

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.710/2013

DISTRICT: DHULE

Shri Giridhar Barku Patil,
Age : Major, Occ : Service,
R/o: Government Industrial Training
Institute, Dhule.

..APPLICANT

V/s.

- 1] The State of Maharashtra
Through the Secretary,
Vocational Education & Training Department,
Mantralaya, Mumbai-400 032.
- 2] The Deputy Director,
Vocational Education and Training,
Nasik Division, Trimbak Naka,
Old Agra Road, Nasik.
- 3] The Principal,
Industrial Training Institute (ITI),
Dhule.

...RESPONDENTS

APPEARANCE: Shri A.S.Deshmukh learned Advocate
holding for Shri Shrikant Patil learned
Advocate for the applicant.

Shri V.R.Bhumkar learned Presenting
Officer for respondent nos.1 to 3 and 5.

CORAM: Hon'ble Shri Rajiv Agarwal, Vice-Chairman (A)
A N D
Hon'ble Shri B. P. Patil, Member (J)

DATE : 24-03-2017

ORDER

[PER: MEMBER (J)]

The applicant has sought relief to quash and set aside order dated 25-09-2013 passed by respondent no.2 and sought direction to consider his claim for promotion on the post of Instructor (Carpenter).

2. The applicant had joined services of respondents on 06-04-1985 in Industrial Training Institute, Jamner, Dist. Jalgaon as Workshop Peon (Class IV). In the year 1991, he was transferred to Government Technical High School, Dhule as Hamal. The applicant is having qualification of SSC Carpentry and NCVT since beginning. He claims promotion on the post of Instructor (Carpenter) in the technical department. He made several representations in that regard to the respondent no.2 time and again. Though applicant had requested for promotion on the post of Instructor (Carpenter) he was promoted as Assistant Store Keeper, Industrial Training

Institute, Nasik on 03-07-1997. In order to obey the order of the higher authorities applicant joined the said post. He worked there for 4 months. Thereafter, requested for reversion on the ground that he is unable to work on the non-technical cadre as he belongs to technical grade. On the basis of his request applicant was reverted on original post at Industrial Training Institute, Dhule. Thereafter, time bound promotion was granted to him in the year 1998 on completion of 12 years' continuous service.

3. The applicant has submitted that he is senior most and eligible for promotion on the post of Instructor (Carpenter). His colleagues were given promotion and they are getting higher remuneration but the applicant has been deprived of the same. Applicant had refused promotion of Junior Clerk and Assistant Workshop Keeper as he belongs to technical cadre. Again applicant was transferred on promotion to Ahmednagar as Assistant Store Keeper on 19-01-2010 but he had not accepted the said promotion due to personal difficulty. Therefore, respondent no.2 by order dated 08-02-2010

withdrew benefit of time bound promotion and higher scale given to him. Since the applicant was not promoted on the post of Instructor (Carpenter) as per his request, he made representations and sought regularization of time bound promotion if no promotional post is available in technical cadre. Applicant's representation had been rejected by the respondent no.2 on the ground that all the posts of Instructors are to be filled by direct recruitment only and not by way of promotion. The applicant has challenged the order dated 08-02-2010 before the Maharashtra Administrative Tribunal by filing O.A.No.916/2010 and claimed promotion on the post of Instructor. The O.A. was disposed of since the respondents had withdrawn the impugned order dated 08-02-2010 by issuing fresh order dated 14-12-2010. According to the applicant, on completion of 24 years' service on Class IV post of Hamal, he became eligible and entitled for time bound promotion scale.

4. Respondent no.3 vide letter dated 21-06-2011 communicated that applicant is not entitled for time bound promotion scale on completion of 24 years' service

referring to decision of respondent no.2 dated 09-05-2011. Said order has been challenged by him in O.A.No.819/2011 before the Maharashtra Administrative Tribunal. The Tribunal allowed the O.A. and extended benefits of second time bound promotion to the applicant by order dated 01-04-2013.

