

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 785 OF 1998
(Subject – Promotion)**

DISTRICT : DHULE

Shri Bhatu s/o Hari Sonar,)
Age : 67 years, Occu. : Nil)
C/o Taluka Inspector of Land Record,)
Dhule, Dist. Dhule.)

.. **APPLICANT**

V E R S U S

1) **The State of Maharashtra,**)

2) **The Settlement Commissioner)
and Director,**)
Land Record, Pune.)

3) **The Deputy Director of Land)
Record,**)
Nasik Division, Nasik.)

4) **Shri Vithal S/o Supdu Kumbarkar,))
Asstt. Taluka Inspector,)
Nandurbar Land Record Office,)
Nandurbar, Dist. Nandurbar.)**

5) **Shri Raghunath s/o Nimraj)
Warodekar,**)
Asstt. Taluka Inspector,)
Sindkheda, Tq. Sindkheda,)
Dist. Nandurbar.)

.. **RESPONDENTS**

APPEARANCE : Shri A.S. Golegaonkar, Advocate for the
Applicant.

: Shri S.K. Shirse, Presenting Officer for the
Respondents.

CORAM : **B.P. PATIL, ACTING CHAIRMAN.**
AND
P.N. DIXIT, VICE CHARIMAN.
RESERVED ON : **16.09.2019.**
PRONOUNCED ON : **20.09.2019.**
PER : **B.P. PATIL, ACTING CHAIRMAN.**

O R D E R

1. By filing the present Original Application, the applicant has sought direction to the respondent No. 2 to issue promotion order and to give deemed date of promotion.

2. The applicant was initially appointed in the Land and Records department on 10.04.1965. At the time of filing of the present O.A., the applicant has completed 33 years' service, but he has not received any promotion. It is contention of the applicant that he had also not received the benefit under time bound promotion scheme as per the G.R. dated 08.06.1995. He has made representation with the respondent No. 2 in that regard, but the respondent No. 2 has not considered his request. It is his contention that he is eligible and entitled to get promotion as per the Recruitment Rules and as per the G.R. dated 08.06.1995 and the Circular dated 20.06.1981. It is his contention that Shri P.N. Sonar, R.N. Warkhedkar, Vs. Kumbhar

and S.N. Kale, who were junior to him had been promoted in the year 1988. Not only this, but thereafter they had received second promotion in the year 1997. It is his contention that the respondent No. 2 has not granted promotion to him without any just cause. It is his further contention that no adverse remarks in his Annual Confidential Reports had been communicated to him and on the ground of adverse remarks recorded in ACRs, promotion cannot be denied. Therefore, he has prayed to direct the respondent No. 2 to promote him and give benefit of time bound promotion from the date of promotion given to his junior by filing the present Original Application.

3. The respondent Nos. 1 to 3 have filed their affidavit in reply and resisted the contentions of the applicant. They have not denied the fact that the applicant was appointed on 10.04.1965. It is their contention that for the first time, the applicant was considered for promotion on the post of Group III category by the Departmental Promotion Committee, which was held on 17.06.1988. Since the ACRs of the applicant for the year 1983-1988 were not satisfactory, his name was not recommended for promotion by the Departmental Promotion Committee. Thereafter, again name of the applicant was considered for promotion by the Departmental Promotion Committee in the

meeting held on 03.05.1989, 07.10.1989, 14.01.1991, 30.11.1991, 10.08.1993, 19.09.1994, 25.04.1995 and 14.10.1997, but his name was recommended for the promotion as his ACRs was not found satisfactory on each occasion. It is their contention that the criteria for the promotion and the procedure for granting time bound promotion is the same. The meeting of the D.P.C. was held on 08.05.1996 for granting time bound promotion and that time, the name of the applicant was considered, but due to unsatisfactory ACRs, time bound promotion was not granted to him. It is their contention that the performance of the applicant was not satisfactory since long. The different officers had written the ACRs of the applicant and recorded the adverse remarks against him. The adverse remarks regarding ACRs for the period from 18.08.1986 to 31.03.1987, 01.04.1992 to 31.03.1993, 15.10.1993 to 31.03.1994, 01.10.1994 to 31.03.1994, 01.04.1997 to 31.03.1998 were communicated to the applicant on 31.08.1987, 30.08.1993, 08.08.1994, 12.02.1996 and 31.07.1998 respectively. As the ACRs of the applicant were not satisfactory, the applicant was not eligible and entitled to get promotion on the promotional post as per the Recruitment Rules. He was also not entitled to get benefit of time bound promotion as per the G.Rs. issued by the Government from time to time. They have denied that the

applicant was never communicated the adverse remarks recorded in the ACRs. It is their contention that the applicant had not challenged the adverse remarks recorded in his ACRs, which were communicated to him. It is their contention that Shri P.N. Sonar, R.N. Warkhedkar, Vs. Kumbhar and S.N. Kale were promoted in the year 1988 and thereafter, they had been again promotion in the year 1997 as per the seniority and on merit and there was no illegality in it. It is their contention that the respondent No. 2 decided the representation made by the applicant and rejected the same on 01.09.1999, as the applicant was not entitled to get promotion as his ACRs were not satisfactory. It is their contention that there is no illegality in giving promotion to others and denying the promotion to the applicant. Therefore, they have prayed to dismiss the present Original Application.

