

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

01. ORIGINAL APPLICATION NO. 327 OF 2010

DISTRICT : - JALNA.

1. Barrawaz Yahya Abdul Habib,
Age : 52 years, Occu. Service (as
Wireless Operator, SRPF Gr.III,
Jalna), R/o. 1-6-73,
Pensionpura, Sadar Bazar,
Jalna.
2. Muktaji S/o. Maruti Chopade,
Age : 51 years, Occ: Service (as
Radio Mechanic, SRPF Gr-III,
Jalna) R/o. B-3, G-4, 300
Quarters, SRPF Group-III,
Mantha Road, Jalna.
3. Ashok S/o. Narayan Turewale,
Age : 42 years, Occ: Service (as
Wireless Operator, SRPF Gr-III,
Jalna) R/o. 3/22/70, Old Line,
SRPF Group-III, Jalna.

.. APPLICANTS.

V E R S U S

1. State of Maharashtra,
Through its Secretary,
Home Department, M.S.,
Mantralaya, Mumbai-32.
2. The Director General of Police,
M.S., Mumbai.

3. The Additional Director General
of Police & Director, Police
Wireless Department, Pune.
4. The Secretary,
Finance Department,
M.S., Mantralaya, Mumbai-32. .. RESPONDENTS.

W I T H

02. ORIGINAL APPLICATION NO. 666 OF 2010

DISTRICT: - AURANGABAD.

1. **Shri Dattatrya S/o Ram Bharti**
Age: 55 years, Occu. Retired
R/at Umaji Colony Plot No. 5
Bansilal Nagar, Aurangabad.
2. **Maroti S/o Mahadeo Nalwade**
Age: 66 years, Occu. Retired
R/at Hatla Devi Road
Barshi Road Opposite Bhagirathi
Society, Plot No. 7, Osmanabad.
3. **Rajaram S/o Sahau Chavan**
Age: 63 years, Occu. Retired
R/o C/o Datta Wadane
At Post. Tamal Wadi
Tal Tuljapur, Dist. Osmanabad.
4. **Gundappa S/o Bhimrao Gopane**
Age: 68 years, Occu. Retired
R/at Post Achlare Tal. Lohara
District : Osmanabad.

5. **Laximan S/o Siddhram Katawe**
Age: 60 years, Occu. Retired
R/at C/o K.D. Goli
CIDCO Waluj Mahanagar
1st Groth Center Sai Swikar
Aurangabad.
6. **Arjun S/o Kondiba Shirsagr**
Age: 64 years, Occu. Retired
C/o Deogiri Colony Samtanagar
Gat No. 1, Aurangabad.
7. **Vasant S/o Dattatrya Mane**
Age: 60 years, Occu. Retired
C/o. V.B. Aradya, Bhagya Sanket 122,
Shrikrushna Nagar, Vasamat Road,
Parbhani.
8. **Awanna S/o Bharma Wader**
Age: 64 years, Occu. Retired
C/o Prachi Residency Cidco N-2,
Mukundwadi, Aurangabad.
9. **Jangubhai S/o Dhondi Shikalgar**
Age: 64 years, Occu. Retired
R/At : Plot No. 42 Shakuntala
Nagar, Mantha Road Jalna
Dist: Jalna.
10. **Bhaguji S/o Ramchandra Sherkar**
Age: 63 years, Occu. Retired
R/at: C/o Bhanunagar, House
No. 26/1294, Near Sastey Society
Osmanabad.

11. **Ramesh S/o Narayan Deshpande**

Age: 60 years, Occu. Retired
R/at C/o S.B. Deshpande
Parshuram Colony Sanja Road,
Osmanabad.

12. **Tatyrao S/o Pundalikrao Birajdar**

Age: 60 years, Occu. Retired
R/at At Post. Sindhikamath
Tal. Devani District: Latur,

13. **Abdul Kadin Abdul Gafur Kazi**

Age: 67 years, Occu. Retired
C/o Sarfaraj Saif Sayyed
House No. 8/22/786 Katkat Gate,
Neheru Nagar, Aurangabad.

.. APPLICANTS.

