

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

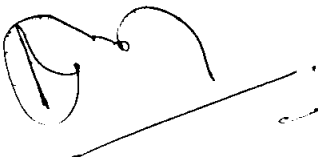
**ORIGINAL APPLICATION NO.364 OF 2015**

**DISTRICT : THANE**

Mrs. Nirmohi P. Tamhankar. )  
Age : 46 Yrs, Occu. Nil, (Ex. Statistical )  
Officer in the Office of the Directorate of )  
Health Services, having office at Arogya )  
Bhavan, Near C.S.T. Mumbai 400 001 )  
R/o. Sai Shraddha C.H.S, Behind )  
Vikhroli Bus Depot, Mumbai 400 083. )  
Address of Service of Notice : )  
Shri B.A. Bandiwadekar, Advocate, )  
Having Office at 9, "Ram-Krishna", )  
Lt. Dilip Gupte Marg, Mahim, )  
Mumbai 400 016. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Principal Secretary, )  
Public Health Department, )  
Mantralaya, Mumbai - 400 032. )
2. The Director of Health Services, )  
M.S, Mumbai having office at )  
Aarogya Bhavan, Near C.S.T, )  
Mumbai - 1. )



3. The Accounts Officer. )  
 Pay Verification Unit in the Office of )  
 the Directorate of Accounts & )  
 Treasuries, Having office at Barrack )  
 No.11 & 12, Free Press Journal Marg, )  
 Mumbai - 21. ) **...Respondents**

**Mr. B.A. Bandiwadkar, Advocate for Applicant.**

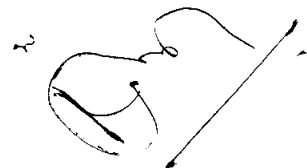
**Mrs. K.S. Gaikwad, Presenting Officer for Respondents.**

**P.C. : R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 27.02.2017**

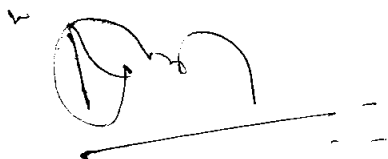
### **JUDGMENT**

1. The fate of this Original Application (OA) is concluded by an order of the 2<sup>nd</sup> Division Bench of this Tribunal in **O.A.No.361/2014 (Shri Zumber K. Maske & 9 others Vs. State of Maharashtra and 3 others dated 5.7.2016, to be hereinafter called Maske's case or Maske's OA)**. The Applicant a voluntarily retired Statistical Officer in the office of the 2<sup>nd</sup> Respondent - Director of Health Services raises a dispute about the fixation of her pay as a result of Assured Career Progression Scheme (ACP). She seeks cancellation of various orders which are at war with her stand in this OA.



2. I have perused the record and proceedings and heard Mr. B.A. Bandiwadekar, the learned Advocate for the Applicant and Mrs. K.S. Gaikwad, the learned Presenting Officer for the Respondents.

3. The date of appointment of the Applicant as Statistical Officer was in the pay scale of Rs.6500-10500 on 28.8.1992. By the order dated NIL March, 2009 which is at Exh. 'A' (Page 16 of the Paper Book (PB), the Applicant was given the Time Bound Promotion w.e.f. 28.8.2004 in the pay scale of Rs.8000-13500 and not Rs.10000-15200. She ultimately stood voluntarily retired w.e.f. 31.10.2012. She has made a grievance that the processing of her pension papers got delayed and that indeed is in fact true. The 1<sup>st</sup> Respondent is the State of Maharashtra in Public Health Department and the 3<sup>rd</sup> Respondent is the Accounts Officer, Pay Verification Unit in the office of the Directorate of Accounts and Treasuries. As already mentioned above, the 2<sup>nd</sup> Respondent is the Director of Health Services, M.S, Mumbai. In fact, the 2<sup>nd</sup> Respondent himself while forwarding the pension papers of the Applicant to the 3<sup>rd</sup> Respondent mentioned that post Time Bound Promotion, she was entitled to the scale of Rs.10000-15200 and not Rs.8000-13500. In the Affidavit-in-reply on behalf of the 3<sup>rd</sup> Respondent, it is made categorically clear that the office



