

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 1 OF 2015  
(Subject:- Non Practicing Allowance)**

**DISTRICT: - AURANGABAD**

1. **Dr. Balaji S/o Gyanoba Phalke,** )  
Age- 40 Years, Occ- Medical Officer )  
(Group -A), P.H.C. Viregaon, Dist.Jalna )  
Presently doing In service P.G. Diploma )  
under Department of Forensic Medicine )  
Govt. Medical College, Aurangabad, )  
Dist. Aurangabad. )
2. **Dr. Sandip S/O Achutrao Sangale,** )  
Age -35 Years, Occ- Medical Officer, )  
(Group -A), P.H.C. Nimgaon, )  
Ta. Sanganner, Dist. Ahmadnagar, )  
Presently doing In Service P.G. under )  
Department of Pathology, Govt. Medical )  
College, Aurangabad, )  
District Aurangabad. )
3. **Dr. Sachin N. Darandale,** )  
Age -35 Years, Occ- Medical Officer )  
(Group -A), P.H.C. Lasur Station, )  
Tq. Gangapur, Dist. Aurangabad, )  
Presently doing In service P.G. under )  
Department of Forensic Medicine, )  
Govt. Medical College, Aurangabad, )  
District Aurangabad. )
4. **Dr. Shashank s/o Shankarrao Waghmare)**  
Age -39 Years, Occ- Medical Officer )  
Group -A, P.H.C. Bardapur, )  
Tq. Ambajogai, Dist. Beed, )  
Presently doing In Service P.G. Diploma )  
under Department of Forensic Medicine )  
Govt. Medical College, Aurangabad, )  
District Aurangabad. )

5. **Dr. Salma M. Hirani,** )  
 Age- 44 Years, Occ- Medical Officer )  
 (Group -A), Sub-District Hospital, )  
 Pusad, Dist. Yeotmal, Presently doing )  
 In service P.G. under Department of )  
 P.S.M. Govt. Medical College, )  
 Aurangabad, District Aurangabad. )...**APPLICANTS**

**V E R S U S**

1. **The State of Maharashtra,** )  
 Through Secretary, )  
 Public Health Department, )  
 Mantralaya, Mumbai-32. )
2. **The District of Health Services,** )  
 "Arogya-Bhavan", V th floor, )  
 St. Georges Hospital Campus, )  
 Near C.S.T. Mumbai. )
3. **The Director,** )  
 Medical Education and Research, )  
 III RD Floor, Dental College Building, )  
 St. Georges Hospital Campus, )  
 Near C.S.T. Mumbai. )
4. **The Dean,** )  
 Govt. Medical College, Aurangabad. )..**RESPONDENTS**

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**APPEARANCE** : Shri J.S. Deshmukh, learned Advocate  
 for the applicant.

: Shri S.K. Shirse, learned Presenting  
 Officer for the respondent.

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**CORAM** : **Shri V.D. Dongre, Member (J)**  
**And**  
**Shri Bijay Kumar, Member (A)**

**Reserved on : 19.01.2023.**

**Pronounced on : 01.03.2023.**

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**ORDER**

**(Per: Shri V.D. Dongre, Member (J))**

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed seeking Non –Practicing Allowances to the applicants who are In-service Medical Officers sent on deputation for Post Graduation Course which is denied to them in view of condition No. 4.13 of G.R. dated 07.08.2012 (Annexure ‘A-2’) issued by the respondent No.1 which condition is also challenged in this Original Application.

2. The facts in brief giving rise to this Original Application can be summarized as follows:-

(i) Some of the applicants are substantially appointed on the post of Medical Officer Group-A in the year 2009 through Maharashtra Public Service Commission (M.P.S.C.) and some of them are absorbed under one time absorption scheme under Public Health Department. Their appointment orders are at Annexure ‘A’ collectively.

(ii) The applicants are selected for the Post Graduation Course as In-service candidates as per seats reserved to that category as per Rules in the year 2013 and 2014. Accordingly, as per their merit list of In-service Medical Officers, the applicants are sent on deputation at Government Medical College, Aurangabad as per their registration in particular subject as reflected in copies of selection/registration letter dated 26.07.2013 and 10.07.2014 (Annexure 'A-1' collectively).

(iii) As per the terms and conditions, the applicants are bound to serve three years in Rural area and three years in naxlite and Tribal area after completion of their Post-Graduation Course and they have executed bond with Government that in case of failure to discharge duties for the period of six years mentioned in the bond, the applicants are bound to deposit of Rs. 50 lacs in the office of Respondent No.2.

