

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 837 OF 2016

DISTRICT : KOLHAPUR

1. The Association of the Sub-ordinate)
Service of Engineers, Maharashtra)
State, Registered No. G.R.G.AD)
1068-J dated 25.3.1968.)
Having office at 1168-E Ward,)
Near Geetanjali Society,)
Opp, Korgaonkar Lawn, Takala,)
Kolhapur 416 001. Through its)
President, Shri Jayvantrao B.)
Gaikwad and General Secretary)
2. Shri Vivekanand P. Maindargi,)
3. Shri Baburao D.Kamble)
4. Shri Abhakumar N. Narlekar)
5. Shri Ravindra T. Chavan)
6. Shri Prakash H. Phadke)
7. Shri Maturi T. Lad)
8. Shri Sunil B. Warale)
9. Shri Dattatray B. Darwadkar)
10. Shri Shankar K. Raul)
11. Shri Rajan G. Ghatage)

12. Shri Dilip R. Ingawale)
 13. Shri Shriram S. Kakade)
 14. Shri Suresh M. Patil)
 15. Shri Ramchandra B. Bhosale)
 16. Shri Sanjay B. Gaikwad)
 17. Shri Balu D. Mogarde)
 18. Shri Mansur B. Sayyad)
 19. Shri Vijay D. Gaikwad)
 20. Shri Shankar K. Kumbhar)
 21. Shri Suryakant D. Barbind)
 22. Shri Sunil G. Holankar)
 23. Shri Ashok R. Phadtare)
 24. Shri Ajit R. Anekar)
 25. Shri Vilas P. Jadhav)
 26. Shri Chaitanya S. Deuskar)
 27. Shri Dhananjay R. Shinde)
 28. Shri Anil P. Jadhav)
 29. Shri Bhagwan R. Khedkar)
 30. Shri Dilip M. Phadke)
 31. Shri Vishnu D. Abhave)
- Add for service)
Having office at 1168-E Ward,)
Near Geetanjali Society,)
Opp, Korgaonkar Lawn, Takala,)
Kolhapur 416 001)...**Applicant**

Versus

1. The State of Maharashtra)
Through the Chief Secretary,)
Mantralaya, Mumbai 400 032.)
2. The Principal Secretary,)
Irrigation Department, Mantralaya,)
Mumbai 400 032.)
3. The Principal Secretary,)
Public Works Department,)
Mantralaya, Mumbai 400 032.)
4. The Principal Secretary,)
General Administration Dept,)
Mantralaya, Mumbai 400 032.)
5. The Principal Secretary,)
Finance Department, Mantralaya,)
Mumbai 400 032.)...**Respondents**

Smt Punam Mahajan, learned advocate for the Applicants.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 02.02.2017

ORDER

1. Heard Smt Punam Mahajan, learned advocate for the Applicants and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Association of Sub-ordinate Service of Engineers, Maharashtra State and some Sectional and Deputy Engineers in the Water Resources Department of the State Government. They are claiming that on second upgradation under the Assured Career Progression (A.C.P) Scheme, the Sectional Engineers are eligible to get the pay scale of the Executive Engineers.

3. Learned Counsel for the Applicants argued that the Applicants were initially appointed as Junior Engineers and later the post was upgraded to that of Sectional Engineer (in case of Diploma holders or non-qualified Junior Engineers). The Applicants were given the pay scale of Deputy Engineer on getting Time Bound Promotion / First benefit of the Assured Career Progression Scheme. On getting second benefit of A.C.P Scheme, they are eligible to get the pay in the pay scale of the Executive Engineer. Learned Counsel for the Applicants argued that the degree holder junior engineers were upgraded as Assistant Engineer, Grade-II, while diploma holders and others were upgraded as Sectional Engineers by G.R dated 16.4.1998. Learned Counsel for the Applicant further argued that such upgradation cannot be said to be 'non-functional' promotion. At the most, it has to be held to be regular promotion and the Applicants are entitled to get two upgradation after 12 years and 24 years as per G.R dated 1.4.2015. Learned

Counsel for the Applicants relied on the judgment of this Tribunal dated 21.4.2015 in O.A nos 333, 1000-1003/2013.

