

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No.1519 of 2011

Mukund s/o Shankarlal Dayama. .. **Petitioner.**

Versus

The State of Maharashtra & Others. .. **Respondents.**

Petitioner-in-person - present.

Shri. R.V. Dasalkar, Assistant Government Pleader, for
respondent Nos.1 to 4.

**Coram: T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Order reserved on : 17 April 2018

Order pronounced on : 24 April 2018.

ORDER (Per T.V. Nalawade, J.):

1) The petition is filed under Article 226 of the Constitution of India. In view of the reliefs claimed it can be said that it is under Article 227 of the Constitution of India also. Relief of the nature of writ of certiorari is claimed and the proceeding is filed for quashing and setting aside the decision given by the Maharashtra

Administrative Tribunal, Aurangabad Bench in Misc. Application No.121/2008. This Misc. Application was filed before the Maharashtra Administrative Tribunal ("M.A.T.") in Original Application No.433/1997. Original Application No.433/1997 was dismissed though on merits, in the absence of the applicant and so in the Misc. Application review was sought. M.A.T. has rejected the application by holding that it has no power to condone the delay which is more than 30 days in view of the rules framed under the Act. The petitioner argued in person. Learned Assistant Government Pleader is also heard.

2) The petitioner was working as Radio Mechanic (*Radio Yantrik*) in Wireless Section of Police in the past. Original Application was filed in the year 1997 for seeking direction against the State Government to give pay scale of Rs.1600 - 2300 to the persons holding the posts of Radio Mechanic. This scale was higher than the scale of Assistant Police Sub Inspector. At the relevant time the persons holding the post of Radio Mechanic were getting the scale that of the Assistant Police Sub Inspector. As from 1991 year nobody had turned up and the matter was

not prosecuted the Chairman of M.A.T. considered the contentions made by the present petitioner and also the say given by the respondents and rejected the Original Application on 28-1-2008. Misc. Application No.121/2008 was filed on 4-4-2008 for review, after 30 days of the order of dismissal. The review is rejected by M.A.T. by holding that there was no separate application filed for condonation of delay and further there was no power with M.A.T. to condone the delay of more than 30 days caused in filing review proceeding. M.A.T. has referred the order made in Misc. Application No.185/2006 by Nagpur Bench of M.A.T. It appears that by referring to the interpretation made by the Supreme Court and by referring to the Maharashtra Administrative Tribunal (Procedure) Rules 1988 the Division Bench of M.A.T. at Nagpur had rejected similar application. Cases on which reliance was placed by Nagpur Bench were as under :-

(i) Union of India v. Chittaranjan Das (1988) 1 CAT 268;

(ii) 1999 (4) ALL MR 188 (Sangh Miraj and Kupwad City Municipal Corporation v. Shri Bal Krishna Haribhau Sawant); and,

(iii) AIR 1976 SC 2161 (Mohd. Ashfaq v. State Transport Appellate Tribunal, U.P.)

3) It appears that one more case reported as **AIR 1997 SCW 3277 (K. Ajit Babu v. Union of India)** was also considered against the present petitioner.

4) Even if the point that the petitioner has not filed separate application for condonation of delay and M.A.T. has no power to condone the delay which was of more than 30 days is ignored, on merits also the petitioner had no case. Original Application No.433/1997 was filed by the petitioner to challenge the policy decision which was taken by the State Government in the year 1986. Prior to 1986 persons holding the post of Radio Mechanics were getting the scale which was higher than the scale of Assistant Police Sub Inspector but in the year 1986 the pay scale was made equal to the pay scale of Assistant Police Sub Inspector. This was continued in subsequent revision of pay which was based on Pay Commission's report in the year 1996. The order, decision which was made against the persons like the petitioner in the year 1986 was challenged in the year 1997. In view of the provisions of the Administrative Tribunals Act, specific period for such challenge is given. For that reason also the

main proceeding itself could have been dismissed. Even the writ petition could not have been allowed by this Court due to laches.

5) The petitioner in person has done much work for collecting the relevant record and this sincere effort of the petitioner needs to be appreciated. He has produced copy of Government Resolution dated 17-8-2011 showing that the Government has now taken decision to change the nomenclature of the posts from Wireless Section. Due to this Government Resolution, Radio Mechanic (*Yantirk*) will be now called as Assistant Police Sub Inspector (Radio Mechanic). The Head Wireless Operator will now be called as Assistant Police Sub Inspector (Head Wireless Operator). Though the nomenclature is changed this way the State Government has made it clear that the scales which these two cadres were getting in Wireless Station of Police will not be changed and it will remain the same, equal to the scale of Assistant Police Sub Inspector.