of the Respondent No.2 was slow in moving in the matter and ultimately, it was because of them that the matter was getting delayed. The Respondent No.2 vide Exh. 'D', dated 21.3.2013, however, insisted that the correct pay scale post Time Bound Promotion of the Applicant was Rs.8000-13500. The 3<sup>rd</sup> Respondent, however, vide Exh. 'E', dated 12.4.2013 remained stuck up to its stance that the pay scale of Rs. 10000-15200 was correct. It is the case of the Applicant that the pensionary benefits having not been received, she was facing hardship. A number of representations were made by her to the highest authority in the field viz. the Principal Secretary, Public Health Department and also to some other authorities in the matter. Ultimately, the 1<sup>st</sup> Respondent - State of Maharashtra took a decision on 31.12.2014, a copy of which is at Exh. 'G'. That was a communication addressed by the State in Public Health Department to the 2<sup>nd</sup> Respondent regarding the issue of pension of the Applicant. It was therein mentioned inter-alia that the Applicant completed 12 years of continuous service in the pay scale of Rs.6500-10500. Thereafter, under the ACP, she was given the pay scale of the next higher post viz. the Demographer in the pay scale of Rs.8000-13500 w.e.f.28.8.2004. Under the 6<sup>th</sup> Pay Commission, the Maharashtra Civil Services (Modified Pay) Rules, 2009, this



post carried the pay scale of Rs.10000-15200. However, the State in Public Health Department vide its G.R. of 13.1.2000 approved the pay scale of Rs.8000-13500 when there was a change of nomenclature of the post of Demographer to State Demographer. The matter was forwarded to the Finance Department who informed that the papers pertaining to the matter were not available, and therefore, no upward change could be made in the pay scale. The pay scale of Rs.10000-15200 was recommended to the Applicant under the Modified Rules of 2009. In the un-amended OA as originally brought, the Applicant sought the relief of a declaration that she was entitled to the pay scale of Rs.10650-15850 post Time Bound Promotion on the basis that the post of State Demographer was the promotional post for Statistical Officers as per the G.R. of 13.1.2000. An alternative prayer was made for a direction to implement Exh. 'G' above discussed.

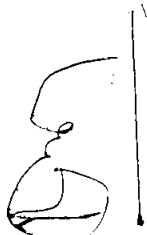
4. However, pending OA and without taking into confidence this Tribunal, the Respondent No.1 vide what is Exh. 'N' (Page 53-A of the PB) in all probability at the instance of the Respondent No.2 vide the said communication of 5.6.2015 (OA having been lodged on 22<sup>nd</sup> May, 2015) cancelled what is Exh. 'G' above discussed and directions were given to treat the post of Demographer



as non-existent on 1.8.2004 which was the date which the Applicant was given the benefit from. Further, the said post was to be filled up by nomination resulting into the post of Statistical Officer held by the Applicant getting isolated. Reliance was placed on the G.R. of 20.7.2001 and directions were given to fix the Applicant at Rs.7450-225-11500 and on that basis, the pension should be worked out. The next step was as is reflected in the order of this Tribunal of 7.1.2016 when the statement of the Applicant was recorded that she had been paid arrears of pension, but recovery had been made in respect of the alleged excess amount for the period 2004 and 2014. The rational of this move on the part of the Respondents must have become clear from the above discussion. The Applicant amended her OA and sought an order of stay against recovery being made, but it seems from the above referred order of this Tribunal that recovery was nevertheless made.

