

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 629 OF 2019
(Subject – Time Bound Promotion/ Assured Career Progression Scheme)

DISTRICT : OSMANABAD

Masarat Begum W/o Late Mohammad Mazrul Haqq.,)

Age : 49 years, Occu. : House Wife,)

R/o : House No. 1-109, Momin Galli,)

A/P. Kalam, Tq. Kalam, Dist. Osmanabad.)

.. APPLICANT

V E R S U S

1) **The State of Maharashtra Through**)
The Principal Secretary,)
General Administrative Department,)
Madam Cama Marg, Hutatma Rajguru)
Chowk, Mantralaya, Mumbai 400032,)
Government of Maharashtra,)
Mantralaya, Mumbai – 400 032.)

2) **The Principal Secretary,**)
Finance Department, Madam Cama)
Marg, Hutatma Rajguru Chowk,)
Mantralaya, Mumbai- 400 032.)

3) **The Principal Secretary,**)
Water Resource Department, Madam)
Cama Marg, Hutatma Rajguru Chowk,)
Mantralaya, Mumbai - 400 032.)

4) **The Superintending Engineer & Administrator,)**
Command Area Development Authority)
Beed, Tq. & Dist. Beed.)

.. RESPONDENTS

APPEARANCE : Shri V.G. Pingle, Advocate for the Applicant.

: Smt. M.S. Patni, Presenting Officer for
Respondents.

CORAM : **SHRI BIJAY KUMAR, MEMBER (A).**

DATE : **23.11.2021.**

ORDER

1. This Original Application (St.) No. 1685 of 2018 had been filed by one Smt. Masarat Begum W/o Late Mohammad Mazrul Haqq., R/o.Osmanabad on 05.10.2018 invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985, thereby seeking relief in terms of issue of directions to the respondents to grant benefits of two non-functional time bound promotions to her late husband on completion of 12 and 24 years of service and also to grant consequential monetary benefits along with arrears. The O.A. was registered after delay condonation on 12.07.2019 and registered as Original Application No. 629/2019.

2. **The background facts of this matter may be summed up as follows:-**

(a) The applicant's husband was appointed on a Group-C post of a Junior Engineer on 16.01.1979. He retired on superannuation on 31.12.2010 from the post of Junior Engineer.

(b) As per submissions made by the applicant in the OA, the applicant's late husband was of the view that getting pay-scale of Sectional Engineer was not beneficial, as the same was up-gradation only and therefore, he was not interested in getting pay-scale of Sectional Engineer on completion of 5 years' service as Junior Engineer. Instead, he wanted to get benefit of time bound promotions to the pay scale of Sub-Divisional Officer and Executive Engineer after the schemes in this regard were launched. However, the applicant has not elaborated any reason behind the fact that her late husband had made the first representation on 04.05.2016, i.e. after over 5 years of his retirement on superannuation, to get time bound pay-scale promotion as Sub-Divisional Officer w.e.f. 01.10.1994 and as Executive Engineer w.e.f. 01.10.2006. The applicant's late husband made follow up representation on 28.07.2017.

(c) The applicant's husband died on 01.03.2018. After his death, the applicant has filed the present Original Application.

3. **Condonation of delay in filing Original Application** :-

The applicant had filed Miscellaneous Application No. 400 of

2018 in O.A. St. No. 1685/2018 for condonation of delay of 7 years and 3 months in filing the accompanying Original Application, which was granted on 12.07.2019.

4. **Relief Sought**– The applicant sought following reliefs as listed in para No. 9 of the Original Application:-

“(A) The Original Application may kindly be allowed.

(B) By order or direction respondents may please be directed to declare that Applicant’s husband (the deceased employee) is entitle for getting two promotional post’s pay scales of (1) Sub Divisional Officer and (2) Executive Engineer, after completion of 12 and 24 years of service or 1.10.1994 and 1.10.2006 respectively and liable to get consequential monetary benefits also with its arrears.

(C) Pending hearing and final disposal of the O.A. respondents be directed to decide the representation pending with them.

(D) Any other appropriate relief in the interest of justice may kindly be granted.”

5. **Pleadings and Citations made**:-

(a) **Pleadings** :- Affidavit in reply was filed on behalf of respondent Nos. 2 and 3 on 19.12.2019 by the learned

Presenting Officer, who submitted that affidavits in reply on behalf of respondent Nos. 1 and 4 were not necessary. Copy of affidavit in reply on behalf of respondent Nos. 2 and 3 was supplied to the learned Advocate for the applicant on 28.07.2021. On 30.08.2021, it was submitted by the learned Advocate for the applicant that filing of affidavit in re-joinder to affidavit in reply was not necessary. Thereafter, the matter was fixed for final hearing, which took place on 13.10.2021. A Written Note of Arguments was submitted by the learned Advocate for the applicant on 26.10.2021. Learned Presenting Officer submitted that affidavit in reply may be treated as written notes of arguments on behalf of the respondents.

