

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD****TRANSFER APPLICATION NO. 09 OF 2021  
(WRIT PETITION NO. 2006 OF 2020)****DISTRICT : AURANGABAD**

1. **Suryakant S/o Vinayakrao Pathak,** )  
Age : 76 years, Occupation : Pensioner,) )  
R/o : 11, Chaitanya Nagar, Sec. N-7, ) )  
L-2 Cidco, Aurangabad. ) )
2. **Madhukar S/o Gangadhar Mahajan,** )  
Age : 76 years, Occupation : Pensioner,) )  
R/o : 10, Pagariya Colony, Near Rly, ) )  
Station, Aurangabad. ) )
3. **Arvind S/o Shyamrao Deshpande,** )  
Age : 79 years, Occupation : Pensioner,) )  
R/o : "Martand" Bangalow Surana Nagar,) )  
Jalna Road, Aurangabad. ) )
4. **Padmakar Vishnupant Kulkarni,** )  
Age: 78 Years, Occupation : Pensioner, ) )  
R/o: Plot No. 56-, N-4, CIDCO Aurangabad.) )
5. **Surendra Gokul Prasad Dubey (Died),** )  
Through L.R. **A. Alkesh Surendray Dubey,**) )  
Age : 48 Years, Occupation : Business, ) )  
R/O: Nr. Gurudwara, Dhawani Mohalla,) )  
Aurangabad. ) )
6. **Madhavroa Bhanudas Kulkarni,** )  
Age: 83 Years, Occupation : Pensioner ) )  
R/O: 5 Ravindra Nagar, Tilak Nagar, ) )  
Aurangabad. ) )
7. **Bhanudas Dttatrya Kulkarni,** )  
Age : 74 Years, Occupation: Pensioner, ) )  
R/O: N-11/D/22/2 Ravi Nagar HADCO,) )  
Aurangabad. ) )
8. **Shivdas Rama Bhavsar,** )  
Age: 79 Years, Occupation : Pensioner, ) )  
R/O: A/3/7 Tapadia Park N-4 CIDCO, ) )  
Aurangabad. ) )

9. **Dinkar Kishanrao Padalkar (Died)** )  
 Through L.R.'s: )  
**A. Madhav Dinkar Padalkar,** )  
 Age: 46 Yrs, Oc. Business, )  
**B. Milind Dinkar Padalkar,** )  
 Age: 44 years, Occ: Service )  
**C. Sow. Manisha Sanjay Patil,** )  
 Age: 48 Years, Oc: House )  
All Above )  
 R/O: 15, Vivek Nagar Housing, Society,) )  
 N-1-D Sector CIDCO Aurangabad. )
10. **K.B. Shelke,** )  
 Age: 77 Years, Occ : Pensioner, )  
 R/O: Ravindra Nagar, Society, )  
 Tilak Nagar, Aurangabad. )
11. **V.G. Dhayre,** )  
 Age: 82 Years, Occupation : Pensioner, )  
 R/O: Shasrstri Nagar, Garkheda Parisar,) )  
 Aurangabad. )
12. **Vishwambhar Narhari Jagdale,** )  
 Age: 78 Yrs, Occ. Pensioner, )  
 R/o. At Sawangi (harsul) Jalgaon Rd., )  
 Aurangabad. )
13. **Ramesh Ramdas Ramdin,** )  
 Age: 79 Years, Occupation : Pensioner, )  
 R/O: Ravindra Nagar, Plat No. 28, )  
 Aurangabad. )
14. **Vishnu Pant Govindrao Nandedkar,** )  
 Age : 78 years, Occupation : Pensioner, )  
 R/O : Shree Ram, Pundlikwadi, )  
 Mahaweer Chowk, Nanded. )
15. **Yashwant Shankarrao Deshmukh,** )  
 Age : 81 years, Occupation : Pensioner, )  
 R/O : Vinayak Nagar, Bhawarchakra, )  
 Taroda Kh, Nanded. )

- 16. Govind Dattatraya Bhanegaonkar,** )  
Age : 74 Years, Occupation : Pensioner, )  
R/O : 100 A. Kayvailyashanti, )  
Yashwant Nagar, Nanded. )
- 17. Anant Bapurao Bidwai,** )  
Age : 77 Years, Occupation : Pensioner, )  
R/O : H.No. 116/4/1, Saibaba Nagar, )  
Hudco, Nanded. )
- 18. Hiranath Keshavrao Gurjar,** )  
Age : 77 years, Occupation : Pensioner, )  
R/O : C-71, Kabbra Nagar Powadi, )  
Nanded. )
- 19. Suryakant Balbhim Kunturwar,** )  
Age : 81 Years, Occupation : Pensioner, )  
R/O : Sahyadri Nagar (Kaman) Tarad BK, )  
Nanded. )
- 20. Purushottam Govind Chowdhari,** )  
Age : 73 years, Occupation : Pensioner, )  
R/O : 1 Sahyadri Nagar, Tarad BK, )  
Nanded. )
- 21. Nanasaheb Dhondopant Muley,** )  
Age : 75 years, Occupation : Pensioner, )  
R/O : Gurukrupa Ashirwad Nagar, )  
Parbhani. )
- 22. Satyaprem Vasant Rao Prasekar,** )  
Age : 65 Years, Occupation : Pensioner, )  
R/O : Ramkrushna Nagar, Parbhani. )
- 23. Sheshadri Ambadas Kulkarni,** )  
Age: 78 Years, Occupation : Pensioner, )  
R/O: Near R.R. Petrol Pamp, )  
Shivram Nagar Parbhani. )
- 24. Vasant Namdeo Joshi,** )  
Age: 80 Years, Occupation : Pensioner, )  
R/O: Suyog Colony, Wangi Road, Parbhani.)

