

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 829 of 2011 (S.B.)**

1. Dinkar Onkar Jadhav,  
Aged about 60 yrs. Occ. Retired Govt. Servant,  
r/o Laxminiwas, Laxminagar, Buldhana.
2. Dashrath Sitaram Kule,  
Aged about 60 yrs. Occ. Retired Govt. Servant,  
r/o Saraswati Nagar, Buldhana

**Applicants.**

**Versus**

1. The State of Maharashtra,  
Through the Secretary,  
Water Supply, Sanitation Department,  
Mantralaya, Mumbai.
2. The Director,  
Earth Water Survey and Development Department,  
Maharashtra State, Pune -5.
3. Deputy Director,  
Earth Water Survey and Development Department,  
Amravati Division Dr. Fundkar's Bungalow,  
Paranjape Colony, Camp, Amravati

**Respondents.**

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**S/Shri S.U. Bhuyar, Amol Mardikar, Advocates for the applicants.  
Shri S.A. Sainis, learned P.O. for respondents.**

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**Coram :- Hon'ble Shri Justice M.G. Giratkar,  
Vice Chairman.**

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**Date of Reserving for Judgment : 12<sup>th</sup> June,2023.**

**Date of Pronouncement of Judgment : 27<sup>th</sup> June,2023.**

**JUDGMENT**

**(Delivered on this 27<sup>th</sup> day of June,2023)**

Heard Shri S.U. Bhuyar, learned counsel for the applicants and Shri S.A. Sainis, learned P.O. for the respondents.

2. This O.A. was decided by this Tribunal by the Judgment dated 15/06/2017. The O.A. was dismissed. Thereafter, Review Application No.16/2017 was filed. The said Review Application was dismissed as per order dated 19/03/2018. Being aggrieved by the order of this Tribunal, the applicants filed the W.P. No.7288/2019 before the Hon'ble Bombay High Court, Bench at Nagpur. The Hon'ble High Court allowed the said Writ Petition on 29/02/2021 and the orders passed by this Tribunal dated 15/06/2017 and 19/03/2018 are quashed and set aside. This O.A. stand restored. This Tribunal was directed to decide the O.A. at the earliest.

3. The case of the both the applicants in short is as under –

The applicants were serving in the Water Supply Department at Buldhana. The applicant no.1 is retired as a Driver on 31/05/2011 and applicant no.2 is retired on 30/10/2009 as a Driver. Both these applicants were appointed on 21/02/1974. It is submitted that during the course of employment, both the applicants were offered a promotion as an Air Compressor Driver at Zilla Parishad, Yavatmal. In fact, this was not a promotion at any stretch of imagination, as the pay scale of said promotional post was same that of pay scale of a light vehicle Driver. For this reason, they refused the

promotion. Copy of the said promotion order dated 29/04/1988 is at Annexure-A-1.

4. During the service period, on 08/06/1995 the Government has issued the Circular in respect of promotional benefits. This Notification was implemented from 01/10/1994. It is pertinent to note that these two applicants are in Class-C category and therefore the promotional benefits of this Circular were not made applicable to these applicants. Copy of the said Circular dated 08/06/1995 is at Annexure-A-2.

5. During the service of applicants, there was another Circular which came into force from 01/11/2008. The Government has decided to give benefits to the employees who are eligible for time bound promotion. The applicants applied for granting for time bound promotion, but they were informed by the communication dated 5/10-08-2011 stating that both the applicants refused the promotion and therefore they are not eligible to get for time bound promotion. Hence, both the applicants approached to this Tribunal by filing the present O.A. for the following reliefs –

*“(1) declare that both the applicants are entitled for the higher pay scale from the period starts from 1.10.1994.*

*“(2) Since both applicants are retired and come in the category of senior citizen, this application may be disposed of at the stage of admission itself.”*

6. The O.A. is strongly opposed by the respondents. It is submitted that the respondent no.3 issued promotion orders to the applicants on 29/04/1988. Both the applicants were promoted on the post of Air Compressor Driver in the establishment of Zilla Parishad, Yavatmal. Both the applicants by communication dated 03/05/1988 refused the said promotion and specifically stated that they do not want promotions in future. The applicants denied the earlier promotion only on the ground of transfer to Yavatmal. The applicants have wrongly stated in the O.A. that they have denied the promotion, because, the pay scales of the promotional post of Air Compressor Driver and the light vehicle Driver were same. It is submitted that the pay scale of promotional post, i.e., Air Compressor Driver will always be higher than that of earlier post of light vehicle Driver held by the applicants.

