

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 995 OF 2019  
DISTRICT : DHULE**

**Dr. Dagajirao Pundalik Patil,** )  
Age : 63 years, Occu. : Nil (Pensioner), )  
R/o Savitri Hospital, Shrirang Colony, Perejur )  
Road, Sakri, Dist. Dhule. ) **.. APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Secretary, )  
Public Health Department, G.T. Hospital,) )  
B. Wing 1<sup>st</sup> Floor, Complex Building, )  
New Mantralaya, Mumbai -01. )
2. **The Director,** )  
Directorate of Health Services, M.S., )  
1<sup>st</sup> Floor, Arogya Bhavan, St. George's )  
Hospital Compound, Near C.S.T. Station,) )  
Mumbai -01. )
3. **The Deputy Director of Health Services,) )  
Nashik Circle, Nashik Civil Hospital Campus,) )  
Trimbak Road, Nashik. )**
4. **The Civil Surgeon,** )  
Dhule, Sakri Road, Vidya Vihar Colony, Dhule.)
5. **The Medical Superintendent,** )  
Class-I, Rural Hospital, Main Road, Sakri,) )  
Dist. Dhule. ) **.. RESPONDENTS**

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**APPEARANCE** : Shri Avinash Deshmukh, Advocate for the  
Applicant.

: Smt. Deepali Deshpande, Presenting Officer for  
Respondents.

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**CORAM** : **Justice Shri P.R. Bora, Vice –Chairman**  
**and**  
**Shri Bijay Kumar, Member (A)**  
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**Reserved on : 22.04.2022**

**Pronounced on : 06.05.2022**  
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**O R D E R**

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

1. This Original Application has been filed by one Dr. Dagajirao Pundalik Patil, R/o Saktri, Dist. Dhule, who retired by superannuation from the post of Medical Officer, Rural Hospital, Sakri, District Dhule on 30.06.2014, invoking the provisions of Section 19 of the Administrative Tribunal Act, 1985, thereby seeking relief of grant of second time bound promotion under Modified Assured Career Progression Scheme, 2019 (in short, "**MACP**").

2. **Background facts of the case are as follows :-**

(a) The applicant Dr. Dagajirao Patil was first appointed as a Medical Officer, Group-A on temporary basis on 12.04.1984 and continued to work on temporary basis up to 07.02.2019. During this period, he was given technical breaks on 12.08.1984, 11.12.1984, 11.04.1985 and 12.08.1985. Thereafter, Dr. Patil appeared in selection process drawn by the Maharashtra Public Service Commission (in short, "**MPSC**") under nomination quota in

which he was successful and got appointed on nomination basis as Medical Officer, Group-A, with effect from 24.04.1998. Breaks in temporary service of the applicant were condoned and benefit of continuous service w.e.f. 12.04.1984 was granted to the applicant vide a Government Resolution of Maharashtra State issued by the Department of Public Health Services, bearing No. मवैअ २२०३/३६०/प्र.क.१७०/सेवा-३, मंत्रालय, मुंबई, दिनांक ०५.०३.२००५ए' copy of the said order is at page No. 42 of the paper book for ready reference.

(b) The applicant was granted benefit of 1<sup>st</sup> Time bound promotion with effect from (in short, w.e.f.) 01.02.2002 vide office order dated 07.01.2009, issued by the Director of Health Services, Maharashtra State, a copy of the said is annexed at Page Nos. 24-27 of the paper book. At this stage, admittedly, the applicant had neither taken objection to the non-inclusion of period of his temporary services for counting period of his continuous and regular service of 12 years for grant of 1<sup>st</sup> time bound promotion nor had he raised the issue of grant of 1<sup>st</sup> time bound promotion w.e.f. 01.02.2002 in view of the fact that he was appointed on nomination basis on 24.04.1998.

(c) The applicant claims to have submitted a representation to Assistant Director, Health Services, dated 24.03.2014 through Medical Superintendent, Rural Hospital, Sakri i.e. the respondent No. 5 asking for benefit of 2<sup>nd</sup> time bound promotion w.e.f. 01.04.2014. However, this representation made by the applicant remained unattended by the Assistant Director, Health Services. It is not explained by the applicant as to why the Assistant Director, Health Services has not been impleaded as respondent.

(d) The applicant, after his retirement on 30.06.2014, came to know about the Government Resolution issued by the Finance Department bearing No. मप्रन्या-२०१२/प्र.क. ६९/२०१२/सेवा-३, मंत्रालय, मुंबई-४०० ०३२, dated 07.10.2016. Thereafter, the claim to have submitted an undated application addressed to the Medical Superintendent, Class-I, Rural Hospital, Sakri asking for benefit of 2<sup>nd</sup> time bound promotion / MACP Scheme by taking into account his temporary services too. A photo-copy of this representation is enclosed at page 37 of the paper-book. Copies of the said representation were endorsed to Director and Deputy Director, Health Services and Civil Surgeon,

Dhule. Accordingly the Medical Superintendent, Rural Hospital, Sakri recommended the case of the applicant for grant of 2<sup>nd</sup> time bound promotion taking into account temporary service vide his letter dated 27.02.2017, a copy of which is enclosed at page 34 of the paper-book.

