

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 458 OF 2012

DIST. : AHMEDNAGAR

Chandrakant s/o Sonu Gurao,
Age. 60 years, Occ. Pensioner,
R/o Dhamangaonk, Awari Road,
AT Post Akole, Tq. Akole,
Dist. Ahmednagar.

-- APPLICANT

VERSUS

(1) The State of Maharashtra,
Through Chief Presenting Officer,
Maharashtra Administrative Tribunal,
Bench at Aurangabad.

(2) The Collector,
Ahmednagar.

(3) The Tahsildar,
Sangamner, Dist. Ahmednagar.

(4) Accounts Officer,
Pay Verification Unit,
Collector Office Compass,
Nasik..

-- RESPONDENTS

APPEARANCE : Shri V.B. Wagh, learned Advocate for the
applicant.

: Shri S.K. Shirse, learned Presenting Officer for
respondents in both the matters.

CORAM : HON'BLE SHRI J. D. KULKARNI, MEMBER (J)

JUDGMENT

(Delivered on this 27th day of January, 2017)

1. The applicant was initially appointed as a Talathi on 2.12.1972 and on completion of 12 years of service and in view of G.R. dated 8.6.1995 the benefits of the said G.R. were extended to the applicant on 2.12.1995. The time bound promotion scale was granted to the applicant in view of the said G.R. on 8.6.1995 w.e.f. from 1.10.1994.
2. On 25.5.2005, the applicant was considered for regular promotion by the res. no. 2 and was promoted to the post of Circle Officer. On 31.10.2008, the applicant submitted an application for voluntary retirement and the same was extended and the applicant was relieved on 1.11.2008.
3. According to the applicant, before his voluntary retirement i.e. on 7.7.2008 a decision was taken to recover the excess payment made to the applicant on the ground that the applicant was not entitled to the promotional scale from 1.10.1994 to 25.2.2005 and vide the impugned order dated 7.7.2008 the recovery was directed.
4. On 1.4.2010, the Government reissued the G.R. in respect of grant of benefits of second time bound promotion. The applicant was, in fact, entitled to second time bound promotion as per G.R. dated 1.4.2010, but the said benefit has not been extended to the applicant and, therefore, the applicant was constrained to file this original application.

5. The applicant has claimed that the impugned communication dated 7.7.2008 was issued by the res. no. 3 regarding recovery of excess amount of pay be quashed and set aside and the respondents be directed to grant the benefit of G.R. dated 1.4.2010 and to extend the benefit of the same to the applicant.

6. The applicant has also claimed that the respondents be directed to revise and re-fix the pension by taking into consideration the applicant's period from 1.10.1994 to 2005 by granting him time scale and to pay the amount of arrears thereof to the applicant and revised his pay scale as per the 6th Pay Commission and further to direct the respondents to refund whatever amount recovered from the applicant.

7. The res. nos. 2 & 3 have filed affidavit in reply and stated that the applicant was working as a Talathi and in fact was not eligible for promotion. In the year 1993, he has voluntarily waived his right for promotion and has not accepted the regular promotion granted to him. The necessary entry to that effect has been taken in the service book and, therefore, he was not entitled to the benefits of the first time bound promotion scheme.

8. It is further stated that the clause 2 (7) of the G.R. dated 8.6.1995 makes it clear that, if an employee refused to accept the regular promotion, then he is not entitled for the benefits of G.R. for time bound

promotion. Since, the applicant refused to accept the regular promotion, he was not entitled to the first time bound promotion.

9. The fact of non acceptance of regular promotion was brought to the notice of the competent authority and, therefore, vide order dated 7.7.2008 the benefit of first time bound promotion granted to the applicant were withdrawn.

10. The res. no. 4 has also filed affidavit in reply and reiterated the fact that the grant of benefits of first assured career progression scheme was withdrawn, since the applicant refused to accept the regular promotion. The excess amount has been recovered since the applicant was not entitled for the benefit of first time bound promotion scheme.

11. The learned Advocate for the applicant submits that the applicant has retired on 1.11.2008. He invited my attention to the minutes of the meeting dated 25.4.1997 (paper book page 54 & 55) and submitted that the applicant was found eligible for promotion in the said meeting for the post of Circle Officer and his name stands at sr. no. 28.

