

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 1071 OF 2019

DISTRICT : AHMEDNAGAR

Virbhadra Ganpatrao Idage,)
Age : 59 years, Occu. : Retired,)
R/o. 64/A, Vishal Niwas, Ashirwad Nagar,))
Troda (BK), Dist. Nanded.) .. **APPLICANT**

V E R S U S

- 1) **The State of Maharashtra,**)
Through its Secretary,)
Water Resources Department,)
Mantralaya, Mumbai.)
- 2) **The Superintending Engineer,**)
Ahmednagar CADA, Ahmednagar,)
Sinchan Bhavan, Fakirwada,)
Ahmednagar-Pune Road, Ahmednagar.)
- 3) **The Executive Engineer,**)
Medium Project Division, Ahmednagar,)
Sinchan Bhavan, Fakirwada,)
Ahmednagar-Pune Road, Dist. Ahmednagar.)
- 4) **The Indian Audit & Account Department,)**
Office of the Accountant General,)
(Accounts & Entitlement -1))
Pratishtha Bhavan, Old C.G.O. Building,)
Maharshi Karve Marge, 2nd Floor,)
Mumbai.) .. **RESPONDENTS**

APPEARANCE : Smt. Suchita A. Dhongde, Advocate for the
Applicant.

: Smt. Sanjivani K. Deshmukh-Ghate,
Presenting Officer for respondent Nos. 1 & 4.

: Shri N.U. Yadav, Advocate for respondent Nos.
2 & 3

CORAM : Justice Shri P.R. Bora, Member (J)
AND
Shri Bijay Kumar, Member (A)
DATE : 11.01.2022.

ORDER

(Pronounced on 11th January, 2022)

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

1. This Original Application has been filed by the original applicant Shri Virbhadra Ganpatrao Idage, R/o Nanded, invoking the provisions of Section 19 of the Administrative Tribunal Act, 1985, challenging the communication issued by the respondent No. 4 bearing No. PR-7/CH-2/P/19/10/60832966/1019429345 /P/19/10/60810122, dated-15.03.2019 addressed to the respondent No. 3 conveying its objection to pension proposal of the applicant. In pursuant to that the respondent No. 3 issued Office Order No. 75/2019 dated 24.06.2019 revising the pay fixation of the applicant.

2. Respondent Nos. 1 to 3 had filed affidavit in reply dated 05.10.2020. Thereafter, this matter came up on Board only on 16.06.2021 due to non-availability of Division Bench. At this stage, the two sides consented that the case may be taken up for

final hearing at the stage of admission itself, which took place on 17.12.2021. Thereafter, the matter has been reserved for orders.

3. The background facts as stated by the applicant may be summed up as follows :-

(a) The applicant was appointed as Technical Assistant on work-charge basis on 13.04.1981 (copy of the said order is not enclosed though stated to be at Annexure A-1. *Later on, upon being asked to submit a correct order of appointment, a photo copy of the same has been submitted on 04.01.2022, which is dated 08.04.1981, no explanation for the discrepancy in respect of date of the order has been put forward*).

(b) The applicant has claimed to have been absorbed as Civil Engineering Assistant (in short, "CEA") with effect from 01.01.1989 in compliance of order of Respondent No. 1 of Irrigation Department, Government of Maharashtra bearing No. स्थाअस १०९८/८२०/(१९८/९८)आ(सां), dated 23.07.1998. *True copy of the said order of absorption as "CEA" has not been made available in support of applicants claim. However, a copy of the said communication from respondent No. 1 dated 29.08.1998 is annexed as Annexure A-2 at page*

No. 14 of the paper book which does not have particulars of employees so absorbed in the rank of "CEA".

(c) The applicant has also stated that he got benefit of first Time-Bound Promotion Scheme w.e.f 01.10.1994 vide order No. उपेप्रवि७/आ-४/वे.नि./३२९२, dated 29.08.1998. Copy of the order is at Annexure A-3, page 15 of the paper book.

(d) The applicant has stated that he was promoted on temporary basis as Junior Engineer (Civil) Group-B (Non Gazetted) vide Order of Department of Irrigation, bearing No. पदोन्नती-११०८/(२६२/२००८)(८) आ. (तांत्रिक), मंत्रालय, मुंबई-४०० ०३२, dated 21.11.2008 (Annexure A-4, page 16 of paper-book).