4. Learned Presenting Officer (P.O) argued that the claim of the Applicants is clearly unfounded. By G.R dated 16.4.1984, all Junior Engineers were not given financial upgradation. Junior Engineers holding a degree in Engineering were immediately upgraded as Assistant Engineer, Grade-II and given gazetted status. Other Junior Engineers were not given gazetted status immediately. Those Junior Engineers who had passed Diploma of 3 years duration were to be given gazetted status after 5 years of service while those who had passed Diploma of 2 years duration were to be given gazetted status after 7 years of service. Those having 'no qualification' (अर्हतारहित) were to be given gazetted status after 10 years of service. Learned Presenting Officer argued that such upgradation was non-functional as the Sectional Engineers continued to do the same work as Junior Engineers. This financial upgradation was in the nature of Time Bound Promotion. This fact was recognized by the State Pay Revision Committee-2008 (Hakim Committee). In para 3.27.5 of its report, Hakim Committee recommended that the benefit of Time Bound Promotion, which was admissible only once till then, should be made applicable twice in the service career of an employee after 12 & 24 years of service. As the

Applicants were given non-functional pay scale once, that was considered as first benefit under Time Bound Promotion and the Applicants are eligible for second Time Bound Promotion for the post of Deputy Engineer. Learned Presenting Officer argued that the facts in O.A no 333, 1000-1003/2013 were entirely different. There the pay scales were revised for all employees unlike in the present case, where it is Schematic.

5. The Applicants have prayed that this Tribunal may declare that clause 2(b)(3) of G.R dated 1.4.2010 is not applicable to the Sectional Engineers. They have also challenged Government Circular dated 13.6.2016.

6. The two important documents which have crucial bearing in this case are G.R dated 16.4.1984 (Annexure A-2) and recommendations of Hakim Committee-2008, in which recommendation to grant second Time Bound Promotion after 24 years of service was made. Before that, by G.R dated 8.6.1995 and G.R dated 20.7.2001, only one Time Bound Promotion was available to Government employees after 12 years of service. G.R dated 16.4.1984 provides for granting gazetted status (and higher pay scale) to Junior Engineers. From the title of this G.R, it is clear that it is definitely not about promotion. Degree holder Junior Engineers were to be given gazetted status immediately

in the pay scale of Rs. 600-950. For non-degree holders, there were three categories, viz:

- (a) those having three years' Diploma,
- (b) those having two years' Diploma, and
- (c) non-qualified (अर्हतरहित) Junior Engineers.

All of them were not given Gazetted status and higher pay scale immediately. For Diploma holder, it was to be given after 5 years (for 3 years Diploma) or 7 years (for 2 years Diploma). For non-qualified Junior Engineer it was to be given after 10 years. It is clear that this financial upgradation was non-functional, meaning that there was no change in the functions and responsibilities. This cannot be called a 'promotion' as there was no change in functions and responsibilities. By G.R dated 28.9.1984, it was clarified that upgradation to the post of Sectional Engineer, was subject to annual confidential reports (ACRs) of last three years being satisfactory. However, this fact alone will not make such upgradation as functional promotion, as condition of satisfactory performance for last 3-5 years is also there for Time Bound Promotion or for grant of selection grade. The important criterion is whether such upgradation results in increasing the duties and responsibilities which is totally absent in the present case.

7. Coming to the report of Hakim Committee-2008, para 3.27.5 of the report reads as follows:-

“ १) संपूर्ण सेवा कालावधीत फक्त एकदाच योजनेचा लाभ मिळण्याच्या सध्याच्या तरतुदीऐवजी १२ व २४ वर्षांच्या सेवेनंतर दोन वेळा लाभ अनुज्ञेय करण्यात यावा. तथापि, तीन किंवा त्यापेक्षा जास्त पदोन्नती मिळालेल्या कर्मचा-यांना या योजनेचा लाभ मिळणार नाही. दोन पदोन्नती मिळालेल्यांना या योजनेचा लाभ एकदा मिळू शकेल. एक पदोन्नती किंवा पदोन्नती न मिळालेल्या कर्मचा-यांना या योजनेचा लाभ दोन वेळा मिळू शकेल. या ठिकाणी हे स्पष्ट करण्यात येते की, कालबद्ध पदोन्नती अथवा सेवांतर्गत आश्वासित प्रगती योजनेचा लाभ यापूर्वी मिळाला असल्यास, सुधारित सेवांतर्गत आश्वासित प्रगती योजनेखाली एक पदोन्नती मिळाली असे गृहीत धरण्यात येईल. तसेच असेही स्पष्ट करण्यात येते की, विशिष्ट कालावधीनंतर समय वेतनश्रेणी, अकार्यकारी वेतनश्रेणी, निवडश्रेणी अथवा अन्य कारणांमुळे मिळणारी उच्च वेतनश्रेणी या योजनेचा लाभ देण्यासाठी पदोन्नती समजण्यात येईल.”

