

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.266 OF 2017

Shri Balkrishna @ Balasaheb Pandharinath)
Shinde,)
Age 73 years, Occ. Retired (API),)
R/o. Sita Kunj Bungalow, Shivparvati)
Nagar, Karhad Road, Korti, Pandharpur,)
Taluka Pandharpur, Dist. Solapur)... **Applicant**

Versus

1. The State of Maharashtra.)
Through Additional Chief Secretary,)
Home Department,)
Mantralaya, Mumbai 32.)
2. Addl. Director General of Police,)
Near Modern High School,)
Pashan Road, CID, M.S. Pune.)... **Respondents**

Shri R.M. Kolge, learned Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondents.

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

DATE : 18.08.2020

J U D G M E N T

1. The Applicant who stands retired on 31.05.2001 has filed the present Original Application claiming Pay and Allowances of the period from 25.03.1992 to 09.07.1996 (one step ahead pay), invoking the

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jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act 1985.

2. Shortly stated facts giving rise to the Original Application are as under :

The Applicant was appointed as PSI by nomination in the year 1969 and in that capacity worked at various places. While he was working as PSI at Kolhapur he was transferred to CID (Intelligence), Mumbai and accordingly joined on 11.07.1988. Initially, he was in pay scale of Rs.1600-60-2600-75-2900. However, in view of his posting in CID (Intelligence), Mumbai his pay was upgraded one step ahead in terms of Government Resolution dated 27.11.1981 and he was placed in the pay scale of Rs.2200-75-2500-100-3500. Thereafter, he was transferred to CID (Crime) Pune and he was relieved on 12.07.1990. He was on leave and did not join transferred posting immediately. He joined in CID (Crime) Pune 25.03.1992. That time his pay was refixed in his earlier pay scale of Rs.1600-60-2600-75-2900 by giving yearly increments. Then, he was promoted to the post of API and worked in CID (Crime), Pune till 09.07.1996. Thereafter, he was transferred to Thane(Rural) where he stands retired on 31.05.2001. He contends that after his transfer to CID (Crime) Pune he was not continued in pay scale of Rs. Rs.2200-75-2500-100-3500, though he was entitled for the said one step ahead pay scale. Then he sought information under RTI Act in 2016 only and claimed details of pay and allowances paid to him from 25.03.1992 to 09.07.1996. On 11.06.2016 he made representation to the Respondent No.2, Additional Director General of Police, CID, Pune claiming one step ahead pay and allowances in the pay scale of Rs.2200-75-2500-100-3500 which he was earlier getting while working as CID (Intelligence), Mumbai. His representation was not responded appropriately and he was informed that record is not available. His grievance remains unredressed. Therefore, on 27.03.2017 he filed present O.A. claiming

one step ahead pay and allowance for the period from 25.03.1992 to 09.07.1996.

3. Respondent No.2 resisted the application by filing affidavit-in-reply, *inter alia*, contending that the applicant stands retired on 31.05.2001 and O.A. is filed in 2017 which is hopelessly barred by limitation and further denied entitlement of the applicant to one step ahead pay for the period from 25.03.1992 to 09.07.1996. It is not in dispute that when the applicant was transferred to CID (Intelligence), Mumbai he was placed in pay scale of Rs.2200-75-2500-100-3500 on the basis of G.R. dated 27.01.1981 which, *inter alia*, provides that the said pay scale would be applicable provisionally as fortuitous benefit and it was applicable only during the tenure in CID (Intelligence), Mumbai. As such after his transfer from CID (Intelligence), Mumbai to CID Pune on 12.07.1990 he was not entitled to continue the said pay scale and accordingly his pay was revised in his original pay scale. Later, the benefit of one step ahead pay scale was made applicable to CID (Crime) Pune w.e.f. 01.07.1995 by G.R. dated 14.08.1995 and accordingly, the said benefit was given to him w.e.f. 01.07.1995. With these pleadings, the Respondents prayed to dismiss the O.A.

4. Shri R.M. Kolge, learned Advocate for the Applicant submits that the Applicant was entitled for continuation of one step ahead pay scale even after his transfer in CID (Crime) Pune and the same being not granted, there is recurring and continuous cause of action to the Applicant. During the course of hearing, he placed on record the extract of service book of the Applicant (page 169 of P.B.), wherein there is reference of upgradation of pay scale on the basis of G.R. dated 01.02.1984. Adverting to this aspect he submits that respondents have suppressed G.R. dated 01.02.1984. He, therefore, submits that the difference in pay and allowances for the period from 25.03.1992 to 09.07.1996 deserves to be granted to the applicant considering his one step ahead pay scale earlier granted to him.