(e) The applicant has further submitted that he got benefit of Modified Assured Career Promotion Scheme (in short, "MACPS") vide order dated 03.01.2012 (Annexure A-5, page 22 of paper-book).

(f) The applicant retired by superannuation on 31.03.2019.

4. Cause of Action :-

(a) When the pension proposal of the applicant was submitted by respondent No. 3 vide letter No. 216 dated

06.02.2019 the same was returned by the respondent no. 4 vide his letter No. PR-7/CH-2/P/19/10/60832966 /1019429345/P/19/10/60810122, dated- 15.03.2019 with remarks extract of which is reproduced below for ready reference:

“ Sir

Kindly refer to the pension case sent vide your letter No. mentioned above (No. 206 dated 06.02.2019). In this regard I am to state that

1) This office is unable to process the pension case for want of following :

1. SHRI IDAGE JOINED GOVT. SERVICE AS ON 13.04.1981 & APPOINTED ON CRT AS ON 13.04.1986. HENCE, HE WILL BE ELIGIBLE FOR 1ST ACP AS ONLY AFTER 13.04.1998 (AFTER COMPLETION OF 12 YEARS' SERVICE). BUT IT WAS GIVEN ON 01.10.1994 WHICH IS INCORRECT. SUBSEQUENTLY, HE WILL BE ELIGIBLE FOR 2ND ACP ONLY AFTER 13.04.2010. (AFTER COMPLETION OF 24 YEARS).

2. PLEASE CHECK AND RESUBMIT THE CASE ALONG WITH REVISED FORM-6 AND TAKING REVISED NOTE IN SERVICE BOOK UNDER PROPER ATTESTATION. IF

ANY CHANGES IN PAY AS ON 01.01.2006,
THEN THE SAME MAY BE VERIFIED
FROM ACCOUNTS OFFICER, PAY
VERIFICATION UNIT.

3. NOTING OF LAST PAY ALSO BE TAKEN IN
SERVICE BOOK.

2) Pension papers/ Service book of Shri
VIRBHADRA GANPATRAO IDAGE is being
returned herewith for want of above compliance,
with a request to resubmit the same, duly
complied, so as to enable this office to finalize
the pension case. Please note that the case is
treated as closed for the present and will be re-
opened on receipt of the information/ document
from your department.

3) In case, any delay is anticipated in complying
with the remarks raised above, Provisional
Pension / DCRG as applicable under rules may
be sanctioned to the govt. servant.

4) Kindly quote the pensioner file ID No.
2121972042 while resubmitting Pension papers
and for all future correspondence.

An early action is requested.

Yours faithfully,

Sd/-

Sr. Accounts Officer/ PR-7”

(b) Upon receipt of objection from respondent No. 4 to the pension proposal of the applicant, the respondent No. 2 passed revised orders dated 24.06.2019 revising the dates of granting benefits of "TBPS" and "ACPS" to the applicant and fixing his pay accordingly.

5. **Pleadings and Submissions made by the Applicant** :- The learned Advocate for the applicant cited following judgments and orders to support relief sought by the applicant :-

- a) Order passed by the Tribunal, Bench at Aurangabad in O.A. No. 701 of 2015, dated 22.09.2017.
- b) Judgment of Hon'ble High Court of Judicature at Bombay in W.P. No. 581 of 2008, dated- 23.09.2019.
- c) Order passed by this Tribunal at Principal Bench in Review Application No. 21 of 2019 in O.A. No. 238 of 2016 with Review Application No. 09 of 2020 in O.A. No. 536 to 538 of 2018; with Review Application No. 13 of 2020 in O.A. No. 539 & 540 of 2018 and O. A. No. 775 to 777 of 2018 and Review Application No. 21 of 2019 in O.A. No. 238 of 2016.