- 25. Madhukar Narayanrao Bandewar,** )  
Age : 77 Years, Occupation : Pensioner,) )  
R/O: Ramkrushna Nagar, Parbhani. )
- 26. Vishwas Dadaprasad Choudhari,** )  
Age: 66 Years, Occupation : Pensioner, )  
R/O: Pardeshi Galli, Bhokardan Dist. Jalna.)
- 27. Sudhakar Ramkrishna Kulkarni,** )  
Age: 81 Years, Occupation : Pensioner, )  
R/O: 20 Shivneri Nagar, Near Manik )  
Hospital, Garkheda Aurangabad.)
- 28. Suresh Ganpatrao Lalsare,** )  
Age: 68 Years, Occupation : Pensiner, )  
R/O: N-2, B. N-2-1/83, Jaibhavani Nagar,) )  
Behind Petrol Pamp, Thakre Nagar, )  
Aurangabad. )
- 29. Sharad Puroshattamrao Naik,** )  
Age: 66 Years, Occupation : Pensioner, )  
R/O: Sitanjali Apartment Chatrapati Nagar,) )  
Garkheda, Aurangabad. )
- 30. Prabhakar Govindrao Kulkarni (Died),)**  
Through L.R.'s: )  
**A. Pramod Prabhakrao Kulkarni,** )  
Age: 52 Years, Occupation : Business, )  
**B. Krishna Prabhakarrao Kulkarni,** )  
Age: 47 Years, Occ. Service, )  
All above )  
R/o. Shivneri Nagar Plot No. 21, Garkheda)  
Aurangabad. )

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**APPLICANTS****V E R S U S**

- 1. The State of Maharashtra,** )  
(copy to be served upon G.P. High Court)  
Bombay at Aurangabad for Resp. No. 2 to 4.)

2. **Principle Secretary General,** )  
Administration Dept., )  
Govt. of Maharashtra, )  
Mantralaya, Mumbai 32. )
3. **Principle Secretary,** )  
Finance Dept. Govt. of Maharashtra, )  
Mantralaya Mumbai -32. )
4. **Principle Secretary',** )  
Water Resource Dept. (CADA), )  
Govt. of Maharashtra, )  
Mantralaya Mumbai-32. )
5. **Principle Secretary,** )  
Public Works Dept., )  
Govt. of Maharashtra, )  
Mantralaya Mumbai-32. )

.. **RESPONDENTS**

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**APPEARANCE** : Shri D.R. Irale Patil, Advocate for the  
Applicants.

: Shri M.S. Mahajan, Chief Presenting Officer  
and Shri S.B. Mene, learned Special  
Counsel for respondents.

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**CORAM** : **Justice Shri P.R. Bora, Member (J)**  
**and**  
**Shri Bijay Kumar, Member (A)**

**DATE** : **17.02.2022.**  
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**ORDER**

**(Per : Shri Bijay Kumar, Member (A))**

1. A Writ Petition No. 2006 of 2020 was filed by the 30 joint petitioners before the Hon'ble High Court of Judicature of Bombay, Bench at Aurangabad on 28.01.2020 being aggrieved by

the decision of the respondents communicated to them by impugned orders dated 14.01.2019 and 08.11.2019 by which the respondent No. 4 had denied the applicants benefits of scheme of Time Bound Promotion framed under Government Resolution of General Administration Department No. एसआरव्ही- १०९५/प्र.क. १/९५/बारा, मंत्रालय, मुंबई, dated 08.06.1995.

2. Three Civil Application Nos. 9849 of 2021, 9850 of 2021 and 9852 of 2021 were filed in W.P. No. 2006/2020 to condone the delay of 167 days, 328 days and 352 days respectively and to grant leave to bring on record legal representatives for the applicant Nos. 5, 9 and 30 who had passed away. Hon'ble Court passed order on 22.09.2021 granting leave to bring on record Legal Representatives on behalf of diseased petitioners and also to condone delays.

3. On submission made by learned Advocate for the petitioners, the petition along with petition paper-book and affidavit in replies filed were allowed to be transferred to this Tribunal vide order passed on 18.11.2021 by the Hon'ble High Court with a direction to decide the same preferably on or before 30.04.2022 and directed the litigating parties to appear before this Tribunal on 10.12.2021.

