work at District Treasury Office, District Gondia. The applicant was promoted from the post of Senior Clerk to Deputy Accountant / Sub Treasury Officer (Lower Grade) w.e.f. 11/01/2010. The applicant was transferred from Collector Office, Gadchiroli to Sub Treasury Office, Amgaon, District Gondia. Thereafter, the applicant was transferred from Sub Treasury Office, Amgaon, District Gondia to District Treasury, District Gondia. The applicant came to be retired as Deputy Accountant / Sub Treasury Officer (Lower Grade) from the office of District Treasury, District Gondia on 31/10/2018.

3. The applicant was working in a naxalite area from the date of his appointment till the date of superannuation. Therefore, as per the Govt. G.R. dated 06/08/2002 he was given one step pay of promotional post. After the retirement, the pay of the applicant is re-fixed by which the applicant's pay is lower down from Rs.18,970/- to 16,380/-. The respondents have also started recovery of excess amount paid to the applicant. Therefore, the applicant has challenged the order dated 13/5/2020 (Annex-A-1) whereby the respondent no.5 is intending to recover excess payment amounting to Rs.5,38,069/-. The applicant is further challenging the revised pay fixation order dated 30/7/2019 (Annex-A-2) issued by respondent no.5.

4. The O.A. is strongly opposed by the respondents. It is submitted that the Govt. Circular dated 6/8/2002 is very clear. The incentives are given to the employees who worked in a naxalite affected area. That incentives are not the part of the salary for final pay fixation. Hence, the respondents have rightly fixed the pay of the applicant after retirement and the respondents have taken legal steps to recover the excess payment made to the applicant. The applicant had given undertaking stating that he shall refund the excess amount, if paid to him. It is submitted that the applicant worked in naxalite area, therefore, he was given incentives of that period. The incentives which were given during his actual working in the naxalite area cannot

be continued after the posting in other area or retirement. Hence, the O.A. is liable to be dismissed.

5. Heard the learned counsel for the applicant Ku. K.K. Pathak. She has submitted that the applicant was working in naxalite area. He got one step promotional pay. That cannot be reduced after his retirement. After the retirement of applicant, the respondents have revised the pay. As per the pay fixation, the pay of the applicant is reduced. It is not permissible. She has submitted that the recovery after retirement is not permissible in view of the Judgment of Hon'ble Apex Court in the case of **State Of Punjab & Ors vs. Rafiq Masih (White Washer)** decided on 18 December, 2014 in Civil Appeal No. 11527 OF 2014 (Arising out of SLP(C) No. 11684 of 2012). She has pointed out the following Judgments –

(i) Koyala Udyog Kamgar Sanghatan, Nagpur Vs. Central Mine Planning and Design Institute Ltd. & Ors, 2007 (4) Mh.L.J.,766.

(ii) Vishnu Manerikar Vs. State of Goa & Ors.,2012 (4) Mh.L.J.,443

(iii) Arun A. Chawade, Wardha Vs. Chief General Manager, Bharat Sanchar Nigam Ltd. & Ors., 2014 CLR 4.

(iv) Dr. Nivruti B. Kalyan Vs. State of Maharashtra & Ors. (Bombay High Court, Bench at Aurangabad, Writ Petition No.11228 of 2015)

(v) Ujwala Wd/o Rupchand Thakre (Smt.) Nagpur Vs. Divisional Controller, Maharashtra State Road Transport Corporation, Nagpur & Ano., 2016 II CLR,607.

(vi) Issak Abbas Hawaldar Vs. The Block Education Officer, Panchayat Samiti, Hatkanangale & Ors.,2017 SCC online Bom 9687 : (2018) 3 Bom CR 147.

(vii) Qamrunnisha Mohammed Hashim Vs. The Municipal Corporation of Greater, Mumbai & Ors.,2017 SCC online Bom 9836.

(viii) Dharmopal Bhimdeo Marchande Vs. State of Maharashtra & Ors. with connected matters, 2018 SCC online Bom 1029.