(iv) In fact the applicants are sent for Post Graduation Course at the expenses of Government and sponsored by the Government and therefore, the Government is taken bond from the applicants to serve under Government for the period

of six years in the area mentioned in the bond after completion of their Post-Graduation Course.

(v) It is submitted that the Government had taken policy decision as reflected in G.R. dated 07.08.2012 (Annexure 'A-2') whereby quantum of Non-Practicing Allowance for Medical Officers was reduced to 35% of basic pay as per the 6th Pay Commission. By the said G.R. the Government applied Ceiling of Rs.85,000/- on the total monthly salary by considering the N.P.A. as part of pay only. As per impugned condition No. 4.13 in the said G.R. dated 07.08.2012 (Annexure 'A-2'). the In -service Medical Officers such as applicants, who are sent for Higher Education are declared not to be entitled for Non Practicing Allowance (N.P.A.) during their time of education.

(vi) It is further submitted that till the year 2011, the in-service Medical Officers sent on deputation for Post Graduation Course were paid the admissible Non Practicing Allowance till 01.07.2012 and all of a sudden by adding impugned condition No. 4.13 in G.R. dated 07.08.2012 (Annexure 'A-2'), the in service candidates are deprived of benefit of Non-Practicing Allowance in most arbitrary manner.

(vii) It is further submitted that the payment of Non-Practicing Allowance is the policy of the State Government and it is quantum governed by the proportionate ratio of basic pay. It is treated as part of salary and it is paid even with pension. Payment of Non-Practicing Allowance is thus a part of condition of service. Clause No. 5 of G.R. dated 07.08.2012 (Annexure 'A-2') makes it clear that Non- Practicing Allowance is taken in to consideration for pension, but the same is not counted for Traveling Allowances, Daily Allowance, H.R.A. As per office memorandum dated 29.09.2008 (Annexure 'A-3') issued by the Ministry of Health of Government of India it is provided that payment of Non Practicing Allowance is treated as pay for the purpose of calculating T.A., D.A. and retirement benefits.

(viii) In view of the above, the applicants are deprived of benefit of Non Practicing Allowance by incorporating impugned condition No. 4.13 in G.R. dated 07.08.2012 (Annexure 'A-2') arbitrary. The impugned condition is contrary to statutory provisions when N.P.A. is part of pay.

(ix) In view of above, representation dated 16.12.2013 was made on behalf of in service Medical Officers to the respondent No. 2 putting forth their grievance about non

payment of N.P.A. The respondent No.2 vide its communication dated 23.12.2013 (Annexure 'A-4') recommended Government to pay Non-Practicing Allowance to in-service P.G. candidates and take appropriate decision regarding the same, but in vain. Hence, the present Original Application is filed seeking following reliefs:-

- “(b) The Government must take decision to pay non practicing allowance to In-service Medical Officers sent on deputation for P.G. course pursuant to letter dtd. 23.12.13 issued by Res. No.2.
- (c) The condition no. 4.13 of G.R. dtd. 07.08.12 by which In service Medical Officers sent on deputation for P.G. course are not entitled for Non-Practicing Allowance may kindly be quashed and set-aside.
- (d) Applicants may kindly be paid the non-practicing allowance since date of their deputation to post Graduation Course till the completion of the said course with arrears.

- (e) The applicants shall give revised pay fixation including admissible Non practicing allowance to their present salary.”

3. The application is resisted on behalf of respondent Nos. 1 and 2 by filing affidavit in reply by one Ravikiran S/o Tukaram Chavan working as the Deputy Director of Health Services, Aurangabad Circle, Aurangabad, thereby de denied the adverse contentions raised in the Original Application.

(i) At the outset the respondents have raised objection about jurisdiction of this Tribunal to decide the constitutional validity of impugned condition No. 4.13 of G.R. dated 07.08.2013 (Annexure 'A-2') contending that such powers are vested only in the Hon'ble High Court and Hon'ble Apex Court.

(ii) It is specifically mentioned in the deputation order dated 26.07.2013 that the Medical Officers who are on deputation for P.G. course are not entitled for N.P.A. In view of the same, the said condition is binding upon them as they have accepted the said condition while joining the P.G. Course. In view of that they have no right to challenge it. Moreover, the respondent No. 2 i.e. the Director of Health Services, Maharashtra State vide letter dated 20.04.2015

(Annexure 'R-1') has requested guidance from the respondent No.1 i.e. the State of Maharashtra in respect of N.P.A. In view of the same, there is no merit in the Original Application and it is liable to be dismissed.

4. We have heard at length the arguments advanced by Shri J.S. Deshmukh, learned Advocate for the applicant on one hand and Shri S.K. Shirse, learned Presenting Officer representing the respondents on other hand.

