

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 361 OF 2018

DISTRICT : AURANGABAD

Anil Govindrao Tornekar
Age : 52 years Occ: Pharmacist,
R/o. Behind Tourist Home, House No. 5-9-5-P,
Gurukrupa Building, Railway Station Road,
Aurangabad.

.. **APPLICANT**

V E R S U S

01. The State of Maharashtra,
Through the Secretary,
Medical Education and Research,
Mantralaya, Mumbai.
02. The Director,
Directorate of Medical Education and Research,
St. Georges Hospital Compound,
Mumbai.
03. The Dean
Government Medical College & Hospital,
Aurangabad.

.. **RESPONDENTS**

APPEARANCE : Shri A.D. Sugdare, Advocate for the Applicant.

: Shri I.S. Thorat, P.O. for the Respondents.

CORAM : **Shri V.D. Dongre, Member (J)**
and
Shri Bijay Kumar, Member (A)

Reserved on : **19.01.2023**

Pronounced on : **17.02.2023**

ORDER**(Per : Shri V.D. Dongre, Member (J))**

1. The present Original Application is made seeking direction to the respondent Nos. 2 and 3 for giving requisite benefits of first and second time bound promotions taking into account promotional post of Pharmacist as Selection Grade Pharmacist and not as Senior Pharmacist on the basis of which, the respondent No. 2 by the impugned communication / order dated 31.03.2018 (Annexure A-6) rejected the representation made in that regard by the applicant. The said letter / communication dated 31.03.2018 (Annexure A-6) is challenged in this Original Application.

2. The facts in brief giving rise to this application can be stated as follows :-

(a) The applicant initially was appointed as Pharmacist in the office of respondent No. 3 i.e. the Dean, Government Medical College and Hospital, Aurangabad on 01.08.1991. The applicant is presently working on the said post in the said office of respondent No. 3.

(b) The Government of Maharashtra introduced scheme of time bound promotion from 01.10.1994 vide G.R. dated

08.06.1995 in order to remove stagnation for want of promotional post after completing 12 years continuous service on the same post. Subsequently, the Government closed the said scheme and introduced new scheme known as "Assured Career Progression Scheme" (in short, "ACPS") 2001 by issuing G.R. dated 20.07.2001. Similarly second time bound promotion / ACPS scheme was also declared subsequently as per G.R. dated 01.04.2010.

(c) The respondent No. 3 considered the claim of the applicant for grant of first time bound promotion after completing 12 years continuous service on the post of Senior Pharmacist in the pay scale of Rs. 5000-150-8000 (Revised Pay Band 9300-34800 with Grade Pay of Rs. 4200) from 01.08.2003 vide office order dated 17.12.2004 (Annexure A-1). According to the applicant that was wrong. According to the applicant, he was entitled for the pay scale with Grade Pay of Rs. 4300/-. Subsequently, his claim was considered for grant of second time promotion (ACPS) after completion of 24 years being completed on 01.08.2015, he was granted the said benefit as per the order dated 07.10.2015 (Annexure A-2) issued by the respondent No. 3

by granting him pay scale in the pay band of Rs. 9300-34800 with Grade of Rs. 4300/-.

(d) It is the contention of the applicant that in fact the applicant was eligible and entitled for first ACPS in the pay scale of Rs. 5500-9000 (Revised Pay Scale of Pay Band-2 Rs. 9300-34800 with Grade Pay of Rs. 4300) on the post of Selection Grade Pharmacist, because that is only a promotional post as per Recruitment Rules. The Selection Grade Pharmacist is only the promotional post of the post of Pharmacist, which post is held by the applicant, as per the recruitment rules for the post of Selection Grade, which were published on 26.09.1970. The applicant therefore, submitted representation dated 18.05.2016 (Annexure A-3) addressed to the respondent No. 3 and requested thereby to consider his claim accordingly. The respondent No. 3 in fact recommended the case of the applicant positively by submitting proposal dated 15.02.2017 (Annexure A-4) to the respondent No. 2 i.e. the Director of Medical Education and Research, Mumbai. However, while making the said proposal, the respondent No. 3 committed mistake by mentioning pay scale of the Senior Pharmacist of Rs. 5000-8000 after 12 years' service as Pharmacist. It should have

been in the pay scale of Rs. 5500-9000 (Revised pay scale of Rs. 9300-34800 with Grade pay of Rs. 4300/-)

(e) As the respondent No. 3 i.e. the Dean, Government Medical College and Hospital, Aurangabad did not decide the applicant's representation dated 18.05.2016 (Annexure A-3) within reasonable period, the applicant filed Original Application No. 754/2017 before this Tribunal. This Tribunal by order dated 14.03.2018 (Annexure A-5) decided the said O.A. No. 754/2017 and was pleased to direct the respondent Nos. 2 and 3 to decide the said representation of the applicant within stipulated time. After receipt of the said order, the respondent No. 2 decided the applicant's representation and communicated its decision to the applicant by the impugned letter/ communication dated 31.03.2018 (Annexure A-6), thereby rejecting the claim of the applicant on vague and unsustainable grounds. The said decision was taken by the respondent No. 2 without application of mind and without taking into consideration the relevant recruitment rules of the post of Selection Grade Pharmacist, which provided feeder post for the said post as Pharmacist. Hence, the present Original Application.

