

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR**

**ORIGINAL APPLICATION NO.507/2017.** (S.B.)

Shri Gautam Namdeorao Ramteke,  
Aged about 58 years,  
Occ-Retired Lab. Technician,  
R/o Officer Colony, Takiya Ward,  
Bhandara.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through Director of Health Services,  
8<sup>th</sup> floor, Arogya Bhavan,  
St. Georges Hospital Compound,  
P.D. Mello Road, Mumbai-01.
2. The Deputy Director of Health Services,  
Shraddhanand Peth, Mata Kacheri,  
Nagpur Division, Nagpur.
3. The Medical Superintendent,  
Rural Hospital, Palandur, Distt. Bhandara.
4. The Accounts Officer,  
Pay Verification Unit, Nagpur.

**Respondents**

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Shri T. Rahul, the Ld. Advocate for the applicant.

Shri V.A. Kulkarni, the Ld. P.O. for the respondents.

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

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**ORAL ORDER**

(Passed on this 28<sup>th</sup> day of September 2018.)

Heard Shri T. Rahul, the learned counsel for the applicant and Shri V.A. Kulkarni, the learned P.O. for the respondents.

2. The applicant is working as Laboratory Technician under the respondents with effect from 19.1.1988. He has acquired requisite qualification B.Sc. (Mathematics, Chemistry and Physics). According to the applicant, the Laboratory Technician is liable to get promotional pay scale of continuous service after completion of 12 years and accordingly benefits were granted to the applicant vide order dated 20.11.2002 w.e.f. 2001. However, vide impugned communication dated 9.11.2016 (A-2), and 28.2.2017 (A.6), the respondents all of a sudden directed recovery of amount paid to the applicant by virtue of his time bound promotion granted in 2001. The amount approximate more than Rs. 1,00,000/- has been recovered from his pension and remaining amount of Rs. 1,00,000/- and odd is to be recovered. Rest of the amount remained to be recovered, because of the stay granted by this Tribunal.

3. The learned counsel for the applicant submits that as per Biochemists in the Directorate of Health Services (Recruitment) Rules, 1990, the applicant is entitled to be appointed on the post of Biochemist in the Directorate. Said rules are placed on

record at page Nos. 48 to 50 (both inclusive). Rule 3 (a) of the said rules reads as under:-

**“3. Appointment to the post of Biochemist in the Directorate shall be made either:-**

(a) by promotion of a suitable of a suitable person on the basis of seniority-cum-merit from amongst the persons holding the post of Laboratory Technician in Class-III, service under the Directorate (i) having not less than three years in the cadre (ii) who possess Degree in Science with Chemistry or Biochemistry.”

4. From the aforesaid rule, it is clear that the Laboratory Technician in Class-III, service under the Directorate of Health Services having not less than three years' experience and who possess a Degree in Science with Chemistry or Biochemistry is eligible to be appointed to the post of Biochemist. Admittedly, the applicant is Laboratory Technician having B.Sc. in Chemistry and was having requisite experience and, therefore, was entitled to be appointed through promotion on the post of Biochemist.

5. The learned P.O. submits that as per G.R. dated 8.6.1995 (Exh.X), if the post is isolated and there is no avenue open for promotion, then in that case, higher pay scale is to be awarded by way of time bound promotion. He has also placed reliance on the

G.R. dated 20<sup>th</sup> July 2001 (Exh. X-1) and submits that the applicant falls within the pay scale of Rs.5,000-150-8000 and the next promotional pay scale is Rs. 5,500-175-9000. In fact, the applicant should have been granted pay scale of Rs. 5,500-175-9000. However, he was wrongly granted pay scale of Rs. 6,500-200-10500 which is a pay scale applicable to the Biochemist. He submitted that the recovery order has been passed in view of objection taken by the Pay Verification Unit. However, from record it seems that the Pay Verification Unit has taken objection about the qualification of the applicant. It seems that as per Rules of 1984 known as "Biochemists in the Directorate of Health Services (Recruitment) Rules, 1984, qualification for recruitment to the post of Biochemist amongst the Laboratory Technicians, Class-III was passing of M.Sc. degree in Biochemistry and on the basis of these rules, the Pay Verification Unit might have objected for time bound promotional scale granted to the applicant. It is, however, clear that these rules have been overruled by subsequent Rules of 1990 and particularly Rule 3 (a) of the Rules as already mentioned. From opening para of Rule of 1990 clearly shows that the Rules of 1990 have been issued in supersession of all existing rules, orders or instruments made in this behalf and, therefore, very objection of Pay Verification Unit seems to

be wrong. As per Rules of 1990, the applicant was entitled to be promoted to the post of Biochemist and he was having requisite qualification and experience for the said post and, therefore, I am satisfied that the earlier time bound promotional pay scale granted to the applicant in 2001, seems to have been rightly granted.

6. It is material to note that, no opportunity has been given to the applicant before passing impugned order of recovery and, therefore, such orders are illegal. It is also material to note that, the applicant is a Class-III employee and has retired on 30.1.2017 and, therefore, such a huge amount from his pensionary benefits after retirement will cause great hardship to the applicant and this will be against the directions issued by the Hon'ble Apex Court in case of **Rafiq Masih V/s Union of India**. Admittedly, the promotional pay scale of Biochemist is in the pay scale of Rs. 6,500-200-10500 and such a pay scale was rightly granted to the applicant.

7. The learned counsel for the applicant has placed reliance on the judgment delivered by this Tribunal on 30.6.2005 in O.A.No.420/2004 (Exh.X-2). The very issue involved in this O.A. has been considered in the said O.A. and, therefore, case of the applicant seems to be covered by the said judgment. This Tribunal in the said O.A. has granted pay scale of Rs. 6,500-200-10500 as revised pay

scale to the Laboratory Technicians on getting first time bound promotion.

8. In view of discussion in foregoing paras, I proceed to pass the following order:-

**ORDER**

- (i) The O.A. stands allowed in terms of prayer Clause (i) (ii) and (iii).
- (ii) The respondents are directed to refund recovered amount to the applicant on the ground that the said amount has been paid in excess to the applicant, within a period of two months from the date of this order.
- (iii) If the amount is not paid within two months from today, the applicant will be entitled to file representation claiming interest on the said amount from the date of recovery till the same is actually refunded to the applicant.
- (iv) No order as to costs.

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

**Dated:-** 28.9.2018.