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5. Par contra, Shri A.J. Chougule, learned Presenting Officer for the Respondents has pointed out one step ahead pay scale granted to the Applicant on his transfer in CID (Intelligence) Mumbai was fortuitous benefit in terms of G.R. dated 27.11.1981 and after his transfer to CID (Crime) Pune it was rightly discontinued. He has further pointed out that later Government issued another G.R. dated 14.08.1995 which was made applicable w.e.f. 01.07.1995 and the said benefit of one step ahead pay scale was again extended to the Applicant. As regard limitation he submits that the applicant though retired on 31.05.2001 he did not availed judicial remedy within the prescribed period of limitation and therefore O.A. filed after 16 years is hopelessly barred by limitation.

6. In view of pleadings and submissions advanced at bar, the crux of the matter is whether the Applicant is entitled for one step ahead pay scale for the period from 25.03.1992 to 09.07.1996 and in my considered opinion the answer is in negative for the reason to follow.

7. Admittedly, while the applicant was working at Kolhapur he was transferred and posted in CID (Intelligence), Mumbai and that time in terms of G.R. dated 27.11.1981 (page 109 and 110 of P.B.) his pay was upgraded in next higher pay scale. Thereafter, he was transferred to CID (Crime) Pune and relieved on 12.07.1990 where he joined belatedly on 25.03.1992 and that time his pay was refixed in his original pay scale of Rs.1600-60-2600-75-2900. Thus the source of upgradation in pay scale was G.R. dated 27.11.1981 and the contents of which are material for the present controversy. Pertinent to note as per paragraph No.4 of the said G.R., the said benefit of one step ahead pay scale shall be payable only for the period of service with CID (Intelligence), Mumbai Special Wing as fortuitous promotion/ benefit. Paragraph No.4 of G.R. is as follows :-

"4. The promotion given according to para 3 above shall be only for the period of service in the State CID (Intelligence Special Wing)

and will be treated as purely fortuitous, when the officer reverts to his present cadre. On promotion, the pay in the higher pay-scale should be fixed as per relevant rules in the Bombay Civil Services Rules."

8. It is thus manifest that the benefit of pay scale in next level was fortuitous and the employee was entitled to enjoy the same till he served with State CID (Intelligence Special Wing). In other words, in case of his transfer from CID (Intelligence Special Wing) to other Department, he would be reverted to original pay scale. Pertinent to note that the benefits of G.R. dated 27.11.1981 was conferred as incentive only for the staff of Intelligence Special Wing only as explicit from the title of contents of G.R. dated 27.11.1981.

9. Accordingly, the benefit of G.R. dated 27.11.1981 was extended to the Applicant during his services with CID (Intelligence Special Wing) and thereafter it was rightly withdrawn when he was transferred to CID (Crime) Pune. Applicant could not produce any other G.R. or material to substantiate that the benefit of one step ahead pay scale was to be continued even after his transfer from Intelligence Wing. The said benefit was extended as a fortuitous benefit to recognize the work done by an employee in Special Wing as an incentive and it was not to be carried forward permanently when the employee is transferred to other Department. Its operation and effectiveness is confined to the service rendered in State CID Intelligence Special Wing only. This being the position the Applicant cannot claim extension of the said benefit during the further tenure in CID (Crime) Pune.

10. Later, while the Applicant was serving in CID (Crime) Pune, Government had issued one more G.R. dated 14.08.1995 (page 111 of P.B.) whereby benefit of one step ahead pay scale/ promotion was granted w.e.f. 01.07.1995 and this benefit was also applicable so long as the employee works in CID (Crime), Pune. Admittedly, the said benefit was extended to the Applicant during his tenure with CID

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(Crime) Pune, latter he was transferred to Thane (Rural), where he stands retired on 31.05.2001.