V E R S U S

1. The State of Maharashtra
Through its Secretary
Home Department,
Mantralaya, Mumbai-32
(Copy to be served on Presenting
Officer of the State of Maharashtra
Administrative Tribunal, Aurangabad.)
2. The Director General of Police
Maharashtra State, Shaid Bhagatsing Marg
Dr. Sham Prasad Mukhargi Chowk,
Mumbai.
3. The Additional Director General of Police
and Director of Police, Wireless Department,
Maharashtra State, Pune-411 008.

4. The Secretary, Finance Department,
Mantralaya, Mumbai-400 032.
5. The Accountant General, I
Mumbai.
6. The Accountant General, II
Nagpur.
7. The Commissioner of Police
Aurangabad.
8. The Commandant S.R.P.F.
Group 10 Solapur.
9. The Superintendent of Police,
Solapur Rural.
10. The Deputy Commissioner of Police,
Wireless Mumbai.
11. The Superintendent of Police,
Sangali.
12. The Superintendent of Police,
Kolapur.
13. The Commandant S.R.P. Group-I
Pune.
14. The Commandant S.R.P. Group XI,
Mumbai.
15. The Account Officer, Pay Verification
Unit, Pune.
16. The Account Officer, Pay Verification
Unit, Aurangabad. .. RESPONDENTS.

APPEARANCE : Shri Avinash Deshmukh – learned Advocate for the Applicants in **O.A. No. 327/2016.**

: Shri R.P. Bhumkar – learned Advocate for the applicants in **O.A. No. 666/2010.**

: Shri I.S. Thorat – learned Presenting Officer for the respondents in both these Original Applications.

CORAM : **HON’BLE SHRI RAJIV AGARWAR,**
VICE CHAIRMAN (A).

AND

: **HON’BLE SHRI J.D. KULKARNI,**
MEMBER (J)

DATE : **21ST OCTOBER, 2016.**

O R D E R

[Per : Hon’ble Shri Rajiv Agarwal, V.C. (A)

O.A. NO. 327 OF 2010

1. Heard Shri Avinash Deshmukh – learned Advocate for the Applicants and Shri I.S. Thorat – learned Presenting Officer (P.O.) for the respondents.

O.A.NO. 666 OF 2010

Heard Shri R.P. Bhumkar – learned Advocate for the Applicants and Shri I.S. Thorat – learned Presenting Officer (P.O.) for the respondents

2. In O.A. No. 327/2010 the Applicant is challenging Government Resolution dated 18.3.2010 issued by the Respondent No. 1, which modifies the special pay granted to the Wireless Operators and Radio Mechanics on passing proficiency tests as per practice prevailing prior to 1.1.1986, and some other provisions of this G.R.

3. Learned Advocate for the Applicants argued that the Applicants are working as Wireless Operator/Radio Mechanic in State Reserve Police Force (S.R.P.F.) Group 3, Jalna in the Wireless Wing of Police Department. It is a Specialized / Technical Wing. As per the Maharashtra Civil Services (Revised Pay) Rules, 1978, the facility of granting advance increments upon passing of the classification and proficiency tests was continued. This was on the lines of policy followed by the Directorate of Police Telecommunications under the Ministry of Home

Affairs, Government of India. Recommendations of the Forth Central Pay Commission were implemented in Maharashtra in 1988 with retrospective effect from 1.1.1986, and Maharashtra Civil Services (Revised Pay) Rules of 1988 were formulated. The facility of advance increments was done away with. However, this was not a conscious decision taken by the Government, but an oversight. The practice of granting advance increments was continued, though the rules did not provide for it. However, by notification dated 3.10.1994 issued by the Respondent No. 4, this facility was expressly withdrawn. This decision was challenged before this Tribunal in O.A. No. 647/1996. By order and judgment dated 6.12.2007, the O.A. was partly allowed and recovery on account of alleged overpayment was quashed. The Respondents were directed to consider restoration of advance increments as per practice prevailing before 1.1.1986. The State Government filed a Writ Petition No. 7630 of 2008 before Aurangabad Bench of Hon'ble High Court against the order of this Tribunal dated 6.12.2007. This Writ Petition was dismissed by Hon'ble High Court on 3.2.2009. As the

