

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 658 OF 2018  
(Subject : Benefits of Time Bound Promotion)**

**DISTRICT : AHMEDNAGAR**

**Raosaheb s/o Shripati Bangar,** )  
Age :- 61 years, Occupation – Retired as )  
Civil Engineer Assistant, )  
R/o : Flat No. 13, Om Apartment, Vidya )  
Nagar, Garkheda Parisar, Aurangabad. )... **APPLICANT**

**V E R S U S**

- 1. The State of Maharashtra,** )  
Through its Secretary, )  
Irrigation Department, )  
Mantralaya, Mumbai- 32. )
- 2. The Superintending Engineer,** )  
Ahmednagar Medium Project, )  
Ahmednagar. )
- 3. The Executive Engineer,** )  
Ahmednagar Medium Project, )  
Division, Ahmednagar. )...**RESPONDENTS**

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**APPEARANCE** : Shri I.D. Maniyar, Advocate for the  
Applicant.

: Shri M.S. Mahajan, Chief Presenting Officer for  
Respondent No. 1.

: Shri S.D. Dhongde, Advocate for respondent  
Nos. 2 & 3.

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**CORAM** : **Justice Shri P.R. Bora, Vice Chairman**  
**AND**  
**Shri Bijay Kumar, Member (A)**

**Reserved on** : **22.07.2022.**

**Pronounced on** : **10.08.2022.**  
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**ORDER****(Per : Shri Bijay Kumar, Member (A))**

1. The Original Applicant Shri Raosaheb Shripati Bangar has filed this application on 23.08.2018 invoking provisions of Section 19 of the Administrative Tribunals Act, 1985; thereby, challenging impugned communication dated 14.09.2017 issued by Respondent No. 2 (enclosed as Annexure A-4, page 44 of the compilation) granting benefits of the first time-bound promotion to the applicant w.e.f. 01.04.2007 instead of 31.08.2002 on the ground of adverse Annual Confidential Report (in short, "ACR") of the Applicant for the year 2001-02.

2. **Background Facts-** the Applicant joined service with Command Area Development Authority, Ahmednagar (in short, "*The Authority*") as a Technical Assistant on 22.05.1980. He was promoted to the post of Deputy Superintendent on 09.04.1986. Later on, as per provisions of G.R. dated 31.01.1989, the Applicant was absorbed as Civil Engineering Assistant w.e.f. 30.09.1989. He completed 12 years regular service with "*The Authority*" as on 30.09.2001 but could not pass professional examination by then. The Applicant completed 45 years' of age on 31.05.2002, his date of birth being 01.06.1957. As the Applicant had not passed professional examination, which was

required for promotion to next higher position, i.e. Junior Engineer, he was not given benefits of Assured Career Progression Scheme (in short, "ACPS") which came in effect from date 01.08.2001. Being aggrieved the applicant filed O.A. No. 395/2015 before this Tribunal and vide order dated 27.03.2018 passed by this Tribunal, the Respondents to the said O.A. were directed to grant exemption to the Applicant from passing the Professional Examination as required under Rule 3, Sub-Rule (a) of the 1998 Recruitment Rules for Junior Engineers on reaching 45 years' of age and also to consider the case of the Applicant for grant of benefits under ACPS, after examining merit of the case. Operating part of the order of the Tribunal in O.A. No. 395/2015 is reproduced below for ready reference:-

"O.A. No. 395/15

**ORDER**

- (i) *The Original Application is disposed of without any order as to costs.*
- (ii) *The respondents are directed to consider all the applicants for grant of time bound promotion as well as assured career progression scheme by exempting them from passing of the professional examination as required under Rule 3 Sub Rule (a) of the 1998 Recruitment Rules for Junior Engineers on reaching 45 years' age, provided that the applicants meet all other criteria as per schemes of time bound promotion.*

(iii) *The respondents are directed to consider the cases of the present applicants as directed above within a period of 4 months' from the date of this order and the necessary orders shall be issued by them and the said orders shall be communicated to each of the applicants by Registered Post Acknowledgement Due, thereafter."*

3. In compliance with the Order of this Tribunal, Respondent No. 2 granted vide order passed on 14.09.2017, the benefits of "ACPS" to the applicant w.e.f 01.04.2007 on the ground that "ACR" of the applicant for the year 2001-02 was not up to mark required for promotion. Copy of the said order was communicated to the applicant by respondent No. 3 vide letter dated 16.10.2017. In the meantime the Applicant had retired as Civil Engineering Assistant (in short, "CEA") by superannuation on 31.05.2015. The contention of the applicant is that any adverse remarks in his "ACR" was never communicated to him and therefore, as per provisions of Government Resolution issued by the General Administration Department (in short, "GAD") bearing No. सीएफआर १२१०/प्र.क्र. ४७/२०१०/तेरा, मंत्रालय, मुंबई, dated 01.11.2011, the same cannot be taken into consideration.