(b) **Citations** :- Following is the list of Government Resolutions, Orders of Tribunal and case laws relied upon by the applicant:-

- (i) Government Resolution No. GAB 1070-E (I), Scahivalaya, Bombay 32 (BR), dated 19.12.1970 defining channel of promotion of Junior Engineer. (A copy is at page No. 20 of the paper-book)

- (ii) Government Resolution No. एसआरव्ही-१०९५/प्र.क. १/९५/बारा, मंत्रालय, मुंबई- ४०० ०३२, dated 08.06.1995 introducing the Time Bound Promotion Scheme. (A copy is at page No. 33 of the paper-book)
- (iii) Government Resolution No. वेतन ११९९/प्र.क. २/९९/सेवा-३, मंत्रालय, मुंबई- ४०० ०३२, dated 20.07.2001 regarding Assured Career Progression Scheme read with Government Resolution No. वेतन ११०९/प्र. क.४४/९९/सेवा-३, मंत्रालय, मुंबई- ४०० ०३२, dated 01.04.2010 regarding Modified Assured Career Progression Scheme. (A copy is at page No. 40 & 45 of the paper-book)
- (iv) Government Resolution No. एसआरव्ही-१०९८/१६४४/प्र.क. २/९९/बारा, मंत्रालय, मुंबई- ४०० ०३२, dated 02.07.2002. (A copy is at page No. 12 of the paper-book)
- (v) Judgment of Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in W.P. No. 5440 of 2009, dated 05.02.2010. (A copy is at page No. 14 of the paper-book)
- (vi) Order passed by this Tribunal in O.A. No. 550/2011 dated 02.02.2012. (A copy is at page No. 53 of the paper-book)

6. **Arguments** :- The matter was argued by the two contesting sides gist of which is as follows :-

(A) **Arguments led by learned Advocate for the applicant:-**

(i) Learned Advocate for the applicant has first of all, elaborated provisions of Government Resolution issued by the Irrigation and Power Department bearing No. GAB 1070-E (I), Scahivalaya, Bombay 32 (BR), dated 19.12.1970, to make out the channel of promotion available for Junior Engineers (Diploma Holders), which is the Sub Divisional Officer and Executive Engineer.

(ii) Thereafter, the learned Advocate for the applicant has elaborated the provisions of General Administration Department Resolution No. एसआरव्ही -१०९५/प्र.क्र.१/९५/बारा, मंत्रालय, मुंबई- ४०० ०३२, dated 08.06.1995 to make out that the applicant's late husband had completed 12 years of continuous service in the rank of Junior Engineer, a Group-C (Class-III) post and therefore, he was eligible for benefit of the first time bound non-functional promotion to apay scale of next higher rank in channel of promotion i.e. Sub-Divisional Officer, w.e.f. 01.10.1994.

(iii) The learned Advocate for the applicant has then elaborated provision of scheme of Modified Assured

Carrier Progression Scheme introduced by the General Administration Department Resolution No. वेतन ११०९/प्र.क्र.४४/९९/सेवा-३, मंत्रालय, मुंबई- ४०० ०३२, dated 01.04.2010, which came in effect from 01.10.2006, setting out claim for the late husband of the applicant for the second non-functional promotion to pay scale of next higher rank in the channel of promotion, i.e. Executive Engineer, on completion of 12 years' continuous service after getting benefit of the first time bound promotion. The learned Advocate for the applicant has further submitted that the applicant's late husband was in pay band-3 (Rs. 15600-39100-5400) Grade Pay as on 01.10.2006 and therefore, he was entitled for the said benefit even if he was not in Group-C or Class-III of employees' classification.

(iv) Learned Advocate for the applicant has also cited judgment of Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad in W.P. No. 5440 of 2009, dated 05.02.2010, in the case of Dinesh S/o Shamrao Sonwane Vs. The State of Maharashtra and Ors. to reinforce the claim of the applicant to be in

Group -C (Class-III) as per definition prescribed by State Government in this regard.

(v) The learned Advocate for the applicant has also cited order passed by this Tribunal in O.A.No.550 of 2011, dated 02.02.2012. However, the said order is only by way of directions to the respondents to consider the request of the applicants in the said O.A. for grant of second time bound promotion (and may be of all employees, in which cadre applicants are working) in terms of G.R. dated 01.04.2010.

