

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 863 OF 2016
(Subject – Recovery)**

DISTRICT: JALNA

Shri Baburao s/o Devidasrao Tathe,)
Age: 57 years, Occu. : Head Constable,)
Driver Class-III, S.R.P.F. Group III,)
(M.T. Section), Jalna, Dist. Jalna.) .. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through Secretary,)
Home Department)
Mantralaya Mumbai- 400 032.)

(Copy to be served on the Chief)
Presenting Officer, Maharashtra)
Administrative Tribunal Mumbai,)
Bench at Aurangabad.)
- 2) **The Special Inspector General**)
of Police,)
Motor Transport, M.S., Pune)
- 3) **The Special Inspector General**)
of Police,)
State Reserved Police Force,)
Nagpur Zone, Nagpur.)
- 4) **The Commandant,**)
State Reserved Police Force,)
Group No. III, Jalna) .. **RESPONDENTS**

APPEARANCE : Shri J.B. Choudhary, Advocate for the
Applicant.

: Smt. Resha S. Deshmukh, Presenting Officer
for the Respondents.

CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J)

ORDER**(Delivered on this 12th day of October, 2017.)**

1. The applicant has challenged the order dated 27.07.2016 passed by the respondent No. 4 reducing the pay scale of the applicant and directing recovery of the excess payment made to him and the order dated 13.10.2016 passed by the respondent No. 4 rejecting his representation and the order passed by the Police Inspector (M.T.), Jalna on 19.08.2015 directing the recovery. The applicant has also claimed declaration that he is entitled for pay scale of Rs. 5200-20200 with Grade Pay of Rs. 2800/-

2. The applicant was initially appointed as an Armed Police Constable on 1.8.1986. Thereafter, the applicant has completed training of Police Head Constable Driver Mechanic Grade-II in the year 1994. Thereafter, he was posted as Head Constable Driver Mechanic Grade-II on 11.06.1994.

3. The Government of Maharashtra had introduced the policy of giving time scale promotion to the employees after completion of 12 years continuous service on one post and accordingly, the Government has issued G.R. dated 8.6.1995. The applicant has completed 12 years' service on the post of Head Constable Driver Mechanic Grade-II on 6.6.2006. Accordingly, the respondent No. 4 issued order granting time scale promotion

to the applicant on 19.7.2006. The applicant was getting pay in the pay scale of Rs. 4000-100-6000 and after getting first time bound promotion, his pay scale was Rs. 4500-125-7000 w.e.f. 6.6.2006 in view of the order dated 19.7.2006 issued by the respondent No. 4. Accordingly, his pay was fixed on 18.08.2006. The Grade Pay of Rs. 2800/- was given to the applicant by the order dated 27.05.2009, while fixing his pay as per 6th Pay Commission recommendation and pay was fixed in the pay scale of Rs. 5200-20200/- with Grade Pay of Rs. 2800/-. In the year 2011, the applicant submitted representation to the respondent No. 2 and requested to give him posting on the equivalent post of Police Head Constable Driver. The post of Police Head Constable Driver Mechanic Grade II and the Police Head Constable Driver are having same pay scale. Considering the request of applicant, the respondent No. 2 issued order dated 27.05.2011 and transferred the applicant from the post of Police Head Constable Driver Mechanic Grade-II to the post of Police Head Constable Driver on certain conditions. Accordingly, the respondent No. 4 issued order dated 11.7.2011 and posted the applicant on the post of Police Head Constable Driver on a condition that seniority of the applicant will be counted from the date of joining on the post of Police Head Constable Driver. It is his contention that, no such condition of losing seniority will be mentioned in the order dated 27.7.2016 issued by the respondent No. 4. The applicant

