

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.80 OF 2021
(Subject:- Recovery)**

DISTRICT: - Nanded.

Bhimrao S/o Namdeorao Kokate,)
Age :59 years, Occu. Service as Peon in)
the office of the Deputy Collector (EGS))
Collectorate, Nanded.)
R/o Savangi (Budruk) Post Ratodi (Budruk),)
Ward No.3, Nanded Waghala Mahanagar)
Palika, Near Air Port, Nanded,)
Taluka and District Nanded.)...**APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through the Principal Secretary)
Revenue and Forest Department,)
Mantralaya, Mumbai.)
2. **The Divisional Commissioner,**)
Aurangabad,)
District Aurangabad.)
3. **The Deputy Commissioner (EGS),**)
Office of the Divisional Commissioner,)
Aurangabad, District Aurangabad.)
4. **The Collector, Nanded.**)
District Nanded.)
5. **The Deputy Collector (EGS),**)
Office of the Collector, Nanded,)
Taluka and District Nanded.)..**RESPONDENTS**

APPEARANCE : Shri Shamsundar B. Patil, learned
Advocate for the applicant.
: Shri V.R. Bhumkar, learned Presenting
Officer for the respondents.

WITH
MISC. APPLICATION NO. 71 OF 2021

DISTRICT: - Nanded.

1. **The State of Maharashtra,**)
through Principal Secretary)
Revenue and Forest Department,)
Mantralaya, Mumbai.)
 2. **The Divisional Commissioner,**)
Aurangabad.)
 3. **The Deputy Commissioner (EGS),**)
Office of the Divisional Commissioner,)
Aurangabad.)
 4. **The Collector, Nanded.**)
District Nanded.)
 5. **The Deputy Collector (EGS),**)
Taluka and District Nanded.)
-)..APPLICANTS**
(Org. Respondents)

V E R S U S

Bhimrao S/o Namdeorao Kokate,)
Age :59 years, Occu. Service as Peon in)
the office of the Deputy Collector (EGS),)
Collectorate, Nanded.)
R/o Savangi (Budruk) Post Ratodi (Budruk),)
Ward No.3, Nanded Waghala Mahanagar)
Palika, Near Air Port, Nanded,)
Taluka and District Nanded.)

)...RESPONDENT
(Org. Applicant)

APPEARANCE : Shri V.R. Bhumkar, learned Presenting
Officer for the applicants (Org.
respondents).

: Shri Shamsundar B. Patil, learned
Advocate for the respondent (Org.
applicant).

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **14.06.2022**

ORDER

1. By invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original Application is filed challenging the impugned order dated 28.12.2020 (Annex. 'A-7') issued by the respondent No.5 i.e. the Deputy Collector (EGS), office of the Collector, Nanded, Taluka and District Nanded allegedly re-fixing the pay of the applicant wrongly and thereby ordering recovery of Rs.1,09,895/- towards excess payment allegedly made to the applicant during the period of November, 2020 to March, 2021.

2. M.A.No.71 of 2021 arises out of interim order of stay dated 16.02.2021 to the execution and implementation of recovery of excess amount from the applicant seeking it's vacation. Both the proceedings are inter-related and therefore, can be disposed of by this common order.

3. The facts in brief giving rise to these proceedings can be summarized as follows:-

- (i) The applicant was appointed as Muster Assistant on 06.08.1984 in the Public Works Sub-Division (North)

Nanded on consolidated salary of Rs.400 per month. He joined the said services on 06.08.1984 and continuously worked as Muster Assistant till 19.02.1988 i.e. till the date of termination from the said services. As the applicant was illegally terminated from the said services, he filed complaint bearing ULP No.42/1988 before the Labour Court, Jalna. By judgment and order dated 13.02.1995, the said complaint was allowed and the applicant was reinstated as Muster Assistant on 31.03.1995 with 50% back wages and was continued in service. Accordingly, the applicant worked on the post of Muster Assistant since 31.03.1995