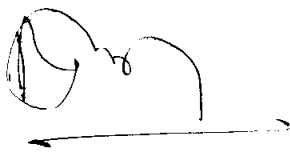
5. The Affidavit-in-reply of the 3<sup>rd</sup> Respondents refers to the admissible pay scale to the Applicant being Rs.7450-225-11500. It is the case of the 3<sup>rd</sup> Respondent that the post of Statistical Officer has no further post available, and therefore, the Applicant would have to be given the pay scale as per the Schedule annexed to the G.R. of 20<sup>th</sup> July, 2001 probably indicating that in her

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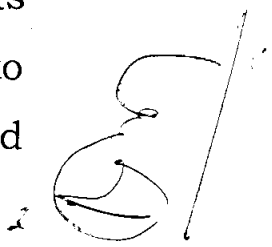
case, there being no promotional post available, the said Schedule rather than the pay scales would govern the case of the Applicant. The reasons why the objections were earlier raised twice over have been explained. In Para 7.1 in fact the 3<sup>rd</sup> Respondent has assailed the 2<sup>nd</sup> Respondent for furnishing ambiguous information. On one hand, on 17.1.2015, it was mentioned that the State Demographer post was not a promotional post while earlier on 15.6.2009 exactly contrary was the stand of the State and the 2<sup>nd</sup> Respondent.

6. Mr. Shailesh R. Patankar, Chief Administrative Officer in the 2<sup>nd</sup> Respondent's Office has filed an Affidavit-in-reply on 20<sup>th</sup> August, 2015 and another one on 26.2.2016. In view of the fact that as mentioned above, this matter is fully governed by an earlier order of the Division Bench of this Tribunal in **Maske's** matter (supra). It may not be necessary for me to refer to several documents which are there on record and the details of the Affidavits-in-reply on behalf of the 2<sup>nd</sup> Respondent. However, a plea which is repeated time and time again in the Affidavit-in-reply of the 2<sup>nd</sup> Respondent is that the post of Demographer was a promotional post for Statistical Officer and that post was upgraded to the post of State Demographer with higher pay scale. However, no



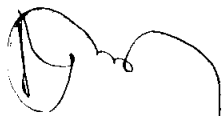
Recruitment Rules were framed for the said post of State Demographer. It needs to be noted quite clearly that what has been placed on record is the Recruitment Rules in the form of a Draft. The Respondents in **Maske's** OA had clearly told the 2<sup>nd</sup> Bench (in OA 361/2014) that no Recruitment Rules were framed. For some reasons which I find difficult to comprehend the learned PO before me wanted to contend that the Recruitment Rules were there. In view of this discussion, I think I must proceed on the basis that for the post of State Demographer, no Recruitment Rules have been finalized and framed.

7. I may now turn to **Maske's** OA (supra). That was an order rendered by the 2<sup>nd</sup> Division Bench of this Tribunal of which I was also a part. The Bench spoke through the Vice-Chairman. The Applicants were the Statistical Officers / Statisticians in the Respondent No.2. They were so similarly placed as the present Applicant. They sought the pay scale attached to the post of State Demographer after getting the benefit of ACP. The Applicants told the Bench that they were initially granted the pay band of Rs.9300-34800, but Grade Pay of Rs.4400/- as a result of the 6<sup>th</sup> Pay Commission. That was the corresponding pay scale post 6<sup>th</sup> Pay Commission to the pay scale of Rs.65-00-10500. Subsequently, they had





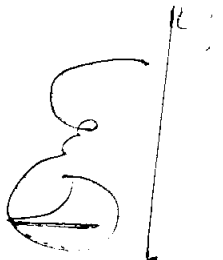
been granted the pay in the band of Rs.15600-39100 plus Grade Pay of Rs.540/- as a result of the ACP. That was the pay to the post of Demographer which was upgraded to the post of State Demographer which was upgraded to the post of State Demographer in the above referred pay scale with the only difference that the Grade Pay was Rs.6600/-. The Applicants in **Maske** (supra) told the Bench that after the up-gradation of the only post of Demographer and State Demographer, the post of Demographer ceased to exist and the post which Statistical Officers were eligible to be promoted was of State Demographer. The Applicants told the Bench further that the assumption of the State that no promotional post was available to the Statistical Officer was itself incorrect. Referring to the various pay scales, the case of those Applicants was that they should be held eligible for promotion to the post of State Demographer. The learned PO who then appeared before the Bench inter-alia submitted that no Recruitment Rules for State Demographer post had been framed and no further promotional post was available to the Statistical Officers and the pay scale of Rs.7450-11500 was the one that the Applicants were entitled to, but the Government fixed them up at Rs.8000-13500 post ACP.