(e) From the copy of an internal communication made by the respondent No. 4 i.e. the District Civil Surgeon dated 15.04.2019, with the respondent No. 3 i.e. the Deputy Director, Health Services, Nashik, it appears that the applicant had submitted a representation dated 15.01.2019 to the respondent No. 4 asking for benefit of 2<sup>nd</sup> time bound promotion on completion of 24 years of service. The respondent No. 4 had, vide the said communication, requested the respondent No. 3, i.e. the Deputy Director, Health Services, Nashik to take appropriate action on the representation made by the applicant. Copy of this communication had been endorsed by the respondent No. 4 to the respondent No. 2 i.e. the Director, Health Services and also to the applicant.

(f) The applicant is obviously treating the above mentioned internal communication between the respondent

No. 4 and the respondent No. 3 as cause of action. This inference has been arrived at from the averments made by the applicant in para (5), page 2-3 of the paper-book, of the original application which is reproduced below for ready reference:-

*“5. Applicant says that he is preferring this Original Application u/sections 15 & 19 of the Administrative Tribunals Act, 1985 and the same is being filed within the prescribed period of limitation as mentioned u/s 21 of the said Act from the date of cause of action i.e. from 15.10.2019 when period six months was completed from 15.04.2019 when Resp. No. 4 had sent communication to the respondent No. 3 with copy of the Resp. No. 2 urging for necessary action in the matter of grant of 2<sup>nd</sup> / Revise Assured Career Progression Scheme benefits to the applicant and still no decision was / has till this date been taken by the respondent No. 2 and / or respondent No. 3 compelling the applicant to approach this Hon’ble Tribunal.”*

(g) The applicant has also cited a copy of Dr. Ashok S/o Wamangir Gosavi, Medical Officer at Rural Hospital, Mhasavad, Dist. Nandurbar who was granted benefit of grant of 2<sup>nd</sup> time bound promotion by this Tribunal Bench at Aurangabad in O.A. No. 212/2014, order dated 15.12.2014.

3. **Relief prayer for**:- The applicant has prayed for relief in terms of para (12) of the Original Application which is reproduced verbatim for ready reference as follows:-

**“12) THE APPLICANT, THEREFORE, PRAYES THAT,**

(A) *This Original Application may kindly be allowed thereby directing the respondents in general and the respondent Nos. 2 and 3 in particular to forthwith consider applicant’s case and to grant him benefit of the 2<sup>nd</sup> /Revised Assured Career Progression Scheme with retrospective effect from 01.02.2014.*

(B) *This Original Application may kindly be allowed thereby directing the Respondents to extend all the consequential financial benefits (s.a. revision of pay & pension and the arrears thereof) to the applicant to which he would become entitled in view of grant of Prayer Clause “A” in his favour.*

(C) *Costs of this Original Application may kindly be awarded to the applicant.*

(D) *Any other appropriate relief as may be deemed fit by this Hon’ble Tribunal may kindly be granted.”*

4. **Grounds for seeking Relief** :- The applicant has given grounds for seeking relief as page Nos. 10 to 12 of the Original Application, which is being reproduced verbatim as follows :-

**“G R O U N D S**

- I. *The impugned inaction of the Respondents in considering applicant's case and granting him the benefit of 2<sup>nd</sup> / Revised ACPS with retrospective effect from 01.02.2014 is against the basic principles of justice, equity and good conscience.*
- II. *The impugned inaction of Respondents in general and of the Respondent Nos. 2 and 3 in particular is most illegal, arbitrary, high-handed, irrational and illogical, as a result of total non-application of mind and hence is liable to be corrected by issuing appropriate orders and directions as prayed for herein below.*
- III. *It needs to be taken into consideration and held that the applicant having duly completed 12 years of continuous service in one & the same pay scale of Rs. 10000-15200 (unrevised) from 01.02.2002 to 01.02.2014 he had become eligible and entitled to be considered for and granted benefit of 2<sup>nd</sup> / Revised ACPS w.e.f. 01.02.2014 on the basis of G.R. dated 01.04.2010. However, by their impugned inaction Respondents have denied said rightful claim of the applicant for reasons best known to them.*
- IV. *It needs consideration that in view of the policy decision of the State Government taken vide G.R. dated 01.04.2010 introducing the benefits 2<sup>nd</sup> /*