4. The applicant has prayed for relief in terms of para VII (A) to VII(F) of the Original Application which is being reproduced verbatim for ready reference:-

**“VII) RELIEF SOUGHT:-**

*In view of the above facts and circumstances and submissions the applicant prayed for the following reliefs.*

*A. This Original Application may kindly be allowed.*

*B. Record and proceedings may kindly be called for;*

*C. By appropriate order of directions, the respondents may kindly be directed to give the benefits of time bound promotion / assured progress scheme first from 31.08.2002 instead of 01.04.2007 and second from 31.05.2014 with arrears of pay and allowances by setting aside the order dated 14.09.2017 and 30.07.2018 passed by the respondent as per the order passed by this Hon’ble Tribunal in O.A. No. 395/2015 dated 27.03.2018 and Government Resolutions.*

*D. Any other suitable and equitable relief may kindly be granted in favour of the applicant.”*

**5. Pleadings and Arguments :-**

(a) Affidavit in Reply on behalf of Respondent Nos. 2 and 3 was filed on 17.01.2019. Thereafter, Affidavit in Reply on behalf of Respondent No. 1 was filed on 17.01.2019. Affidavit in Rejoinder to the Affidavit in Reply filed by Respondent No. 1 to 3 was filed on behalf of the Applicant on 23.07.2019.

(b) The Applicant has contended that adverse entries in ACR is to be communicated to the employee concerned and any representation made him needs to be decided as prescribed by Government Resolution issued by the General Administration Department (in short, "GAD") bearing No. सीएफआर १२१०/प्र.क. ४७/२०१०/तेरा, मंत्रालय, मुंबई, dated 01.11.2011. The Applicant has further claimed that no adverse entry in his ACR for year 2001-02 has ever been communicated to him and un-communicated ACR cannot form a basis for denying promotion to the concerned employee. The Applicant has further contended that in response to RTI query made by him, the office of the Respondent No. 2 has informed him that copy of acknowledgement of communication of adverse ACR entry is not available in office record. Applicant has also pleaded that average gradation of last five years' ACRs has to be taken into account for promotion instead of taking into account grading of the year 2001-02 in isolation.

(c) On the other hand, the Respondents have contended that the G.R. dated 01.11.2011 does not have retrospective effect and at the relevant point of time the G.R. No. सीएफआर-१२९५/प्र.क. ३६/९५/१३, मंत्रालय, मुंबई-३२, dated 01.02.1996 was in

force. He further submitted that the Applicant could not be granted benefit of ACPS w.e.f 31.05.2002 due to adverse entry in ACR of the Applicant for the year 2001-02 which had been communicated to the Applicant by the office of Executive Engineer, Ahmednagar Medium Irrigation Division on 07.05.2002 and by the office of Sub-divisional Engineer, Tajanapur Medium Project Sub-division, shevgaon, district-Ahmednagar vide letter dated 31.05.2002 and service report of the same had been submitted by the Sub-divisional office to Divisional office vide letter dated 16.10.2002. The Respondents have also contended that the claim made by the Applicant in the year 2018 regarding getting benefits of ACPS w.e.f 31.05.2002 is time-barred. Based on above contentions the Respondents have prayed for dismissal of the Original Application.

(d) During arguments, the learned Advocate for the Applicant has cited following three judgments :-

- (i) *(2009) 16 Supreme Court Cases 146, Abhijit Ghosh Dastidar Vs. Union of India & Others, judgment dated 22.10.2008.*
- (ii) *(2013) 9 Supreme Court Cases 566, Sukhdev Singh Vs. Union of India and Ors, judgment dated 23.04.2013.*

(iii) 2005 (6) Bom C.R. 183 (Bombay High Court), C. Ramakant Naidu Vs. Maharashtra State Electricity Board & Ors, judgment dated-24.06.2005.

(e) Learned Chief Presenting Officer representing Respondent No. 1 has, as per the direction given by this Tribunal, submitted the gist of the government guidelines regarding preservation of office records relating to acknowledgements of outward communication in ordinary situation and also regarding preservation of such documents after retirement of an employee.