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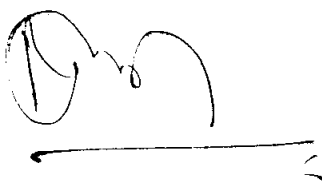
8. As for the rest, I think, I had best reproduced Paras 5, 6, 7 and 8 from the said order of the 2<sup>nd</sup> Bench, so that no paraphrasing would be necessary and the entire scenario will be self-evident.

“5. We find that the Applicants are claiming that the decision of the Respondent no. 2 in granting them pay scale of Rs. 7450-11500 on giving A.C.P benefit, on the basis that there are no promotional avenues for the post of Statistician was wrong. The post of ‘Demographer’ which was in the scale of pay of Rs. 8000-13500, should have been given. Also, as the post of ‘Demographer’ was upgraded to that of ‘State Demographer’ in the pay scale of Rs. 10650-15850, the same should have been given to the Applicants on getting A.C.P benefits. (For the sake of convenience, pay scale of 5<sup>th</sup> Pay Commission are used). It is seen that now all the Statisticians are getting pay scale of Rs. 8000-13500 on getting A.C.P benefits. In the Government letter dated 16.12.2008 (Page 47 of the Paper Book), it was clarified that the pay scale of Rs. 8000-13500 applicable to Demographer, Group ‘A’ should be granted to the Statistician, on granting A.C.P benefits. The controversy that for the post of Statistician, there is no promotional post, therefore, does not survive. Now the question is that the lone post of ‘Demographer’ in the State has been upgraded to that of ‘State Demographer’. The claim of the Applicants is that the next promotional post from the post of Statistician is



now 'State Demographer' in the pay scale of Rs. 10650-15850 and that scale should be granted to the Applicants on grant of A.C.P benefits. The Applicants have produced minutes of the Departmental Promotion Committee dated 24.9.2013 (page 93 of the Paper Book), wherein it was noted that the post of 'Demographer' was upgraded to that of 'State Demographer'. The Committee recommended that Shri S.B. Nandkar may be promoted as 'State Demographer'. The minutes of the D.P.C meeting have been provided to the Applicant no. 2 under the Right to Information Act by the Respondent no. 2. Shri Nandkar was, however, subsequently not given the post and scale of 'State Demographer'.

**6.** The Applicants have stated in paragraph 6.13 of the Original Application that the facts in the present case are not similar to that of District Extension and Media Officer who are seeking benefit of the pay scale of Deputy Director, Publicity, which is pending in Hon'ble Bombay High Court. In this connection, a copy of judgment of this Tribunal (Aurangabad Bench) dated 21.11.2007 in O.A no 54/2007 is enclosed. On reading of the judgment of this Tribunal in O.A no 54/2007, we agree with the contention of the Applicants that facts in that O.A are quite different. The Applicants are relying on the order dated 31.12.2014 (p. 98 of the Paper Book), which was issued by the Respondent no. 1 in case of one Smt. Tamhankar, Statistical Officer. In her case, she was granted pay scale of Rs. 10000-15200, which was



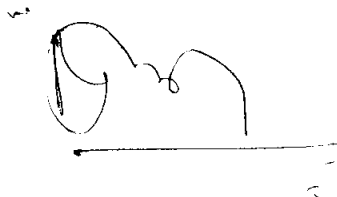
applicable to the post of 'State Demographer'. The Applicant claims that they are also entitled to be given the same pay scale of the post of 'State Demographer'. The case of the Respondents is that for the post of 'State Demographer' no recruitment rules have been framed and as such, it cannot be held that the Statistical Officers are eligible for promotion to that post. The Applicants have been given pay scale of the post of 'Demographer' (before upgradation), though, the post does not exist, on the basis of Recruitment Rules for that post. We find it difficult to accept the contention of the Applicants, that once a post is upgraded the recruitment rules availed to the post before upgradation will apply to the upgraded post. On the contrary, Recruitment Rules for the upgraded posts are required to be framed as the posts are upgraded when there is change in the nature of work and responsibility attached to a post. In the present case, the post of 'Demographer' was upgraded to that of 'State Demographer', by G.R dated 13.1.2000 (page 43 of the Paper Book). The G.R makes it clear that the scope of responsibilities attached to the post have widened.