6) The petitioner has placed reliance on the decision given by Delhi High Court in **W.P. (Civil)**

No.2747/2012 (Pooran Singh v. Union of India) and the decision of this Court given in **Writ Petition No.3580/2009 (Purushottam Pathak v. The State of Maharashtra & Others)**. The facts of these cases were different. It can be said that after about 10 years the petitioner had filed the proceeding before M.A.T. to challenge the policy decision taken by the Government. In view of this single circumstance no relief could have been granted. On this, learned Assistant Government Pleader has placed reliance on a case reported as **2007 AIR SCW 6227 (Union of India v. Arun Jyoti Kundu & Others)**. This case is referred by M.A.T. also for dismissal of the Original Application. The facts of this reported case show that Senior Typists were claiming equivalence to Senior Clerks, Head Typists were claiming equivalence to Head Clerks and Chief Typists were claiming equivalence to Overseer Grade II. The Apex Court has rejected the proceeding by making following observations :-

"9. We had recently held in *K.S. Krishnaswamy Vs. Union of India & Anr.* [JT 2006 (10) 479] that the recommendations of Pay Commissions are subject to acceptance or rejection. Speaking for the Bench, one of us (H.K. Sema, J.) stated:

"It is well settled principle of law that recommendations of the Pay Commission are subject to the acceptance/rejection with modifications of the appropriate Government. So, unless the Government has accepted the recommendation to merge the cadres, the Court cannot proceed on the basis of the recommendation alone or to direct the Government to accept the recommendation. In this context we have also to take note of the decisions of this Court in *Dev Kumar Mukherjee* (1995 Suppl. (2) SCC 640) that the recommendations of pay scales are not open to judicial review and the one in *State of Uttar Pradesh vs. Ministerial Karamchari Sangh* (1998) (1) SCC 422) to the effect that the evaluation of typists for the purposes of pay scales must be left to the expert body. The role of the Pay Commission and that of the court has also been dealt by the decision of this Court in *Saurabh Chaudri and others v. Union of India and others* (2003(9) SCALE 272) and *M.P. Rural Agricultural Officer Association vs. State of M.P.* (2004 (4) SCC 646). In the latter decision it was held by this Court that pay commissions are constituted for evaluating duties and functions of the employees and the nature thereof vis-a-vis the educational qualifications therefor. Although the pay commission is an expert body, the State in its wisdom and in furtherance of its valid policy may or may not accept its recommendations."

"12. We are afraid that the tribunal has exceeded its jurisdiction in issuing the direction, it has issued. The fact that notwithstanding the Fifth Pay Commission not recommending, particularly, the payment of higher scale to two sets of typists, typists in English language and typists in Hindi language, the Government chose to give them relief with effect from 31.1.2000 would not justify an inference of discrimination or a finding that the authority has acted arbitrarily or unreasonably. As this Court has clarified in the decisions adverted to, it is for the Government to act on the report of the Pay Commission or either to accept or not to accept its recommendation. Once the recommendations of the pay commission are accepted, in full, it could also give effect to it from the date recommended in that behalf. But when admittedly no provision was made in respect of the English and Hindi typists and they pointed to the anomalies and the Government on the basis of the recommendation of the Anomalies Committees decided

to give them the scale with effect from 31.1.2000, it could not be held to be discriminatory or to be beyond the power of the Government. When a concession was being extended as distinct from implementing a specific recommendation of the Pay Commission with reference to a particular point of time, it is open to the Government to provide that the benefit it proposes to give, would be available only from a notified date. As this Court has observed, neither the Central Administrative Tribunal nor the High Court, can direct the merger of any cadre. That is a policy decision for the Government to take. So long as it is not done, it is not open to the tribunal or the court to issue directions in that regard and to follow it up with what are thought to be consequential directions."

The aforesaid observations can be used in the present matter also. Thus, on merits also the petitioner has no case. In view of the aforesaid circumstances, this Court holds that it is not possible to interfere in the order made by the Maharashtra Administrative Tribunal of rejecting the application. In the result, the petition stands dismissed.

Sd/-
(SUNIL K. KOTWAL, J.)

Sd/-
(T.V. NALAWADE, J.)

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