4. The Transferred Petition is numbered as T.A. No. 09/2021 by this Tribunal on receipt of the paper book etc. on 29.11.2021. Affidavit in reply on behalf of respondent No. 4 had already been filed on 04.10.2021. Rejoinder to affidavit in reply too had been filed on 20.10.2021. Learned Advocate for the applicants filed copies of certain judgments by way of citations on 18.11.2021. These documents were received along with the petition. However, the respondent Nos. 1 to 3 did not file separate affidavit in reply. As the pleading were complete, the present matter was fixed for final hearing on 03.02.2022, which took place on same date i.e. on 03.02.2022.

5. **Relief prayed for** – The applicants have prayed for relief in terms of para 35 (A), (B) and (C) of the T.A., which is being reproduced verbatim for ready reference as follows:-

*“A. Kindly allow writ petition and call record and proceeding.*

*The Hon’ble Court may be pleased to pass appropriate order & quash and set aside the impugned order dt. 08.11.2019, 14.11.2019, 29.11.2019 & 13.12.2019, passed by the Respondent No. 4, thereby denied the benefit of Time Bound Promotional Scheme framed under G.R. dt. 08.06.1995 giving effect from 01.10.1994 in the pay scale of Rs. 2200-4000 and grant*

*deceleration that the petitioners are entitled for the original scheme of 08.06.1995 for pay scale Rs. 2200-4000 from 01.10.1994 and making revised pay fixation in the corresponding pay scale for the purpose of monetary benefits & reversion of pensionary benefits.*

- (B) **B1)** *Quashing & setting aside the impugned order dt. 08.11.2019, 14.11.2019, 29.01.2019 & 13.12.2019, passed by the Respondent No. 4, by issuing a writ of Mandamus or a writ in like nature, direct the respondents to consider earlier service of 12 years prior to Time Bound Promotional Scheme of dt. 08.06.1995 with effect from 01.10.1994 & provide benefit of pay scale of Rs. 2200-4000 making revised pay fixation in the corresponding pay scale for the purpose of monetary benefits & revision of pensionary benefits.*
- (C) *Pending hearing and final disposal of this Writ Petition, the Hon'ble Court may be pleased to pass the necessary order and stay the effect & implementation of the Impugned Orders under Challenge & direct the respondents to grant similar relief granted in identical writ petition no. 346/2009 and oblige."*

6. **Defining the cause of action in details covered by**

**impugned communications / orders** :- On perusal of Transfer Application, it prima-facie, appears that though the applicants have been seeking relief under clause (2) of the G.R. dated 08.06.1995 under which scheme of Time Bound Promotion has been framed, they have been leading pleadings relating to Clause



2 (b) (3) of G.R. dated 01.04.2010 under which scheme of modified Assured Career Progression Scheme has been framed. It is also observed that the prayer for condonation of delay submitted by the applicants before Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad through a Miscellaneous Applications filed by the petitioners in W.P. No. 2006/2020, was by referring to only two impugned orders dated 14.01.2019 and 08.11.2019, whereas, there is reference to four communications/ orders in prayer clause. Therefore, all the four communications mentioned in prayer clause have been taken for defining the exact cause of action as follows:-

(a) Impugned order dated 08.11.2019 (page No. 186 of paper book). Extract of relevant part of this impugned order is as follows:-

**“विषय :- शाखा अभियंता वर्ग-२ यांना आश्वासित प्रगती योजनेचा पहिला टप्पा दि.**

**०१.१०.१९९४ पासून मिळणेबाबत.,**

**संदर्भ :- आपले दि. २३.०९.२०१९ रोजीचे निवेदन.**

उपरोक्त विषयासंदर्भात आपल्या संदर्भीय पत्राच्या अन्वयाने आपणांस कळविण्यात येते की, सामान्य प्रशासन विभाग, शासन निर्णय दिनांक ८.६.१९९५ अन्वये, कालबद्ध पदोन्नती योजना राबविण्यात आली होती. सदर योजना केवळ गट “क” व “ड” मधील कर्मचा-यांसाठी राबविण्यात आली होती. त्यानुसार गट “क” व “ड” मधील कर्मचा-यांना पदोन्नतीची वेतनश्रेणी दिनांक १.१०.१९९४ पासून लागू करण्यात आली. सदर योजना अस्तित्वात आली त्यावेळी आपण वर्ग-२ (राजपत्रित) चे

*अधिकारी म्हणून कार्यरत असल्याने सदर योजनेचा लाभ आपणांस अनुज्ञेय ठरत नसल्याने देण्यात आलेला नाही.*

स्वा./-  
(मानसी स. काटकर)  
कार्यासन अधिकारी, महाराष्ट्र शासन”

From above, it is inferred that the respondents had clarified to the applicants their stand that the applicants had been Class 2 (Gazetted) Level employees in the year 1994 whereas, the Time Bound Promotion scheme was applicable only for Group “C” and Group “D” employees and as such, they were not eligible for grant of benefits under the said scheme.

On the other hand, on perusal of representation dated 23.09.2019 (page No. 174 of paper book) made by the applicants, it is clear that the applicants have based their claim for benefits under time-bound promotion scheme of 1995 relying mainly upon following judgments:-

- (i) Hon’ble High Court of Judicature at Bombay in W.P. No. 2605/2017 in the case of The Association of Sub-ordinate Service of Engineers Maharashtra State and Ors. Vs. The State of Maharashtra and Ors., dated 06.02.2019.

