

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 49 of 2020**  
**WITH CIVIL APPLICATION No. 340 of 2021 (S.B.)**

Shiwaji S/o Madhukarrao Tale,  
Aged about 58 years, Occ. Retired Head Constable,  
R/o Dadaji Dhuniwal Math New State Bank of India Colony,  
Wardha, District Wardha.

**Applicant.**

**Versus**

- 1) State of Maharashtra,  
through its Secretary,  
Home Department, Mantralaya, Mumbai-32.
- 2) Director General of Police,  
Maharashtra State, Mumbai-32.
- 3) The Director Office of Directorate of  
Accounts and Treasury Pay Verification Unit,  
Finance Department Accounts 3<sup>rd</sup> floor,  
Thakrsi House Shurji Vallbhdas Marg, behind Videshi  
Tapal Karyalaya Belord Estate, Mumbai-400 001 (M.S.)
- 4) Deputy Director of Pay Verification Unit (Pension),  
in the office of Directorate of Treasury and Accounts 3<sup>rd</sup> floor,  
Thakrsi House Shurji Vallbhdas Marg, behind Videshi  
Tapal Karyalaya Belord Estate, Mumbai-400 001 (M.S.)
- 5) Deputy Director of Accounts Officer,  
Pay Verification Unit, Civil Lines,  
Nagpur.
- 6) The Superintendent of Police,  
Wardha, District Wardha.

**Respondents.**

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**Shri D.M. Surjuse, Advocate for the applicant.**  
**Shri A.P. Potnis, P.O. for respondents.**

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**Coram :- Hon'ble Shri Justice M.G. Giratkar,  
Member (J).**

**Dated :- 27/11/2021.**

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## JUDGMENT

Heard Shri D.M. Surjuse, learned counsel for the applicant and Shri A.P. Potnis, learned P.O. for the respondents.

2. This O.A. is filed by the applicant, retired Head Constable, for direction to the respondents to fix his pay on the post of Head Constable from the date, his juniors are getting the pay scale of the post of Head Constable.

3. The case of the applicant is that, he was appointed as Police Constable on 14/2/1990. He was promoted as Police Naik on 14/11/2006. Thereafter, he was promoted as Head Constable on 30/10/2011. The pay scale of the post of Head Constable was Rs. 5200-20200, Grade Pay Rs.2500/-. As per the gradation list of the year 2018-2019, the juniors who are promoted / posted on the post of Head Constable are getting the said pay scale, but pay of the applicant was wrongly fixed as on 1/7/2018 i.e. basic pay of Rs. 12980/- + GP 2500/- (as per 6<sup>th</sup> Pay Commission) and Pay Rs. 39,900/- (S-9) (as per 7<sup>th</sup> Pay Commission).

4. As per the contention of the applicant, his juniors namely Mr. Janrao S. Karluke and others were getting the basic pay of Rs.41,100/- on 1/7/2018 and on 1/7/2019 the pay scale of Rs.42,300/-. The Chart is given in the rejoinder about the pay scale of the juniors.

5. It is submitted that the Government has issued the Notification dated 30/01/2019 is at Annex-A-13. The relevant Note-8 is as under –

टीप ८. - (एक) १ जानेवारी २०१६ पूर्वी वरच्या पदावर बढती दिलेला वरिष्ठ शासकीय कर्मचारी सुधारित वेतन संरचनेत, १ जानेवारी २०१६ रोजी किंवा त्यानंतर वरच्या पदावर बढती मिळालेल्या त्याच्या कनिष्ठाहून कमी वेतन घेत असेल तेव्हा अशा प्रकरणी वरिष्ठ शासकीय कर्मचाऱ्याचे वेतन त्याच्या कनिष्ठ कर्मचाऱ्याच्या सुधारित वेतन संरचनेत निश्चित केलेल्या वेतनाच्या रकमेइतके वाढविण्यात यावे. ही वाढ कनिष्ठ शासकीय कर्मचाऱ्याच्या बढतीच्या तारखेपासून लागू करण्यात यावी. मात्र, त्यासाठी पुढील शर्ती पूर्ण कराव्या लागतील :-

(अ) कनिष्ठ व वरिष्ठ शासकीय कर्मचारी हे दोघेही एकाच संवर्गातील असावेत आणि ज्या पदांवर त्यांना बढती देण्यात आली असेल ती पदे त्याच संवर्गात समरूप असावीत;

6. The applicant prayed to direct the respondents to grant him the pay scale on 1/7/2018 of Rs. 41,100/- and on 1/7/2019 Rs.42,300/- as like the juniors who were promoted / posted on the same post as Head Constable.

