

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 776 OF 2015

DISTRICT: - LATUR.

Bhagwant S/o. Bajrangrao Kadam,
Age : 61 years, Occu: Retired
As Sectional Engineer,
In the office of Executive Engineer,
Latur Minor Irrigation Division, Latur,
R/o : Pragati Nagar, Khopegaon Road,
Latur, Tq. & Dist. Latur.

.. APPLICANT.

V E R S U S

- 1) **The State of Maharashtra,**
Through it's Secretary
Water Resources Department,
Mantralaya, Mumbai – 32.
(Copy to be served on C.P.O.,
M.A.T. AURANGABAD.
- 2) **Executive Engineer,**
Latur Minor Irrigation,
Division Latur, Dist. Latur.
- 3) **The Executive Engineer,**
Latur Irrigation Division, No. 1
Latur.
- 4) **The Executive Engineer,**
Lower Terna Canal,
Division No. 2, Latur.
- 5) **The Superintending Engineer,**
Beed Irrigation Project, Circle,
Sinchan Bhavan, Ambajogai Road,
Parli Vaijnath. 431 515, Dist. Beed.
- 6) **Pay Verification Unit Aurangabad**
Tq. & Dist. Aurangabad.

7) The Accountant General (A & E-II),
Maharashtra State,
Nagpur.

.. RESPONDENTS.

APPEARANCE : Shri Madhukar Dhongde, learned
Advocate for the applicant.

: Smt. D.S. Deshpande, learned
Presenting Officer for the respondent
Nos. 1, 6 & 7.

: Shri G.N. Patil, learned Advocate for
Respondent Nos. 2 to 5.

CORAM : HON'BLE SHRI J.D. KULKARNI,
MEMBER (J)

J U D G M E N T

[Delivered on 23RD AUGUST, 2016]

The applicant has retired on superannuation on 31.1.2012 from the post of Junior Engineer. After retirement, respondent No. 2 issued an order dated 18.5.2015 re-fixing the pay scale of the applicant. As per the said order pay scale was re-fixed vide orders dated 1.2.2012, 14.5.2012 & 15.6.2012 an amount of Rs. 2,84,355/- was recovered from his pensionary benefits. Being aggrieved by these orders of recovery the applicant has filed O.A. No. 348/2015 before this Tribunal Bench at Aurangabad. The Tribunal vide order dated 1.10.2015 was pleased to quash and set aside the order of

recovery of excess amount. The Hon'ble Tribunal observed as under: -

“8. The learned counsel for the applicant submits that the applicant has prayed in prayer clause ‘D’ a declaration that he is entitled to draw the regular pension on the basis of pay scale sanctioned by the respondent vide order dated 27.7.1998 and further that respondents be directed to re-fix pension on the basic pay i.e. 21,500/- or as per last salary drawn by the applicant. In this regard it is material to note that except the prayer, the applicant has not challenged the order of re-fixation. The applicant may challenge such re-fixation by filing separate O.A.

9. In view thereof, I pass following order :-

O R D E R

- 1. The O.A. No. 348/2015 is partly allowed.***
- 2. The recovery of Rs. 2,84,355/- of the applicant is held illegal.***
- 3. The respondent No. 2 is therefore, directed to refund the said amount immediately to the applicant and in any case within two months from the date of this order.***

4. The applicant's claim of interest on this amount is however, rejected as no mala-fides in the recovery order are proved. However, in case amount is not refunded within two months as aforesaid, applicant will be entitled to claim interest as per rules. No order as to costs."

2. The applicant has, therefore, filed the presenting original application challenging his re-fixation vide various orders, such as 1.2.2012, 14.5.2012, 15.6.2012 & 18.5.2015 passed by the respondent Nos. 2 to 5, as the case may be as regards re-fixation of his pay scale. It is stated that all these orders are arbitrary, contrary to the due process of law and are against the provisions of Rule 18 of Maharashtra Civil Services (Pay) Rules, 1981. It is also claimed that the said orders are contrary to the principles of natural justice and against the provisions of Rule 134-A of the Maharashtra Civil Services (Pension) Rules, 1982 and, therefore, it is prayed that these orders be quashed and set aside and it be held that the applicant is entitled to draw regular pension on the basis of pay scale sanctioned by the respondents vide order dated 27.7.1998 as per Annexure 'A-4'.

