

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 948 of 2019 (S.B.)

Sunil Namdeorao Ramteke,
Aged about 53 years,
Occ. Service,
R/o Plot No.60, Venuwan Society,
Narendra Nagar, Nagpur.

Applicant.

Versus

1) State of Maharashtra,
through its Principal Secretary,
Industries, Energy and Labour Department,
Mantralaya, Mumbai-32.

2) The Director, Geology & Mining,
Government of Maharashtra,
27, Shivaji Nagar, Nagpur-10.

Respondents.

Shri S.P. Palshikar, Advocate for the applicant.
Shri V.A. Kulkarni, learned P.O. for respondents.

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

Date of Reserving for Judgment : 14th March,2023.

Date of Pronouncement of Judgment : 5th April,2023.

JUDGMENT

(Delivered on this 5th day of April,2023)

Heard Shri S.P. Palshikar, learned counsel for the applicant and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. The applicant was appointed through Maharashtra Public Service Commission (MPSC) as a Junior Geologist, Group-B as per the order dated 11/12/1990. The applicant has joined on the said post

at Kolhapur on 10/01/1991. The applicant has completed 12 years continuous service on the same post on 09/01/2003. The applicant was entitled for time bound promotion in view of the G.R. dated 20/07/2001, therefore, he made various representations. However, in spite of repeated representations, no fruitful steps have been taken by the respondent authority till date.

3. While the applicant was working as a District Mining Officer at Wardha an offence punishable under Section 7 r/w 13 (1) (d) and under section 13 (2) of the Prevention of Corruption Act, 1988 was registered against the applicant on 30/04/2004. The applicant was placed under suspension with immediate effect. The Special (ACB) Case No.2/2005 was filed in the Special Court, Wardha. The respondents revoked the suspension of the applicant on 02/09/2008 subject to outcome of result of Special (ACB) Case No.2/2005 and reinstated the applicant at Nagpur Head Office.

4. On 06/03/2014, the applicant came to be promoted on the post of Geologist Group-A by giving posting him at Chandrapur. On 28/07/2015, the Special Judge, Wardha has decided Special Case No.2/2005 and acquitted the applicant from the aforesaid charges (offence). On 22/04/2016, the Deputy Superintendent of Police, Anti Corruption Bureau, Division, Mumbai informed to the Superintendent of Police, Anti Corruption Bureau, Nagpur that there was no necessity

to challenge the order / judgment dated 20/07/2015. The respondent no.1 considered the suspension period of applicant from 30/04/2004 to 03/09/2008 as a duty period. The applicant was paid the entire claim because of the revocation of suspension since the suspension period has been considered as a duty period as per order dated 19/07/2019. The entire service of the applicant from the date of joining, i.e., from 10/01/1991 has been considered as a regular service period for all purposes of service benefit.

5. The office of respondent no.2 sent a proposal to respondent no.1 on 22/11/2018 with recommendation that the applicant has completed all the formalities and he is eligible to get the benefit of A.C.P., as the applicant has passed the requisite examination and after taking into account the five years C.Rs. In spite of this positive recommendation made by respondent no.2 to the respondent no.1, the respondent no.1 has not taken any step till date and the representations of applicant are kept pending.

6. The applicant has completed 24 years of continuous service on 09/01/2015. Considering this fact, the applicant is entitled to get 2nd benefit of ACP as per G.R. dated 01/04/2010. The applicant has been given physical promotion on the post of Geologist, Group-A on 06/03/2014. The applicant has completed continuous 12 years service on 09/01/2003 and therefore it was incumbent on the part of

respondents to give the benefit of ACP as per G.R. dated 20/07/2001. The respondent no.1 has not considered the proposal submitted by respondent no.2. Hence, the applicant approached to this Tribunal for the following reliefs –

“(i) Direct the Respondents to release the benefits of 1st time bound promotion i.e. assured progressive scheme in favour of the Applicant, considering the Government Resolution dated 1.1.2019 (Annexure A-12) with effect from 1.1.2001 i.e. after the completion of 10 years service and 2nd time bound promotion from 9.1.2011 and pay the arrears along with an interest thereon;

(ii) Direct the Respondent No.1 to consider the recommendation sent by the Respondent No.2 dated 22.11.2018 (Annexure A-10) during the pendency of the original application;

(iii) Grant any other relief which this Hon'ble Tribunal may find deem fit and proper in the facts and circumstances of the case and

(iv) Allow the Original Application with cost.”