6. **Analysis of Facts:-** Grading of annual performance of the Applicant for the relevant period as mentioned in ACRs tabulated below for ready reference:-

Years→	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02
<b>Grading→</b>	<b>B</b>	<b>B</b>	<b>B</b>	<b>B</b>	<b>B</b>	<b>B</b>	<b>B-</b>

From the above tabulated information it is evident that the Applicant did not have grading higher than **B** in any of the five years under consideration, therefore; average of grading of ACRs for immediately preceding five years will definitely be lower than **B** due to grading of **B(-)** in the year 2001-02. In other words, the



respondents have not erred by taking into account average grading of ACR for the year 2001-02 in isolation, but they have considered grading of ACRs for immediately preceding five years while taking decision in respect of granting benefits of ACPS to the applicant.

7. On perusal of two judgments of Hon'ble Apex Court and, one judgment delivered by Hon'ble High Court of Judicature at Bombay, cited by the learned Advocate for the Applicant, it is observed that the cited judgments mandated communication of entries in ACRs to concerned employee and un-communicated remarks have to be ignored. This is not disputed by the respondents who claim that adverse ACR entry in respect of the Applicant had been duly communicated.

8. The Respondents have contended that the G.R. dated 01.11.2011 does not have retrospective effect and at the relevant point of time the G.R. No. सीएफआर- १२९५/प्र.क. ३६/९५/१३, मंत्रालय, मुंबई-३२, dated 01.02.1996 was in force. Therefore, we examine the provisions regarding communication of adverse remarks in ACRs as provided in G.R. dated 01.02.1996 which has an elaborate Guidelines on Annexure to the G.R. Provisions of para 39 and 40 of the said guidelines requires that adverse ACR entry should be

communicated either by Hand Delivery and acknowledgement thereof must be obtained or, by Registered Post with Acknowledgment Due. It also prescribes that the acknowledgment must be kept with the decision taken for communicating adverse ACR. In the present matter, no evidence has been produced by any of the Respondents depicting the means by which the adverse ACR entry for the Applicant was conveyed to him. The letter dated 07.05.2002 issued by Respondent No. 3 was addressed to the Applicant directly. However, mode of transmission of this communication to the Applicant has not been mentioned on the same. Similarly, communication dated 05.10.2002 made by Respondent No. 3 was addressed to the Sub-divisional Engineer, Tajanapur Medium Project Sub-division, Shevgaon, District Ahmednagar and copy endorsed to the Applicant. On this letter too, no mention is seen regarding mode of transmission to the Applicant. Last but not the least, copy of the reply given by the Sub-divisional Engineer, Tajanapur Project to the communication received from Respondent No. 3 bearing date of 05.10.2002 is not accompanied by copy of acknowledgement received from the Applicant.

9. The Sub-Divisional Officer, Tajanapur Medium Project Sub-division Shevgaon has, vide his letter with outward number आस्था/न्या.प्र./२३४/सन-२०२२, dated 20.07.2022, addressed to the learned Chief Presenting Officer has stated as follows:-

“ त्यानुसार वरील संदर्भ क्र.-८ अन्वये दि. ०१.११.२०११ चे शासन निर्णयापूर्वी पूर्वी शासकीय अधिकार/कर्मचारी यांना त्यांचे अतिउत्कृष्ट किंवा प्रतिकूल गोपनीय अहवाल त्यांना कळविण्यात येत होते. तथापी त्यांची पोहोच घेण्याची पध्दत याच शासन निर्णयातील परिशिष्ट-अ मधील मुद्दा क्रं. २७-अ अन्वये लागू झालेली आहे. तसेच याच शासन निर्णयातील परिशिष्ट अ मधील मुद्दा क्रं. ३२ मध्ये कर्मचा-याची सेवा समाप्ती नंतर त्यांचे संप्रेषण (जतन कालावधी) साधारणपणे ५ वर्ष कालावधी पर्यंत जतन करावेत असे स्पष्टपणे नमुद केलेले आहे. सोबत सदरील शासन निर्णयाची प्रत जोडण्यात आलेली आहे.