5. Respondent no.2 had issued order to the applicant to join as Clerk, Workshop Attendant at various places. However, due to his personal difficulty and lack of knowledge and experience for performing duty as Clerk/Computer Operator, applicant had not accepted the said promotional post. On 27-12-2011 respondent no.2 again issued order directing the applicant to join on the post of Clerk and informed that in case he fails to join new promotional posting, his time bound promotion will be cancelled and action will be taken against him. Reserving his right to claim promotion on the post of Instructor by filing an application dated 06-01-2012, the applicant accepted promotion on the post of Clerk and joined the posting on 07-01-2012.

6. Meanwhile, respondent no.1 issued Government Circular dated 14-12-2012 whereby it has been resolved to grant promotion to the employees of Class-D category, as per seniority list dated 30-07-2013, who are having qualification and experience required for the post of Instructor. Accordingly, respondent no.2 prepared seniority list of eligible candidates for the post of Instructor and called for objection from the concerned. Applicant made representations dated 21-08-2013 and 07-09-2013 with a request to add his name in the seniority list of Group D eligible for promotion as Instructor. Respondent no.2 rejected his application on the ground that applicant's cadre has been changed and now applicant belongs to Group C category. Being aggrieved by the order dated 25-09-2013, the applicant has filed the present O.A.

7. Respondent nos.1 to 3 have filed their reply affidavit and admitted the fact that the applicant possesses technical qualification i.e. certificate of Carpenter trade from Industrial Training Institute but they have denied that the applicant has any right to claim promotion on

the post of Instructor on that basis. The applicant passed trade of Carpentry of Industrial Training Institute in the year 1983 but he was working as Peon (Class-IV). He was promoted twice as Assistant Store Keeper and Junior Clerk but he refused to accept those promotions and demanded promotion on the post of Instructor only. There was no promotion channel for the post of Instructor from Class-IV cadre, as per the rules then prevailing. The applicant was promoted as Junior Clerk. The applicant joined on the promotional post of Junior Clerk subsequently and since then he is working as Junior Clerk (Class III). As the applicant joined on the post of Junior Clerk, he has no right to claim benefit in future on the basis of his previous services in Class-IV cadre.

8. The applicant joined the promotional post as Assistant Store Keeper in the pay scale of Rs.3050-75-3950-80-4790 but due to lack of knowledge and will power he was unable to perform duties of the said post properly. Therefore, he refused the promotion and requested for his reversion to the original post of Hamal

by filing application dated 01-09-1997. Considering his request, applicant was reverted to his original post of Hamal and since then he was working in Class-IV cadre. The applicant being Class-IV employee question of technical and non-technical cadre does not arise as there is no separate technical and non-technical cadre for Class-IV category. Thereafter, the applicant was promoted to the post of Junior Clerk and he has joined said post and since then he is working on the post of Junior Clerk. There was no provision for promotion of an employee working in Class-IV cadre to the post of Instructor at that time. The post of Instructor in the Government Technical School was not available for promotion from Class IV cadre and this post was filled up by direct recruitment only. Considering the qualification and eligibility of the applicant he was promoted to the post of Assistant Store Keeper on 19-01-2010 but the applicant again refused the promotion. Therefore, respondent no.2 communicated to him that he will not be entitled to further promotion and benefit of time scale promotion will be withdrawn. Thereafter, while reviewing the matter it was found that action of withdrawing time

bound promotion given to the applicant was not proper. Therefore, respondent no.2 by order dated 14-12-2010 cancelled the order dated 08-02-2010 and restored the benefit of time bound promotion to the applicant. The applicant made several requests to promote him on the post of Instructor (Carpenter) though he had no right to choose a specific promotional post. Applicant was promoted as per the recruitment rules of concerned post then prevailing. As per the recruitment rules prevailing at the relevant time, the post of Instructor (Carpenter) was not available for promotion and that post was to be filled by direct recruitment only.