3. As already stated there is no dispute that the excess amount alleged to be paid to the applicant has already been

repaid to him and, therefore, the only question is to be decided as to whether the impugned order dated 18.5.2015 vide which the respondent Nos. 2 to 5 re-fixed the applicant's pay in view of earlier orders dated 1.2.2012, 5.5.2012 & 15.6.2012 are legal and proper.

4. The respondent Nos. 2 to 5 defended the claim. It is stated that the applicant had not passed departmental examination / professional examination, which is required to be passed for claiming time bound promotion to the Junior Engineer's post. He has not completed 12 years regular service, as he has worked during the period from 1978 to 1987 on work charge establishment and the said service cannot be counted for time bound promotion.

5. The applicant was not eligible for time bound promotion as per the Government Resolution dated 8.6.1995 w.e.f. 1.10.1994 and, therefore, the order granting him such time bound promotion on 22.7.1998 was erroneous. However, the first time bound promotion was given to him by mistake. The reference of judgment in **PUNJAB STATE ELECTRICAL BOARD VS. GANGAJIVAN RAM** reported in **2009 (1) SCC (L&S) page-769** has been given, where the Hon'ble Apex Court

has held that regular service means service rendered after regular appointment and it does not include service rendered as temporary, ad hoc or work charge employee.

6. It is stated that the applicant was given show cause notice and on hearing him the order of re-fixation has been passed. After hearing him, amount paid in excess has been recovered. It is stated that the pay fixation was made as per the direction of the Pay Verification Unit.

7. The respondent Nos. 6 & 7 have filed separate affidavit in reply and resisted the claim.

8. Heard Shri Madhukar Dhongde – learned counsel for the applicant, Smt. D.S. Deshpande – learned Presenting Officer for respondent Nos. 1, 6 & 7 and Shri G.N. Patil – learned Advocate for the respondent Nos. 2 to 5. I have also perused the application, affidavit, affidavit in reply, affidavit in rejoinder, as well as, various documents placed on record. Since it was stated that the re-fixation was made as per the objections taken by the Pay Verification Unit, respondent No. 2 was directed to place on record the copy of the said objection. The Pay Verification Unit's objection has been placed on record as per the Annexure 'X-1' & 'X-2'. Annexure 'X-1' is the

objection (dated 28.3.2011), whereas Annexure 'X-2' is the Government Resolution dated 8.6.1995 on the basis of which objection was taken.

9. From the facts referred above, it is clear that the impugned order of recovery of excess payment paid to the applicant was quashed in the earlier O.A. as already stated. From the facts on record, it is also clear that the Pay Verification Unit has taken objection when the above papers were submitted for grant of regular pension and at that time it was noticed that the applicant has not passed departmental examination / professional examination for the post of Junior Engineer and that he was not on regular establishment during the year 1978 to 1987. As he was on work charge establishment and, therefore, as per the G.R. dated 8.6.1995 he was not entitled to time bound promotion w.e.f. 1.10.1994. Similar objection has been taken by the Pay Verification Unit as will be seen from Annexure "X-1". The relevant Government Resolution is at Annexure "x-2".

10. I have perused the judgment delivered in O.A. No. 263/2012, 593/2012 and 379/2013 passed by this Tribunal on 10.4.2014. It is to be noted that the all the impugned

orders except order dated 18.5.2015 were challenged in these original applications and the Tribunal was pleased to quash and set aside the impugned orders dated 1.2.2012, 14.5.2012 and 15.6.2012. The relevant paragraph No. 9 of the said order clearly shows that these orders were quashed because opportunity was not given to the applicant to show cause against the recovery as per the first proviso to Rule 134-A of the Maharashtra Civil Services (Pension) Rules, 1982. It however, seems that in view of the said judgment the respondents were pleased to issue show cause notice to the applicants and after going through the reply given by the applicants the impugned order dated 18.5.2015 has been passed.