- (ii) High Court of Judicature at Bombay Bench at Aruangabad in W.P. No. 1836/2009 in the case of Dongre Damu Koli Vs. The State of Maharashtra and Ors., dated 21.10.2016.
- (iii) The applicant has also drawn reference to administrative order passed on 27.09.2017 vide outward No. जिपऔ/बांध/आस्था-१/कवि/ २०१७/७२६३/३३८०, कार्यालय जिल्हा परिषद औरंगाबाद, dated 27.09.2017.
- (iv) High Court of Judicature at Bombay, Bench at Aurangabad common order in W.P. Nos. 8881/2009, 346/2009, 7462/2008, 6847/2008, 6912/2008, 1834/2008, 6454/2009, 6855/2009 and 8188/2009 in the matter of Pandharinath Eknath Bakshi and Ors. Vs. The State of Maharashtra and Ors., judgment dated 11.01.2017.
- (b) Impugned order dated 14.11.2019 (page No. 187 of paper book).

On perusal of the said order, it is clear that it is a communication from Water Resources Department to the

Chief Engineer of the Department and the Executive Directors of different River Valley Development Corporation guiding them as to how to implement mandates from judgment in W.P. No. 2605/2017 and W.P. No. 3377/2018.

(c) Impugned order dated 29.11.2019 (Page No. 189 of paper book).

By this impugned order, the respondent No. 4 i.e. the Department of Water Resources, Government of Maharashtra has communicated with Chief Engineers and other field Officers, decision of respondent No. 4 taken in consultation with respondent No. 3 and directed them to take action on remaining representations received from retired Dy. Engineers and directly communicate the same to the applicants. Thus, this impugned order is the same as impugned order dated 14.11.2019.

(d) Impugned order dated 13.12.2019 (Page No. 192 of paper book).

It is essentially a reply to legal notice dated 30.11.2019, sent to Adv. Shri Vivek Pingle representing the applicants by which the respondents were requested to

implement the mandate from judgment in W.P. No. 2605/2017 and W.P. No. 3377/2018.

(e)Inferences :- From perusal of the four impugned orders/ communications, following inferences are drawn :-

(i) That one of the 4 communications i.e. dated 08.11.2019 is a reply sent to the applicant Nos. 1, 3 and 4 in response to applicant's representation made on 23.09.2019. Impugned orders dated 14.11.2019 and 29.11.2019 are internal communication by the respondent No. 4 with its field officers giving guidance about how to implement the mandates in W.P. No. 2605/2017 and W.P. No. 3377/2018 and how to deal with various representations made by the retired Deputy Engineers demanding grant of benefit to them of Time Bound Promotion Scheme of the year 1995 and the last impugned order dated 13.12.2019 is essentially in the form of reply to legal notice received by the respondent No. 4 issued on behalf of the applicants. Therefore, the issues of contention is *zeroed down* is a narrow compass as elaborate as follows;

(ii) It is obvious that the applicants and the respondents are not on the same page. By referring to various judgments pronounced by the Hon'ble High Court of Judicature of Bombay which have determined that up-gradation of Junior Engineers to the post of Sectional Engineers does not amount to time-bound promotion as implied under Rule 2(b)(3) of G.R. dated 01.04.2010, the applicants have inferred therefrom that the cited judgments entitle them to get benefit of Time Bound Promotion scheme under G.R. dated 08.06.1995. On the other hand, the respondents have contended that irrespective of the decision that promotion of the applicants as Sectional Engineer was only "up gradation of post" and not "promotion" under Rule 2(b)(3) of the G.R. dated 01.04.2010, the Sectional Engineer do not fall under Class "3" (Group "C") or, Class "4"(Grade "D") category of employees as defined by G.R. dated 21.07.1993 and therefore, were not entitled for benefit of Time Bound Promotion Scheme launched by the G.R. dated 08.06.1995. The respondents have taken stand that the provisions of Clause (2) of the G.R. dated

08.06.1995 does not entitle the applicants, who fall under category of Group 'B' or Class 'II' employees for benefit of Time Bound Promotion under the said G.R. dated 08.06.1995.

7. **Analysis of Facts on record and oral submissions made by the contesting parties :-**

(A) Facts submitted and Arguments made on behalf of the applicants:-

(a) Applicants based their arguments mainly on mandates laid down by Hon'ble High Courts through various judgments. Therefore, let us first analyze the mandate laid down by the judgment in W.P. No. 2605/2017. The Hon'ble High Court vide judgment delivered on 06.02.2019 in W.P. No. 2605/2017 had examined the question whether the up-gradation of the Junior Engineer as Sectional Engineer, in terms of G.R. dated 16.04.1984, amounts to grant of a non-functional promotion and thereby falls within the ambit of clause 2(b)(3) of the G.R. dated 01.04.2010 so as to amount to the 'first benefit' thereunder. Hon'ble High Court, had by the said judgment, decided that the up-gradation to the post of Sectional Engineers as granted under provisions of G.R. dated 16.04.1984 does not constitute grant of

nonfunctional promotion and cannot be treated as the 'first benefit' within the meaning of clause 2(b)(3) of the G.R. dated 01.04.2010.