3. (a) The present Original Application is resisted by filing affidavit in reply on behalf of respondent Nos. 1 to 3 by one Prakash S/o Nathaji Dehade, working as Administrative Officer, in the office of the Dean, Government Medical College & Hospital, Aurangabad, thereby he denied all the adverse contentions raised in the present Original Application. It is specifically contended that the applicant has claimed on his own assumption about applicability of pay scales to his post and higher pay scale to be granted as time bound promotion, which are two separate issues. The said scheme is introduced to remove stagnation in the channel of promotion due to non-availability of higher posts for promotion like isolated post.

(b) It is submitted that the grievance about ACPS was made by the applicant before the Hon'ble Lokayukta, Maharashtra where response / report was submitted to the office of Hon'ble Lokayukta, whereby it was clearly mentioned that the applicant was entitled for higher pay scale of Rs. 5000-8000. The available recruitment rules for the Selection Grade Pharmacist were quite old and were prepared by the then Urban Development and Housing Department. The Medical Education and Drugs Department

came into existence afterward. Preparation of new revised recruitment rules is in process. In view of the same, there is no merit in the O.A. and the same is liable to be dismissed.

4. We have heard the arguments advanced by Shri A.D. Sugdare, learned Advocate for the applicant on one hand and Shri I.S. Thorat, learned Presenting Officer for the respondents on the other hand.

5. Undisputedly the time bound promotion was granted by the Government to the Government servants belonging to Group-C and Group-D cadre by issuing G.R. dated 08.06.1995 w.e.f. 01.10.1994 to remove stagnation for want of promotion post after completing 12 years continuous service on the same post. The Government closed the said scheme and introduced new scheme known as "Assured Career Progression Scheme" 2001 by issuing G.R. dated 20.07.2001 and second ACPS by issuing G.R. dated 01.04.2010.

6. Further undisputedly the applicant was granted first time bound promotion / ACPS after completion of 12 years' service only of the post of Senior Pharmacist in the pay scale of Rs. 5000-150-8000 (Revised Pay Band of Rs. 9300-34800 with Grade

Pay of Rs. 4200/-) from 01.08.2003 vide office order dated 17.12.2004 (Annexure A-1) issued by the respondent No. 3. Further he was granted second benefit of ACPS after completion of 24 years of continuous service on the same post vide order dated 07.10.2015 (Annexure A-2) in the pay band of Rs. 9300-34800 with Grade of Rs. 4300/ from 25.06.2015 (Annexure A-2) issued by the respondent No. 3.

7. According to the applicant he ought to have been granted first ACPS w.e.f. 25.06.2003 in the pay scale of Rs. 5500-9000 (Revised Pay Scale of Pay Band-2 Rs. 9300-34800 with Grade Pay of Rs. 4300) on the post of Selection Grade Pharmacist, because this is a promotional post as per recruitment Rules. In this regard, the applicant has placed on record G.R. dated 26.09.1970 issued by the Urban Development, Public Health and Housing Department, Government of Maharashtra regarding recruitment rules for the post of Selection Grade Pharmacist. The said Recruitment rules as follows :-

“ Recruitment Rule for the post of Selection Grade Pharmacist

Appointment to the post of Selection Grade Pharmacist shall be made either :-

(A) By Promotion to the post shall be made either

(i) Who have at least five years' experience as Pharmacist.

(ii) ability to do the work as certified by the Dean/Principal and Professor of Pharmacology.

(B) By nomination amongst the candidates who

(i) unless already in service are not more than 25 years

(ii) Possess degree in Pharmacy i.e. B. Pharm as recognized University and is registered under the Parma Act 1948.

2. Provided that the age limit will be relaxed in the case of candidate having exceptional qualifications;

3. A person appointed either by nomination or promotion will be required to pass the examination in Hindi and Marathi according to Prescribed rules.”