“६६. कुटुंब कल्याण कार्यक्रमांतर्गत बाह्य राष्ट्रांच्या सहाने विविध प्रकल्प राबविण्यात येत असल्याने ह्या प्रकल्पांमुळे झालेल्या आरोग्य सेवेतील सुधारणांचे योग्य मूल्यमापन करणे आवश्यक असल्यामुळे या मध्ये लोकसंख्या शास्त्रज्ञ या पदधारकाच्या भुमिकेला महत्त्व प्राप्त झाले आहे.”

As the responsibility attached to the posts have increased it was decided to upgrade the post. It is,

therefore, logical, that the Recruitment Rules for the upgraded post may also provide, additional qualifications/experience etc. The claim of the Applicants that the promotional post for the post of Statistical Officer/Statistician become 'State Demographer' on upgradation of the post of 'Demographer' is unfounded.

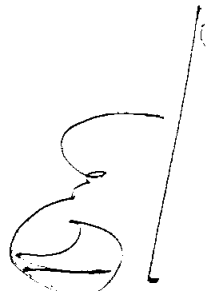
**7.** The Applicants have claimed alternate remedy of grant of pay scale of Rs. 10000-15200 made applicable to the post of 'State Demographer' as mentioned in the Booklet published with the Maharashtra Civil Services (Revised Pay) Rules, 2009 to them on grant of ACP benefits. This was done in the case of Smt Tamhankar. This is to take be benefit of a clear mistake in the Booklet. As per G.R dated 13.1.2000, the pay scale of the post of State Demographer is Rs. 10650-15850 and not Rs. 10000-15200. As the Applicants are held ineligible to get the pay scale of 'State Demographer' on getting A.C.P benefits, the question of grant of scale of Rs. 10000-15200 does not arise. It seems that in the case of Smt Tamhankar, the pay scale of the post of State Demographer was granted to her on granting A.C.P benefits. However, if in one case, erroneous order is passed, that cannot become a ground to perpetuate that error. On merits, the Applicants have been held to be ineligible to get the benefit of the pay scale of the post of 'State Demographer' on being granted benefit of A.C.P scheme.



8. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs."

9. It is very pertinent to note that in **Maske's** OA, the case of the present Applicant was also discussed. It is not as if, it did not arise. In fact, those Applicants were entitled to seek parity with the Applicant and in that behalf, ultimately, the 2<sup>nd</sup> Bench made clear observations that the Respondents were in error in doing what they did in case of the present Applicant. That is a significant aspect of the matter, but even if that is kept aside for the time being, it is quite clear in my view that the principles that can be culled out therefrom and the application of those principles to the present facts cannot lead me to hold for the Applicant in so far as the issue of pay scale is concerned and consequent fixation of pension. In as much as the entire Paragraphs have been fully reproduced, I repeat, it is not necessary for me to add anything of my own. Therefore, on that aspect of the matter, the Applicant fails.

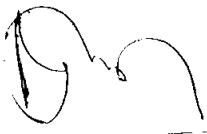
10. However, in so far as the recovery aspect of the matter is concerned, quite pertinently, in **Maske's** OA itself, the 2<sup>nd</sup> Bench had made it clear that it was the fault on the part of the Respondents. In the present OA, there is



not even a particle of material to suggest that the Applicant took recourse to any out of ordinary way to secure any benefit. She just cannot be blamed for any sharp practice as it were. She is absolutely innocent in that behalf. Therefore, to the present facts, the principles laid down by the Hon'ble Supreme Court in a number of Civil Appeals, the leading one being **Civil Appeal No.11527 of 2014 (arising out of SLP (C) No.11684 of 2012 (State of Punjab and others. Vs. Rafiq Masih (White Washer).** That was a Judgment rendered by a Bench of two Hon'ble Judges of the Apex Court on 18<sup>th</sup> December, 2014. Para 12 thereof, needs to be fully reproduced for guidance.