joined his new posting immediately and since then, he is discharging his duties. On 27.07.2016, the respondent No. 4 issued the order by which he observed that there is discrepancy in the pay scale of the applicant and he revised the pay scale of the applicant w.e.f. 1.7.2011 reducing the Grade Pay from 2800 to 2400. The respondent No. 4 further directed to take action for recovery of excess payment made to the applicant vide order dated 13.10.2016. The applicant made representation to the respondent No. 1 against the order dated 27.7.2016 by filing application dated 11.8.2016 and requested to continue the benefits of time scale promotion and to cancel the order reducing pay scale and Grade Pay. Thereafter, he filed one more representation dated 16.02.2016 with the same request, but the respondents had not decided the said representations. Thereafter, he approached the respondent No. 4 personally and explained the fact and requested him to cancel the order dated 27.07.2016. It is contention of the applicant that the respondents might have withdrawn time scale promotion on the ground that he was posted on the post of Police Head Constable Driver on Zero seniority and therefore, applicant submitted copies of G.Rs. dated 1.11.1995, 1.7.2011 and 1.11.2008 along with representation dated 11.8.2016, which provide that the time scale promotion cannot be reduced on the ground that the employee was put on Zero seniority for transfer on request. But the respondents have

not considered his representation and therefore, applicant has approached this Tribunal by filing the present Original Application and prayed to quash the impugned orders dated 27.07.2016 and 19.08.2016 issued by the respondent No. 4 and sought declaration that he is entitled to get pay scale of Rs. 5200-20200 with Grade Pay of Rs. 2800/-.

4. The respondent No. 2 has filed his affidavit in reply and contended that the Police Head Constable Driver Mechanic Grade-II and Police Head Constable Driver are of same cadre and the pay scale of the said posts is also same. It is his contention that the applicant has requested to transfer him on the post of Police Head Constable Driver from the post of Police Head Constable Driver Mechanic Grade-II and accordingly, he was transferred by the office order dated 27.05.2011. It is his contention that the respondent No. 4 has passed the order dated 27.7.2016 and he is not concerned with it.

5. The respondent No. 4 has filed his affidavit in reply and contended that as per request application filed by the applicant on 4.7.2016 his pay has been revised and fixed vide order dated 27.7.2016 by the respondent No. 4. Thereafter, the application of the applicant dated 11.8.2016, which has been rejected on 30.10.2016 after hearing the applicant personally, as it was not admissible. It is his contention that as per G.R. dated

1.11.1995, the applicant is entitled for time scale promotion and accordingly, he was granted promotion and granted pay scale of Rs. 4500-125-7000 w.e.f. 19.7.2016 by the respondent No. 4. As per the recommendation of 6th Pay Commission, his pay has been revised and fixed in the pay scale of Rs. 5200-20200 with Grade Pay of Rs. 2800/- vide order dated 27.09.2010. It is his contention that the applicant has been transferred from the post of Police Head Constable Driver Mechanic Grade-II to Police Head Constable Driver in the same unit vide order dated 27.05.2011 issued by the Special Inspector General of Police, Motor Transport Section, Pune i.e. respondent No. 2 on the ground that he should work as SRPF GR III, Jalna as reserved driver and performed his duty as a Driver and to repair vehicle in case of emergency. The respondent No. 4 passed the order dated 11.7.2011 on the basis of said order dated 27.5.2011 on a condition that the seniority of the applicant will be counted from the date of joining on the post. It is his contention that the applicant admitted above said condition and had given written consent. Therefore, the respondent No. 4 had issued the order dated 27.5.2011. It is his contention that the applicant has been transferred from technical staff to non-technical staff and pay scale of both the posts are same. As the request application of the applicant dated 4.7.2016 has been considered and he has been transferred as Police Head Constable Driver, his pay has been revised and the Grade Pay has

been reduced from Rs. 2800/- to 2400/- in view of the provisions of the G.R. It is his contention that the applicant was posted on the post of Head Constable Driver on Zero seniority and therefore, he is not entitled to get higher pay scale and the grade pay and therefore, respondent No. 4 has passed the impugned order dated 27.7.2016. There is no illegality in the impugned order and therefore, he prayed to reject the Original Application.