7. The application is strongly opposed by the respondents' side and submitted that as per the guidelines, the pay of the applicant is rightly fixed. He was promoted from the post of Police Constable to the post of Police Naik. As per their submission, there was no change of duties of the post of Police Naik and Head Constable and therefore his pay was fixed on the post of Police Naik. The applicant is not entitled to claim parity as like other Head Constables and therefore the application is liable to be dismissed.

8. Heard learned counsel for the applicant. He has pointed out the gradation list of the year 2018-2019 and submitted that the applicant was promoted on the post of Police Naik on 14/11/2006. He was promoted on the post of Head Constable on 30/10/2011. His seniority as per the gradation list is at Sr.No.140 and the juniors who are at Sr.Nos.155,167,202,269,320,341,343,344,346,350,351, 353, 354,355, 356,367, 368,369,370,372,373 & 374, as per the gradation list, they are getting the pay scale of Rs.41,100/- on 1/7/2018 and Rs.42,300/- on 1/7/2019. In support of his contention, he has pointed out the following Judgments–

(i) The Hon'ble Bombay High Court, Bench at Nagpur Judgment in Writ Petition No.1796/1990, decided on 29<sup>th</sup> June, 2006 in case of Arvind Wamanrao Pendharkar (Deceased through L.Rs.) Vs. State Of Maharashtra, 2006 (5) ALL MR 77.

(ii) The Hon'ble Bombay High Court, Bench at Nagpur Judgment in LPA No. 63/2006 in Writ Petition No.3368/1993, decided on 29<sup>th</sup> June, 2006 in case of Shri Ashok S/o Pandurang Janjal Vs. The Secretary, Tulsabai Kawal Vidyalaya, Dist. Akola, 2006 (5) ALL MR 86.

(iii) The Hon'ble Bombay High Court, Bench at Nagpur Judgment in Writ Petition No.2999/1995, decided on 2/12/1998 in case of Dr. Sakhaullah S/o Darab Khan Vs. Visvesveraya Regional College & Ors., 1992 (2) ALL MR 99.

(iv) The Hon'ble Bombay High Court, Bench at Aurangabad Judgment in Writ Petition No.10283/2012 with Writ Petition No.88/2013, decided on 21/11/2013 in case of Sudamrao K. Aher & Ors. Vs. State of Maharashtra & Ors., 2014 (a) ALL MR 697.

9. Heard the Id. P.O. He has strongly supported the contention of the respondents and submitted that the applicant cannot claim parity, because, he was promoted as Police Naik and thereafter

he was posted as Head Constable, it was not promotion and therefore the pay scale of the post of Police Naik was continued. As per his contention, there was no change in the duty. Hence, the pay of Police Naik was rightly considered by the respondents. In support of his submission, he has pointed out the following Judgments –

(i) *The Judgment of this Tribunal decided on 21/12/2017 in C.A.431/2017 in O.A. 636/2017 in case of Sharad W. Ghui Vs. State of Maharashtra & Ors.*

(ii) *The Judgment of this Tribunal decided on 10/03/2017 in O.A. 565/2013 in case of Mohd. Iqbal Mohd. Hussain & Ors. Vs. State of Maharashtra & Ors.*

10. The Judgments of this Tribunal are not helpful to the respondents' side. On the other side, as per the Judgments of Hon'ble Bombay High Court cited by the applicant, it is clear that the employee who is promoted on the higher post is entitled to get the pay of the same post as like his juniors, who were also posted on the same post. The said employee is entitled to get the pay scale of promoted post as like his juniors from the date, juniors are getting the said pay scale.

11. Keeping in mind, this principle laid down by the Hon'ble Bombay High Court in the above cited decisions, it is clear that the applicant was promoted as Police Naik in the year 2006 and thereafter he was promoted as Head Constable. There is no dispute about the gradation list published by the respondents for the year 2018-2019. As per the gradation list, the seniority of the applicant is at Sr.No.140.

The juniors who were promoted in the year 2011 and onwards, were getting the pay scale of Rs.41,100/- on 1/7/2018 and pay scale of Rs.42,300/- on 1/7/2019. The comparative chart is given as under –

**COMPARATIVE TABLE**

Sr. No.	Name of H.C as per gradation list 2018-19	Sr. No. as per HC gradation list	Sr. No. of Junior HC pay fixation list	Initial date of appointment as Constable	Police Nike	Head constable
1	Sanjay Madhukar Thombre	341	1	24.01.93	22.01.08	14.06.16
2	Irfan Amanulla Pathan	373	2	10.04.95	29.12.08	05.09.17
3	Trambak Narayan Pande	372	3	15.12.92	06.12.08	05.09.17
4	Pancham R.Kotgiwar	350	4	11.09.93	21.11.08	13.12.16
5.	Satish Dudhane	167	5	29.01.90	16.08.07	04.05.12
6	Ramesh Champatrao Kewat	202	6	18.08.90	16.08.07	05.08.13
7.	Anil Madhukar Sathone	370	7	21.12.94	21.11.08	05.09.17
8	Nishiranjnan Pande	269	8	15.10.93	21.11.08	04.08.14
9	Pradeep Prabhakar Kadam	320	9	11.09.93	16.08.07	07.07.15
10	Bhagat Pandurang Hajare	343	10	19.12.92	23.01.08	10.08.16