*Revised ACPS, it was / is the bounden duty and responsibility of the Respondents to not only consider applicant's case, but also to confer upon him benefits of said revised Scheme with retrospective effect from 01.02.2014 particularly in view of the fact that the applicant was fully eligible therefor as established from the proposal dated 27.02.2017 submitted by the respondent No. 5 to respondent No. 2 with copy to respondent No. 2.*

- V. *It further needs consideration that in view of the documents at Annexs. A-5 to A-7 it is explicitly and abundantly clear that the Respondents have indulged in the impugned inaction for absolutely no fault on the part of the applicant and in spite of their being absolutely no reason for non-consideration of applicant's case for conferment of 2<sup>nd</sup> / Revised ACPS benefits.*
- VI. *It also needs consideration that by indulging in the impugned inaction the Respondents have defeated the very purpose and intention behind introduction of 2<sup>nd</sup> / Revised ACPS inasmuch as in spite of being fully eligible therefor the applicant has till this date been deprived of the benefits of the said Scheme.*
- VII. *From the totality of circumstances and documents already referred hereinabove, it is explicitly clear that it is only and only due to the negligent and indifferent attitude exhibited by the Respondents*

*that the applicant is deprived of his rightful claim to the benefit of 2<sup>nd</sup> / Revised ACPS.*

*VIII. It needs consideration that there was absolutely no reason muchless any justifiable, palatable and sustainable reason for the impugned inaction of the Respondents and hence it is most essential in the interests of justice that the Respondents are directed to forthwith process applicant's case and grant him the benefits of 2<sup>nd</sup> / Revised ACPS with retrospective effect from 01.02.2014.*

*IX. The impugned inaction of the Respondents being otherwise bad in law is liable to be corrected by issuing appropriate orders and directions as prayed for here in below."*

5. **Pleadings and final hearing** :- The respondents filed a joint affidavit in reply dated 10.02.2020 which was taken on record and a copy thereof had been supplied to the other side by order of this Tribunal dated 17.02.2020. The matter remained dormant thereafter during Covid-19 pandemic. It was thereafter transferred from Single Judge Bench to Division Bench in view of the Circular No. MAT/MUM/ESTT/732/2021, dated 25/28.05.2021 issued by the Principal Bench of this Tribunal, by which the matter pertaining to the grant of time bound promotion and MACP are required to be decided by the Division Bench.

Therefore, the matter was placed before the Division Bench vide order of Single Judge Bench dated 04.01.2022. The matter was heard afresh by the Division Bench on 22.04.2022 and thereafter the matter was reserved for orders.

6. **Analysis of Facts** :- On analysis of facts on record and oral submissions made by the two contesting sides, following six issues emerge which may lead us to decide the present matter :-

**Issue No. I-** Whether the applicant meets requirement of limitation under section 21 of the Administrative Tribunals Act, 1985?

**Analysis-** The applicant claims to have made his first representation for 2<sup>nd</sup> time bound promotion on 24.03.2014 (page 23 of paper-book), just before his retirement by superannuation on 30.06.2014. Then, he came to know about Finance Department G.R. No. मप्रन्या-२०१२/प्र.क. ६९/२०१२/सेवा-३, मंत्रालय, मुंबई-४०० ०३२, Mantralaya, Mumbai, dated 07.10.2016 (supra) and accordingly represented in the year February, 2017 for grant of 2<sup>nd</sup> time bound promotion taking into account period of his temporary service. Thereafter, he remained dormant and is treating pendency of one internal

communication by respondent No. 4 with respondent No. 3 as the cause of action.

**Conclusion:-** *Real cause of action in the present matter is that applicant was not granted benefits of MACP Scheme as claimed by him vide his representation made dated 24.03.2014. Pendency of an internal communication dated 15.04.2019 between Respondents No. 3 and 4 may not qualify for being treated as the cause of action in the present matter. Therefore, the applicant cannot be said to be within limitation and no application / prayer has been made for condonation of delay in filing the O.A. However, this issue has not been raised earlier by any side of the dispute and therefore, the original application is not being decided solely on ground of not being within limitation period.*

**Issue No. II-** Whether the applicant was entitled for benefits of time-bound, non-functional promotion scheme introduced by the Government Resolution of General Administration Department bearing No. एसआरव्ही-१०९५/प्र.क.१/९५/बारा, मंत्रालया, मुंबई, दिनांक ०८.०६.१९९५?

**Analysis :-** Benefit of time bound promotion scheme, 1995 had been available only to class-III and Class-IV employees, whereas the applicant was class-I employee. Therefore, the applicant was not

entitled to get benefit of time bound promotion scheme of 1995.