6. The applicant has filed rejoinder affidavit and contended that the posts of Police Head Constable Driver Mechanic Grade-II and Police Head Constable Driver are of the same cadre and the pay scale of the said posts is also same. The order of respondents reducing pay scale and Grade Pay is not legal one. It is his further contention that the pay scale of Police Head Constable Driver Mechanic Grade-II and Police Head Constable Driver is also equal as per the recommendation of the 6th Pay Commission. The respondent No. 4 has not considered the recommendation of 6th Pay Commission and therefore, they have wrongly reduced the Grade Pay of the applicant. It is his contention that in view of the provisions of the G.R. dated 3.4.1990 even though the employee is transferred from one post to another post, and if no duties and responsibilities of higher importance are assigned to the said post, the pay scale of the earlier post should be fixed at the same stage. But the

respondent No. 4 had not considered the said G.R. and therefore, he prayed to quash and set aside the impugned orders.

7. The respondent No. 4 has filed additional affidavit to the rejoinder of the applicant and contended that the impugned order is legal one and therefore, he prayed to reject the Original Application.

8. I have heard Shri J.B. Choudhary, Advocate for the applicant and Smt. Resha S. Deshmukh, Presenting Officer for the respondents. I have perused the documents placed on record by the parties.

9. Admittedly, the applicant was initially appointed as an Armed Police Constable on 1.8.1986. He had undergone training of Head Constable Driver Mechanic Grade-II in the year 1994 and thereafter, he was posted as Head Constable Driver Mechanic Grade II on 11.06.1994. On completion of 12 years continuous service in the same cadre, time scale promotion was granted to him w.e.f. 6.6.2006 in view of the G.R. dated 8.6.1995. Admittedly, the applicant was getting pay scale of the post of Police Head Constable Driver Mechanic Grade-II in the pay scale of Rs. 4000-100-6000. On granting first benefit of the time scale promotion to the applicant, his pay scale was fixed in the pay scale of Rs. 4500-125-7000 with Grade Pay of Rs. 2800/- There is

no dispute about the fact that after recommendation of 6th Pay Commission pay scale was fixed of Rs. 5200-20200 with Grade Pay of Rs. 2800/- to the State Government employees getting pay scale of Rs. 4500-7000/-. Higher pay scale of Rs. 4500-7000/- was given to the applicant w.e.f. 6.6.2006 with Grade Pay of Rs. 2800/-. Admittedly, in the year 2011, the applicant submitted representation to the respondent No. 2 and requested to transfer him on the equivalent post of Police Head Constable Driver from the post of Police Head Constable Driver Mechanic Grade-II, as both the posts are of the same cadre and having equal pay scale. Considering his request, the applicant was transferred on the post of Police Head Constable Driver by the order dated 27.05.2011. On the basis of said order, the respondent No. 4 issued another order dated 11.07.2011 and posted the applicant on the post of Police Head Constable Driver on Zero seniority. The applicant joined the said posting on 11.7.2011. On 27.07.2016, the respondent No. 4 passed the impugned order and reduced the Grade Pay of the applicant from Rs. 2800/- to Rs. 2400/- and further issued order dated 13.10.2016 and directed to take appropriate action for recovery of the excess payment made to the applicant. Admittedly, the applicant made request with the respondent No. 4 not to recover the said amount and to grant Grade Pay of Rs. 2800/- to him by filing the representations dated 11.8.2016 and 16.8.2016 relying on the G.R. dated 1.11.1995,

1.7.2011 and 1.11.2008, but his request was not considered by the respondents.

10. Learned Advocate for the applicant has submitted that the applicant was serving as a Police Head Constable Driver Mechanic Grade-II since the year 1994 till his transfer on the post of Police Head Constable Driver in the year 2011. He has submitted that both the posts i.e. Police Head Constable Driver Mechanic Grade-II and Police Head Constable Driver are of the same cadre and having equal pay scale and therefore, the applicant has been transferred and posted on the post of Police Head Constable Driver by the order dated 27.05.2011 issued by the respondent No. 2 and the order dated 11.07.2011 issued by the respondent No. 4. He has submitted that the applicant was granted first time scale promotion in the pay scale on the post of Police Head Constable Driver Mechanic Grade-II in view of the G.R. dated 8.6.1995 w.e.f. 6.6.2016 on completion of 12 years continuous service on the post of Police Head Constable Driver Mechanic Grade-II. Prior to granting of the time scale promotion, the applicant was getting pay scale of Rs. 4000-100-6000 and after granting time scale promotion he was getting pay in the pay scale of Rs. 4500-125-7000. Thereafter, his pay scale was fixed in the pay scale of Rs. 5200-20200 with Grade Pay of Rs. 2800/- in view of the recommendation of the 6th Pay Commission w.e.f.