11. Thus, the benefit of one step ahead pay scale was payable during the tenure of the applicant in the said Department and in terms of G.R. dated 27.11.1981 and dated 14.08.1995. However, he is claiming enhance pay scale for the period from 25.03.1992 to 09.07.1996 as if benefit of higher pay scale was continued irrespective of his transfer to other Department. The present O.A. seems to have been filed on assumption of entitlement to same pay scale irrespective of transfer to other Department and the assumption is obviously erroneous and has no foundation.

12. Shri R.M. Kolge, learned Advocate for the Applicant tried to make much capital of one entry dated 11.07.1988 which is at page 169 of P.B. There is reference of one step ahead pay in terms of G.R. dated 01.02.1984 and adverting to this aspect learned Advocate sought to contend that his case is governed by G.R. dated 01.02.1984. However, he could not produce G.R. dated 01.02.1984 in support of his contention. Efforts were made to have G.R. dated 01.02.1984 on record, but learned P.O. submits that the Department has no such G.R. dated 01.02.1984 with it. Be that as it may, the perusal of entry dated 11.07.1988 reveals that the Applicant was promoted vide order dated 03.08.1988 and therefore his pay was refixed in terms of G.R. dated 01.02.1984. As such, the said entry pertains to fixation of pay on promotion in 1988, whereas, in present case, we are concerned with period from 25.03.1992 to 09.07.1996 and therefore the entry dated 11.07.1988 and reference of G.R. dated 01.02.1984 at page 169 of P.B. is hardly of any assistance to the Applicant.

13. Pertinent to note that it is applicant's own case that when he was transferred in CID Intelligence his pay was upgraded in pay scale of Rs.2200-75-2500-100-3500 in place of his original pay scale i.e.

Rs.1600-60-2600-75-2900 as seen from page 10 of P.B. O.A. is conspicuously silent as to on the basis of which G.R. the said benefit was extended to him. Respondents made it clear that the said benefit was paid in terms of G.R. dated 27.11.1981 so long as applicant was serving with Intelligence Wing. As stated above, the said benefit was payable only during the period of service with Intelligence Wing and therefore the question of continuation of said benefit after his transfer did not survive.

14. It would not be out of place to mention here that the Applicant did not raise any grievance of pay scale during tenure of service till retirement on 31.05.2001. Even thereafter, he remained silent for near about 15 years. He made representation for the first time on 13.07.2016 (page 25 of P.B.) and then filed the present O.A. on 27.03.2017. As rightly pointed out by learned P.O. the O.A. ought to have been filed within one year from the date of cause of action or within the period of six months from the date of filing representation in terms of Section 21(1)(b) of Administrative Tribunals Act 1985.

15. I find no substance in the submission advanced by learned Advocate for the Applicant that it is continuous and recurring cause of action and therefore the question of delay does not survive. Learned Advocate referred to the decision of Hon'ble Supreme Court (1) **2004 Supreme Court Cases (L&S) 654, Basic Shiksha Parishad and Another Versus Sugna Devi (Smt) and Others**, (2) **2008 (11) SCC 648, Union of India & Anr Versus Tarsem Singh**. The conspectus of these decisions is that where there is continuing case of action accruing every month to the employee, the question of limitation does not arise. Needless to mention that the essence of continuing wrong is an act which creates a continuing source of injury and renders Respondent liable for the continuous of the said injury. In the present case, Applicant is claiming pay and allowances of promotional posts for the period from 25.03.1992 to 09.07.1996. In other words, his

claim is restricted for the alleged injury suffered for the period from 25.03.1992 to 09.07.1996. Therefore at the most it may be case causing injury which is completed in 1996 and therefore, it is not case of continuous cause of action. There is distinction between injury completed due to the alleged wrongful act and continuous injury. Thus, even assuming for a moment that he was entitled to one step ahead pay scale for the period from 25.03.1992 to 09.07.1996 in that event, also it cannot be termed as case of continuous case of action. The Applicant has raked-up the issue after more than two decades. Even after retirement the Applicant did not take any steps for 15 years. He remained silent spectator. Suffice to say, the claim is stale, unfounded and hopelessly bared by limitation. The benefit of one step ahead pay scale was restricted in service with Intelligence Wing only. As such on merit also the O.A. is devoid of any merit.

16. The totality of the aforesaid discussion leads me to conclude that O.A. is devoid of any merit and deserves to be dismissed. Hence, the following order.

ORDER

Original Application is dismissed with no order as to costs.

Sd/-

(A.P.^N KURHEKAR)
MEMBER-J