5. Undisputedly in-service Medical Offices Group –A such as applicants who were sent on deputation for prosecuting higher studies of P.G. Course were paid the admissible N.P.A. till 01.07.2012. Such payment of N.P.A. is stopped by virtue of G.R. dated 07.08.2012 (Annexure 'A-2') by incorporating condition No. 4.13 as follows:-

“४.१३) ज्या वैद्यकीय अधिकाऱ्यांना उच्च शिक्षणासाठी प्रशिक्षणावर पाठविण्यात येईल अशा वैद्यकीय अधिकाऱ्यांना प्रशिक्षण कालावधी दरम्यान भत्ता अनुज्ञेय असणार नाही.”

The said impugned condition No. 4.13 is incorporated as clause No. 12 in deputation letter dated 10.07.2014 (Annexure 'A-1' collectively) in respect of some of the applicants and as clause No. 17 in deputation letter dated 26.07.2013 (Annexure 'A-1' collectively) for remaining

applicants. The said clause Nos. 12 and 17 are identical. It is as follows:-

“शासन निर्णय क्र. मवैअ-२०११/प्र.क्र. ६२६/११/सेवा-३ /मंत्रालय, मुंबई दि. ७.८.२०१२ अन्वये ज्या सेवांतर्गत वैद्यकीय आधिकाऱ्यांना उच्च शिक्षणासाठी प्रशिक्षणासाठी पाठविण्यात येईल अशा वैद्यकीय आधिकाऱ्यांना प्रशिक्षण कालावधी दरम्यान व्यवसायरोध भत्ता अनुज्ञेय असणार नाही.”

In view of that Non-Practicing Allowance is not being paid to the applicants basically in view of impugned condition No. 4.13 incorporated in G.R. dated 07.08.2012 (Annexure ‘A-2’).

6. From above, it is evident that the applicants are aggrieved by the action of the respondent authorities of depriving the applicants of N.P.A. This grievance very well false within jurisdiction of this Tribunal being exercised u/S 19 of Administrative Tribunals Act, 1985. Hence there is no merit in the objection of jurisdiction of this Tribunal raised on behalf of the respondents.

7. Learned Advocate for the applicants submitted that the Non-Practicing Allowance is a part of pay and it is considered even for pension. The same is reflected in column No. 1 of G.R. dated 07.08.2012 (Annexure ‘A-2’). It is as follows:-

“ १. राज्य शासनाच्या महाराष्ट्र वैद्यकीय व आरोग्य सेवेतील रूग्ण सेवेशी संबंधित जिल्हा शल्य चिकित्सक, वैद्यकीय अधिक्षक, वैद्यकीय

अधिकारी विशेषज्ञ आणि वैद्यकीय अधिकारी गट—अ (राज्यस्तर) या संवर्गातील वैद्यकीय अधिकाऱ्यांना सुधारीत व्यवसायरोध भत्ता मंजूर करण्याची बाब शासनाच्या विचाराधीन होती. आता शासनाने राज्य शासनाच्या सार्वजनिक आरोग्य सेवेत कार्यरत असणाऱ्या सर्व वैद्यकीय अधिकारी यांना (ज्यांना व्यवसायरोध भत्ता मिळतो तसेच ज्यांना व्यवसायरोध मिळत नाही असे दोन्ही प्रकारचे वैद्यकीय अधिकारी मिळून) ६ व्या वेतन आयोगातील वेतन श्रेणीनुसार मूळ वेतनाच्या ३५ % व्यवसायरोध भत्ता मंजूर करण्याचा निर्णय घेतला आहे. परंतु त्यांना मिळणारे एकूण वेतन अधिक व्यवसायरोध भत्ता यांची एकत्रित रक्कम दरमहा रू. ८५०००/- पेक्षा जास्त नसावी.

२. सदर व्यवसायरोध भत्ता दि. १ जूलै, २०१२ पासून लागू होईल.”

8. However, as per impugned condition No. 4.13 in G.R. dated 07.08.2012 (Annexure 'A-2') payment of such Non-Practicing Allowance is not to be paid to the in-service Medical Offices sent on deputation for higher studies. It is as follows:-

“४.१३) ज्या वैद्यकीय अधिकाऱ्यांना उच्च शिक्षणासाठी प्रशिक्षणावर पाठविण्यात येईल अशा वैद्यकीय अधिकाऱ्यांना प्रशिक्षण कालावधी दरम्यान भत्ता अनुज्ञेय असणार नाही.”

Perusal of the said clause would show that no reason is mentioned for disentitling such in service Medical Officers of benefit of N.P.A.