The case of the Applicants is covered by ‘ अकार्यकारी ’ in the report of Hakim Committee. It is an admitted fact that G.R dated 1.4.2010 was issued pursuant to the acceptance of the aforesaid recommendation of the Hakim Committee. Para 2(b)(3) of this G.R reads:-

“ (३) विवक्षित सेवाकालावधीनंतर, संबंधित पदाच्या कर्तव्ये व जबाबदारीत वाढ न होता, अकार्यात्मक वा तत्सम उच्च वेतनसंरचनेचा (Non functional pay structure) मंजूर करण्यात आलेला/येणारा लाभ हा या योजनेखालील पहिला लाभ समजण्यात येईल. उदा. मंत्रालय/ विधान मंडळ सचिवालयातील कक्ष अधिका-यांना चार वर्षांच्या नियमित सेवेनंतर देण्यात येत असलेली अकार्यात्मक वेतनसंरचना.”

The Applicants have claimed that this clause is not applicable for Sectional Engineer. On plain reading of G.R dated 16.4.1984, report of Hakim Committee and G.R dated 1.4.2010, it is difficult to accept the contention of the Applicants that clause 2(b)(3) of G.R dated

1.4.2010 would not apply to Sectional Engineers, when it applies to Section Officers, working in Mantralaya.

8. By judgment dated 21.4.2015 in O.A nos 233, 1000-1003/2013, this Tribunal has held that grant of higher pay scale will not amount to grant of Time Bound Promotion. By G.R dated 14.12.1998, employees of Dairy Development Department were given higher pay scales. This Tribunal has held in para 11 of the aforesaid judgment that:-

“11. The conjoint reading of the notification and the GR shows that the Government has revised the existing pay scale of Milk Procurement/Distribution Supervisors from Rs. 1200-1800 to Rs. 1350-2200 as per the notification of 7.11.1998. It is not a higher pay scale applicable to the post of Milk Procurement / Distribution Supervisor.”

This Tribunal, has also observed in para 13 that:-

“It is pertinent to note that the said para refers to an example of the benefit of pay structure which is given to Desk Officers in Mantralaya or Legislative Secretariat on completion of 4 years of service. It is a type of benefit which is schematic and not given as a one-time grant”.

It was also held that such financial upgradation in that case was one-time grant and not schematic. Benefit granted to Desk Officers in Mantralaya on completion of 4 years of service was held to be 'schematic', i.e. it is applicable to all cases, old and new. On this parameter, the scheme of G.R dated 16.4.1984 is also 'schematic' and not one-time grant.

9. This Tribunal in the aforesaid judgment has clearly distinguished financial upgradation as a 'one time grant', which would not amount to Time Bound Promotion and 'schematic' upgradation, which would be covered by clause 2(b)(3) of G.R dated 1.4.2011. Even today, a Junior Engineer, if holding 3 years Diploma will not be eligible to be given upgradation as Sectional Engineer, unless he completes satisfactorily 5 years in the post of Junior Engineer. His position is exactly parallel to that of a Section Officer in Mantralaya.

10. The contention of the Applicants that the aforesaid judgment of this Tribunal is applicable in their case, has to be rejected. Their case is covered by clause 2(b)(3) of G.R dated 1.4.2010.

11. The Applicants have challenged circular dated 16.6.2016. This Circular provides that if 2nd benefit of Assured Career Progression Scheme has been given in violation of clause 2(b)(3) of G.R dated 1.4.2010, it will be

withdrawn. In the present case, it has been held that clause 2(b)(3) of G.R dated 1.4.2010 is applicable to Sectional Engineers. As such, the request of the Applicants cannot be accepted. As regards recovery of amount paid in excess of entitlement in cases of some of the Applicants, no order can be passed in this Original Application. Such persons will have to individually take up their cases before appropriate authorities in case they are aggrieved.

12. Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs.

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 02.02.2017
Dictation taken by : A.K. Nair.