7. The applicants claim is falsified by their stand. They have refused the promotion on the post of Air Compressor Driver on the basis that the pay scale for that post was less than what they were earlier getting. However, the applicants refused the promotion not on this ground, but on the ground of transfer only. The applicants have written the letter to the respondents dated 03/05/1988. From the careful reading of this letter, it will reveal that the applicants were reluctant to accept the promotion on the post of Air Compressor Driver

as they required to go to Yavatmal on promotional post. The said letter does not mention the reasons stated by the applicants in para-4.1 of this O.A.

8. As per the G.R. dated 08/07/1995, the time bound promotion scheme is implemented. As per the said G.R., the employees who could not get promotion for want of vacancy of the promotional post etc., then after completion of 12 years service, the eligible employees to get time bound promotion/ pay scale. In the said G.R., it is specifically mentioned that who refused to get the promotion, they are not eligible to get benefit of G.R. of 1995. The other G.Rs. also show that the employees who refused to get the promotional post, are not eligible to get the higher pay scale / time bound promotion as per the G.R. of 1995. Hence, the O.A. is liable to be dismissed.

9. During the course of argument, the learned counsel for the applicants has submitted that both the applicants refused the promotion because of the pay scales of the promotional post of Air Compressor Driver and the post of light vehicle Driver were same and therefore they refused the promotion.

10. The learned counsel for the applicants has pointed out the decision of the Hon'ble Bombay High Court, Bench at Nagpur in the

case of **Sarjerao Rangnath Chauhan and others Vs. State of Maharashtra and others** and submitted that the applicants are entitled to get the benefit of the G.R. of 1995.

11. The learned P.O. for the respondents Shri S.A. Sainis has pointed out the promotion order issued by respondent no.3 dated 29/04/1998 by which the applicants were transferred from Buldhana to Yavatmal on the promotional post of Air Compressor Driver. Both the applicants requested the respondent no.3 that they don't accept the promotion and they will not accept the promotional post in future also and therefore their transfers should be cancelled.

12. The learned P.O. has pointed out the Rules for promotion and the pay scales of the post of light vehicle Driver and the post of Air Compressor Driver. At last, submitted that the pay scale of the post of Air Compressor Driver is more than the post of light vehicle Driver.

13. There is no dispute that both the applicants were promoted from the post of light vehicle Driver to the post of Air Compressor Driver as per the promotion order dated 29/04/1988. Both the applicants were transferred from Buldhana to Yavatmal. From the letter written by both the applicants dated 03/05/1988 it is clear that they have stated in the said application that they were several times asked about the promotion, on each time they informed that they do not want any promotion on the post of Air Compressor Driver.

Therefore, both the applicants requested the respondent no.3 that they should not be given promotion at this time and also in future time, therefore, their transfers on promotion should be cancelled.

14. For the first time, the Government of Maharashtra issued the G.R. dated 08/06/1995 to give promotional benefits to the employees of Class-C and D because some of the employees were not getting promotion because of vacancy of the post etc. Therefore, the Government of Maharashtra has decided to give time bound promotion after completion of 12 years of service. In the said G.R., it is specifically mentioned that those employees who had refused regular promotion, they are not eligible to get the benefit of the G.R. of 1995.

15. In the year 1988, both the applicants refused the promotion, therefore, as per the G.R. of 1995, they are not eligible to get time bound promotion.

16. The learned counsel for the applicants during the course of submission submitted that the post of Air Compressor Driver is not a promotional post and therefore the applicants have refused the promotion.