order of this Tribunal dated 6.12.2007 was not implemented by the Respondents, a Contempt Petition No. 42/2008 was filed. The Government issued Government Resolution on 7.5.2009 and a corrigendum on 29.6.2009. The Contempt Proceedings were dropped by order dated 21.7.2009 in view of the Government's decision to issue aforesaid GRs. However, in supersession of the aforesaid Government Resolution dated 7.5.2009 and Corrigendum dated 26.9.2009, Government Resolution dated 18.3.2010 has since been issued and facility of advance increments has been replaced with a facility of Proficiency Pay Rs. 30/- and RS. 60/- p.m. on passing the Class IV and Class III and Class II & Class I tests respectively for Radio Mechanics and Rs. 30/- p.m. for Wireless Operators as proficiency pay has been provided. Though no recovery has been ordered for past payments, by applying G.R. dated 18.3.2010 retrospectively from 1.1.1986, great hardship would be caused to the Applicants.

4. Learned Presenting Officer (P.O.) on behalf of the Respondents argued that the facility of class pay was

introduced in pursuance of clause 191 of the Bombay Police Manual for the Wireless Operators. The Second State Pay Commission recommended that incentive in the form of advance increments, instead of class pay be provided to the Radio Mechanics. The recommendations of advance increments on passing of classification tests were accepted by the State Government and included in Maharashtra Civil Services (Revised Pay) Rules, 1978. Learned Advocate for the Applicants stated that the Government has taken a policy decision and issued G.R. dated 18.3.2010. Learned Presenting Officer stated that matters like pay scale and implementation of Pay Commission recommendations are subject matter in Executive domain and Hon'ble Supreme Court has held that there should not be any interference in such matters by Courts/Tribunals.

5. The State Government has issued Government Resolution dated 18.3.2010 in supersession of Government Resolution dated 7.5.2009. This Government Resolution dated 7.5.2009 reads as under: -

“शासन निर्णय :-

मा. न्यायाधिकरणाचे आदेश लक्षात घेता केंद्र शासनाने दि. १९.१०.२००६ च्या पत्रान्वये कळविल्यानुसार पोलीस बिनतारी संदेश विभागातील रेडिओ मेकॅनिक व बिनतारी यंत्रचालक यांना वर्ग IV, III अशा दोन परिक्षा पास झाल्यानंतर रु. ४०/- व वर्ग II व I अशा परीक्षा पास झाल्यानंतर रु. ६०/- असे (proficiency pay) विशेष वेतन मंजूर करण्यास दिनांक १.१.१९८६ पासून चौथ्या वेतन आयोगाच्या कालावधीपुरते मंजूर करण्यास मान्यता देण्यात येत आहे.”

6. For Radio Mechanics and Wireless Operators, proficiency pay of Rs. 40/- and passing Grade IV & III tests and Rs. 60/- on passing Grade II & I tests were provided from 1.1.1986 for the duration of the Fourth Pay Commission. Another Government Resolution dated 29.9.2009 was issued as a Corrigendum to Government Resolution dated 7.5.2009 and Rs. 40/- was to be read as Rs. 30/- and the stipulation that such proficiency pay will continue only till 4th Pay Commission was deleted. The implication is clear that beyond 1.1.1996 (when 5th Pay Commission was implemented) this facility would have continued. In the Contempt Application No. 42/2008 in O.A. No. 647/1996, this Tribunal has taken note of these GRs and directed the Respondents to implement the GRs

in all respect within a period of four months. This order is dated 21.7.2009. The 6th Pay Commission was implemented in Maharashtra in 2009 with retrospective effect from 1.1.2006. The Government Resolution dated 18.3.2010 states that some modification in earlier GRs dated 7.5.2009 and 29.9.2009 is necessitated for the following reasons:

(1) The 'Proficiency' pay is required to be given and not 'special' pay.

(2) For Wireless Operators, only one proficiency test is prescribed. They are, therefore, entitled to only Rs. 30/- p.m. as proficiency pay.

(3) Accordingly, pay has to be re-fixed for Wireless Operators and Radio Mechanics from 1.1.1986 and the pay in 6th Pay Commission has to be fixed accordingly.