4. The applicant has filed rejoinder affidavit and resisted the contentions of the respondents. It is his contention that he never received communications from the respondents about his adverse remarks made in his ACRs. and therefore, he had no opportunity to challenge the same. It is his contentions that since the adverse remarks had not been communicated to him, the same cannot be taken in to consideration while deciding the

issue of his promotion in view of the judgment delivered by the Hon'ble High Court of Bombay, Bench at Nagpur in case of **Nathu Dharmaji Padole and Another Vs. Commissioner, Nagpur Division, Nagpur and Ors.** reported in **1983 Mh.L.J., 1108**. It is his contention that he is entitled to get benefit of time bound promotion as per the G.R. dated 08.06.1995. Therefore, he has prayed to allow the present O.A.

5. We have heard Shri A.S. Golegaonkar, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents. We have perused the documents placed on record by both the parties.

6. Admittedly, the applicant was initially appointed on 10.04.1965 on the post of Surveyor. There is no dispute about the fact that no promotion was given to the applicant till filing of the present O.A., as well as, till his retirement. Admittedly, no benefit of time bound promotion was extended to the applicant on the ground of his unsatisfactory work and adverse remarks recorded in his ACRs. Admittedly, the other employees, who were junior to the applicant viz. Shri P.N. Sonar, R.N. Warkhedkar, Vs. Kumbhar and S.N. Kale, were promoted in the year 1988 and thereafter, again they received second promotion in the year 1997. Admittedly, the applicant made representation

with the respondents on 29.06.1996 raising his grievance for not granting regular promotion, as well as, benefit under time bound promotion scheme. The respondent No. 2 by the communication dated 17.07.1996 informed the applicant that regular promotion, as well as, benefit under time bound promotion scheme was not given to the applicant, because of adverse remarks recorded in his ACRs in view of the decision taken by the Departmental Promotion Committee. Admittedly, the applicant has not challenged the said communication. There is no dispute about the fact that before filing the present O.A., the applicant has filed the representation dated 02.08.1998 raising similar request with the respondent No. 2 and the respondent No. 2 rejected his representation by the communication dated 01.09.1999 during pendency of the present O.A.

7. Learned Advocate for the applicant has submitted that the applicant was eligible for the promotion in the year 1988, but the respondents had not promoted him on the promotional post though he was eligible. But the respondents promoted his juniors viz. Shri P.N. Sonar, R.N. Warkhedkar, Vs. Kumbhar and S.N. Kale. He has argued that those persons have been again promoted in the year 1997. He has submitted that the respondents had not informed the applicant regarding reasons

for not promoting him on the promotional post. Not only this, but the respondent No. 2 never communicated the adverse remarks recorded in the ACRs to the applicant and therefore, in the absence of communication of adverse remarks recorded in the ACRs of the applicant, the applicant cannot be denied promotion. In support of his submissions, he has placed reliance on the judgment delivered by the High Court of Bombay, Bench at Nagpur in case of **Nathu Dharmaji Padole and Another Vs. Commissioner, Nagpur Division, Nagpur and Ors.** reported in **1983 Mh.L.J., 1108**, when it is observed as follows:-

“ Service Record in the career of a Government servant is an objective assessment by a superior of a subordinate by which his general and special qualities are recorded. The object of maintenance of service record is twofold. First is to record contemporaneously the assessment of the work and to provide guidance to the concerned officer, and secondly to appraise him of his limitations so that if so desired he may improve his conduct and work. It is by far the most important weapon in the armoury of the department by which his career can be exploded. Promotion cannot be denied to a Government servant on the basis of uncommunicated adverse remark and if the claim is rejected after taking into account such uncommunicated adverse remarks the rejection of the claim to promotion will be bad in law resulting in question of promotion of persons promoted

who were junior to such Government servant. AIR 1979 SC 1622 and AIR 1981 SC 384 Rel. AIR 1980 SC 563 Dist. (Paras. 3 and 6)"

8. Learned Advocate for the applicant has further submitted that the applicant was not given benefit under time bound promotion scheme in view of the G.R. dated 08.06.1995, though he was eligible and therefore, he has prayed to allow the present Original Application and to direct the respondent No. 2 to grant promotion to the applicant from the date of promotion given to his junior and also prayed to extend the benefits of the G.R. dated 08.06.1995 to the applicant.