(b) Secondly, in W.P. No. 3377 of 2018, Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad relied on the judgment delivered by the Principal Bench in W.P. No. 2605 of 2017, dated 06.02.2019 and granted same relief to the petitioners.

(c) Thirdly, the applicants have also relied on a common judgment of Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in a batch of W.P. Nos. 8881/2009, 346/2009, 7462/2008, 6847/2008, 6912/2008, 1834/2008, 6454/2009, 6855/2009 and 8188/2009, dated 11.01.2017. Hon'ble High Court, in the instant Group Writ Petitions passed order that, as admitted by the contesting parties, the petitioners in all these petitions were similarly situated like in the petitioner in W.P. No. 1836/2009 to whom the revised pensionary benefits were already accorded by the respondents and therefore, the petitioners were entitled for same benefits. In absence of details of facts submitted by the petitioner in the judgment in this case, we may not be able to make out ratio



*decidendi* unless the judgment in W.P. No. 1836 of 2009 dated 21.10.2016 is perused.

(d) Now, therefore, let us note down the ratio *decidendi* of judgment of Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in W.P. No. 1836/2009, dated 21.10.2016. On perusal of brief order passed by the Hon'ble High Court, it appears that the petitioner, who was a Sectional Engineer, was granted benefit of Time Bound Promotion under G.R. dated 08.06.1994 and later on, it was found to be a mistake by the respondent Zilla Parishad, which ordered recovery of the benefits of Time Bound Promotion granted. In that background, the petitioner filed W.P. No. 1836/2009 and Hon'ble High Court passed interim order on 03.08.2009, by which respondents were restrained from recovering the amount from the petitioner. In response to the interim order, before, the matter could be examined on merit, the respondents passed the order dated 27.05.2016, by which the recovery was stopped. Therefore, the W.P. No. 1836/2009 was disposed of directing the respondents to implement its own order dated 27.05.2016, if there is no other legal impediment, expeditiously and release payment, if any,

preferably within a period of six months from the date of passing of the order. Therefore, the ratio *decidendi* in the present matter is not available.

(e) Fifthly, the applicants have also cited that the Hon'ble High Court of Judicature at Bombay, Bench at Nagpur passed order on 23.11.2015 in W.P. No. 6329/2015. The matter related to employees in Milk Scheme in the Dairy Development Department. The fact in the matter is that upgradation provided to the petitioner in the year 1988 in pursuance of department's scheme announced by G.R. dated 01.01.1986 was treated as 1<sup>st</sup> Time Bound Promotion, whereas, by that time the scheme of Time-Bound Promotion scheme had not even been launched. Therefore, the ratio in judgment in this W.P. is different and the same may not be relevant for the Original Application under adjudication.

(f) The learned Counsel for the applicants has also referred to citations, which relate to issues of delay condonation or to issue of taking into account past temporary services for the purpose of granting benefits of Time Bound Promotion without conferring benefit of

seniority for period of temporary services to the employees. These citations, though do not have bearing on the present matter, are listed as follows for information :-

- (i) AIR 1999 Supreme Court 598, Civil Appeal No. 3093 of 1988, dated 15.12.1998, Dwijen Chandra Sarkar and Anr. Vs. Union of India and Anr.
- (ii) AIR 1997 Supreme Court 1125 (1), L. Chandra Kumar Vs. Union of India and Ors. in Civil Appeal No. 481 of 1989 with S.L.P. (Civil) No. 16059 of 1992.
- (iii) Civil Appeal No. 4790 of 2009 (Arising out of S.L.P. (C) No. 6207 of 2006) with Civil Appeal Nos. 4791-4887 of 2006 (Arising out of S.L.P. (C) Nos. 6296 and batch), Chairman, U.P. Jal Nigam and Ors. Vs. Jaswant Singh and Ors., decided on 10.11.2006.
- (iv) Supreme Court of India in Special Leave Petition (Civil) Nos. 6609-6613 of 2014, Brijesh Kumar and Ors. Vs. State of Haryana and Ors., decided on 24.03.2014.
- (v) Supreme Court of India in Civil Appeal No. 1214 of 2007 (Arising out of SLP (C) No. 21024 of 2005), New Delhi Municipal Council Vs. Pan Singh and Ors., decided on 08.03.2007.

(B) Facts submitted and Arguments made on behalf of respondents.