(ix) Grace George Pampoorickal Vs. Municipal Corporation of Gr. Mumbai & Ors.,2018 SCC online Bom 1037.

(x) Union of India & Ors. Vs. Nabilal S. Saheb, 2018 SCC online Bom 1904.

(xi) M.P. Sreedharan Vs. Union of India & Ors., 2018 SCC Online Bom 1949.

(xii) Union of India & Ors. Vs. Ramsing D. Jadhav, 2018 SCC online Bom 2464.

(xiii) Mohan Motiramani & Ors. Vs. Union of India & Ors., 2018 SCC Online Bom 2472.

(xiv) Government of Maharashtra & Ors. Vs. Shri Vilas N. Patil, 2018 SCC Online Bom 7332.

(xv) *Dudhale Ramdas Krushna Vs. Administrative Officer & Ano. with connected matters, 2018 SCC Online Bom 14034.*

6. The cited Judgments are not applicable to the present case. There is no dispute that the applicant was working in a naxalite area in Gondia and Gadchiroli Districts. He rendered all his services in the naxalite area, therefore, he got the incentives / extra payment for working in the naxalite area. The Govt. G.R. dated 6/8/2002 is very clear. The Clause 7 of the said G.R. is reproduced as under –

“ (७) सर्व पदांसाठी एकस्तर पदोन्नती -

आदिवासी व नक्षलग्रस्त क्षेत्रात काम करण्यासाठी प्रोत्साहन म्हणून गट 'अ' ते 'ड' मधील सर्व पदधारकांना संबंधित कर्मचारी / अधिकारी त्या क्षेत्रात कार्यरत असेपर्यंतच्या काळात त्यांनी धारण केलेल्या मूळ पदाच्या नजीकची वरिष्ठ / पदोन्नतीची वेतनश्रेणी व त्या अनुषंगाने वेतननिश्चितीचा लाभ देण्यात यावा. ज्या कर्मचारी/ अधिका-यांना सेवांतर्गत आश्वासित प्रगती योजनेचा लाभ देण्यात आले आहे त्यांना आणखी वरिष्ठ पदाच्या वेतनश्रेणीचा लाभ अनुज्ञेय नसेल. ही एकस्तर पदोन्नतीची योजना दिनांक १ जूलै, २००२ पासून अंमलात येईल आणि ती संबंधित कर्मचारी/अधिकारी आदिवासी/नक्षलग्रस्त क्षेत्रात कार्यरत असेपर्यंतच अनुज्ञेय राहिल. त्या क्षेत्रातून कर्मचारी/अधिकारी बिगर आदिवासी क्षेत्रात परत आल्यावर तो त्याच्या मूळच्या संवर्गातील वेतनश्रेणीत पूर्वीच्या वेतनाच्या अनुषंगाने वेतन घेईल.”

7. It is specifically mentioned in the G.R. dated 6/8/2002 that one step promotional pay is to be paid to the employees working in naxalite affected / tribal area. That extra payment is till the employee worked in that area. After the transfer of that employee from naxalite / tribal area, he shall get his original pay scale. In view of this G.R., it is very clear that whatever the amount of one step promotional pay granted to the employees working in naxalite area, are not the pay, but it is incentive so that the employee shall be interested to work in

the naxalite area. As per the clause 7 of the said G.R., the respondents have paid the incentives to the applicant and it was applicable till the actual working in the naxalite area. Therefore, the respondents have re-fixed the pay after his retirement. It is inconsonance with the G.R. dated 6/8/2002. The same situation was in the case of **Tarachand S/o Urkudaji Gajbhiye Vs. State of Maharashtra & Ors.**, who had filed the O.A.186/2016. This Tribunal has recorded its findings in para-6 as under –

“6. Coming to the issue whether Circular dated 17.12.2013 has retrospective application or not, it is seen that the applicant claims that it has no retrospective application. However, Para 3 of this Circular reads as follows.