17. The learned P.O. has pointed out the Rules for appointment / promotion. It is reproduced below –

***“7. Appointment to the post of Air-Compressor Driver in the Directorate shall be made either.-***

*(a) by promotion of a suitable person on the basis of seniority-cum- merit from amongst the persons holding the posts of Drivers or Jack- Hammer Drillers in the Directorate, having not less than three years service as such to their credit and who possess a valid heavy duty driving licence for heavy goods vehicle or heavy passenger motor vehicle; or*

*(b) by nomination from amongst candidates who.-*

*(i) unless already in the service of Government are not more than thirty years of age:*

*(ii) have passed the Eighth Standard examination from any school recognised by Government :*

*(iii) possess a valid heavy duty driving licence for driving heavy goods vehicle or heavy passenger motor vehicle ;*

*(iv) have experience of driving a heavy goods. vehicle or heavy passenger motor vehicle for not less than one year gained after acquiring the qualification mentioned in sub-clause (ii); and*

*(v) have experience of operating an air compressor independently for a period of not less than three years gained after acquiring the qualification mentioned in sub-clause (ii) :*

*Provided that, preference may be given to candidates who have experience in handling explosives and blasting material :*

*Provided further that, the age limit or period of experience or both may be relaxed by Government on the recommendation of the Selection Board in favour of candidates having exceptional qualification or experience or both.”*



18. Both the applicants were working on the post of light vehicle Driver. They were senior, therefore, they were promoted to the post of Air Compressor Driver.

19. The learned counsel for the applicants submitted that the pay scales of Air Compressor Driver and the pay scale of light vehicle Driver were same and therefore they refused the promotion. The learned P.O. has pointed out the pay scale. As per the pay scale, the pay scale of the post of Driver was Rs.3050-4590 and the pay scale of the post of Air Compressor Driver was Rs.3200-4900. In the year 2009, revised pay scale of the post of the Air Compressor Driver was Rs. 5200-20200 + Grade Pay Rs.2000, whereas, the pay scale of the post of light vehicle Driver was Rs. 5200-20200 + GP Rs.1900.

20. In the G.R. dated 08/06/1995, specific condition is mentioned that the employees who refused the regular promotion are not entitled to get the benefit of time bound promotion. Both the applicants have specifically stated in their application dated 03/05/1988 stating that they every time informed that they don't want any promotion even though they were promoted, therefore, they requested to cancel the transfer on promotion. They have stated in the said application that they do not want promotion at this time and also in future.

21. Both the applicants have not stated in the application that because of less pay of the post of Air Compressor Driver, they have refused the promotion. Hence, the argument by the learned counsel for the applicants that it was not a promotion because the pay scales of the post of Air Compressor Driver and light vehicle Driver were same is not acceptable. Moreover, the learned counsel for the applicants has submitted that it was not a promotional post. As per the Rule 7 cited above, it is clear that the post of Air Compressor Driver is a promotional post. It is to be filled as per seniority from the post of Driver. The applicants were promoted from the post of Driver. Therefore, it was a promotion, but both the applicants refused the said promotion.

22. The learned counsel for the applicants pointed out the Judgment of the Hon'ble Bombay High Court, Bench at Nagpur in the case of **Sarjerao Rangnath Chauhan and others Vs. State of Maharashtra and others**. The Hon'ble High Court has held that all Drivers working on the establishment of State of Maharashtra and those working on autonomous bodies to whom pay scale of the State Government is made applicable, are entitled to get higher pay scale as provided in Clause 2 of the Government Resolution dated 03/08/2001. The said Judgment is on different footing, therefore it is not applicable in the case in hand.

23. First the G.R. of 1995, thereafter the G.R. of 2001 were issued by the State Government. Keeping in mind that some of the employees are not getting the promotion for want of promotional post etc., therefore for those employees the time bound promotion scheme is implemented. In both the G.Rs., there is a specific condition that those employees who refused the regular promotion, are not entitled to get benefit of time bound promotion. Both the applicants refused the regular promotion by not joining on the promotional post on transferred at Yavatmal and therefore they are not entitled to get the benefit of the G.Rs. of 1995 and 2001. Hence, there is no merit in the O.A. Therefore, I pass the following order –

**ORDER**

The O.A. is dismissed. No order as to costs.

**Dated** :- 27/06/2023.

dnk.

**(Justice M.G. Giratkar)**  
**Vice Chairman.**

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 27/06/2023.

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