6. **Pleadings and Submissions made by Respondents** :- The respondent Nos. 1 to 3 have filed affidavit in reply by which the respondents have advanced following arguments justifying its actions :-

- (a) Action of respondents is in accordance with the clarification issued by Water Resources Department, Government of Maharashtra, Mantralaya, Mumbai-400 032 vide letter No. काबप-१२१३/(प्र.क. २८३/२०१३) आ(तां), dated 19.05.2014 that the employees on CRTE are first engaged on daily wages. However, while granting benefits of Time-Bound Promotion Scheme the period of 12 years of regular service has to be counted from the date of appointment of an employee on CRTE basis only. Likewise, once a Technical Assistant is promoted as CEA, the period of 12 years has to be counted from the date of promotion as CEA.
- (b) Respondents have only complied with the directions given by the respondent No. 4 vide his letter No. PR-7/CH-2/P/19/10/60832966/1019429345/ P/19/10/60810122, dated- 15.03.2019 to revise the orders of granting benefits of "TBPS" and "ACPS".
- (c) Respondents rely on the Order passed by MAT, Principal Bench in O.A. No. 617 of dated 02.12.2015 upholding guidelines issued by Water Resources Department on 19.05.2014.

(d) Respondents were going to file Review Petition against the order passed by this Tribunal in O.A. Nos. 536, 537, 538, 539, 540, 775, 776, 777 and 1084, all of 2018 and review petition filed in O.A. No. 238 of 2019.

(e) Payment of provisional pension and final payment of following items have been made to the applicant :-

Sr. No.	Item of payment and date of payment made	Amount of final payment
1	GIS, Date 12.04.2019	Rs. 1,65,082
2	G.P.F. Date- 16.04.2019	Rs. 13,84,874
3	Leave Encashment, Date- 01.06.2019	Rs. 6,56,300
4	G.P.F. balance amount, Date- 29.06.2020	Rs. 31,106
5	7 th Pay Commission, 1 st Installment of Difference	Rs. 71648
	Total	Rs. 23,09,010

7. **Analysis of facts on record** :-

(a) It is observed that this Tribunal, Bench at Aurangabad, had passed orders in O.A. No. 701 of 2015, dated 22.09.2017 [Coram: Shri J.D. Kulkarni, Vice-Chairman (J)], after taking into account facts and operative parts of the orders passed by this Tribunal in O.A. No. 617 of 2014, dated- 02.12.2015 by which government letter No. काबप-१२१३/(प्र.क. २८३/२०१३) आ(तां), dated 19.05.2014, addressed

to the Principal Accountant General (Accounts & Entitlement-1), Maharashtra, Mumbai was upheld. We are aware of the fact that the extract of para 13 of the order passed by this Tribunal in O.A. No. 617/2014 reads as below: -

“From these clarifications, it is crystal clear that the service on daily wages or before regularization could not be counted for T.B.P. Similarly, for the persons appointed as C.E.A., were given up gradation in pay scale (श्रेणीवाद), they were not eligible to be given T.B.P., unless they have completed 12 years as C.E.A. and has upheld the Govt. letter dated 19.05.2014.”

As the orders of this Tribunal in O.A. No. 701 of 2015 has not been challenged by the State Government, therefore, the earlier order in O.A. No. 617 of 2014, dated 02.12.2015 no longer subsists.

(b) The learned Advocate for the applicant has, during final hearing of the matter held on 17.12.2021, submitted a copy of common order passed by the Principal Bench of this Tribunal in all the Review Applications stated to have been filed by the respondent No. 1, list of which is at Annexure R-1, page 57 of the paper-book. The Principal

Bench of this Tribunal has dismissed all the 3 Review Applications filed by the Respondent No. 1 and therefore, the contention of the respondents to that effect no longer subsists.

(c) The applicant has also cited the judgment of Hon'ble High Court of Judicature of Bombay, Bench at Aurangabad in **W.P. No. 581 of 2008, Social Secretary (Social Forestry), Govt. of Maharashtra & Ors. Vs. Tulsidas Vishwanath Dhanwade and three Ors.**, dated 23.09.2019 [Coram: Shri Pradeep Nandrajog, C.J. & Shri R G. Avachat, J] . The Hon'ble High Court had ruled as follows :-

“10] The contention is without any sound legal basis for the reason the settled law is that unless a person is accorded permanent employment, the benefits of permanent employment have to be denied. The law does not draw any distinction between the post being a temporary post or a permanent post. As long as the appointment is permanent with benefit of increments in the pay scale being granted, if a temporary post is subsequently made a permanent post and the appointee on the permanent post against a temporary post becomes permanent appointee on a permanent

post, the benefit would be from the date of initial appointment.”