9. The applicant filed O.A.No.916/2010 before this Tribunal after cancellation of second time bound promotion. The O.A. was partly allowed. Thereafter, respondents have conferred benefit of second time bound promotion on the applicant. The applicant was promoted on the post of Junior Clerk and he joined the said post on 07-01-2012. His name was, therefore, included in the seniority list of Junior Clerk (Class III) and not in Class IV category. Government in Higher and Technical

Department issued Ordinance dated 14-12-2012 and issued revised recruitment rules regarding the post of Instructor. By issuing said rules Government has opened promotional channel for the post of Instructor from Class IV cadre. Said notification came into force with effect from the date of its issuance. It is prospective and cannot be applied retrospectively. Therefore, the applicant cannot claim benefit under the said notification. This Tribunal has passed order in O.A.No.916/2010 in respect of time bound promotion of the applicant. Respondents have therefore, submitted that the impugned order passed by them is proper and legal, and therefore, there is no scope for interference at the hands of this Tribunal.

10. We have heard Shri A.S.Deshmukh learned Advocate holding for Shri Shrikant Patil learned Advocate for the applicant and Shri V.R.Bhumkar learned Presenting Officer for the respondents.

11. The applicant has submitted that he has qualification of SSC Carpentry and NCVT since he joined

duty as Workshop Peon in I.T.I. Jamner, Dist. Jalgaon. Since beginning he was requesting the respondents to promote him on the post of Instructor (Carpentry) as he belongs to technical grade and acquired necessary qualification required for the post of Instructor (Carpenter) but promotion was not given to him on the said post. On 03-07-1997, he was promoted on the post of Assistant Store Keeper in I.T.I. Nasik and he accepted promotion to obey orders of the superior authorities. Applicant worked there for 4 months and thereafter requested for reversion on the previous post of Hamal as he belongs to technical grade and was unable to work properly on non-technical cadre. Thereafter, also applicant again promoted on the post of Junior Clerk and worked there for some time. He again refused promotion because of his personal difficulty and on the ground that he belongs to technical cadre. As the applicant failed to accept the promotion as Assistant Store Keeper at Ahmednagar, respondent no.2 passed order dated 08-02-2010 and withdrew higher pay scale given to him as per time bound promotion. He made representation against withdrawal of the higher pay scale. He also filed

O.A.No.916/2010 and claimed promotion on the post of Instructor. O.A. was disposed of since the respondents had withdrawn the impugned order dated 08-02-2010.

12. Learned Advocate for the applicant has submitted that thereafter the applicant claimed benefit of time bound scale on completion of 24 years but his representation was rejected on 21-06-2011. Thereafter, applicant filed O.A.No.819/2011 before Maharashtra Administrative Tribunal and claimed extension of benefits of time bound scale. His application was partly allowed and benefits of time bound scale were extended to him. Learned Advocate for the applicant has further argued that on 27-12-2011 the respondent no.2 directed him to join on the promotional post of Clerk, failing which time bound promotion given to him will be cancelled and action will be taken against him. Therefore, the applicant accepted the promotion on the post of Clerk under protest by filing application dated 06-01-2012 and joined duties on 07-01-2012. It is argued on behalf of the applicant that the Government has issued circular and decided to grant promotion to the employees of Class-IV

category who are qualified and having experience on the post of Instructor as per seniority. It is submitted that in view of the said Government circular applicant is entitled to be promoted on the post of Instructor (Carpenter) and therefore he made representation to the respondents in that regard but the respondents without considering educational qualification and experience of the applicant rejected his representation. Applicant has submitted that since promotional avenue for the post of Instructor (Carpenter) has been made available to the Class-IV employees, the applicant is entitled to be promoted on the said post as he originally belonged to Class-IV cadre and as he had accepted the promotion of Junior Clerk under protest.

13. Learned P.O. has submitted that the applicant has received benefits under time bound promotion scheme on completion of 12 years' and 24 years' services, respectively. Thereafter, he was promoted on the post of Assistant Store Keeper but the applicant had refused to accept the promotion of Assistant Store Keeper. On his representation, applicant was reverted back to the post of Hamal. It is submitted that thereafter the applicant was

again promoted as Junior Clerk in the year 2012. Applicant was directed to join the said post failing which benefit of time bound promotion given to him will be withdrawn. Thereafter, the applicant joined on the promotional post. The post of Instructor (Carpenter) was filled by direct recruitment as it was not a promotional post. In view of the new recruitment Rules framed on 14-12-2012, promotional avenue was made available to the Class-IV employees for promotion on the post of Instructor for the first time. Accordingly, seniority list dated 30-07-2013 of eligible employees has been issued by the respondents (page 85). At the time of promotion of the applicant said recruitment rules were not in existence, and therefore, the applicant cannot claim promotion on the post of Instructor (Carpenter) on the basis of said recruitment rules.