- (a) The respondents have submitted that mandates laid down by judgments cited by the applicant relate to applicability of clause 2 (b) (3) of the GR dated 01.04.2010 which have been complied by them. Therefore, claims of the respondents are misplaced in as much as they are seeking benefits of time-bound promotion under GR dated 08.06.1995 citing the judgments in which question of applicability of clause (2) of the related GR of 08.06.1995 was not before the Hon'ble High Courts.
- (b) Further contention of the respondents has been that the applicants do not fall under definition of Group 'C' and 'D' employees and therefore, are not entitled for benefits under scheme of Time Bound Promotion framed by the G.R. dated 08.06.1995. Extract of relevant part of G.R. dated 08.06.1995, which is in Marathi is being reproduced below for ready reference:-

*“शासन सेवेत गट “क” व “ड” संवर्गात काही ठिकाणी पदोन्नतीच्या संधी उपलब्ध नाहीत, तर काही ठिकाणी अशा संधी असल्यातरी पदोन्नती मिळण्यास प्रदीर्घ*

कालावधी लागतो. त्यामुळे कर्मचारी संघटनेतर्फे कालबद्ध पदोन्नतीची योजना राबवावी अशी मागणी सातत्याने करण्यात येत होती. केंद्र शासनाचे यासंबंधी निर्गमित केलेले कार्यालयीन ज्ञापन क्रमांक १०(१)/ई-३/८८, दिनांक १३ सप्टेंबर, १९९१ व तदनंतर वेळोवेळी केलेल्या सुधारणा व अन्य काही राज्य शासनानी अंमलात आणलेली अशाच प्रकारची योजना कर्मचारीवृंदाचे हित लक्षात घेउन राज्य शासकीय कर्मचा-यांसाठी देखील अंमलात आणण्याचा निर्णय शासनाने दिनांक २२ सप्टेंबर १९९४ रोजी घेतला आहे.

२. या पदोन्नतीची तपशिलवार योजना खालीलप्रमाणे आहे :-

गट “क” व “ड” (पूर्वीचे वर्ग ३ व ४) मधील पदधारकांना १२ वर्षांच्या नियमित सेवेनंतर त्यांच्या पदोन्नती साखळीतील वरच्या पदावरील वेतनश्रेणी देण्यात येईल. ज्या कर्मचा-यांना पदोन्नती साखळीतील पदावर पदोन्नतीसाठी पद अस्तित्वात नाही अशा कर्मचा-यांना या निर्णयासोबतच्या परिशिष्टामध्ये दर्शविण्यात आल्यानुसार वरिष्ठ वेतनश्रेणी देण्यात येईल. या योजनेची इतर प्रमुख वैशिष्ट्ये व अंमलबजावणीची कार्यपध्दती खालीलप्रमाणे आहे.

- (अ) ही योजना १ ऑक्टोबर १९९४ पासून अंमलात येईल.
- (ब) या योजनेअंतर्गत वरिष्ठश्रेणी मिळविण्यासाठी पदोन्नतीसाठी विहित कार्यपध्दती, ज्येष्ठतापात्रता, अर्हता परीक्षा, विभागीय या बाबींची पूर्तता करणे आवश्यक आहे.
- (क) सरळ सेवेने प्रविष्ट झालेल्या अथवा पदोन्नतीने नियुक्त झालेल्या कर्मचा-यांच्याबाबतीत एकवेळ या योजनेअंतर्गत १२ वर्षांनंतरच्या नियमित सेवेनंतर वरिष्ठ वेतनश्रेणी अनुज्ञेय असेल.
- (ड) ज्या कर्मचा-यांना यापूर्वी दोन पेक्षाजास्त पदोन्नती मिळाल्या आहेत अशा कर्मचा-यांना योजनेअंतर्गत वरिष्ठ वेतनश्रेणी मिळणार नाही.
- (ई) गट “ड” मधील कर्मचा-यांना या योजनेअंतर्गत गट “क” मधील वेतनश्रेणी म्हणजे रु. ९५०-१४०० दिली तरी त्यांचे सेवानिवृत्तीचे वय ६० हेच असेल. मात्र गट “क” मधील अन्य वरिष्ठ पदांवर त्यांना पदोन्नती मिळाल्यास त्यांचे सेवानिवृत्तीचे वय ५८ वर्षे राहिल. गट “क” मधील पदधारकांना गट “ब” मधील राजपत्रित पदावर पदोन्नती देण्यासाठी या योजनेअंतर्गत विचार केला जाणार नाही.
- (मा) या पदोन्नतीमुळे जबाबदारी आणि कर्तव्ये यात वाढ होत नसली तरी नियमित पदोन्नती प्रमाणे वेतन निश्चितीत लाभ देण्यात येईल. मात्र

वेतननिश्चितीत मिळालेला हा लाभ त्याच वेतनश्रेणीत कार्यात्मक (Functional) पदोन्नती मिळाल्यावर पुन्हा देय होणार नाही.

- (ग) जर कर्मचा-यास विशेष वेतन मिळत असेल तर या योजनेखालील पदोन्नतीनंतर कर्मचा-यांस मूळ वेतनश्रेणीतील विशेष वेतन अनुज्ञेय राहणार नाही.
- (घ) या योजनेअंतर्गत पदोन्नती मिळाली तरी कर्मचा-यांचे नाव कनिष्ठ (मूळ) संवर्गाच्या ज्येष्ठता सूचीत राहिल. आणि सेवा प्रवेश नियमातील तरतुदीनुसार उपलब्ध रिक्ततेत योग्यवेळी नियमित पदोन्नतीसाठी (Functional Promotion) त्याचा विचार करण्यात येईल. नियमित पदोन्नतीस अपात्र ठरलेल्या कर्मचा-यास या योजनेचा लाभ मिळणार नाही. त्याचप्रमाणे नियमित पदोन्नती नाकारलेल्या कर्मचा-यास देखील या पदोन्नतीचा लाभ मिळू शकणार नाही. या अधीच त्यांना (In-Situ) पदोन्नती दिली असल्यास मूळच्या पदावर पदावनत करण्यात येईल. तशा आशयाचे बंधपत्र कर्मचा-यांना लिहून द्यावे लागेल. मात्र देण्यात आलेल्या आर्थिक लाभांची वसुली केली जाणार नाही.”