तसेच वरील संदर्भ क्रं. ९ अन्वये महाराष्ट्र सार्वजनिक बांधकाम नियम पुस्तिका - १९८४ या मधील पान क्रं.-१२ वर दर्शविल्याप्रमाणे अनु क्रं. ३३५ व ३६० मध्ये दर्शविल्या प्रमाणे शासकीय अभिलेख कार्यालय तसेच आवक व जावक पत्रे साधारण १० वर्ष कालावधी पर्यंत जतन करावेत असे नमुद केलेले आहे. वरील संदर्भ क्रं. ९ अन्वये महाराष्ट्र सार्वजनिक बांधकाम नियम पुस्तिका - १९८४ सोबत जोडून देण्यात येत आहे.

श्री. आर.एस. बांगर- से.नि.स्था.अ.स. यांना अश्वषित प्रगती योजना ३१.०५.२००२ पासून लागू होणे अपेक्षित होते तथापी त्यांचे गोपनीय अहवाल प्रतिकूल असल्याकारणाने त्यांना त्याचा लाभ देता आला नाही. सदर चा लाभ दि. ०१.०४.२००७ पासून देण्यात आलेला आहे.

तसेच वरील संदर्भ क्रं. -४ अन्वये श्री. आर.एस. बांगर- से.नि.स्था.अ.स. यांना त्यांचे गोपनीय अहवाल प्रतिकूल असल्याचे विभागीय कार्यालयाचे पत्र जा.क्र. /गोपनीय/प्रलि-२/२२०/सन २००२ दि.०७.०५.२००२ अन्वये तसेच वरील संदर्भ क्रं. ५ अन्वये उपविभागीय कार्यालयाचा जा.क्र. / गोपनीय/वलि/लेशा/१७/सन २००२ दि. ३१.०५.२००२ अन्वये उपविभागामार्फत अर्जदाराला कळविण्यात आलेले आहे. तसेच वरील संदर्भ क्रं. ६ अन्वये या उपविभागीय कार्यालयाचे पत्र जा.क्र/वलि/३७/सन २००२ दि. १६.१०.२००२ अन्वये सदर प्रतिकूल अहवाल अर्जदाराला कळविले असल्याबाबत अहवाल विभागीय कार्यालयास सादर केलेला आहे. संदर्भ क्रं. ४,५,६ च्या पत्राच्या प्रति सोबत जोडून देण्यात येत आहेत.

तथापी श्री. आर.एस. बांगर- से.नि.स्था.अ.स. यांनी सदरील पत्राची पोहोच देण्यास तोंडी नकार दिलेला होता. तथापी श्री. आर.एस. बांगर- से.नि.स्था.अ.स. यांनी (अर्जदाराने) सदरील गोपनीय पत्र घेतल्याची पोहोच या कार्यालयाकडे उपलब्ध नाही.

हे आपले माहितीसाठी व पुढील कार्यवाहीसाठी सविनय सादर ”

10. Based on the facts on record and oral submissions made and upon analysis thereof, it is inferred that the respondents have not communicated adverse ACR entry for the year 2001-02 to the applicant as per procedure prescribed even under G.R. No. सीएफआर- १२९५/प्र.क्र. ३६/९५/१३, मंत्रालय, मुंबई-३२, dated 01.02.1996. In such situation, the competent authority could have considered on previous year's ACR which is also **B**, which too has not been done. Thus injustice appears to have been caused to the applicant.

11. **Conclusion** :- After considering facts on record and oral submissions made, we are of considered opinion that there is merit in the Original Application. Therefore, following order is passed :-

### **ORDER**

The Original Application No. 658 of 2018 is allowed in following terms :-

- (A) Benefits of Assured Career Progression Scheme be granted to the Applicant w.e.f 31.08.2002, i.e. on completion of 12 years regular service as Civil

Engineering Assistant, subject to the Applicant fulfilling all other eligibility criterion prescribed by the G.R. No. वेतन-११९९/प्र.क्र.२/९९ सेवा-३, dated 20.07.2001, ignoring the un-communicated adverse ACR entry for the year 2001-02.

- (B) As the benefits of scheme of ACPS are non-functional, all consequential benefits should also be granted including those relating to pensionary benefits. The exercise in this respect may be completed within a period of four months from receipt of this order by the Respondents, failing which penal interest on amount due but not paid @ 6% per annum shall be payable to the Applicant.
- (C) Respondent Nos. 1 to 3 may fix responsibility of concerned for not communicating adverse ACR entry to the Applicant and failing to exercise supervisory control in this respect, as per procedure prescribed and in force at the relevant time.
- (D) No orders as to costs.

**MEMBER (A)**

**VICE CHAIRMAN**