11	Kailas Narayanrao Date	344	17	10.09.93	15.02.08	10.08.16
12	Pawan Pandurangji Devgirkar	351	19	11.09.93	21.11.08	13.12.16
13	Janrao S Karluke	155	20	03.01.91	18.12.03	06.03.12
14	Sanjay vasantrao Tiwaskar	346	22	11.09.93	21.11.08	10.08.16
15	Dilip Chandrabhan Ambatkat	355	23	12.09.93	21.11.08	13.12.16
16	Manohar Vithobha Mule	356	24	13.09.93	21.11.08	13.12.16
17	Deepak Vitthalrao Dagwar	354	25	12.09.93	21.11.08	13.12.16
18	Ratnakar Parasram Pande	374	26	13.09.93	13.02.09	16.12.17
19	Shekhar Dayaramji Patil	353	28	12.09.93	21.11.08	13.12.16
20	Subhash Gangadhar Ade	367	29	19.04.94	21.11.08	02.08.17
21	Vijay Avchitrao Giramkar	368	32	20.04.94	21.11.08	02.08.17
22	Subhash Kisanrao Martode	369	35	30.04.94	21.11.08	02.08.17
23	<b>Shiwaji Madhukarrao Tale</b> <b><u>Applicant</u></b>	<b>140</b>	<b>Not granted</b>	<b>14.02.90</b>	<b>14.11.06</b>	<b>30.10.11</b>

12. The Rule 11 of the Maharashtra Civil Services (Pay) Rules, 1981 (in short "MCS (Pay) Rules") is very clear. As per Rule 11 (1) of the MCS (Pay) Rules, it is clear that the pay of the applicant should have been fixed after the promotion on the post of Head

Constable from the date on which he assumes the charge. The said rule and instruction no.2 are as under –

**“11. Fixation of pay on appointment to another post** – Save as provided in Rules 12,13,14,17 and 20 where a Government servant holding a post in a substantive, temporary or officiating capacity, is promoted or appointed in a substantive, temporary or officiating capacity, to another post including an ex-cadre post, his initial pay shall be regulated as follows -

(1) When appointment to the new post involves assumption of duties or responsibilities of greater importance than though attaching to the old post and -

(a) if he is holding a post not higher than a Class II post, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay nationally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued and in the case of a Government servant drawing pay at the maximum of the pay scale by an amount equivalent to the last increment; and

(b) if he is holding a post higher than a Class II post, he will draw as initial pay the stage of the time scale next above his pay in respect of the old (lower) post”.

**Instruction no.2** – In case, as senior Government servant promoted on or after 1<sup>st</sup> April, 1971 but drawing less pay than his junior promoted subsequently to another identical post, the pay of the senior Government servant should be stepped up to a figure equal to the pay of his junior in that higher post under Rule 40 with effect from the date



*of promotion of his junior subject to the fulfilment of the conditions mentioned at (i) to (iv) of instruction 1, above”.*

13. There is no dispute that as per the gradation list of the year 2018-2019, the applicant is senior as compared to other junior employees who are at Sr.Nos. 155,167,202,269,320,341,343,344,346, 350, 351,353, 354,355,356,367,368,369,370,372,373 &374, therefore, the Department should have fixed the pay of the applicant on the pay scale of Rs.41,100/- on 1/7/2018 and Rs.42,300/- on 1/7/2019 as like the juniors from the date on which they were getting the said pay scale of the post of Head Constable. The Notification issued by the Government dated 30/01/2019 is very clear. The applicant is retired on 30/07/2019. As per his contention, he is not getting the pension as per revised pay scale of the post of Police Head Constable.

14. In that view of the matter, following order is passed-

**ORDER**

(i) The O.A. is allowed.

(ii) The respondents are directed to fix the pay scale of the applicant on the post of Head Constable on 1/7/2018 of Rs.41,100/- and on 1/7/2019 Rs.42,300/- from the date his juniors are getting the same pay scale and give all pensionary benefits accordingly.

(iii) The respondents are directed to pay arrears of salary as per pay fixation and pay revised pension accordingly.

(iv) The C.A.No.340/2021 also stands disposed off accordingly.

(v) No order as to costs.

**Dated** :- 27/11/2021.

**(Justice M.G. Giratkar)  
Member (J).**

\*dnk

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 27/11/2021.

Uploaded on : 29/11/2021.