

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 788/2020**

Dilip Hiralal Tiwari,
Aged about 59 years, Occ –Retired,
R/o Plot No.105/1, Pension Nagar,
Nagpur-13.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Home Department,
Mantralaya, Mumbai-440 032.
- 2) The Director General of Police,
Shahid Bhagat Singh Marg,
Opp. Regal Cinema, Colaba,
Mumbai-19.
- 3) The Commissioner of Police,
Civil Lines, Nagpur.

Respondents

Shri D.R. Rupnarayan, Ld. counsel for the applicant.

Shri S.A. Sainis, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri M.A. Lovekar, Member (J).

Dated: - 18th January 2022.

Heard Shri D.R. Rupnarayan, learned counsel for the applicant and Shri S.A. Sainis, Ld. P.O. for respondents.

2. Case of the applicant is as follows:-

The applicant was promoted as A.S.I. in the year 2009.

He retired on superannuation on 31.5.2019. Respondent No.3

passed the impugned order (Annexure A-2) on 8.4.2019 directing recovery of amount which was said to have been paid to the applicant in excess on account of his wrong pay fixation. By filing representation dated 11.2.2020 (Annexure A-3), the applicant objected to proposed recovery. By letter dated 3.3.2020 (Annexure A-4), office of respondent No.3 informed the applicant that he had not given option at the time of fixation of his pay on being promoted to the post of A.S.I. within one month from the promotion and, therefore, his pay could not be re-fixed by proceeding on a footing that he had exercised such option. The applicant filed one more representation dated 18.3.2020 (Annexure A-5) that option be presumed to have been given by him to fix his pay of promotional post and benefits of 6th and 7th Pay Commission be accordingly given to him. On 30.6.2020, the applicant issued notice (Annexure A-8) to respondent Nos. 1 to 3. Office of respondent No.3, by communication (Annexure A-9), informed Advocate of the applicant as follows—

“महाराष्ट्र नागरी सेवा (वेतन) नियम १९८१ च्या नियम क्रमांक ११ अन्वये तसेच महाराष्ट्र शासन, शासन निर्णय वित्त विभाग, दिनांक ३ जुलाई १९९३ नुसार पदोन्नतिची वेतन निश्चिती ही पदोन्नति दिनांकापासून किंवा पुढील वेतनवाढ दिनांकापासून करण्याबाबत विकल्प सादर करणे आवश्यक आहे. परन्तु सेवानिवृत्त सहायक फौजदार /१३८१ दिलीपकुमार तिवारी, यांनी पदोन्नती झाल्यानंतर विकल्प सादर न केल्यामुळे त्यांच्या वेतनाची वेतन निश्चिती ही पदोन्नती दिनांकापासून करण्यात आलेली आहे.”

Hence this application.

3. Reply of respondent No.3 is at pages 27 to 30. In para 3 of reply, respondent No.3 stated-

“After promotion as A.S.I. by order dated 18.3.2019, in pursuance of Rule 11 (2) (c) (i) and (ii) of M.C.S. (Pay) Rules, 1981, and G.R. of Finance Department dated 3.7.1993, he was legally bound to elect for fixation of his pay in one of the following manner, (i) either to get his initial pay fixed straightway with effect from the date of his appointment to the new post OR (ii) to get his pay fixed w.e.f. the date of his next increment in the old post, within prescribed period of one month. But the applicant did not elect for fixation of his pay, within prescribed time in one of the above manners, hence his pay fixation had been done from the date of his promotion.”

Respondent No.3 also resisted the application on the ground that the applicant had applied for re-fixation of his pay after lapse of eleven years.

4. Rule 11 of the M.C.S. (Pay) Rules, 1981 reads as under:-

“(१) नविन पदावरील नियुक्तिमुले जुन्या पदाच्या कर्तव्यापेक्षा किंवा जबाबदार्यापेक्षा अधिक महत्वाची कर्तव्य किंवा जबाबदारया येत असतील तर त्याचे वरच्या पदाच्या समय वेतनश्रेणीतील प्रारंभिक वेतन हे, खालच्या पदावर ज्या टप्प्याला त्यांचे वेतन असेल त्या टप्प्याला एक वेतनवाढ मिलविल्यावर आणि वेतनमानातिल कमाल वेतन घेणारया शासकीय कर्मचार्यांच्याबाबत मागील वेतनवाढी इतकी रक्कम मिलविल्यावर जे मानीव वेतन येइल त्याच्या पुढील टप्प्यावर निश्चित करण्यात येइल.

परन्तु जो शासकीय कर्मचारी एकाच बढती क्रमावरिल उच्च पदावर नियमितपणे पदोन्नत झाला असेल त्याला वेतननिश्चिती पदोन्नतिच्या दिनांकापासून १ महिन्याच्या मुदतीत खालीलप्रमाणे विकल्प देता येइल.

(एक) खालच्या पदावरील वेतनश्रेणीत पुढील वेतनवाढीनंतर, पुनर्विचार न होता त्याचे प्रारंभिक वेतन वरच्या पदावर ह्या पोटनियमानुसार निश्चित करण्यात यावे; किंवा

(दोन) पदोन्नतिनंतर सुरुवातीस त्याचे वेतन (खालच्या) पदावरील समयश्रेणीतिल वेतनाच्या पुढील टप्प्यावर निश्चित करण्यात यावे आणि खालच्या पदावरील

वेतनश्रेणितिल वेतनवाढीच्या दिनांकास त्याचे वेतन पोटनियम १ अनुसार पुनर्निश्चित करण्यात यावे.

जर त्याचे वेतन त्याच्या विकल्पानुसार खालच्या पदावरील वेतनवाढ मिलाल्यानंतर पुनर्निश्चित करण्यात आलेले असेल तर त्यांच्या पुढील वेतनवाढीचा दिनांक वेतन पुनर्निश्चितिच्या दिनांकापासून १२ महीने पूर्ण झाल्यानंतर असेल.”

5. The applicant has relied on G.R. dated 19.12.1995. It lays down—

“शासनाच्या असे निदर्शनास आले आहे की अद्यापही संबंधित कर्मचार्यांच्या पदोन्नतिच्या आदेशामध्ये वेतननिश्चिति करण्यासम्बंधिचा विकल्प देण्यासम्बंधिचा वर विहित केलेला परिच्छेद अंतर्भूत केला जात नाही. यास्तव सर्व प्रशासकिय विभाग व् त्यांच्या अधिपत्याखालिल विभाग प्रमुख यांना या परिपत्रकाद्वारे पुनर्सुचित करण्यात येते की, त्यांनी सम्बंधित कर्मचार्यांना पदोन्नतिच्या आदेशात वरिलप्रमाने विकल्प देण्याविषयीचा परीचछेद न चुकता अंतर्भूत करण्याची दक्षता घ्यावी. या आदेशाची अम्मलबजावणी न झाल्यास व् संबंधित कर्मचार्यांनी असा विकल्प उशिरा सादर करण्याबाबत मागणी केल्यास त्यास मंजूरी दिली जाणार नाही याची सर्व सम्बन्धीतांनी नोंद घ्यावी.”

It is a matter of record that the order dated 18.3.2009 (Annexure A-6) does not contain instructions regarding exercise of option under aforesated Rule 11. However, it may be mentioned that G.R. dated 19.12.1995 itself states that request for belated exercise of option shall not be entertained. Aforesated Rule 11 is quite clear. The applicant ought to have exercised option for fixation of his pay within one month of promotion. After eleven years, he has approached this Tribunal. For these reasons, he would not be entitled to any relief. Hence, the order—

ORDER

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

(M.A.Lovekar)
Member (J)

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