- (ii) It is admitted that in spite of various Government Resolutions/Circulars and several judgments and orders of the Hon'ble Bombay High Court, the Muster Assistants like the applicant were not being absorbed in permanent government service. In view of same, the applicant filed Original Application No.743/2018 seeking his absorption on any suitable Group 'D' post. During pendency of the said Original Application by an order dated 04.02.2020 (Annex. 'A-2'), the respondent No.2 i.e. the Divisional Commissioner, Aurangabad

granted proposal of the Collector, Nanded for absorption of the applicant on Group 'D' post of Peon. Pursuant to that, the respondent No.4 i.e. the Collector, Nanded issued appointment order of the applicant dated 11.02.2020 (Annex. 'A-3') on the post of Peon in the pay scale of Rs.15000-47600 (S-1). Thereby the applicant was posted in the office of the respondent No.5 i.e. Deputy Collector (EGS), Nanded. The applicant joined on the said post on the same day i.e. on 11.02.2020.

- (iii) Thereafter, the respondent No.3 i.e. the Deputy Commissioner (EGS) office of the Divisional Commissioner, Aurangabad, District Aurangabad issued letter dated 24.08.2020 (Annex. 'A-4') to the respondent No.4 i.e. the Collector, Nanded stating that the Muster Assistants, who have been absorbed in Government Service on the basis of the orders of the Hon'ble Maharashtra Administrative Tribunal, Aurangabad are absorbed in the Government service with effect from 25.06.2004 in view of Government Resolution of Planning Department dated 25.06.2004. Moreover, the MCS Rules are made applicable to such Muster Assistants, who have been absorbed in

Government Service and they be given benefit of continuity in service from 25.06.2004.

- (iv) Thereafter, accordingly the respondent No.4 i.e. the Collector, Nanded issued an order dated 12.10.2020 (Annex. 'A-5') extending requisite benefit of continuity in service to the Muster Assistants, who have been absorbed in Class-III or Class-IV (Group 'C' & 'D') post as per the G.R. of Planning Department dated 25.06.2004.
- (v) Thereafter, by an order dated 23.10.2020 (Annex. 'A-6'), the respondent No.5 i.e. the Deputy Collector (EGS), Nanded made fixation of pay of the applicant with effect from 25.06.2004 till 11.02.2020 on the basis of relevant Pay Commission Reports. Thereby the pay of the applicant has been fixed w.e.f. 01.01.2016 on the basis of M.C.S. (Revised Pay) Rules, 2009 in the pay scale of Rs.15000-47200 and his basic pay as on 11.02.2020 is fixed as Rs.24,200/-. On the basis of the said pay fixation, the monthly salary was paid to the applicant from 11.02.2020 at the rate of basic pay of Rs.24,200/- and usual allowances.

(vi) However, the respondent No.5 i.e. the Deputy Collector (EGS), Nanded by impugned order dated 28.12.2020 (Annex. 'A-7') wrongly re-fixed the pay of the applicant w.e.f. 12.02.2020 reducing the basic pay from Rs.24,200/- to Rs.15,000/- and further ordered recovery of Rs.1,09,895/- towards alleged excess payment from the applicant from the monthly salary of November, 2020 towards. In fact by further order dated 30.12.2020 (Annex. 'A-8'), the respondent No.4 i.e. the Collector, Nanded has sought guidance of the respondent No.3 i.e. the Deputy Commissioner (EGS), Aurangabad on the aspect of the pension and other pensionary benefits opining that there are no specific direction to give benefits to such Muster Assistants with retrospective effect from the date of G.R. of Planning Department dated 25.06.2004. In view of the same, according to the applicant, the orders of re-fixation of pay dated 28.12.2020 and recovery are liable to be quashed and set aside.

4. By order dated 16.02.2021, interim stay to the said recovery order was granted. M.A.No.71 of 2021 is filed by the respondents seeking vacation of the said stay order on the ground that at the time of impugned re-fixation of the pay of the applicant, the

applicant had given undertaking dated 04.11.2020 (Annex. 'R-2') that he would refund the excess payment, if found.

5. The applicant has filed affidavit-in-reply in the said Misc. Application No.71/2021 and has denied the adverse contentions raised by the respondents and submitted categorically that the applicant belongs to Group 'D' category and therefore, recovery of such excess amount from such employee is impermissible.