**Conclusion:-** *Based on above analysis, it is inferred that the applicant was not eligible for getting benefit of 1<sup>st</sup> time-bound promotion scheme of 1995. In view of this inference, the question of taking into account period of his temporary service for this purpose becomes redundant.*

**Issue No. III -** Whether the applicant was entitled for grant of benefits under Assured Career Progression Scheme introduced by Government Resolution of Finance Department, being no. प्र.क. २/९९/सेवा-३, मंत्रालया, मुंबई, दिनांक २०.०७.२०१२? If so, whether the same was granted?

**Analysis :-** Scheme of Assured Career progression Scheme was introduced w.e.f. 01.08.2001. This scheme was available for employee in pay scale of Rs. 8000-13500 or less subject to an employee meeting all criterions for eligibility for promotion unless the employee is on an isolated post, in that case, his annual confidential reports are as per prescribed norms. As the applicant was in pay scale of Rs. 8000-13500 as per recommendations of 5<sup>th</sup> Pay Commission applicable during period from 01.01.1996 to 31.12.2005, he was eligible for benefit of Assured Career Progression Scheme, 2001

which had come in force w.e.f. 01.08.2001. The benefits of this scheme was granted to the applicant w.e.f. next date of 01.02.2002 and he has no grievance about the same.

**Conclusion :-** *The applicant had been granted benefits of ACPS, 2001 to his satisfaction. As the scheme was introduced w.e.f. 01.08.2001, it would not have made any difference even if the period of temporary services of the applicant had been taken into account for this purpose.*

**Issue No. IV -** Whether the applicant is entitled for benefit under MACP introduced by the Government Resolution issued by the Finance Department bearing no. वेतन-११०९/प्र.क्र. ४४/सेवा-३, मंत्रालया, मुंबई, दिनांक ०१.०४.२०१० ?

**Analysis :-** MACP scheme 2010 came in force w.e.f. 01.10.2006. Employees in Pay Band PB-3, Pay Scale of Rs. 15600-39100 and Grade Pay up to Rs. 5400 are eligible for benefit under the scheme. However, the applicant came under PB-3, Pay-Scale Rs. 15600-39100, Grade Pay 6600 as per pay fixation with effect from 01.01.2006 (as per sixth pay commission), which is higher pay scale than the limit prescribed under the scheme. Therefore, he is not eligible for benefits under MACP, 2010.

**Conclusion :-** The applicant is not entitled for benefit MACP Scheme, 2010. Therefore, the claim of the applicant for grant of benefits of 2<sup>nd</sup> time bound promotion under scheme of MACP, 2010 is not sustainable.

**Issue No. V-** Whether order of this Tribunal, bench at Aurangabad in O.A. No. 212/2014 dated 15.12.2014, has any bearing on this matter?

**Analysis :-** In the cited case of O.A. No. 212/2014 which was filed before this Tribunal, the related applicant had been given substantive promotion by the respondents before any order was passed. This Tribunal had, therefore, disposed of the O.A. with direction to the respondents to decide the representations made by the applicants within a period of six weeks and accordingly, inform the applicant of the decision taken. Therefore, in our considered opinion, the ratio in the two cases are different and the order passed by this Tribunal in O.A. No. 212/2014 is not relevant for adjudication of the present matter.

**Conclusion :-** Order passed by this Tribunal Bench at Aurangabad in O.A. No. 212/2014 has a different ratio and the same is not applicable in the instant matter.

Following Table depicts the relevant information, analysis thereof and conclusions drawn at a glance.

<b>Scheme&gt;&gt;&gt;</b>	<b>Time Bound Promotion Scheme 1995</b>	<b>Assured Career Progression Scheme 2001</b>	<b>MACP scheme 2010</b>
<i>Period for Schemes &gt;&gt;&gt;</i>	<i>Effective from 01.10.1994 to 31.07.2001</i>	<i>Effective from 01.08.2001 to 31.12.2005</i>	<i>Up to 01.01.2006-31.12.2015</i>
<i>Critical Eligibility parameter</i>	<i>Applicable for Class III and IV employee/ Group C and D employee</i>	<i>Up to Pay-scale Rs. 8000-13500</i>	<i>Up to Pay Band PB-3, pay-scale up to Rs. (15600-39100) Grade Pay 5400</i>
<i>Parameters as applicable to the applicant</i>	<i>Group A/ Class I employee</i>	<i>Pay-scale Rs. 8000-13500</i>	<i>Pay Band PB-2, pay-scale Rs. 15600-39100, Grade Pay 6600</i>
<b>Conclusion</b>	<b>Not eligible</b>	<b>Eligible and granted</b>	<b>Not eligible</b>

7. Hence, the following order:-

### **ORDER**

- (A) The Original Application No. 995/2019 is dismissed for reasons of being misconceived and devoid of merit.
- (B) No order as to costs.

**MEMBER (A)**

**VICE-CHAIRMAN**