14. Learned P.O. has further submitted that the applicant was already promoted on the post of Junior Clerk in the year 2012 before coming into existence the said recruitment rules, and therefore, his name had been deleted from the seniority list of Hamal (Class IV) and included in the seniority list of the Class-III employees.

Therefore, no question of inclusion of his name in the seniority list of Class IV employees arises. It is submitted that since the applicant was promoted to the post of Junior Clerk, he was not eligible to be considered for promotion from Class IV cadre. Therefore, the learned P.O. supported the impugned order.

15. We have gone through the documents available on record. On perusal of the same it reveals that in the year 1997 the applicant was promoted as Assistant Store Keeper at I.T.I. Nasik by order dated 03-07-1997, and accordingly, he joined there. Thereafter, applicant made representation to the respondents for his reversion. On the basis of his request, reversion order dated 01-09-1997 has been issued and since then he was working as Hamal, Class IV. Again applicant was promoted and transferred to Ahmednagar as Assistant Store Keeper on 19-01-2010. He had not accepted the said promotion due to personal difficulty. Therefore, respondent no.2 by order dated 08-02-2010 withdrew time bound promotion and higher scale given to him. Since the applicant was not promoted on the post of Instructor (Carpenter) as per his request, he made

representations and sought regularization of time bound promotion if no promotional post is available in technical cadre. Applicant's representation had been rejected by the respondent no.2 on the ground that all the posts of Instructors are to be filled by direct recruitment only and not by way of promotion. The applicant has challenged the order dated 08-02-2010 before the Maharashtra Administrative Tribunal by filing O.A.No.916/2010 and claimed promotion on the post of Instructor. During the pendency of the said O.A. respondents restored the benefits of time bound promotion, and the said O.A. was accordingly disposed of. Thereafter, the applicant claimed second time bound promotion on completion of 24 years continuous service but the respondent no.2 by its order dated 21-06-2011 communicated to the applicant that he was not entitled for time bound promotion. Said order has been challenged by the applicant in O.A.No.819/2011 before the Tribunal. The Tribunal passed order in O.A.No.819/2011 and extended benefits of time bound promotion to him.

16. Meanwhile, the applicant was promoted on the post of Clerk by order dated 27-12-2011. Respondent no.2

issued order directing him to join posting failing which his time bound promotion will be canceled. Thereafter, the applicant joined the promotional post of Clerk on 07-01-2012 and since then he has been working there. On perusal of documents on record it reveals that the applicant was promoted on the post of Assistant Store Keeper, which is a Class-III post but the applicant refused to accept the promotional post on his personal ground and he was reverted to Class IV post on his request. Thereafter, he accepted the promotion and joined as Junior Clerk on 07-01-2012. At that time as per recruitment rules then prevailing the post of Instructor (Carpenter) was to be filled directly by nomination, and there was no promotional channel available from Class IV employees to Class III post of Instructor. For the first time in the year 2012 recruitment rules have been framed on 14-12-2012 (page 81) and accordingly seniority list of Class IV employees dated 30-07-2013 (page 85) has been published by the respondents. At that time, the applicant was working in Class III cadre. He was

not eligible for promotion on the post of Instructor as he already got promotion in the cadre of Clerk i.e. Class III post. Respondents have rightly rejected the representation of the applicant requesting incorporation of his name in the list of eligible candidates working in Class IV cadre as he was already in Class III cadre. Consequently, applicant is not eligible for promotion on the post of Instructor (Carpenter). Respondent no.2 has rightly passed order dated 25-09-2013 rejecting representation of the applicant.

17. Considering all these facts, we find no fault on the part of the respondent no.2 while passing impugned order dated 25-09-2013. There is no merit in the O.A. Consequently, O.A. deserves to be dismissed. Hence, O.A. stands dismissed with no order as to costs.

(B. P. Patil)
Member (J)

(Rajiv Agarwal)
Vice-Chairman (A)

PLACE : AURANGABAD
DATE : 24-03-2017