(4) No recovery is to be made if any excess payment has been made.

We find that only significant change in this G.R. is regarding Wireless Operators. It is clarified that Wireless

Operators have to pass only one proficiency test and therefore, proficiency pay of Rs. 30/- be granted to them on passing such a test. For Radio Mechanics, they have to pass tests in four grades viz. IV to I. On passing tests in Grade IV & III, proficiency pay of Rs. 30/- is to be granted and on passing Grade II & I tests, proficiency pay of Rs. 60/- is to be granted. We find that these clarifications in G.R. dated 7.5.2009 (and corrigendum dated 29.6.2009) are quite reasonable and logical. The pay of the Applicants and other similarly situated persons is to be fixed accordingly with effect from 1.1.1986 and salary in 6th Pay Commission has to be fixed on that basis. No recovery, if any excess payment has been made in the past, is to be effected. We do not find that this is a case requiring our interference and it deserves to be dismissed.

7. In O.A. No. 666/2010, the Applicants were represented by Learned Advocate Shri R.P. Bhumkar and the Respondents by Learned Presenting Officer Shri I.S. Thorat.

8. Facts are identical in this O.A. and it also challenges G.R. dated 18.3.2010. We have already held that this G.R. dated 18.3.2010 is substantially the same as G.R. dated 7.5.2009 and Corrigendum dated 29.6.2009, which was accepted by this Tribunal while disposing of C.A. No. 42/2008 in O.A. No. 647/1996. Only one additional issue has been raised in this O.A. that despite stay order from this Tribunal in O.A. No. 647/1996 and provisions of various GRs, the Respondents have recovered excess payment made to the Applicants. The recoveries were made from the year 2002 to 2008 on different dates, details of which are given in paragraph 17 of the O.A. This Tribunal has passed orders in O.A. No. 647/1996 on 6.12.2007. It is stated that interim order was passed by this Tribunal on 9.5.1997. The operative part of this interim order reads:

“In the meanwhile, recovery in pursuance of the impugned orders, if already initiated, should be stopped.”

The order dated 6.12.2007 reads regarding recovery:

“However, since the amount already paid to the Electricians was not due to any mistake on their part, the same need not be recovered.”

The Applicants have sought the following reliefs :

“A. Original application may kindly be allowed.

B. Quash and set aside the Government Resolution dated 18/3/2010 and all consequential orders and respondents be directed to issue new GR providing restoration of advance increments from 1/1/1986 and payment of arrears of advance increments.

C. To direct the respondents to repay the amount which was unlawfully recovered from the applicants at the time of their retirement along with compounded interest for the intervening period (i.e. from date of recovery to till date) at the rate of 18% p.a. to the applicants or be deposited with the Hon’ble Tribunal.

D. Pending hearing and final disposal of this application the impugned G.R. as Exhibit “dated 18/03/2010 and the consequential order issue by R-3 dated 30/4/2010 be stayed.

E. To direct the respondents to revise the pension by including the advance increments which were unlawfully discontinued at the time of retirement and further be directed to pay the amount of arrears arising out of such re-fixation.

F. Applicants be paid a compensation of Rs. Two Lakhs each for the physical and mental distress suffered due to wrongful conduct of recovery by respondents and resulting harassment of the applicants.

G. Any other just and equitable relief may kindly be granted in the favour of the applicants.”

9. The Applicants had retired before the G.R. dated 18.3.2010 was issued. In any case, we had rejected the prayer for quashing this G.R. in the other related OAs. The amounts were recovered from the Applicants from

2002 to 2008. The stay order was granted on 9.5.1997. The Applicants never challenged the orders of recovery and had filed this O.A. on 30.7.2010. There is no prayer for condonation of delay. Their claims are already time barred and cannot be considered and hence, this O.A. also deserves to be dismissed.

10. In view of foregoing paragraphs, both the O.A. Nos. 327 & 666 both of 2010 stand dismissed with no order as to costs.

MEMBER (J)

VICE CHAIRMAN (A)

O.A.NOS.327 & 666 OF-2010(hdd)-2016(DB)