

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.913 OF 2021

DISTRICT : MUMBAI

Shri Rajendra M. Mahajan.)
Age : 53 Yrs., Working as Section Officer,)
Office address Industry, Energy & Labour)
Department, Mantralaya, Mumbai – 32.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
General Administration Department,)
Mantralaya, Mumbai – 400 032.)
2. The Principal Secretary.)
Finance Department, Mantralaya,)
Mumbai – 400 032.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

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

DATE : 02.12.2021

JUDGMENT

1. The Applicant has challenged the communication dated 08.10.2020 whereby he was informed by the Government that the decision about implementation of recommendation of 7th Pay Commission to him will be taken only after completion of departmental enquiry pending against him.

2. The Applicant was suspended by order dated 02.05.2018 in view of registration of crime against him under the provisions of Prevention of Corruption Act, 1988. However, later, the Government by order dated 22.01.2020 reinstated him in service. In the meantime, he was served with Charge-sheet dated 14.08.2019 in D.E. which is still pending. He made representation to implement recommendation of 7th Pay Commission and to revise his pay w.e.f.01.01.2016 which is rejected by the impugned communication dated 08.10.2020.

3. The learned P.O. sought to justify the impugned communication stating that as per Note No.2 of Maharashtra Civil Services (Revised Pay) Rules, 2019, a Government servant under suspension shall continue to draw Subsistence Allowance based on existing pay structure, and therefore, is not entitled to revised pay scale in terms of 7th Pay Commission Recommendation.

4. Whereas, the learned Advocate for the Applicant sought to contend that since Applicant is already reinstated in service and secondly, he was not under suspension on 01.01.2016 i.e. the date from which recommendation of 7th Pay Commission is made applicable. The said Note No.2 is not attracted. She, therefore, submits that the Applicant cannot be deprived of his benefits of recommendation of 7th Pay Commission on the ground of pendency of D.E.

5. Indisputably, the Applicant was under suspension on 01.01.2016 i.e. the date from which recommendation of 7th Pay Commission are made applicable. He was suspended later by order dated 02.05.2018 and importantly, he was reinstated in service by order dated 22.01.2020. As such, he is no more under suspension. Once he is reinstated in service, he is entitled to regular pay and allowances as per his entitlement.

6. Note No.2 on which reliance is placed by the Respondents is as under :-

“A Government Servant under suspension shall continue to draw subsistence allowance based on existing pay structure and his pay in the revised pay structure shall be subject to the final order on the pending disciplinary proceedings.”

7. It is thus explicit from the aforesaid Note that it is applicable to a Government who is undergoing suspension. Whereas, in the present case, the Applicant is already reinstated in service by order dated 22.01.2020. This being the position, Note No.2 is not at all attracted.

8. Apart, though DE has been initiated by Charge-sheet dated 14.08.2019, it is still pending though more than 2 years is over. Even if Applicant is subjected to punishment in DE, that will take effect from the finality of order in disciplinary proceedings. At any rate, the Applicant not being under suspension presently and being already reinstated in service, the denial of implementation of benefits of 7th Pay Commission Recommendation is totally unjust and without legal foundation. In such situation, if one accepts the theory propounded by the Government, it would amount to punishment and deprivation of rights of pay and allowances to a Government servant. The impugned communication is, therefore, totally unsustainable in law and deserves to be quashed. Hence, the order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The impugned communication dated 08.10.2020 is hereby quashed and set aside.
- (C) The Respondents are directed to release pay and allowances in terms of 7th Pay Commission to the Applicant as per his entitlement and necessary orders to that effect be passed within a month.

(D) No order as to costs.

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

Mumbai

Date : 02.12.2021

Dictation taken by :

S.K. Wamanse.

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