

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1071 OF 2022**

**DISTRICT : SATARA**

**Sub.:- Pensionary  
Benefits/Revised Pay  
Fixation/Pension/Recovery**

Shri Vijay Shankar Kamble. )  
Age : 69 Yrs, Occu.: Retired Govt. )  
Servant and residing at Village )  
Shivade, Post : Umbraz, Tal.: Karad, )  
District : Satara – 415 109. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Secretary, )  
Revenue Department, )  
Mantralaya, Mumbai – 32. )

2. The District Collector, Satara. )

3. The Tahasildar. )  
Vaduj-Khatav, Dist.: Satara. )

4. Accounts Officer. )  
Indian Audit & Accounts Dept., )  
Office of Principal Accountant )  
General (Account Entitlement), )  
2<sup>nd</sup> Floor, Pratiksha Bhavan, )  
New Marine Lines, 101, Maharshi )  
Karve Road, Churchgate, )  
Mumbai – 400 020. )

5. Additional Treasury Officer. )  
District Treasury Office, 524/A/2, )  
Sadar Bazar, Opp. Shivaji College, )  
Satara - 415 001. )...**Respondents**

**Mr. R.M. Kolge, Advocate for Applicant.**

**Smt. A.B. Kololgi, Presenting Officer for Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER-J**

**DATE : 24.03.2023**

**JUDGMENT**

1. The Applicant has challenged the communication dated 25.11.2019 issued by Respondent No.3 – Tahasildar, Vaduj-Khatav, District Satara as well as communication dated 25.10.2021 issued by Respondent No.5 – Treasury Officer, Satara, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

While Applicant was serving as Circle Officer, Patan, District : Satara, he was caught by Anti-Corruption Bureau allegedly accepting bribe and was arrested on 30.04.2003. He was, therefore, suspended by order dated 13.10.2003 in view of registration of criminal offence under the provisions of Prevention of Corruption Act. He was prosecuted under the provisions of Prevention of Corruption Act before learned Special Judge, Karad. On 22.05.2008, learned Special Judge convicted him under Section 7, 13(1)(d) and 13(2) of Prevention of Corruption Act and sentenced to suffer two years' Rigorous Imprisonment and fine of Rs.5,000/- and on default, three months' Simple Imprisonment. Being aggrieved by it, he preferred appeal before Hon'ble High Court and it is still subjudice. In view of conviction, Collector, Satara by his order dated 31.10.2010 passed order of compulsory retirement, invoking Rule 13(1) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'D & A Rules of 1979' for brevity). As such, the punishment of compulsory retirement was passed during the period of suspension itself. Later, Collector, Satara by order dated 19.01.2016 passed order to treat the period from 13.10.2003 to 31.10.2010

'suspension as such'. The Applicant has not challenged the order dated 31.10.20010 or 19.01.2016 and had attained finality. In view of punishment of compulsory retirement, he was granted compassionate pension of Rs.1,385/- p.m. from 01.11.2010 and was also granted compassionate gratuity of RS.46,000/- by order dated 28.09.2016 passed by Collector, Satara.

3. Later, Applicant raised grievance that he ought to have been given the benefit of 6<sup>th</sup> Pay Commission, which is made applicable w.e.f 01.01.2006 and his pay ought to have been revised and fixed in terms of revised pay scale in terms of 6<sup>th</sup> Pay Commission. However, his claim has been rejected by communication dated 25.11.2019 as well as 21.10.2021.

4. Shri R.M. Kolge, learned Advocate for the Applicant sought to assail the impugned communication *inter-alia* contending that though Applicant was under suspension till passing of order of punishment, the suspension order merged in the punishment order and Applicant's pay ought to have been carried forward and revised in terms of recommendation of 6<sup>th</sup> Pay Commission, which are made applicable on 01.01.2006. In other words, according to him, Applicant ought to have been given the benefit of recommendation of 6<sup>th</sup> Pay Commission, so that he would get revised pension.

5. Per contra, Smt. A.B. Kololgi, learned Presenting Officer for the Respondents in reference to contentions raised in Affidavit-in-reply submits that in terms of Circular issued by Finance Department, Government of Maharashtra dated 25.10.2011, the Applicant being under suspension at the time of compulsory retirement on 01.01.2006 and later, suspension period is also treated as 'suspension as such', he is not entitled to revised pay scale in terms of 6<sup>th</sup> Pay Commission.