(c) Referring to clause (3) of the G.R. dated 16.04.1984, by which three years diploma holder Junior Engineers, two years Diploma holder Junior Engineers and non-qualified Junior Engineers were granted up-gradations to Sectional Engineers after completion of 5 years, 7 years and 10 years' service respectively, is quoted as follows:-

“(३) सहाय्यक अभियंता, श्रेणी-२ व शाखा अभियंता या दोन्ही संवर्गातील पदांसाठी समान वेतनश्रेणी, रुपये ६००-३०-७५०-४०-९५० अशी मंजूर करण्यात यावी.”

(d) Classification of employees as Group 'C' and Group 'D' has been done vide G.R. of सामान्य प्रशासन विभाग, शासन निर्णय क्रमांक

-एसआरव्ही-१०८८/प्र.क्र. १३/८८/बारा, मंत्रालय, मुंबई, dated 29.07.1993, on the basis of pay scale as per recommendations of 4<sup>th</sup> Pay Commission. Whereas, the post of sectional engineer was created vide GR dated 16.04.1984 in the pay scale of Rs. 600-30-750-40-950 as per 3<sup>rd</sup> Central Pay Commission. Eligibility for granting of benefits of time-bound promotion scheme is required to be determined as on 01.10.1994 which is during period in which 4<sup>th</sup> pay commission pay-scales were in force. Upon doing so, eligibility of the applicants for benefits under Time Bound Promotion Scheme under G.R. dated 08.06.1995 does not materialize.

C. Working Out Classification of Post of Sectional Engineer

(a) As applicants have not responded to the contention of respondents who have been citing provisions of Clause (2) of GR dated 08.06.1995. For doing so it was required to work out classification of Sectional Engineers under Group 'A', 'B', 'C' or 'D', as the case may be, and show that the applicants met the basic eligibility for getting benefit of the first time-bound promotion under GR dated 08.06.1995. Therefore, first of all, 4<sup>th</sup> pay commission equivalent pay-scale of Rs. 600-30-750-40-950 during 3<sup>rd</sup> pay commission

recommendation needs to be worked out which has been done as follows :-

**Table-1**  
Pay-scales under 3<sup>rd</sup> Pay Commission and their equivalent pay-scales under 4<sup>th</sup> Pay Commission

Sr. No.	Pay Scale as per 3 <sup>rd</sup> Central Pay Commission	Equivalent Pay Scale as per 4 <sup>th</sup> Central Pay Commission
1(a)	(a) 500-20-700-EB-25-900	1640-60-2600-EB-75-2900
1(b)	(b) 550-25-750-EB-30-900	
2(a)	(a) 650-30-740-35-800-EB-40-960	2000-60-2300-EB-75-3200
2(b)	(b) 700-35-880-40-10000	

Above table shows that maximum pay and upper limit of pay scale of Rs. 600-30-750-40-950 granted to Sectional Engineer as per 3<sup>rd</sup> Central Pay Commission may come out to be not less than Rs. 2900 as per 4<sup>th</sup> Central Pay Commission, as the given pay scale falls between the pay scale shown at Sr. No. 1 (b) and 2 (a) is above given table.

(b) Now we, examine classification of post of Sectional Engineer under provisions of G.R. dated 29.07.1993. The classification as given in the said G.R. is as follows:-

**Table -2**  
Classification of Employees under provisions of G.R. dated 29.07.1993

विद्यमान वर्गीकरण	वेतनमर्यादा	सुधारित वर्गीकरण
वर्ग-१	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमाल मर्यादा रु. ३७००/- पेक्षा कमी नाही अशी पदे.	अ
वर्ग-२	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमाल मर्यादा रु. २९००/- पेक्षा कमी नाही आणि रु. ३७००/- पेक्षा कमी आहे अशी पदे.	ब



वर्ग-३	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमाल मर्यादा रु. १४००/- पेक्षा कमी नाही आणि रु. २९००/- पेक्षा कमी आहे अशी पदे.	क
वर्ग-४	ज्या पदांचे वेतन किंवा पदाच्या वेतनश्रेणीची कमाल मर्यादा रु. १४००/- पेक्षा कमी आहे अशी पदे.	ड

From above Table, we see that the pay scale of Sectional Engineer falls under old category of “Class- 2” and new category as “Group-B”.