9. Learned Advocate for the applicant also invited our attention to the provisions of Rule 22 of Maharashtra Civil Service (Pay) Rules, 1981, which is as follows:-

**“ 22. Pay during the course of instruction or training.-** When a Government servant is treated as on duty under Rules 9(14)(c), (d), (e) and (h) (vii), the authority competent to depute him for a course of

instruction or training under Rule 9(14)(c)(d) or (h) (vii) or to permit him to appear for an examination under Rule 9(14)(3), may allow during such period of duty, pay (including special pay) equal to the amount he was drawing before joining the training or appearing for the examination provided, he has reason to believe that the Government servant is likely to continue to hold the post from which he is deputed during the full period of the course of instruction or training and records a certificate to that effect.”

Plain reading of this Rule would show that the Government cannot deprive such Government servant sent on training of pay including special pay equal to the amount he was drawing before joining the training or appearing for the examination provided, he has reason to believe that the Government servant is likely to continue to hold the post from which he is deputed during the full period of the course of instructions or training and records a certificate to that effect. This condition is fulfilled in the case of the applicants.

10. Further in order to establish entitlement of Non-Practicing Allowance to the Government servants like applicants, learned Advocate for the applicant placed reliance on the decision of Punjab & Haryana High Court dated 23.07.2019 in **CWP-11372-2017 (O & M)** in the matter of **Dr. Harmandeep Singh and Ors. Vs. State of Punjab & Ors.** In the said citation case payment of Non-Practicing

Allowance to the petitioners therein who were members of Punjab Civil Medical Services (PCMS) serving as Medical Officers and sent on deputation for three years P.G. Course was stopped.

11. Special pay defined under Rule 2.52 of Punjab Civil Services Rules, Vol. I, Part I including Non-Practicing Allowance was granted to the Doctors in view of private practice. In the said citation it is observed as follows:-

“ It is not in dispute that upto the year 2015 the doctors undergoing the Post Graduate course were allowed the NPA whereas the same has been discontinued vide impugned order dated 26.03.2015, (Annexure P-5). No reasoning has come forth to justify the withdrawal of NPA.

In view of the above, the instant petitions are allowed; impugned order dated 26.03.2015 (Annexure P-5) is hereby set aside; and the petitioners are held entitled to grant of NPA during the course of Post Graduation.

The arrears, if any, shall be released in favour of the petitioners within a period of six weeks from the date of receipt of a certified copy of judgment.

Allowed.”

12. In the background of the ratio laid down in the abovesaid citation case, if the facts of the present case are considered it is seen that expression “Pay” is defined

under Rule 9 (36) and “Special Pay” under Rule 9 (48) and “Substantive Pay” under Rule 9 (51) as follows:-

“9 (36) “Pay” means the amount drawn monthly by a Government servant as –

- (i) the pay (including special dearness pay) which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and
- (ii) personal pay, and special pay; and
- (iii) any other emoluments which may be specially classed as pay by Government.

48. “Special pay” means an addition, of the nature of pay, to the emoluments of a post or of a Government servant granted in consideration of –

- (a) the specially arduous nature of the duties,
- (b) a specific addition to the work or responsibility.

51. “Substantive pay” means the pay other than special pay, personal pay or emoluments classed as pay by Government under sub-rule 36(iii) to which a Government servant is entitled on account of a post to which he has been appointed substantively or by reasons of his substantive position in a cadre.

13. Moreover, clause Nos. 1 & 2 of G.R. dated 07.08.2012 (Annexure ‘A-2’) which are already reproduced in earlier part of the judgment make it clear that the Non-Practicing Allowance is part of pay admissible to Medical Officers Group –A. In the said G.R. dated 07.08.2012 (Annexure ‘A-2’) no

specific reason or analogy is given while depriving in service Medical Officers sent on deputation for higher studies of N.P.A. In such circumstances, it is evident that the said condition No. 4.13 of G.R. dated 07.08.2012 (Annexure 'A-2') is contrary to the provisions of Maharashtra Civil Services (Pay) Rules, 1981 and arbitrary in nature. Hence, the said condition is liable to struck down and consequently the applicants shall be entitled for the monetary benefits and arrears thereof towards Non-Practicing Allowance. Hence, we proceed to pass the following order:-

**ORDER**

- (A) The Original Application is allowed in terms of prayer clauses 'b to e'.
- (B) The respondents are directed to pay arrears of requisite monetary benefits within the period of two months from the date of this order.
- (C) No order as to costs.

**MEMBER (A)**

**MEMBER (J)**

**Place:-Aurangabad**  
**Date : -01.03.2023**  
SAS O.A.1/2015