

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**AURANGABAD BENCH AURANGABAD**  
**ORIGINAL APPLICATION NO. 800 of 2015**

Dattatraya S/o Khanderao Kulkarni,  
Aged about 67 years, Occ. Retired,  
R/o Vasant Niwas, Ram Galli, Latur,  
Tq. & Dist. Latur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
Through Principal Secretary,  
Public Works Department,  
Mantralaya, Mumbai-32.
- 2) The Executive Engineer,  
Public Works Department,  
Latur Division, Latur.
- 3) The Superintending Engineer,  
Public Works Department,  
Osmanabad.
- 4) The Accountant General (A&E)-II,  
Maharashtra State, Nagpur.

**Respondents**

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**Shri M.B. Kolpe, Advocate for the applicant.**

**Mrs. Deepali S. Deshpande, Id. C.P.O. for the respondents.**

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

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**JUDGEMENT**

**(Delivered on this 22<sup>nd</sup> day of September,2017)**

Heard Shri M.B. Kolpe, learned Counsel for the applicant and Mrs. Deepali S. Deshpande, learned Presenting Officer for the respondents.

2. The applicant was appointed on temporary basis as Assistant on 1/10/1971. He was absorbed as Civil Engineering Assistant w.e.f. 14/1/1993 as per order dated 1/8/2005. The applicant got retired on superannuation after serving about 28 years on 2/12/2005.

3. The respondent no.4 revised the pay scale of the applicant w.e.f. 1/12/2006 as Rs.5,348/- vide order dated 17/1/2011. The Government of Maharashtra has taken a decision to grant promotion to retired Civil Engineering Assistant on completion of 45 years of age by granting exemption for appearing qualifying examination vide G.R. dated 31/7/2013. The said decision was taken by the Government in view of the order passed in O.A.No. 663/2010.

4. The Superintending Engineer, PWD, Aurangabad Division accordingly gave effect to the absorption order from 13/12/1992 granting time bound promotion to the various employees. Similar order was passed by Superintending Engineer, PWD, Usmanabad also on 31/8/2014. The applicant was also granted pay scale and benefit of the Circular as already stated and his pay scale was revised

on 18/9/2014. Accordingly he was given pay of Rs.9300/- and Grade Pay of Rs.2400/- as on 1/1/2006.

5. The respondent no.1 has issued directions to all Executive Engineers, PWD Department granting time bound promotion to the employees who have completed their 45 years of age as per letter dated 21/11/2014 and in view thereof the respondent no.4 has revised the pension of the applicant and granted pension Rs.5348/- p.m. from 1/2/2006 to 31/8/2009 and Rs. 7548/- p.m. from 1/9/2009. The said order was passed on 21/1/2015 by respondent no.4. However, the respondent no.2, i.e., the Executive Engineer, PWD, Latur Division, Latur had issued a letter dated 19/3/2015 to respondent no.4 whereby the pensionary benefits granted to the applicant vide letter dated 29/1/2015 were cancelled. Accordingly respondent no.4 has cancelled the pensionary benefits of the applicant and restored pensionary benefits granted on 17/1/2011. The applicant has therefore filed this O.A. The applicant has claimed reliefs as under :-

*“(C) By issuing directions and orders the letters issued by Executive Engineer, PWD, Latur dated 19/3/2015 and letter issued by respondent no.4 dated 20/04/2015 bearing NO. PR-5/R-4/101 may kindly be quashed and set aside.*

*(C) By issuing directions or orders, the benefits granted to the petitioner as per order being No. PR-5/R4/OC 374/05-06,*

*dated 29/01/2015 passed by respondent no.4 may kindly be restored.”*

6. The respondent nos. 1 to 3 have filed reply-affidavit and admitted almost all the facts. It is also admitted that respondent no.4 cancelled the order of pay fixation of the applicant on the instruction of respondent no.2. It is stated that the pension has been revised in view of the G.Rs. dated 1/11/2013, 5/4/2014 and 29/1/2015. It is stated that the application is premature.

7. The respondent no.4 filed separate reply-affidavit and submitted that the role of respondent no.4 is very limited it has only to scrutinise the proposals for pension and to see whether as those proposals are as per rules. The respondent no.4 the Accountant General does not act on its own, but authorises pensionary benefits only on receipt of proper pension papers duly attested by head of the offices. It is stated that since the respondent no.2 has not sent any revised pension proposal for the applicant, It has not proceeded with such proposal and it will proceed only on receipt of proper proposal from respondent no.2.

8. The applicant also filed rejoinder along with the documents. Perusal of the aforesaid facts clearly shows that the applicant was absorbed as a Civil Engineering Assistant long back in the year, 1993. It seems that earlier he has not cleared the qualifying

examination which was required to be passed for getting promotion of Junior Engineer. However, the Govt. had issued a circular and an embargo to pass qualifying examination was taken out in cases of those employees who have completed 45 years of age and in view thereof, the applicant was given benefit of time bond promotion and other financial benefits. The embargo was removed in view of the Judgment in O.A.663/2010. It seems that the applicant was granted the benefit of crossing of 45 years of age and subsequent financial benefits accordingly vide order dated 29/1/2015 and thereafter the case of the applicant was referred for revised pension to respondent no.4 vide letter dated 20/4/2015. However thereafter the respondent no.2 cancelled the pay scale granted to the applicant and not only that the Director (R/4) not to act upon the letter dated 29/1/2015. In view thereof, the impugned order dated 19/3/2015 has been issued. The respondent no.2 could not state as to what was the reason for cancelling the order of revision of pay of the applicant and the respondent no.2 also could not place on record satisfactory explanation as to what was the reason for cancelling the pay scale granted to the applicant. The act on the part of respondent no.2 in cancelling the pay scale granted to the applicant in view of the fact that he has crossed 45 years of age is thus illegal and arbitrary. The respondent no.4 seems to have acted only on the basis of direction

issued by respondent no.2 and therefore issued the letter dated 20/4/2015. The Accountant General is an authority which grants pension as per the proposal received by it and therefore the respondent no.4 seems to have issued the letter only because it was directed to do so by respondent no.2. The respondent no.2 however could not justify the reason for cancellation of revised pay scale granted to the applicant.

9. In view of the discussion in forgoing paras, I am therefore satisfied that action on the part of respondent no.2 in cancelling pension proposed to the applicant is arbitrary exercise of power. The impugned communications dated 20/4/2015 and 19/3/2015 are thus arbitrary and are required to be quashed and set aside. The Executive Engineer cannot direct respondent no.4 to stop revised pensionary benefits dated 29/1/2015 contrary to the provisions of law. Hence, the following order :-

### **ORDER**

The O.A. is allowed in terms of prayer clause- C & D. The respondent no.2 is directed to immediately submit pension papers to the respondent no.4 in respect of applicant and to grant applicant's benefits as per the order bearing no. PR/R4/OC-374/05-06 dated 29/1/2015. The revised pension and the arrears thereon along with all

consequential benefits shall be paid to the applicant within three months from the date of this order. No order as to costs.

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

dnk.