11. The learned Presenting Officer submits that the applicant was given an opportunity to explain as to why recovery shall not be made due to wrong fixation of pay as provided under Rule 134-A of the M.C.S. (Pension) Rules, 1982. He further submits, in fact, as per the said rule even excess amount paid can be recovered. However, the amount was refunded to the applicant in view of the order passed by the Tribunal in view of the observations made by the Hon'ble Apex Court in the case of **STATE OF PUNJAB AND OTHERS VS. RAFIQ MASIH**

(WHITE WASHER) AND OTHER reported in **(2015) 4 Supreme Court Cases 334.**

12. The applicant himself has placed on record the show cause notice and the reply given by him to the show cause notice. The show cause notice is at Annexure 'A-12', p.b. page-70. In the said notice, it has been mentioned that the applicant was appointed as a Technical Assistant on 24.1.1978 and even though he has not passed the qualifying examination, he was given promotion and as per the amended Rules on 1.11.1998. The Technical Assistants possessing diploma in Engineering were held eligible for promotion. Though the applicant was promoted as per the said rules on the post of Junior Engineer in 1999, he was given pay scale for the promotional post from 1994 and, therefore, notice was issued as to why the said amount shall not be recovered as per Rule 18 of the Maharashtra Civil Services (Pay) Rules, 1981. The said rule reads as under: -

“18. Pay when promotion or appointment found to be erroneous.- Notwithstanding the provisions contained in these rules, the pay of a Government servant whose promotion or appointment to a post is found to be or to have been erroneous, shall be regulated in accordance

with any general or special orders issued by Government in this behalf.

13. It seems from the record that the applicant has also replied the said notice as per Annexure 'A-13' dated 20.8.2014 and tried to justify his promotion. I have carefully gone through the reply given by the applicant, as well as, the objection taken by Pay Verification Unit. Annexure 'X-1' dated 28.3.2011 is objection taken by the Pay Verification Unit, from which it seems that the applicant has completed his age of 45 years on 15.2.2002 and, therefore, was exempted from qualifying examination for promotion to the post of Junior Engineer. Thus, though he was exempted from 15.2.2002, the pay scale of Junior Engineer was made applicable to him from 1.10.1994 and this was against the Government Resolution dated 8.6.1995. As per the said G.R. it is necessary for the employee to pass qualifying examination for being eligible for the time bound promotion. The learned Presenting Officer submits that those employees, who complete 45 years are exempted from passing the qualifying departmental examination and since the applicant has crossed the age of 45 years on 15.2.2002 he was entitled to get time bound promotion and pay scale on the date on completion of 45 years

of age. However, he was wrongly given higher pay of promotional scale w.e.f. 1.10.1994 and, therefore, this mistake was rectified by re-fixing the pay scale of the applicant. It is true that the respondents cannot recover the excess amount paid to him in view of his promotion, in view of judgment delivered by the Hon'ble Apex Court in the case of **STATE OF PUNJAB AND OTHERS VS. RAFIQ MASIH (WHITE WASHER) AND OTHER** (supra). However, that will not mean that the respondents cannot rectify their mistake of re-fixation of pay.

14. As already stated, the respondents have placed reliance on the judgment in ***PUNJAB STATE ELECTRICAL BOARD VS. GANGAJIVAN RAM*** reported in ***2009 (1) SCC (L&S) page-769***, which states about the regular service and it means service rendered after regular appointment and, therefore, does not include service rendered as temporary, ad hoc or work charge employee.

15. As already stated the respondents have already refunded the amount recovered from the applicant. This Tribunal is, therefore, only concerned with challenge to re-fixation of pay scale and as per rule 18 of M.C.S. (Pay) Rules, 1981 pay of the

Government servant, whose promotion or appointment to a post found to have been erroneous, can be regulated.

16. From the discussion in foregoing paragraphs, it seems that the respondents have brought on record evidence to show that the applicant's pay was fixed by granting him time bound promotion w.e.f. 1.10.1994 though he was not entitled to get that promotion at that time since he has not passed qualifying departmental examination. He was exempted from appearing for such qualifying departmental examination w.e.f. 15.2.2002 i.e. after attaining the age of 45 years and, therefore, it can be said that the time bound promotion granted w.e.f. 1.10.1994 should have been, in fact, granted on completion of 45 years of age on 15.2.2002. The said fact came to the notice of Pay Verification Unit while verifying the pension case of the applicant and, therefore, the pay was revised. In the earlier litigation no show cause notice was given to the applicant before recovery, but now the show cause notice has been given and the applicant was called upon to explain. The applicant has also filed reply and after due consideration the respondents rejected the applicant's claim. In such circumstances, the applicant has miserably failed to bring on record sufficient evidence to show that his re-fixation was

illegal or arbitrary or without giving an opportunity to him. Therefore, I do not find any merits in the present original application. Hence, the following order: -

ORDER

The present Original Application stands dismissed with no order as to costs.

MEMBER (JUDICIAL)

O.A.NO.776-2015(hdd)-2016