

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.322 OF 2022**

**DISTRICT : MUMBAI**  
**Sub.:- Recovery**

Shri Jaywant Sahdev Surve. )  
Age : 59 Yrs, Working as Lascar, )  
Having Office at 1, Maharashtra Air )  
Squadron, N.C.C, Near Jai Hind College )  
Building, 'A' Road, Churchgate, )  
Mumbai – 20 and residing at Tulsipada, )  
Waghmare Chawl, Room No.3, Gayatri )  
School, Bhandup [W], Mumbai – 78. ) **...Applicant**

**Versus**

The Deputy Director of Sports and Youth )  
Services, Mumbai Division, Mumbai, )  
Having Office at Administrative Officers )  
Training College, Room No.21/22, )  
Hajarilal Somani Marg, Boribandar, )  
Mumbai – 400 001. ) **...Respondent**

**Mr. Arvind V. Bandiwadekar, Advocate for Applicant.**

**Smt. K.S. Gaikwad, Presenting Officer for Respondent.**

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

**DATE : 01.02.2023**

**JUDGMENT**

1. The Applicant has challenged the communication dated 07.04.2021 as well as revised pay fixation order dated 07.04.2021 issued

by Respondent, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The Applicant was appointed as Chowkidar in 1985. After 12 years of service, he was given the benefit of 1<sup>st</sup> Time Bound Promotion (TBP) in terms of G.R. dated 08.06.1995 by order dated 30.04.1998. Later, Applicant was promoted to the post of Lascar by order dated 07.04.1999 by way of functional promotion. Then again, he was given the benefit of 2<sup>nd</sup> TBP by order dated 18.03.2011 and was placed in pay scale of Rs.4400-7440 G.P. Rs.2100 w.e.f. 02.11.2009. Since then, Applicant is availing the said pay scale and due to retire at the end of December, 2023.

3. In 2012, when Service Book was sent to Pay Verification Unit, it raised objection about Recruitment Rules for the post of Lascar. It appears that Pay Verification Unit was informed that the process for framing Recruitment Rules is still under process. That time, Department had brought to the notice of Pay Verification Unit the order passed by the Tribunal in **O.A.No.375/2017 (T.B. Gawade Vs. State of Maharashtra) decided on 13.11.2017** in which benefits for the post of Lascar were granted to Gawade and recovery order was quashed. Despite this position, Pay Verification Unit by his communication dated 28.12.2018 informed to the Department that the order in the matter of Gawade is restricted to that matter only. It is on the basis of these objections raised by Pay Verification Unit, the Respondent passed impugned order dated 07.04.2021 thereby withdrawing the benefit of 2<sup>nd</sup> TBP and granted GP Rs.1800 in place of Rs.2100.

4. In Affidavit-in-reply, all that Respondent sought to contend that there was no Recruitment Rules for Class IV employees in place and since those were not finalized, the Applicant was not entitled to the benefit of TBP as well as promotional pay for the post of Lascar. Thus, it is only on the ground of absence of Recruitment Rules, the impugned

order is passed thereby downgrading GP from 2100 to 1800 w.e.f.02.01.2009 and recovery is sought.

5. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondent.

6. At the very outset, it needs to be noted that this issue was already dealt with by the Tribunal in O.A.No.375/2017 i.e. Gawade's matter. In that matter, Respondent in Affidavit-in-reply itself admits that mistakenly Applicant therein was shown as Chowkidar for pensionary benefits though he was Lascar. In view of this admission in Affidavit-in-reply, the Tribunal disposed of O.A. by following order.

"2. Heard both the sides. Admission in Para No.10 of the Affidavit-in-reply of Respondents 1 to 3 (Page 38) would show that the Respondent has mistaken the present Applicant as a Chowkidar and accordingly processed the papers for pensionary benefits. The same has resulted into granting pensionary benefits to the present Applicant for the post of Chowkidar though he was Lascar as is clear from Exh. 'A' (Page 16).

3. It is unfortunate that no corrective steps are taken despite the Respondents 1 to 3 came to know of the said mistake. In the circumstances, the present O.A. is allowed without any orders as to costs, with direction to the Respondents 1 to 3 to process the papers for grant of pensionary benefits to the present Applicant to the post of Lascar within a period of four months from the date of this order.