(B) Arguments led by learned presenting officer on behalf of respondents –

(i) The learned Presenting Officer referred to submission made by the applicant in para No.6.3 of the Original Application, which shows that the applicant's husband did not desire to get pay-scale of Sectional Engineer; instead, he found the scheme of time-bound promotion more beneficial. He further submitted that had the applicant's husband been upgraded to rank of Sectional Engineer, which skipped from sight of supervisory authorities, the

applicant's husband would have fallen in category of Group -B, instead of Group-C in year 1984 only and would not have been eligible to get benefits of time bound promotion scheme.

(ii) The learned Presenting Officer further submitted that the applicant's late husband had not submitted his Annual Self-Evaluation Report to enable his supervisory officer to record their remarks in the form of Annual Confidential Report. Therefore, it was difficult to determine his eligibility for promotions and grant of time bound promotion. Moreover, the applicant's late husband used to be absent from duty in un-authorized manner. He was so negligent in submission of application for regularization of period of his unauthorized absence from duty that in a number of cases he submitted such applications years after his retirement on superannuation.

(iii) The details of unauthorized absence from duty by applicant's husband have been elaborated by the learned Presenting Officer which has been mentioned

in details in affidavit in reply filed on behalf of respondents enclosing relevant documents referred to as *Annexure- 'R-1'* collectively. The information in this regard is tabulated below for appreciating the same at a glance: -

Table Showing Details of Absence from Duty and Leave Sanctioned :

Sr. No.	Period of absence	Year of regularization	Nature of leave sanctioned
1	01.08.1988 to 07.02.1989 (191 days)	2011	Extraordinary Leave*
2	08.02.1989 to 28.02.1989 (21 days)	2011	Extraordinary leave*
3	01.07.1993 to 09.12.1993 (162 days)	2012	Extraordinary Leave*
4	01.07.1994 to 04.08.1994 (35 days)	2012	Extraordinary Leave*
5	01.10.1994 to 28.02.1995 (151 days)	2012	Extraordinary Leave*
6	25.11.1995 to 15.08.1999 (1360 days)	2015	Extraordinary Leave*# Medical Board did not recommend the Leave as Medical Leave # This was treated as break in service
7	10.07.2007 to 19.09.2007 (72 days)	2015	Extraordinary Leave*

* *Leave granted under Provisions of Rule 63(6) of Maharashtra Civil Services (Leave) Rules, 1981.*

The absence period was regularized under Provisions of Rule 47(1) of Maharashtra Civil Services (Pay) Rules, 1982 having effect of break in service.

(iv) Learned Presenting Officer further argued that the applicant's husband had made first representation for getting benefits of Time Bound Promotion w.e.f. 01.10.1994 and Modified Assured Career Progression Scheme w.e.f 01.10.2006 only on 04.05.2016, i.e. after over five years of his retirement on superannuation on 31.12.2010. The facts as stated above show that he was not meeting criteria of promotion had not submit self-assessment criteria, had been on un-authorized leave regularized after his retirement, had break in service and therefore, there is no merit in the claim of the applicant.

7. **Analysis of facts:-**

(a) On considering all the facts on record and oral submissions made, it is amply clear that the submission made by the learned Presenting Officer regarding eligibility of the applicant's husband to get benefit of Time Bound Promotion Scheme and Modified Assured Career Progression Scheme are material in nature of determining the entitlement of the applicant's late husband (diseased employee). Surprisingly, the learned Advocate for the

applicant has decided not to file rejoinder affidavit to affidavit-in-reply filed on behalf of the Respondent No. 3, which contained all above mentioned facts and reiterated by the learned Presenting Officer during arguments made by him. Thus, the facts revealed in para No. 6(B) above, stand undisputed by the opposite party.

(b) In other words, the applicant has, for reasons best known to her, has only stated scheme deliverables and legal provisions which provides for benefits of Time Bound Promotion and Modified Assured Career Progression Schemes but, she has fallen short in rebutting the evidence put forward by the respondents establishing lack of eligibility of applicant's late husband's for getting benefit of the two schemes, namely, Time-Bound Promotion Scheme and Modified Assured Career Progression Scheme and gross negligence and laches on part of her late husband in performing his part for pursuing his interest in his service career in general and in this regard in particular.

(c) Therefore, the representation made by applicant's deceased husband more than 5 years after his retirement by superannuation and filing of this Original Application over two years thereafter, seems to be afterthought.

(d) In view of above analysis, in my considered opinion, the Original Application is based on afterthought and is totally devoid of merit and therefore, following order is being passed:-

ORDER

- (A) Original Application No. 629 of 2019 is hereby dismissed, for reasons of being devoid of merit.
- (B) No order as to costs.

PLACE : AURANGABAD.
DATE : 23.11.2021.

(BIJAY KUMAR)
MEMBER (A)