

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.884 OF 2015

DISTRICT : MUMBAI

1. Mr. Vilas H. Jagdale.)
Age : 58 Yrs, Occu.: Retired, R/o. 11,)
Dakshata CHS, Sec. No.21, Nerul, Navi)
Mumbai 400 706.)

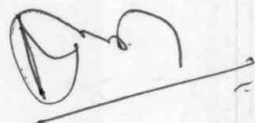
2. Mr. Suresh P. Chavan.)
Age : 59 Yrs, Occu.: Retired, R/o. Vastu)
Anand Complex, Building No.2/503,)
Parsik Nagar, Kharegaon, Kalwa, Thane.)

3. Mr. Balasaheb K. Sangale.)
Age : 59 Yrs, Occu.: Retired, R/o. Ayodhya)
5/2122, E-Tarabai Park, Kolhapur.)

4. Mr. Shankar P. Hardas.)
Age : 58 Yrs, Occu.: Retired, R/o. Building)
No.C-48/201, Sec.No.10, Shanti Nagar,)
Mira Road (E), Dist : Thane.)

5. Mr. Mohmad H.H. Pirjade.)
Age : 58 Yrs, Occu.: Retired, R/o. Bldg.)
No.A/6, Flat No.206, Saraf Choudhary)
Nagar Thakur Complex, Kandiwali (E),)
Mumbai.)

6. Mr. Bajrang K. Dhemare.)
Age : 58 Yrs, Occu.: Retired, R/o. 9,)
Sadguru Saibaba CHS, Sigh Estate,)
Church Lane, Kandivali (E), Mumbai.)



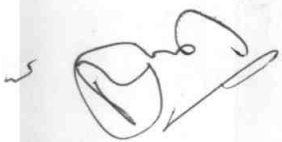
7. Mr. Mahadev S. Birajdar.)
 Age : 59 Yrs, Occu.: Retired, R/o. Plot No.)
 D1, Jai Jalaram Nagar, Jule Solapur,)
 Dist : Solapur.)

8. Mr. Arjun K. Vhankade.)
 Age : 59 Yrs, Occu.: Retired, R/o. 4-B,)
 Ekata Nagar, WIT College, Opp.)
 Raghvendra Apartment, Solapur 413 006.)

...Applicants

Versus

1. The State of Maharashtra.)
 Through the Secretary,)
 Home Department,)
 Mantralaya, Mumbai - 400 032.)
2. The Secretary, Finance Department,)
 Mantralaya, Mumbai 400 032.)
3. The Secretary.)
 General Admn. Department,)
 Mantralaya, Mumbai.)
4. The Principal Accountant General)
 (A & E)-1, Pratishtha Bhavan)
 (Old CGO Building), 101, Maharshi)
 Karve Marg, Mumbai 400 020.)
5. The Director General of Police.)
 Shahid Bhagat Singh Marg, Colaba,)
 Mumbai.)
6. The Commissioner.)
 State Intelligence Department,)
 Shahid Bhagat Singh Marg, Colaba,)
 M.S, Mumbai.)
7. The Principal.)
 Turchi Police Training Centre,)
 Turchi, Dist : Sangli.)



8. The Principal.)
Solapur Police Training Centre,)
Dist : Solapur.)
9. The Principal.)
Police Training Centre,)
Marol, Andheri (E), Mumbai.)
10. The Addl. Director General of Police,)
State Crime Investigation Dept.,)
Pashan, Pune.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

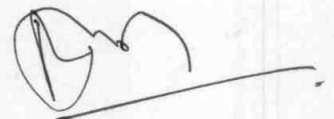
Mr. K.B. Bhise, Presenting Officer for Respondents.

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

DATE : 25.01.2017

JUDGMENT

1. This Original Application (OA) is brought by 8 retired Police Personnel who were working in what can be described as Non-Executive Police Force in different capacities like Inspector, Dy.S.P., etc. As incentive, they were being paid what can broadly be described as Additional Pay. That Additional Pay, however, by virtue of Notification dated 27th October, 2004 whereby Rules 9, 38 and 60 of the Maharashtra Civil Services (Pension) Rules,



1982 (Pension Rules) whereby by way of amendment, practically excluded from the definition of pay, the financial incentives including difference in pay on account of one step promotion which was good in case of the Applicants and the Applicants are aggrieved thereby on account of the financial loss that would be caused to them in so far as their pension is concerned. They are up before me by way of this OA.

2. I have perused the record and proceedings and heard Mr. K.R. Jagdale, the learned Advocate for the Applicants and Mr. K.B. Bhise, the learned Presenting Officer (PO) for the Respondents.

3. The Applicants took up the jobs in the Police Establishment on various dates in various capacities which is mentioned in the Chart at Exh. 'A' (Page 17 of the PB). The details thereof may not really be necessary to be set out. It is, however, quite clearly established that in the Non-Executive Posts which has been described in the OA as side posting also, the Police Personnel were not quite willing to work, and therefore, for such postings in State Intelligence Department, Anti Corruption Bureau and Police Training College or Centre, financial incentives were given by way of what has been described as one step

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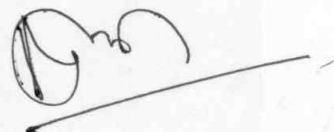
promotion. This was done by virtue of the GRs dated 27.11.1982, 20.8.1985 and 25.2.199. Just by way of illustration in so far as the State CID (Intelligence Special Wing) was concerned, Clauses 3 & 4 need to be reproduced.

“3. The posts mentioned in the re-organized State CID (Intelligence Special Wing) should be filled in the following manner :-

(a) The posts of Additional Deputy Commissioner, CID (Intelligence Special Wings) down to that of Intelligence Officers should be filled in from persons promoted from within the organization on a one step up basis after scrutiny of their suitability for the State CID (Intelligence Special Wing).