6. The facts as narrated above are not in dispute. The Applicant was suspended by order dated 13.10.2003 and during suspension itself, he was convicted by Special Judge under the provisions of Prevention of Corruption Act on 22.05.2008 and consequent to it, the Collector, Satara, invoking Rule 13(1) of 'D & A Rules of 1979' issued order of compulsory retirement of the Applicant. Later, Collector, Satara by order dated 19.01.2016 passed another order treating period of suspension from 13.10.2003 to 31.10.2010 'suspension as such' in reference to Rule 70, 70(1) and 70(2) of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as 'Joining Time Rules of 1981' for brevity). Admittedly, both these orders of compulsory retirement and treating the period of suspension from 13.10.2003 to 31.10.2010 attained finality. The criminal appeal filed by the Applicant is still subjudice.

7. True, the recommendation of 6<sup>th</sup> Pay Commission came into force w.e.f. 01.01.2006 in terms of Notification issued by Government of Maharashtra on 22.04.2009. However, the issue in the present case is about the entitlement to the revised pay scale to Government servants who were under suspension on 01.01.2006. In this behalf, Para No.3 of Circular dated 25.10.2011 issued by Finance Department is material, which is as under :-

“३. शासनाने यावर विचार केला असून, शासन आता असा खुलासा करीत आहे की, जे कर्मचारी दिनांक १ जानेवारी २००६ पूर्वीपासून असाधारण रजेवर किंवा निलंबनाखाली होते व जे प्रत्यक्षात दि. १ जानेवारी २००६ नंतर असाधारण रजेवर असताना सेवानिवृत्त किंवा मृत्यू पावले असतील किंवा निलंबनाधीन असताना सेवानिवृत्त झाले/करण्यात आले असतील तर अशा कर्मचा-यांना म.ना.से. (सु.वे.) नियम २००९ चा लाभ अनुज्ञेय नाही.”

8. As such, in view of Circular referred to above, if Government servant is under suspension on 01.01.2006, then he will not be entitled to the benefit of revised pay scale in terms of 6<sup>th</sup> Pay Commission viz. Maharashtra Civil Services (Revised Pay) Rules, 2009 (hereinafter referred to as 'Revised Pay Rules of 2009' for brevity).

9. As stated above, it is not a case that later suspension period has been treated duty period where a Government servant would be justified in claiming the benefit of 6<sup>th</sup> Pay Commission. In the present case, Collector, Satara has passed order to treat suspension period from 13.10.2003 to 31.10.2010 'suspension as such'. Needless to mention, in suspension period, the Government servant does not earn any increment. All that, he gets Subsistence Allowance and continues on same pay scale. As such, pension was granted to the Applicant considering his pay which he was getting at the time of suspension, since he did not get any increment nor entitled to revised pay scale in terms of 6<sup>th</sup> Pay Commission in view of Circular dated 25.10.2011 referred to above.

10. The submission advanced by the learned Advocate for the Applicant that in terms of Rule 100, the Applicant was entitled to compassionate pension considering his revised pay scale in terms of recommendation of 6<sup>th</sup> Pay Commission is totally misconceived. It is in normal situation, pension is to be granted on the basis of last drawn pay. In the present case also, Applicant was granted pension considering his last drawn pay which he was getting at the time of suspension, since he was not entitled to the revised pay scale in terms of 6<sup>th</sup> Pay Commission. The Applicant was not eligible to get revised pay scale in terms of 6<sup>th</sup> Pay Commission in view of disqualification of suspension incurred by him. As such, the situation is squarely covered by Circular dated 25.10.2011.

11. The totality of aforesaid discussion leads me to sum-up that the challenge to the impugned order holds no water and O.A. is liable to be dismissed. Hence, the order.

**ORDER**

The Original Application stands dismissed with no order as to costs.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 24.03.2023

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2023\March, 2023\O.A.1071.22.w.3.2023.Pensionary Benefit, Revised Pay Fixation, Pension & Recovery.doc

Uploaded on