6. The Original Application is resisted by the respondent Nos.4 & 5 by filing affidavit-in-reply of one Mrs. Anuradha Digambarrao Dhalkari working as Deputy Collector (EGS) in the office of the respondent No.4 i.e. the Collector, Nanded. Thereby she denied all the adverse contentions raised in the Original Application.

(i) It is however, admitted that the applicant entered into service as Muster Assistant in the year, 1984. The previous litigations as mentioned by the applicant are also admitted. It is also not disputed that the applicant has been absorbed in the Government Service on the post of Peon and his pay was fixed as per order dated 23.10.2020 in terms of the G.R. dated 25.06.2004.

(ii) According to these respondents, though the applicant is given benefit of continuity of service as he was

working on the post of Muster Assistant in terms of G.R. dated 25.06.2004 of Planning Department, the post of Muster Assistant earlier held by the applicant is not Government Service post and therefore, pensionary benefits cannot be given to the applicant by counting the service of the applicant retrospectively. Infact the applicant was not on actual work during the period of 26.05.1993 to 31.05.1993 and therefore, his name was not included in District Seniority list. Therefore, he is not amongst the 751 supernumerary posts created as per Government Resolution of Planning Department dated 25.06.2004. As per G.R. dated 11.03.2016, the applicant has been given the grade pay of 6th Pay Commission during his service as Muster Assistant. The applicant has been given imaginary increments in his salary from 25.06.2004 to 01.07.2020 as per G.R. dated 25.06.2004 issued by the Department of Planning.

- (iii) After his absorption to the post of Peon by order dated 11.02.2020, he was not entitled to imaginary pay increment for the post of Peon. Therefore, the recovery of Rs.1,09,895/- towards excess amount paid to the applicant during the period of 12.02.2020 to

31.10.2020 is rightly ordered by re-fixing the pay of the applicant by impugned order dated 28.12.2020.

- (iv) It is further submitted that before the said order of re-fixation of pay dated 28.12.2020, requisite undertaking dated 04.11.2020 (Annex. 'R-2') was taken from the applicant. Thereby he agreed to refund the recoverable amount of difference to the government. However, guidance is sought from the higher authority by issuing letter dated 30.12.2020 regarding the pension and pensionary benefits of the applicant, if any. But till date, no reply is received from the respondent No.3 i.e. the Deputy Commissioner (EGS), Aurangabad. Further guidance is also sought from the Government by sending letter dated 22.02.2021. But no response is received. Necessary action will be taken after receipt of the said guidance. In view of the same, there is no merit in the Original Application and is liable to be dismissed.

7. The applicant filed affidavit-in-rejoinder denying adverse contentions raised in the affidavit-in-reply and reiterated the contentions raised in the Original Application.

8. I have heard at length the arguments advanced by Shri S.B. Patil, learned Advocate for the applicant in O.A. (respondent in M.A.) on one hand and Shri V.R. Bhumkar, learned Presenting Officer for the respondents in O.A. (applicants in M.A.) on other hand.

9. Considering the pleadings on record it is evident that by the impugned order dated 28.12.2020 (Annex. 'A-7') issued by the respondent No.5 i.e. the Deputy Collector (EGS), Nanded, the pay of the applicant is re-fixed and recovery of excess amount of Rs.1,09,895/- for the period of 12.02.2020 to 31.10.2020 is ordered. While doing so it is observed that the applicant was given posting of Peon by order dated 11.02.2020 (Annex. 'A-3') issued by the respondent No.4 i.e. the Collector, Nanded pursuant to order dated 04.02.2020 (Annex. 'A-2') issued by the Divisional Commissioner, Aurangabad. Thereby the applicant was continued in Government Service w.e.f. 25.06.2004. For the period of 25.06.2004 to 11.02.2020, the applicant was given annual increments in the pay scale of Rs.1500-47600 and accordingly as on 11.02.2020, the basic pay of the applicant in the cadre of Peon was fixed at Rs.24,200/-. However, from 12.02.2020, the applicant would not be entitled for the said pay scale and he would be entitled for basic pay scale of Rs.15,000/- in the pay scale of Rs.15,000 to 47600/-.