“या संदर्भातील शासनाचा निर्णय प्रलंबित असल्यामुळे अशा सुचना देण्यात येत आहेत की, आदिवासी व नक्षलग्रस्त भागातून दिनांक ०१.०१.२००६ रोजी किंवा त्यानंतर सेवानिवृत्त झालेल्या अधिकारी/कर्मचारी यांना निवृत्तीच्या दिनांकास ते ज्या मूळ पदावर कार्यरत आहेत (एकतर पदोन्नतीचे पद वगळून), त्या पदाच्या पे-बॅन्डमध्ये ते घेत असलेले वेतन + अनुज्ञेय ग्रेड वेतनावर निवृत्तीवेतनाची परिगणना करावी. ज्या कर्मचा-यांना अशा परिगणनेनुसार अनुज्ञेय निवृत्तीवेतनापेक्षा जास्त निवृत्तीवेतन अदा करण्यात आले आहे, त्या निवृत्तीवेतनधारकांकडून जास्त अदा केलेले निवृत्तीवेतन महाराष्ट्र नागरी सेवा (निवृत्तीवेतन) नियम १९८२ मधील नियम १३४ (ए) (दि.३०.०७.२००७ नुसार केलेली सुधारणा) नुसार वसूल करण्याची कार्यवाही या नियमातील परंतूकानुसार करण्यात यावी.”

There is a clear provision in this Circular that all Government servants, who retired from Tribal/Naxal affected areas on 01.01.2006 or thereafter, will be entitled to draw pension on the basis of their original pay and not on the pay they were drawing on one step promotion. This is a clear provision which suggest retrospective application of the Circular. Similarly, the relevant Maharashtra Civil Services (Pension) (Amendment) Rules, 2014 have been notified on 27.10.2014 and a new rule has been added to Rule 9(36), which reads:-

“2. In rule 9 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as “the principal Rules”)-

(a) in clause (36), after sub-clause (iii), the following sub-clause shall be added, namely-

“(iv) Any kind of financial incentive, including different in pay on account of one-step promotion (other than by way of Time Bound Promotion of Assured Career Progression) as per any policy of the Government, shall not be admissible for calculating pay.”

The Applicant has not challenged the Constitutional validity of the aforesaid Circular. There is no request in the relief clause 11 in the Original Application in that regard. Otherwise also, looking into the philosophy behind issuing the G.R. dated 06.08.2002, this Circular appears to be fully justified. A Government servant appointed to a Tribal/Naxal affected area is not given permanent one step promotion. Such promotion is given to him as long as he is working in such areas. Such a posting is supposed to be temporary and only young officer below the age of 50 years are expected to be posted in Tribal/Naxal affected areas. Ordinarily, therefore, situation where a person retires from Tribal/Naxal affected areas should not arise. If a person retiring in such areas given pension on one step promotion basis when he is no longer required to work in that area will be highly discriminatory vis-à-vis other persons similarly situated and who retire from areas other than Tribal/Naxal affected area. It is my considered opinion that Circular dated 17.12.2013 is fully in consonance with the G.R. dated 6.8.2002. The only issue is regarding recovery of excess payment which has already been discussed in the preceding paragraph.”

8. The employee working in the naxalite affected area namely Ashok J. Aknurwar was granted relief by this Tribunal. The respondent authority challenged the said order of this Tribunal dated 11/4/2014 in Writ Petition No.1701/2015. In the cited decision, the

employee was working in naxalite area. This Tribunal directed the respondents authority to consider the last drawn salary of applicant Ashok J. Aknurwar in the pay scale of Rs.15,600-39,100/-. The Hon'ble High Court has recorded findings that in view of Rule 9 (36) of the Maharashtra Civil Services (Pension) Rules, 1982 the pay under rule would only include the pay sanctioned for a post, personal pay and special pay at any emoluments classed as 'pay'. The pay received by the respondent (employee) in the higher pay scale cannot be termed as a special pay as it is only in the nature of an incentive, as could be gathered from reading of the G.R. dated 6/8/2002." On a reading of the G.R., it is clear that higher pay scale is provided for a Government servant, only for the period during which he works in the naxalite affected areas. That is not a 'pay' sanctioned for the post.