4. The recovery, if any, made be refunded to the Applicant as has been detailed in Prayer Clause (b)."

7. There is no denying that Applicant is similarly situated person. Only difference is that Mr. Gawade was already retired from Government service and Applicant is due to retire in 2023. Thus, in Gawade's matter, the Department admits the mistake of processing pension papers showing Gawade as Chowkidar though he was actually promoted to the post of Lascar and retired from the said post. Thus, the fact remains that Gawade got retiral benefits considering his post as Lascar. Notably, in that case, no such stand of absence of Recruitment Rules was taken. On the contrary, Respondent in Affidavit-in-reply itself admits their mistake of showing Gawade as Chowkidar instead of Lascar.

8. However, in the present case, same Respondent is coming with totally different stand that in absence of Recruitment Rules, the Applicant was not entitled to the post of Lascar and consequential service benefits. It is the Department who promoted the Applicant as Lascar by order dated 07.04.1999. The Applicant discharged the duties of Lascar for 23 years and now Respondent sought to raise contention of absence of Recruitment Rules, which can hardly be accepted after two decades.

9. This is not a case where promotion was granted contrary or in contravention of Recruitment Rules. Promotion was granted on the basis of seniority as well as practice since there were no such Recruitment Rules in place. This being the state of affairs, now after two decades, Respondent cannot be allowed to turn around and to take away the benefit already availed by the Applicant. At this juncture, it would be apposite to refer the decision of Hon'ble High Court in Writ Petition No.2260/2018 [State of Maharashtra Vs. Vasant Balel] decided on 26.06.2018 arising from the decision rendered by the Tribunal. In that case, benefit of promotion was granted since Recruitment Rules of 1983 was not made effective for want of finalization and publication in the Official Gazette. The Applicants therein were promoted to the post of Instructor and enjoyed all the benefits of promotion. The Tribunal allowed the O.A. and quashed the order of reversion and granted all consequential benefits. Being aggrieved by it, the Government filed Writ Petition which came to be dismissed. In Para Nos.8 and 9 of the Judgment, Hon'ble High Court held as under :-

*“8) This is not a case where the respondents had secured any promotions by practising fraud or misrepresentations. In such circumstances, the petitioners cannot simply wake-up after 18 years and state that the promotions granted to the D.S. Sherla page 5 of 9 27-j-cwp-2260-18-gropu respondents were a mistake and therefore, the respondents should not only suffer reversion, but also refund the amount earned by them in the promotional posts, notwithstanding the fact that the respondents may have worked in the promotional posts for all these years. There is absolutely no explanation as to why the respondents were*

*promoted in the first place and thereafter, permitted to continue for over 18 years in the promotional posts, if indeed the 1983 Rules were in force.*

*9) It is in this context that the MAT has observed that so called Recruitment Rules of 1983 were never made effective, possibly, for want of publication in the Official Gazette. The petitioners concede that the Recruitment Rules of 1983 were never published in the Official Gazette. Further, the circumstance that despite the so called existence of the unpublished Recruitment Rules of 1983, actually promoted the respondents as Instructors/Craft Instructors and further, continued them in the said position for a period of over 18 years, clearly implies that even the petitioner did not treat the so called 1983 as operative for all this while."*

10. Whereas in the present case, there was no such Recruitment Rules at all in place. Promotion was granted to the Applicant considering his seniority, eligibility and practice adopted in the Department. Even till date, no such Recruitment Rules have seen the day of light. Suffice to say, the benefits accorded to the Applicant cannot be taken away on such ground of absence of Recruitment Rules after two decades. If pay and allowances is revised on such totally unsustainable ground after two decades, it would be against doctrine of legitimate expectation of employee and it would cause serious prejudice to him. The impugned order is thus totally arbitrary and bad in law.

11. As stated above, Applicant is similarly situated person in view of order passed by the Tribunal in Gawade's matter. The Department had implemented the order of Tribunal and granted benefit to Gawade for the post of Lascar. This being the position, Respondent cannot be allowed to discriminate amongst its employees, otherwise it would be violative of the Article 14 of the Constitution of India.

12. The totality of aforesaid submission leads me to sum-up that impugned orders dated 07.04.2021 and downgrading grade pay Rs.1800 from 2100 is totally arbitrary and liable to be quashed. Hence, the following order.

**ORDER**

- (A) The Original Application is allowed.
- (B) Impugned orders dated 07.04.2021 of revision of pay and downgrading grade pay from 2100 to 1800 are quashed and set aside.
- (C) There shall be no recovery from the Applicant.
- (D) No order as to costs.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 01.02.2023

Dictation taken by :

S.K. Wamanse.

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