9. Learned Presenting Officer has submitted that the work of the applicant was not satisfactory since beginning. He worked under different officers. The different officers wrote the ACRs of the applicant and made adverse remarks therein for the year 1986-87, 1992-93, 1993-94, 1994-95 and 1997-98. He has submitted that the adverse remarks noted in the ACRs of the applicant for the above said period had been communicated to the applicant on 31.08.1987, 30.08.1993, 08.08.1994, 12.02.1996 and 31.07.1998 respectively. But the applicant had not challenged the said communications. He has submitted that the case of the applicant was considered by the DPC in the

meetings held on 17.06.1988, 03.05.1989, 07.10.1989, 14.01.1991, 30.11.1991, 10.08.1993, 19.09.1994, 25.04.1995 and 14.10.1997. Each and every time, the DPC found that the ACRs of the applicant were not satisfactory and therefore, he was not promoted on the promotional post. He has argued that the criteria and procedure for extending the benefits under time bound promotion scheme is similar to that of the criteria and procedure for regular promotion. The case of the applicant was considered by the DPC in its meeting held on 08.05.1996 for time bound promotion. At that time also, the DPC found that the ACRs of the applicant were unsatisfactory and therefore, the benefit of time bound promotion was not extended to him in view of the G.R. dated 08.06.1995. He has submitted that there is no illegality in refusing the promotion and extending the benefit under time bound promotion scheme to the applicant. The decision has been taken by the DPC in view of the provisions of Recruitment Rules, as well as, in view of the G.R. dated 08.06.1995 and therefore, he supported the decision of the DPC. He has further submitted that the representation made by the applicant has also been rejected by the respondent No. 2 and the applicant was informed about the said decision accordingly. But the applicant has not challenged the said communications dated 17.07.1996 and 01.09.1999. He has submitted that there is no

illegality in refusing the promotion and benefit under time bound promotion to the applicant. Therefore, he has prayed to dismiss the present Original Application.

10. On perusal of the record, it reveals that the adverse remarks recorded in the ACRs for the year 1986-87, 1992-93, 1993-94, 1994-95 and 1997-98 has been communicated to the applicant from time to time i.e. on 31.08.1987, 30.08.1993, 08.08.1994, 12.02.1996 and 31.07.1998. The said fact is evident from paper book page Nos. 47 to 53. But the applicant never challenged the said remarks recorded in ACRs. Since the applicant was coming under zone of consideration for promotion, the case of the applicant along with other employees had been placed before the D.P.C. in its meeting, held on 17.06.1988, 03.05.1989, 07.10.1989, 14.01.1991, 30.11.1991, 10.08.1993, 19.09.1994, 25.04.1995 and 14.10.1997. On each and every occasion, the DPC found that the ACRs of the applicant were not satisfactory and therefore, DPC denied to give promotion to the applicant. The applicant was aware about the said decisions, but he had not challenged the said decisions. He was aware about the fact that the junior employees to him had been promoted in the year 1988, but he never raised his grievance and

he kept mum till the year 1998 and for the first time i.e. in the year 1998 he has filed the present Original Application.

11. It is material to note here that, the name of the applicant was considered by the DPC in its meeting which was held on 08.05.1996 for extending the benefit under time bound promotion scheme in view of the G.R. dated 08.06.1995. At that time also, the DPC found that the ACRs of the applicant were not satisfactory. The criteria and the procedure for extending the benefits of time bound promotion is same to that of the criteria and procedure of the regular promotion. As the applicant was not eligible for regular promotion, the benefit under time bound promotion was not extended to him. The applicant has raised his grievance in that regard by filing the representation dated 29.06.1996, but his representation has been rejected by the communication dated 17.07.1996. The applicant has not challenged the said communication. All these facts are evident from the documents produced by the respondents, which are marked as documents 'X'. As the applicant has not fulfilled the required criteria for promotional post, the promotion was denied to him. There is no illegality in the decision taken by the respondent No. 2 in that regard. The same criteria was applicable for extending the benefits under time bound

promotion scheme as per the G.R. dated 08.06.1995, but the applicant was not fulfilling the said criteria and therefore, the benefit under that scheme was not extended to him. There is no illegality in that aspect also. Therefore, we do not find substance in the submissions advanced by the learned Advocate for the applicant in that regard.

12. We have gone through the above said decision cited by the learned Advocate for the applicant. We have no dispute regarding the settled legal principles laid down therein. In the present case, the adverse remarks recorded in the ACRs of the applicant had been communicated to him from time to time. The applicant had been given an opportunity of raising his grievance in that regard, but he had not availed that remedy. Therefore, considering the said fact, in our view, the principles laid down in the above cited decision are not attracted in the instant case.

13. In view of the discussions in foregoing paragraphs, in our view, there is no illegality in refusing the promotion and benefit under time bound promotion to the applicant. The applicant was not eligible to get promotion and benefit of time bound promotion scheme as he had not fulfilled required criteria and therefore, he is not entitled to get promotion, as well as, benefit under time bound promotion scheme. The applicant

therefore, is not entitled to claim the relief as sought. There is no merit in the Original Application. Therefore, the Original Application deserves to be dismissed.

14. In view of the discussions in the foregoing paragraphs, the Original Application stands dismissed with no order as to costs.

(P.N. DIXIT)
VICE CHAIRMAN

(B.P. PATIL)
ACTING CHAIRMAN

PLACE : AURANGABAD.

DATE : 20.09.2019.

KPB D.B. O.A. No. 785 of 1998 BPP 2019 Promotion