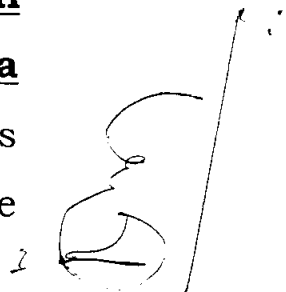
“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employees, would be impermissible in law:

- (i) Recovery from employees belonging to Class-II and Class-IV service (or Group 'C' and Group 'D' service).

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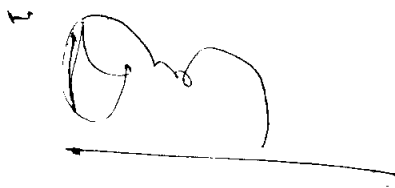
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

11. The learned PO, however, referred me to a later Judgment of the Hon'ble Supreme Court in **Civil Appeal No.3500 of 2006 (High Court of Punjab and Haryana and others Vs. Jagdev Singh, 29<sup>th</sup> July, 2016.** That is also a Judgment rendered by a 2 Judge Bench of the





Hon'ble Supreme Court presided over by the Hon'ble the Chief Justice. The submission of the learned PO was that the application of the principles laid down in **Jagdev Singh** in the present OA would lead to the conclusion that the Respondents were justified in making the recovery from the present Applicant. Now, having carefully perused both the Judgments of the Hon'ble Supreme Court, both having been rendered by two Judge Benches, I find that in **Jagdev Singh**, Their Lordships were pleased to consider **Rafiq Masih's** case also and in fact, in Para 10 above quoted, Para 12 from **Rafiq Masih** was quoted. The principal reason why the recovery was upheld in **Jagdev Singh** was a categorical undertaking with regard to the refund being made in the event of the pay fixation having been found erroneous. That was very much there and in that matter, the concerned Applicant was a Class-I Officer being a Civil Judge. Here, the Respondents have not placed on record any material to seek parity with the State in **Jagdev Singh's** case (supra). In the hierarchy also, I think, the present Applicant cannot be equated with the cadre of Civil Judge Junior Division, but in any case, there is no material to suggest that any undertaking was taken from the present Applicant, and therefore, this matter will be fully governed by **Rafiq Masih's** case for which even the principles in **Jagdev Singh's** case when applied to, would



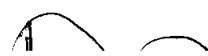
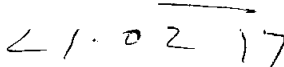
make it clear that **Rafiq Masih** will be the governing one herefor.

12. The Applicant apparently has been made to pay the allegedly excess amount which the Respondents will have to refund to her.

13. Before I conclude it needs to be mentioned that neither in the Original Application nor amended application is there a specific plea for refund of the recovery. However, the recovery apparently was made pending OA and that too, when this Tribunal was constantly breathing down the neck of the authorities of the Respondents 1 & 2 who somehow or the other were not quite forthcoming. Further, an interim relief with regard to the stay to the recovery was claimed. It is always in the hands of the authorities who are in a dominating position to make recoveries and the party like the present Applicant have got to yield to their pressure in order to ensure larger good and they do what they are told to do, but in as much as an interim relief was sought and the recovery was made pending OA, I am quite clearly of the view that in order to do complete justice to the cause at hand, the order of refund can safely be made.



14. The Respondents are directed to refund to the Applicant the amount recovered by them on the ground of the alleged over-payment within a period of four weeks from today. The failure to comply would entail the liability on the Respondents to pay interest at Rs.12% p.a. from the date of the recovery till actual repayment. As for the rest of the OA is concerned, it is held against the Applicant, and therefore, this Original Application is only partly allowed with no order as to costs.

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Sd/-  
**(R.B. Malik)**  
**Member-J**  
**27.02.2017** 

Mumbai

Date : 27.02.2017

Dictation taken by :

S.K. Wamanse.

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