7. Heard Shri V.A. Kulkarni, learned P.O. for the respondents. The O.A. is strongly opposed by the respondent no.2 by filing reply. In para-3 of the reply, it is submitted that the applicant has claimed benefit of ACP in pursuance of G.R. dated 01/01/2019 w.e.f. 01/01/2001 after completion of 10 years of service and 2nd time bound promotion from 09/01/2011 and also prayed arrears along with interest thereon. It is pertinent to mention that said claim of the applicant is not maintainable because as per G.R. dated 20/07/2001, the 1st time

bound promotion was applicable after completion of 12 years of service and that too if applicant is otherwise entitled for promotion and there is no vacancy. The applicant is claiming two more benefits of ACP by virtue of latest G.R. In the present case, 1st time bound promotion itself was rejected by the State Government considering the C.R. of the applicant preceding the five years of entitlement. The applicant became entitled for promotion in the year 2013 and therefore functional promotion was given to the applicant in 2014. Therefore, subsequent promotion will be considered as and when applicant became entitled. Hence, the present O.A. deserves to be dismissed.

8. In para-4, it is submitted that the applicant was appointed as a Junior Geologist Group-B category in 1991. He was entitled for 1st time bound promotion after completion of 12 years of service, i.e., in the year 2003. However, the applicant was charged with the offence under Section 13 (1) (d) of the Prevention of Corruption Act. Accordingly, he was suspended as a consequence of his arrest on 30/04/2004. After his acquittal from criminal case, the suspension period of applicant is determined and suspension period is treated as duty period. In the meantime, the applicant came to be promoted as Geologist, Group-A as per order dated 06/03/2014 after revocation of his suspension. The applicant has submitted several representations for the benefit of time bound promotion, therefore, respondent no.2

submitted proposal to respondent no.1 on 22/11/2019. The C.R. of applicant for last five years preceding the date of entitlement was considered and same were counted as 'B' Grade. In such circumstances, the approval of Government is necessary and accordingly the proposal was considered by respondent no.1 and rejected the same vide letter dated 20/02/2020 and the decision was taken that the applicant was not entitled for time bound promotion in the year 2003. The applicant is not entitled for 1st time bound promotion in the year 2003, because, he was not fulfilling the criteria of promotion because of adverse C.Rs., therefore, the applicant is not entitled for the relief prayed in this O.A.

9. During the course of argument, learned counsel for the applicant Shri S.P. Palshikar has pointed out the proposal submitted by respondent no.2. The P.O. has pointed out the letter dated 28/02/2020 addressed to respondent no.2. As per G.Rs. dated 21/02/1994 and 20/07/2011, five years C.Rs. of applicant was considered. Looking to the five years C.Rs., the applicant is not entitled for 1st time bound promotion.

10. The learned counsel for applicant Shri S.P. Palshikar has pointed out the Judgment of this Tribunal in O.A. Nos.300/2018 and 499/2017 and the Judgment of Hon'ble Supreme Court in the case of ***Dev Dutt Vs. Union of India and Others (2008) 8 SCC,725***. The

learned counsel for applicant has submitted that adverse remarks were not communicated to the applicant and therefore there was no any opportunity to explain the same. In view of the judgment of Hon'ble Supreme Court, the respondents were duty bound to communicate the adverse remarks to the applicant. The learned counsel for applicant has submitted that the direction be given as per Judgment of Hon'ble Supreme Court.

11. From the perusal of proposal submitted by respondent no.2, it appears that five years C.Rs. from the year 1998 to 2002 was not upto the mark. The total marks of the applicant was 2.8 (B). Nothing is on record to show that respondents have communicated any adverse remark to the applicant. The CRs of the year 1999-2000 is recorded as 'B+'. The C.R. of the year 2000-2001 is recorded as 'B'. The C.R. of the year 2001-2002 is recorded as 'B'. Therefore, in view of the Judgment of the Hon'ble Supreme Court in the case of **Dev Dutt Vs. Union of India and Others** (cited supra), it was for the respondents to communicate the C.Rs. to the applicant. The Hon'ble Supreme Court has held in para-44 as under –

"44. We, therefore, direct that the "good" entry be communicated to the appellant within a period of two months from the date of receipt of the copy of this judgment. On being communicated, the appellant may make the representation, if he so chooses, against the said entry within two months thereafter and the said representation will be decided within two months thereafter. If his entry is upgraded the appellant shall be considered for

promotion retrospectively by the Departmental Promotion Committee (DPC) within three months thereafter and if the appellant gets selected for promotion retrospectively, he should be given higher pension with arrears of pay and interest @ 8% per annum till the date of payment.”

12. In view of the judgment of the Hon'ble Supreme Court in the case of ***Dev Dutt Vs. Union of India and Others*** (cited supra), the following order is passed -

ORDER

- (i) The O.A. is partly allowed.
- (ii) The respondents are directed to communicate the adverse remarks to the applicant within a period of two months from the date of receipt of copy of this Judgment. On being communicated, the applicant may make representation, if he so chooses, against the said entry within two months thereafter and the said representation will be decided within two months thereafter. If his entry is upgraded, the applicant shall be considered for promotion retrospectively by the Departmental Promotion Committee (D.P.C.) within three months thereafter and if the applicant gets selected for promotion retrospectively, he should be given higher pay scale with arrears of pay and interest @ 8% p.a. till the date of payment.
- (iii) No order as to costs.

Dated :- 05/04/2023.

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 : 05/04/2023.