8. Above-said rules make it explicit and clear that the selection on promotion to the post of Selection Grade Pharmacist is from feeder cadre of from Pharmacist, who have at least five years' experience as Pharmacist and ability to do the work as certified by the Dean / Principal and Professor of Pharmacology. The respondents, however, granted first ACPS pay scale to the applicant for the post of Senior Pharmacist. The respondents, however, have not placed on record any recruitment rules of Senior Pharmacist. In this regard, the respondents have placed reliance only on pay scale of different posts prescribed under Maharashtra Civil Services (Revised Pay) Rules, 2009 wherein there is mention of post of Senior Pharmacist having pay scale of Rs. 5000-8000 (Revised Pay scale of Rs. 9300-34800 with Grade Pay of Rs. 4200/-). In the very said document the post of

Selection Grade Pharmacists is also mentioned with pay scale of Rs. 5500-9000 (Revised Pay Scale of Rs. 9300-34800 with Grade Pay of Rs. 4300/-).

9. In this regard, learned Advocate for the applicant placed reliance on the copy of the order dated 16.09.2014 passed in O.A. No. 49/2005 by the co-ordinate Bench of this Tribunal at Nagpur in identical situation, where the applicant was also working as Pharmacist was declared entitled to be restored in the scale of Rs. 5500-9000 meant for Selection Grade Pharmacist only and accordingly his pension was ordered to be fixed. The said order was challenged before the Hon'ble High Court of Judicature at Bombay, Nagpur Bench by filing W.P. No. 7116/2017. The said W.P. was disposed of by the order dated 23.07.2018 confirming the above-said order dated 16.09.2014 passed in O.A. No. 49/2005. In the said order it was observed as follows :-

“ The findings of the Tribunal that the post of Senior Pharmacist was not available to be filled in by way of promotion in the year 1995 is based upon the communication dated 22/12/2016. Our attention is invited to Ground No. E on Page No. 18 of the petition wherein it is stated that the controversy to be decided herein is promotional post which was available at the relevant time.

It seems that only two posts of Senior Pharmacist were available in the entire State, one was in J. J. Hospital and the another one was in Sasoon Medical College, Pune.

We are unable to find any statement that in the year 1995, these two posts were required to be filled in by way of promotion and not by way of direct recruitment. The Tribunal has held that these two posts were required to be filled in by way of direct recruitment.

We do not find any reason to interfere in the order of the Tribunal. Writ petition is dismissed.”

10. Considering the decision of the learned co-ordinate Bench of this Tribunal at Nagpur in identical situation, we have no reason to deviate from view taken therein. No any document is placed on record by the respondents to take a different view. In view of the same, we find that the applicant shall be entitled for first ACPS in the pay scale of the post of Selection Grade Pharmacist and not the pay scale of Senior Pharmacist, as has been wrongly given to the applicant and thereafter benefit of second ACPS in accordance with law.

11. As discussed earlier as the applicant did not get the benefit of first ACPS in accordance with law as reflected in the order of second ACPS dated 17.12.2004 (Annexure A-1), the applicant made representation dated 18.05.2016 (Annexure A-3) pleading entitlement of first ACPS in the pay scale of the post of Selection

Grade Pharmacist, as the applicant was granted first ACPS in the pay scale of the post of Senior Pharmacist. The said representation was pending with the respondent No. 3. The respondent No. 3 forwarded the said presentation to the respondent No. 2 under proposal dated 15.02.2017 (Annexure A-4) to the respondent No. 2 i.e. the Director of Medical Education and Research, Mumbai with favourable remark for consideration. No decision was taken on the same for reasonable period. Therefore, the applicant filed Original Application No. 754/2017 before this Tribunal. The said O.A. was disposed of by the order dated 14.03.2018 (Annexure A-5) giving direction to the respondent Nos. 2 and 3 to decide the said representation of the applicant within stipulated time. After receipt of the said order, the respondent No. 2 decided the applicant's representation and communicated its decision to the applicant by the impugned letter/ communication dated 31.03.2018 (Annexure A-6), thereby rejecting the claim of the applicant on vague and unsustainable grounds.

12. For the reasons stated hereinabove the decision of the respondent No. 2 rejecting the claim of the applicant is totally unsustainable in the eyes of law. Hence, the impugned letter / communication dated 31.03.2018 (Annexure A-6) is required to

be quashed and set aside. In view of the same, we proceed to pass the following order :-

ORDER

The Original Application is allowed in following terms :-

- (A) The impugned communication / letter dated 31.03.2018 (Annex. A-6) is hereby quashed and set aside.
- (B) It is declared that the applicant is entitled for the pay scale of the post of Selection Grade Pharmacist of Rs. 5500-9000 (Revised Pay Scale of Pay Band-2 Rs. 9300-34800 with Grade Pay of Rs. 4300) as first benefit of ACPS after completion of 12 years of continuous service and therefore the respondent Nos. 2 and 3 are directed to grant said pay scale to the applicant and accordingly further grant benefit of second ACPS after completion of 24 years of continuous service as on 01.08.2015 and to pay difference of pay and allowances to the applicant within a period of two months from the date of receipt of this order.
- (C) There shall be no order as to costs.

MEMBER (A)

MEMBER (J)