(d) We have also made reference to the Judgment of Hon'ble High Court of Judicature at Bombay, bench at Aurangabad in **Writ Petition No. 9051 of 2013, the State of Maharashtra and Ors Vs. Smt. Meena A, Kuwalekar** and a batch of similar petitions [2016 SCC Online Bom 2497: (2016) 3 AIR Bom R 722]. This judgment can be termed as the water-shed judgment in this respect, which has settled the issue whether or not temporary services of a Government employee, rendered prior to regularization of his/her services, should be taken in to account for granting benefits of Time-Bound Promotion Scheme and Modified Assured Career Promotion Scheme. For this purpose following filters can be said to be the acid test :-

- i. The post on which temporary appointment has been made is a permanent post or, has been made permanent subsequently, and vacancy thereon is sanctioned.*
- ii. The employee had requisite qualification prescribed in respective recruitment rules at the time of temporary appointment.*

- iii. There is no back-door entry and a fair, transparent procedure, as prescribed, has been followed for making recruitment, giving equal opportunity to similarly placed candidates before making appointment on temporary basis.*
- iv. From the date of appointment the employee has been placed in the regular pay scale to the post to which he came to be appointed.*
- v. Regular service includes continuous service, but technical break given merely to infringe applicable rules is to be ignored.*

8. Conclusion :- Though this Original Application has not been drafted with accuracy of facts stated therein and some of the important documents have not been enclosed as Annexures, the underlying fact constituting cause of action is understood from the communication between respondent No. 4 on one side and other respondents on the other side. The case laws too, are well settled as analyzed in preceding para No. 7. It is admitted by the two contesting sides that the applicant had been duly appointed as Technical Assistant on work charge basis, absorbed in the cadre of "CEA", promoted as subsequently Junior Engineer before his retirement on 31.03.2019. There is discrepancy in respect of date of his appointment as Technical Assistant on

work-charge basis and copies of documents evidencing his conversion of employment as CTRE and absorption in rank of “CEA” have not been enclosed, which may be verified by the respondents while giving effect to the order being passed in the Original Application and therefore, in our opinion the same may not amount to fatal error. The applicant is obviously not a back-door entrant, had been appointed on work-charge basis on pay-scale prescribed for the post, he had all the minimum qualifications prescribed for the post at the time of his appointment, the vacancy was sanctioned one. The applicant has been, later on absorbed on permanent basis on a substantive position on a sanctioned post. Therefore, in our considered opinion, the case of the applicant passes through all the filters which have emerged from the judgment of Hon’ble High Court of Judicature at Bombay, bench at Aurangabad in **Writ Petition No. 9051 of 2013, the State of Maharashtra and Ors Vs. Smt. Meena A, Kuwalekar** and a batch of similar petitions. Therefore, the services of the applicant on work-charge / temporary basis qualifies for consideration for granting him benefit of first time-bound promotion, subject to meeting all other prescribed criterion. Accordingly, following order is being passed : -

ORDER

After considering facts on record and oral submissions made by the two contesting sides, the Original Application No. 1071 of 2019 is hereby allowed in following terms :-

- (A) The communication issued by the Respondent No. 4, the Accountant General (A&E) Maharashtra State bearing letter No. PR-7/CH-2/P/19/10/60832966/1019429345/P/19/10/60810122, dated-15.03.2019, is hereby quashed and set aside.
- (B) The regular services rendered by the applicant on work charge basis as Technical Assistant should be taken into account for grant of benefit of Time-Bound promotion as per G.R. dated 08.06.1995 and also for granting benefits of "MACPS".
- (C) The applicant shall earn annual increment during the period of regular services rendered as Technical Assistant on Work-Charge basis.
- (D) The respondents shall take into account the period of regular services rendered by the applicant as Technical Assistant on work-charge bases as qualifying services for the purpose of pensionary benefits. However, the period of services rendered as Technical Assistant on Work Charge basis shall not be considered for determining his service seniority.

- (E) The applicant shall not be entitled for any interest payment on any amount determined to be payable to him under this order.
- (F) In view of above stated background facts, the respondents must confirm critical information such as the date of appointment of the applicant of work-charge basis etc. from the original record and complete the implementation of this order within 6 months of passing this order.
- (G) No order as to costs.

MEMBER (A)
(Bijay Kumar)

MEMBER (J)
(P.R. Bora)