6.6.2006. Accordingly, he was getting pay in that scale. In the year 2011, he was transferred on the post of Police Head Constable Driver on his request. He has submitted that thereafter, the respondent No. 4 has reduced the Grade Pay from Rs. 2800/- to 2400/- by impugned order dated 27.7.2016 on the ground that he has lost his seniority on his transfer on the post of Police Head Constable Driver and therefore, he was not entitled to get time scale promotion. He has submitted that the act of the respondents to reduce the pay scale of the applicant is not in accordance with the G.Rs. dated 1.11.1995, 1.7.2011, 1.11.2008 and 3.4.1990. He has submitted that the applicant made representation with the respondents to quash the order dated 27.7.2016, but his representation has not been considered and therefore, the applicant approached this Tribunal by filing the present Original Application.

11. He has submitted that since the posts of Police Head Constable Driver Mechanic Grade-II and Police Head Constable Driver are of equal cadre and having equal pay scale, the applicant's pay cannot be reduced. He has further submitted that the promotional post for the above said posts viz. A.S.I. (Technical) and A.S.I. Driver (Non-technical) are one and the same. The applicant will get pay scales of the said posts in view of the first time scale promotion granted to him. He has submitted

that the scale of both the posts are also same and therefore, the applicant is getting pay scale of Rs. 5200-20200 with Grade Pay of Rs. 2800/-. First time scale promotion was granted in view of the G.R. dated 8.6.1995. He has submitted that on transfer of the applicant on the post of Police Head Constable Driver, the applicant lost his seniority and he will not lose his pay scale or Grade Pay and therefore, impugned order passed by the respondent No. 4 is illegal. He has submitted that in view of the G.R. dated 1.11.1995, earlier service rendered by the applicant prior to his transfer will be considered for granting benefits under assured career progression scheme and therefore, the applicant's seniority cannot be counted for withdrawing the benefit granted to him and therefore, he prayed to quash the impugned order and to grant him Grade Pay of Rs. 2800/-.

12. Learned Presenting Officer has submitted that the applicant has been transferred as Police Head Constable Driver from the post of Police Head Constable Driver Mechanic Grade-II on his request and that time, it was one of the conditions that the applicant will lose his seniority in the new post and his seniority will be counted from the date of his joining. She has submitted that since the applicant has lost his seniority, he will not be entitled to get time scale promotion and therefore, the respondent No. 4 has rightly issued the order dated 27.7.2016 and reduced

the Grade Pay of the applicant accordingly. She has submitted that there is no illegality in the impugned order and therefore, she supported the impugned orders.

13. On going through the documents on record, it reveals that there is no dispute about the fact that the pay scale of the posts of Police Head Constable Driver Mechanic Grade-II and Police Head Constable Driver are same. Only contention of the respondents that since the applicant transferred to the post of Police Head Constable Driver from the post of Police Head Constable Driver Mechanic Grade-II, he lost his seniority and therefore, he is not entitled to claim Grade Pay of Rs. 2800/-, which is available to the promotional post. On perusal of the Maharashtra Civil Services (Revised Pay) Rules, 2009 framed on the basis of recommendation of 6th Pay Commission, it reveals that the Head Constable Driver and Head Constable Driver, Mechanic were getting same pay scale i.e. 4000-6000 in the 5th Pay Commission. As per the 6th Pay Commission's recommendation the said pay structure was revised and fixed in the pay scale of Rs. 5200-20200 with Grade Pay of Rs. 2800/-. The promotional post of the said post is of A.S.I. Technical (M.T.) and Assistant Sub Inspector (Driver) respectively. The said post was getting pay scale of Rs. 4500-7000 as per the 5th Pay Commission. As per the recommendation of 6th Pay Commission

it is revised to Rs. 5200-20200 with Grade Pay of Rs. 2800/-.