9. The Government servant would be entitled to the higher pay scale as an incentive in terms of G.R. dated 6/8/2002, only from the date of joining the posting in the naxalite affected area and till the date he continues to work in the naxalite affected area. The Government servant working on a particular post would stop drawing a higher pay scale as soon as he is transferred out of the naxalite affected / tribal area. It is apparent from the reading of Govt. G.R. that the special incentive is sought to be granted to the employees only for the period during which they work in naxalite affected areas or tribal

areas. On a reading of Rule 9 (36) of the Rules, it cannot be said that the higher pay scale drawn by the respondents during the last 10 months of his service would fall within the definition of word 'pay' and that the higher pay scale is a special pay which was drawn by the respondents.

10. It is further observed by the Division Bench of Bombay High Court, Bench at Nagpur that "there is one more aspect of the matter which needs to be considered. if we accept the submission made on behalf of the respondent in regard to the computation of the pensionary benefits on the basis of the pay drawn by him during the last 10 months of his service, grave injustice would be caused to the employees that were holding the same post of Accounts Officer, but were not posted in the naxalite affected / tribal areas during the last 10 months of their service. If the submission made on behalf of the respondents is accepted, there would be a mad rush for seeking a transfer to a place located in naxalite affected areas or tribal areas during the last year of service of the employees. In a given case a person may have worked for a period of nearly 10 years in a naxalite affected area or tribal area till the penultimate year of his service and during the last year if he is transferred in a non naxalite affected area or non tribal area, the pension drawn by such an employee would be computed on the basis of lesser pay drawn by him, whereas, a person

who may have enjoyed his postings during his entire services in non-naxalite affected area or a non-tribal area would be entitled to a much higher pension merely because he is posted in the naxalite affected area during the last year of his service. There is a great difference in the pay scale drawn by a government servant working in a non-naxalite affected area and naxalite affected area, for the same post. For example, in the present case, an Accounts Officer working in a non-naxalite affected area would receive the pay in the pay scale of Rs.9300-34800 with GP Rs.4400, whereas, an Accounts Officer working in a naxalite affected area would receive the pay in the pay scale of Rs.15600-39100 with GP Rs.5400. There is vast difference between the pay drawn by an employee working in the naxalite area and non naxalite area. On reading of the provisions of Rule 60 (1) & 9 (36) of the Rules and the Govt. G.R. dated 6/8/2002 it is clear that the intention of the Government was not to grant considerably higher pension to a government servant, who has worked in a naxalite / tribal area in the last year of his service, vis-a-vis a government servant, who has worked in non-naxalite affected area during the last year of his service. There would be a great difference in the monthly pension -

11. The Govt. G.R. dated 17/12/2013 clearly provides that the government servants retiring after coming into force of 6th Pay

Commission recommendations on 1/1/2006 would be entitled to receive the pension by considering the last pay sanctioned for the post and not on the basis of the higher pay scale drawn in pursuance of Govt. G.R. dated 6/8/2002.

12. The Hon'ble High Court in Writ Petition No. 1701/2015 has held that the employee is entitled for one step promotional pay during his actual working in the naxalite affected area. That does not mean that he is entitled for the said pay scale even after retirement. The said issue is also decided by this Tribunal in O.A. 186/2016, holding that the employee working in naxalite affected area are not entitled to get the pension on the basis of last pay drawn in the naxalite area.

13. In view of above discussions, the applicant is not entitled for any relief. Hence, the following order –

ORDER

The O.A. is dismissed. No order as to costs.

Dated :- 28/07/2022.

**(Justice M.G. Giratkar)
Vice Chairman.**

dnk.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 28/07/2022.

Uploaded on : 29/07/2022.**