**8. Conclusion:** - Following conclusions may be drawn from the facts on record and oral submissions made by the contesting parties :-

(a) It is observed that the rule laid down by judgment by High Court of Judicature at Bombay in W.P. No. 2605 of 2017 and W.P. No. 3377/2018 has been that conferring designation of Sectional Engineers to Junior Engineers on completion of certain number of years of service amounts to up-gradation which cannot be treated as non-functional promotion and therefore, the same does not invite any disqualification for Sectional Engineers within ambit of clause 2(b)(3) of the G.R. dated 01.04.2010, by which Modified Assured Career Progression Scheme (in short, ‘MAPS’) has been framed. However, the judgments under reference do not lay down any rule that entitles Sectional

Engineers to get benefits of Time Bound Promotion Scheme framed under G.R. dated 08.06.1995 in spite of their being under classification of Group 'B' or Class 'II' employees in contravention of Clause (2) of the Time-Bound Promotion Scheme 1995.

(b) It is also observed that the Clause (2) of Time-Bound Promotion Scheme framed under GR dated 08.06.1995 prescribes one of the eligibility criteria as per which employees only of Group 'C' and Group 'D' category are entitled to get the benefits of the scheme.

(c) In the instant matter, the applicants, who are Sectional Engineers, had been placed in pay scale of Rs. 600-30-750-40-950 (as per recommendation of 3<sup>rd</sup> Central Pay Commission) in the year 1984. However, the definition of Group 'C' and 'D' category of staff had been defined by GR dated 1993 based on maximum pay and pay-scales. This reference period relates to 4<sup>th</sup> pay commission. In order to compare apple with apple, 4<sup>th</sup> Pay Commission equivalent of the pay scale of Rs. 600-30-750-40-950 (of the period of 3<sup>rd</sup> Pay Commission) has been worked out and it has been found that highest pay in the equivalent pay-

scale is not less than Rs. 2900, which puts the petitioners in “Group-B”/ “Class-II” category. The applicants, for the reasons best known to them, have not responded to this contention of the respondents and instead have been dwelling upon one point argument that granting of designation of Sectional Engineers is only up-gradation. It appears that by advancing this argument the applicants have hoped to get the matter treated like the cited cases covered by W.P. No. 2605/2017 and 3377/2018 resulting into getting the O.A. allowed out of misplaced conclusion.

(d) In our considered opinion, judgment in W.P. No. 1836 of 2009, dated 21.10.2016 and a common judgment in W.P. No. 8881 of 2009 and a batch has been based on the respondent Zilla Parishad Aurangabad, implementing the interim order as final order and accordingly the W.P. was disposed of. It appears that the issue involved in the present Transfer Application i.e. Clause (2) of GR dated 08.06.1995, was not before the Hon’ble High Court for adjudication in the Writ Petitions No. 1836/2009. Even though the ZP Aurangabad had implemented the interim orders as final orders it had further admitted that the matter in the Group W.P. No. 8881/2009 & was identical

with that in W.P. No. 1836/2009. In this back ground, there appears to be a need to examine the claims of applicants in the light of Clause (2) of GR dated 08.06.1995.

(e) From facts on record and oral submissions made, it is clear that the applicants who were Sectional Engineers as on 01.10.1994, have been seeking benefits of Time-Bound Promotion Scheme framed under G.R. dated 08.06.1995. However, the applicants have been silent on the point whether they qualified for the benefits sought as the scheme was applicable only for employees of Group 'C' of Group 'D' as defined by the G.R. of General Administration Department, bearing number एसआरव्ही-१०८८/प्र.क. १३/८८/बारा, मंत्रालय, मुंबई, dated 29.07.1993 (page No. 65 of paper book) considering the pay scale of 600-30-750-40-950 granted to them as on 16.04.1994 i.e. the date of issue of G.R., by which provision for up-gradation to the post of Sectional Engineer was issued. The applicants have thus not attempted to establish that they qualify for benefits of 1<sup>st</sup> Time Bound Promotion stipulated under Clause (2) of G.R. dated 08.06.1995. Instead, the applicants have been dwelling upon the judgments of the Hon'ble High Court of

Judicature at Bombay by which it was decided that up-gradation of Junior Engineers to the rank of Sectional Engineers does not amount to granting them benefit of 1<sup>st</sup> Time Bound Promotion as stipulated under Clause 2(b)(3) of the G.R. dated 01.10.2010, by which the modified Assured Career Progression Scheme has been framed.

(f) The applicants have also relied on a short judgment in W.P. No. 1836 of 2009 in which the issue of recovery of benefits of Time Bound Promotion already granted to certain Sectional Engineer was taken for adjudication and after the Hon'ble Court granted interim relief prohibiting recovery of benefits already paid, the respondents Zilla Parishad passed order giving effect to interim order as final order. Thus, the issue of applicability of Clause (2) of G.R. dated 08.06.1995 was not before the Hon'ble High Court to be decided on merits. The merit of the applicability of Clause (2) of G.R. dated 08.06.1995 has, therefore, been examined in the present Transfer Application with finding that the prayer of the applicants does not meet requirement stipulated by the said clause.

(g) After considering all facts on record and oral submissions made, we are of the considered opinion that

the present Transfer Application is misconceived, is based on misplaced facts and therefore, is devoid of merits.

Hence, we pass following order:-

**ORDER**

- (A) T.A. No. 09/2021 is hereby dismissed for reason of being based on misplaced facts, misconceived and devoid of merits.
- (B) There shall be no order as to costs.

**MEMBER (A)**

**MEMBER (J)**