10. It is a fact that after absorbing the applicant in Government Service and giving appointment on 11.02.2020 on the post of Peon, his pay fixation was done as per order dated 23.10.2020 (Annex. 'A-6'). As per the said order the basic pay of the applicant as on 11.02.2020 was fixed at Rs.24200/- and consequently as on 01.07.2021 by adding annual increment his pay was fixed at Rs.24,900/-. According to the respondents that was wrong pay fixation. Hence, by impugned order pay is fixed and recovery is ordered.

11. I have carefully gone through the pleadings and documents in that regard. Upon perusal of the impugned order dated 28.12.2020 (Annex. 'A-7') I find that before passing this order, no show cause notice was served upon the applicant to give him fair opportunity to file say. I further find that no any plausible explanation is given as to how and for what reasons earlier pay fixation order dated 23.10.2020 is wrong. The applicant has been accepted as Government Servant pursuant to G.R. dated 25.06.2004 and is given continuity in service from 25.06.2004 and his pay was fixed in the cadre of Peon in the pay scale of Rs.15,000-47600/- as per earlier order dated 23.10.2020 (Annex. 'A-6'). No any provision of law or Rule is quoted in the impugned order to substantiate that only because the order is issued on 11.02.2020, the applicant would be entitled for basic

monthly pay of Rs.15000/- in the bay scale of Rs.15000-47600/- when entire benefit was given to the applicant notionally giving annual increments in the cadre of Peon retrospectively.

12. Even during the course of arguments, nothing is shown from the G.R. dated 25.06.2004 that as on the date of giving posting and continuity of service, the basic pay can be brought down to the entry level basic pay ignoring notional annual increments granted to the applicant retrospectively. In view of same in my considered opinion, impugned order of pay fixation and recovery dated 28.12.2020 is liable to be quashed and set aside and the respondents should be directed to do the re-fixation of pay of the applicant in accordance with law by giving fair opportunity of hearing on that aspect. Till then earlier pay fixation order of the applicant dated 23.10.2020 (Annex. 'A-6') would hold field.

13. It is a fact that the impugned order of recovery dated 28.12.2020 is stayed by this Tribunal by its order dated 16.02.2021. The Misc. Application No.71/2021 is taken out by the respondents seeking to vacate the said order contending that undertaking for refund of the amount was given by the applicant at the time of the pay fixation. The said undertaking is dated 04.11.2020 (Annex. 'R-2'). In this regard, the respondents have placed reliance on the judgment and order of the Hon'ble High Court of judicature at Bombay Bench at Nagpur in the matter of

State of Maharashtra & Ors. Vs. SureshChandra S/o. Dharamchand Jain & Ors. decided on 23.07.2019 wherein it is held that if the conscious undertaking for refund of excess amount is given, he is bound by the undertaking and cannot seek benefit of the ratio laid down in **State of Punjab and Ors. Vs. Rafiq Masih case reported in (2015) 4 SCC 334** where recovery of excess amount ordered due to wrong pay fixation from Class-III and Class-IV employees is held to be impermissible. No doubt, the said case law would be applicable, if the recovery order is held to be legal. In the case in hand, I have already held that the impugned order of re-fixation of pay of the applicant and recovery dated 28.12.2020 (Annex. 'A-7') is liable to be quashed and set aside with direction to reconsider. The Misc. Application made by the respondents in that regard is liable to be dismissed. In the result, I proceed to pass the following order:-

ORDER

The Original Application is allowed in following terms:-

- (A) The impugned order of re-fixation of pay of the applicant and recovery dated 28.12.2020 (Annex. 'A-7') issued by the respondent No.5 i.e. the Deputy Collector (EGS), office of the Collector, Nanded is hereby quashed and set aside.

- (B) The respondents are directed to carry out the process of re-fixation of pay of the applicant by giving fair opportunity of hearing to the applicant by serving upon him requisite show cause notice.
- (C) Accordingly, O.A. No. 80/2021 and Misc. Application No.71/2021 stand disposed of.
- (D) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place :- Aurangabad
Date :- 14.06.2022