(b) These persons in the existing set up at each level, who are not so selected and promoted should be given the option of reverting to their parent cadres.

(c) The vacancies at any level from Additional Deputy Commissioners, CID (Intelligence Special Wing) to Assistance Intelligence Officers should be filled in by drawing persons from the



executive Branches on promotion from the next below rank.

4. The promotions 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 parent cadre. On promotion, the pay in the higher pay-scale should be fixed as per relevant rules in the Bombay Civil Services Rules."

4. Broadly so speaking, as far as the other incentive oriented departments are concerned, more or less the same were the terms and conditions.

5. The Applicants post retirement suffered loss of financial benefits because from the definition of the word, "pay" appearing in Rules 9(36), (38) and (60) of the Pension Rules, such financial incentives apparently have been removed. In other words, such financial incentives would not be counted as pay for the purposes of working out the pension. The sum and substance of the case of the Applicants in the OA as well as by way of addresses at the Bar ably and efficiently put forth by Mr. Jagdale, the learned Advocate for them inter-alia is that by recourse to the instrumentalities of Right to Information Act, they have

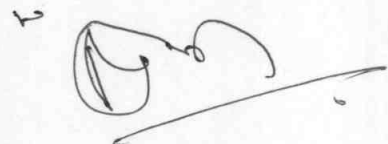


been able to get the documents and according to them, the provisions of the Notification of 27th October, 2014 would not apply against them. They are only applicable to those personnel who had been deployed to work in the difficult positions and situations in the Tribal and the Naxal affected areas. According to Mr. Jagdale, while interpreting the said Notification, it will have to be held that they are applicable only to those that worked in Naxal affected areas, etc. but the Personnel like the Applicants would remain unaffected thereby. Mr. Bhise, the learned PO was equally forceful in the rebuttal that he made Mr. Jagdale to face.

6. The Notification of 27th October, 2014 has been issued in exercise of powers conferred by the proviso to Article 309 of the Constitution of India. These Rules are called "Maharashtra Civil Services (Pension Amendment) Rules, 2014. The Rules 2 and 3 in fact need to be fully reproduced for a proper grasp and focus.

"2. In rule 9 of the Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as "the principal Rules"),-

(a) in clause (36), after sub-clause (iii), the following sub-clause shall be added, namely:-



“(iv) Any kind of financial incentive, including difference in pay on account of one-step promotion (other than by way of Time bound promotion or Assured career progression) as per any policy of the Government, shall not be admissible for calculating pay.”;

(b) in clause (38), after the main clause, the following sub-clause shall be inserted namely:-

“(i) Any kind of financial incentive, including difference in pay on account of one-step promotion (other than by way of Time bound promotion or Assured career progression) as per any policy of the Government, shall not be admissible for calculating pensionable pay.”

3. In rule 60 of the principal Rules-

(a) after sub-rule (1), the following sub-rule shall be inserted, namely -

“(1A) Any kind of financial incentive, including difference in pay on account of one-step promotion (other than by way of Time bound promotion or Assured career progression) as per any policy of the



Government, shall not be admissible for calculating pensionable pay”.

(ii) in sub-rule (3), for the word, figures and brackets “rule 9(36)(i)” the word, figures and brackets “rule 9 (36)” shall be substituted.”

7. In my opinion, whatever this or that party would urge in keeping with the brief that one might be holding the language of the above quoted Rules is too clear to merit even any interpretative exercise. The literal interpretation presents absolutely no difficulty, and therefore, pointless exercise into an aimless foray into the interpretative adventure will really be a misadventure which is best not resorted to. The words, “any kind of financial incentive” and the words that keep company therewith would make it quite clear that each and every type of financial incentive is included in carving out an exception of such incentive from the definition of the word, “pay” in the said Rules of Pension Rules.

8. I find absolutely no justification in the submissions made by Mr. Jagdale about the said Rules being applicable only to those that worked in Naxal affected areas, etc. If the Rule maker had it in mind, there is no reason why a clear provision to that effect would not



have been made. As a matter of fact, if the literal meaning of the words is so clear as it is, there is no occasion for me to take recourse to any external aid to the interpretation because there is no confusion, uncertainty or ambiguity in the plain meanings to be accorded to the Rules.

9. Mr. Jagdale told me that the said Rule would bring in an anomaly in as much as the ex-colleagues of the Applicants who were senior to them would in fact be getting more pension by virtue of inclusion in their salary of the incentives given to them and post 27th October, 2014, the Applicants will be receiving the rough side of the stick. In my opinion, however, in the first place, the said Rules have not been challenged as to their validity on any ground whatsoever except for the external aid sought to be enlisted by citing Naxal affected area, etc. That is too farfetched to be of any real assistance to Mr. Jagdale and I have no hesitation in not accepting his submission in that behalf. In fact, that is also not in the form of the challenge to the said Rules and the said Rules have not been challenged at all. Therefore, the Rule maker was perfectly within his powers and duties to make the Rule in the manner he has done it. Even if it produces the result for which Mr. Jagdale makes a grievance, in my opinion, it is not a sufficient enough reason to take any view of the

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matter other than the one that the plain language suggests. The crux of the matter is that no discrimination has been made between the Applicants and others, who were so similarly placed as they are and those that retired earlier cannot be considered as similarly placed as the Applicants.

10. For the foregoing, therefore, I find no merit in this Original Application and the same is accordingly dismissed with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
25.01.2017

Mumbai

Date : 25.01.2017

Dictation taken by :

S.K. Wamanse.

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