Admittedly, the applicant was granted first time scale promotion w.e.f. 06.6.2006 and he continued to get revised pay scale as per the recommendation of 6th Pay Commission in the pay band of Rs. 5400-20200 with Grade Pay of Rs. 2800/-. Only because he has been transferred from the post of Police Head Constable Driver Mechanic Grade-II to the post of Police Head Constable Driver, his grade pay has been reduced by the respondent No. 4, by impugned order dated 27.07.2016 on the ground that the applicant lost his seniority. G.R. dated 1.11.2008 (page no. 53 of the paper book) specifically provides that prior services of the employees, who have been transferred on their request, can be considered while granting benefit under the said scheme. The said G.R. is squarely applicable to the case of the applicant. The relevant portion of the said G.R. is as under:-

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गट- क व गट ड (वर्ग-३ व ४) मधील
कर्मचा-यांच्या पदोन्नतीच्या संधी उपलब्ध
नसल्याने असलेली कुठितता घालविण्या
संबंधी योजना.

महाराष्ट्र शासन
वित्त विभाग,

शासन निर्णय क्र. वेतन ११०६/प्र.क्र. ३०/सेवा-३,
मंत्रालय, मुंबई ४०० ०३२,
दिनांक १ नोव्हेंबर २००८.

शासन निर्णय

शासन आता असे आदेश देते की, स्वविनंतीनुसार अथवा अन्य कारणास्तव बदली झाल्यामुळे ज्येष्ठता गमावलेल्या कर्मचा-यांची बदलीपूर्वीची नियमित सेवा सेवांतर्गत आश्वासित प्रगती योजनेसाठी ग्राह्य धरण्याचा वरील अनुक्रमांक ३ मधील परिच्छेद-२ अन्वये देण्यात आलेला लाभ दि. ०१ ऑक्टोबर, १९९४ पासून अंमलात आलेल्या कालबद्ध पदोन्नती योजनेसाठी देखील देण्यात यावा.

२. प्रस्तावतनेतील परिच्छेद २ मधील पार्श्वभूमी विचारा घेवून वरील अ.क. ३ येथील दिनांक १० सप्टेंबर २००७ च्या शासन निर्णयातील परिच्छेद ३ आणि ४ या आदेशान्वये आता निरसित करण्यात येत आहेत.”

But the respondent No. 4 had not considered the said G.R. while passing the impugned order dated 27.07.2016. No justifiable reasons have been assigned by the respondents while passing the impugned order dated 27.7.2016. The order dated 27.7.2016, which is at page No. 83 shows that the respondent No. 4 has passed the order and reduced the pay scale of the applicant on the ground that there is discrimination in the pay scale, but no reasons have been recorded while reducing pay scale of the applicant. Therefore, the impugned order dated 27.7.2016 passed by the respondent No. 4 and subsequent order dated 19.08.2016 issued by the Police Inspector (M.T.) Jalna, directing recovery of the excess payment made to the applicant are illegal and therefore, same require to be quashed and set aside. Likewise, order dated 13.10.2016 issued by the respondent No. 4 rejecting the request of the applicant is also not legal one and it requires to be quashed and set aside. Since the order dated 27.7.2016 passed by the respondent No. 4 is not legal and in accordance with the G.R. dated 1.11.2008, the same is not maintainable. The applicant is entitled to get benefit as time scale promotion and pay scale fixed therein, therefore, he is entitled to get Grade Pay of Rs. 2800/-, which is applicable to the promotional post i.e. Police

Head Constable Driver and therefore, he is entitled to seek declaration as claimed for.

14. In view of the above said facts and circumstances; the Original Application deserves to be allowed. Hence, I pass following order:-

ORDER

1. The Original Application is allowed.
2. It is hereby declared that the applicant is entitled to get pay scale of Rs. 5200-20200 with Grade Pay of Rs. 2800/-.
3. The impugned order dated 27.07.2016 issued by the respondent No. 4 reducing pay scale of the applicant and directing recovery of the excess payment made to the applicant and order dated 19.8.2016 issued by the Police Inspector (M.T.), Jalna directing recovery from the salary of the applicant, are hereby quashed and set aside.

There shall be no order as to costs.

(B.P. PATIL)
MEMBER (J)