12. There is no dispute that the applicant was found fit for promotion. It is also not disputed that the applicant was earlier granted time bound promotion in view of the order dated 24.1.1997 w.e.f. 1.10.1994. However, earlier though the applicant was promoted regularly, it seems that, he did not accept the said regular promotion. The entry to that effect

has been taken in the service book of the applicant and copy thereof has been placed on record of this original application at paper book page 56, which is as under :-

श्री. सी.एस.गुरव, तलाठी यांनी उ.वि.अ. संगमनेर भाग यांचे कडील पत्र क्रं. कावि/आस्था/१/१४०७/९३, दि. १८.९.९३ चे सोबत दिलेल्या अर्जाप्रमाणे मंडळ निरिक्षक संवर्गातील पदोन्नती कायम स्वरूपी नाकारली आहे.+

13. The first time bound promotion was granted to the applicant. The said benefit of first time bound promotion was withdrawn by the competent authority vide the impugned order dated 7.7.2008. The said order is self explanatory and it refers to the condition in the G.R. dated 8.6.1995. In clause 2 (य) of the said G.R. it has been specifically mentioned as under :-

श्री(य)नियमित पदोन्नतीस अपात्र ठरलेल्या कर्मचा-यास या योजनेचा लाभ मिळणार नाही. त्याप्रमाणे नियमित पदोन्नती नाकारलेल्या कर्मचा-यास देखील या पदोन्नतीचा लाभ मिळू शकणार नाही. या आधीच त्यांना (In-Situ) पदोन्नती दिली असल्यास मूळच्या पदावर पदावनत करण्यात येईल. तशा आशयाचे बंधपत्र कर्मचा-याना लिहून द्यावे लागेल. मात्र देण्यात आलेल्या आर्थिक लाभांची वसूली केली जाणार नाही.+

14. From the aforesaid circumstances, it will be clear that the applicant was not entitled to claim the benefit of first time bound promotion as per the G.R. dated 8.6.1995, since he has refused the regular promotion.

However, the first time bound promotion was given and when it came to the knowledge on the objection taken by the res. no. 4 at the time of fixation of pay of the applicant due to his voluntary retirement, the said benefits of first time bound promotion scheme was withdrawn. However, the respondents should not have recovered whatever amount wrongly paid to the applicant due to grant of benefit of first time bound promotion by showing it as excess payment in view of the condition of the said G.R. as already stated hereinabove.

15. Even recently the Hon'ble Supreme Court has observed in the case of **STATE OF PUNJAB AND OTHERS ETC. VS. RAFIQ MASIH (WHITE WASHER) ETC. IN CIVIL APPEAL NO. 11527/2014 (ARISING OUT OF S.L.P. (C) NO. 11684/2012 AND OTHERS** that the excess amount paid to the Class . III employee cannot be recovered from him.

16. The applicant is also claiming second time bound promotion scheme in view of the G.R. dated 1.4.2010. The clause 5 of the said G.R. states as under :-

१६४) पहिला लाभ मंजूर केल्यानंतर संबंधित कर्मचारी प्रत्यक्ष पदोन्नतीस अपात्र ठरला अथवा त्याने पदोन्नती नाकारली तर अशा प्रकरणी पहिला लाभ काढून घेतला जात असल्याने अशा कर्मचा-यांचा थेट दुस-या लाभासाठी विचार करता येणार नाही. मात्र त्याने त्यानंतर पदोन्नती स्वीकारल्याच्या दिनांकापासून १२ वर्षांच्या नियमित सेवेनंतर त्याला अन्य अटी व शर्तीच्या अधीन राहून दुसरा लाभ मंजूर करता येईल. +

17. In the present case, since the first time bound promotion benefit granted to the applicant was withdrawn as he refused to accept the regular promotion, and since the applicant was not entitled for the first time bound promotion scheme, he is also not entitled for the benefit of second time bound promotion scheme as per the G.R. dated 12.4.2010 in view of the clause therein as reproduced hereinabove.

18. The learned Advocate for the applicant has invited my attention to one of the judgment delivered by Hon^{ble} Bombay High Court, Bench at Aurangabad in **writ petition no. 2598 of 2012 [Shri Gopinath Bajaba Ugale Vs. the State of Maharashtra & Ors]** on 22.8.2012 and submitted that in the similar circumstances, Hon^{ble} High Court has given relief to the petitioner therein Shri Gopinath Bajaba Ugale. He submits that the case of the present applicant is similar.

19. I have carefully gone through the said judgment. It is material to note that, in the said judgment also the only recovery of excess amount was quashed and the petitioner therein was held entitled to recovery of the amount, which was already recovered. As already stated, the recovery of excess amount is concerned, the respondents cannot recover the so called excess amount paid to the applicant. If such amount is recovered by the respondents, the same is required to be refunded to the applicant.

20. The applicant has not stated in the original application as to what exact amount has been recovered from him due to withdrawal of benefits of first time bound promotion. In view thereof I pass following order :-

ORDER

- (i) The original application is partly allowed.
- (ii) The impugned order dated 7.7.2008 only to the extent of directions of recovery of excess amount from the applicant is quashed and set aside.
- (iii) The respondents are directed to repay the excess amount, if recovered from the applicant under the impugned order. The rest of the claim made by the applicant in the original application stands rejected.

There shall be no order as to costs.

MEMBER (J)