

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.178/2016.

(S.B.)

Devidas Tulshiram Futane,
Aged about 59 years,
R/o Shree Maa Colony, Ekvira Nagar,
Amravati-444 607.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Principal Secretary,
Department of Higher & Technical Education,
Mantralaya, Mumbai-32.
2. The Joint Director of Technical Education,
Regional Office, Gadge Nagar,
Amravati-444 603.

Respondents

Shri Bharat Kulkarni, the Ld. Advocate for the applicant.
Shri S.A. Sainis, the Ld. P.O. for the respondents.

Coram:-Shri A.D. Karanjkar,
Member (J)

ORAL ORDER

(Passed on this 4th day of December 2018.)

Heard Shri Bharat Kulkarni, the Ld. counsel for the
applicant and Shri S.A. Sainis, the learned P.O. for the respondents.

2. The applicant was appointed as Junior Clerk / Time Keeper in District Dairy Development Office, Amravati on 6.4.1981. On completion of twelve years service, first time bound promotion was given to the applicant. In the year 2006, the post held by the applicant was declared surplus, therefore, the list of surplus employees on the establishment of District Dairy Development Office, Amravati was forwarded to the Divisional Commissioner, Amravati Division, Amravati, who was Head of the Surplus Cell and considering the G.Rs dated 10.9.2001 and 26.3.2004, the applicant was absorbed and posted as Laboratory Assistant in Government College of Pharmacy, Amravati. In pursuance of the order passed by the Divisional Commissioner, Amravati, the applicant joined the duty as Laboratory Assistant on 21.9.2006.

3. The applicant was in service of Government College of Pharmacy, Amravati and after completion of twelve years' service, i.e. from grant of first time bound promotion, proposal was forwarded to give second time bound promotion to the applicant and thereafter vide order dated 15.1.2013, the applicant was placed in the pay scale of Rs. 5200-20200 plus grade pay of Rs. 2850/- and he was given second benefit w.e.f. 1.10.2006.

4. It was apprehension of the applicant that he was posted as Junior Clerk / Time Keeper in District Dairy Development Office, Amravati and there was a regular channel for promotion available to him, the first promotion was Senior Clerk and second promotion was as Head Clerk. It was contended by the applicant that after twelve years, first benefit was given to him. Scale of Senior Clerk was given to him and his salary was protected when he was absorbed and appointed as Laboratory Assistant in Government College of Pharmacy, Amravati. According to the applicant, he should have been given second time bound promotion i.e. the pay scale admissible to the post of the Head Clerk. It is contended by the applicant that, the employees junior to him on the establishment of Dairy Development Office, were given second time bound promotion and they are receiving the pay of the Head Clerk, but meagre relief was given to the applicant, therefore, total miscarriage of justice is caused

5. It is the contention of the applicant that the Divisional Commissioner, Amravati committed mistake and committed breach of para No.9, schedule-3 annexed to the G.R. dated 10.9.2012 , therefore, it was the duty of his department i.e. the Government College of Pharmacy, Amravati to grant him pay scale

admissible to the post of Head Clerk, as his salary was protected. It is, therefore, submitted that direction be given to the respondents to fix the salary of the applicant in the pay scale admissible to the post of Head Clerk with effect from the date of second time bound promotion i.e. 1.10.2006.

6. Application is opposed by the respondents on the ground that, no illegality is committed by them while giving second time bound promotion to the applicant. It is contention of the respondents that, the applicant voluntarily accepted the post of Laboratory Assistant which was having the same pay scale which was admissible to the post of Junior Clerk. The applicant was aware that the promotional avenue was not available to the post of Laboratory Assistant and, therefore, now the applicant cannot turn around and say that injustice is caused to him. It is further contended that the pay drawn by the applicant when he was appointed as Laboratory Assistant in the Govt. College of Pharmacy, Amravati was protected and, therefore, no miscarriage of justice is caused to the applicant. It is contention of the respondents that, after retirement from service, the applicant is approaching this Tribunal for the relief which is not well founded and therefore, application is liable to be dismissed.

7. The material question is whether the applicant who was declared surplus and absorbed in other department of Government on the equivalent post to which promotional avenue is not available, can claim second time bound promotion as per his old service.

8. It is contention of the learned P.O. that, as per para 2 (b) (4) of the G.R. dated 1.4.2010, as the first time bound promotion was given to the applicant and now promotional avenue is not available, therefore, the applicant is entitled to be placed at the higher stage, in the same pay scale to which he is entitled. It is contended that, the applicant was drawing the pay in the scale of Rs. 5200-20200 plus grade pay of Rs. 2400/- and higher stage pay scale i.e. higher grade pay of Rs. 2850/- is paid to him and, therefore, there is no wrong committed by the department. After reading the G.R. dated 1.4.2010, it seems that in the G.R., it is mentioned that the post to which promotional avenue was not available, for which special orders would be issued by the Government. But such special orders are not brought to my notice.

9. There is no dispute about the fact that when the applicant was absorbed in Govt. College of Pharmacy, Amravati, as

he became surplus, pay scales of Junior Clerk and Laboratory Assistant were same and as directed in the G.R. dated 26.3.2004, salary of the applicant at the relevant time i.e. at the time of absorption is protected. Similarly, previous service of the applicant before absorption on the post of Laboratory Assistant is taken into account. The only question is as the promotional avenue was not available to the post of Laboratory Assistant, how the applicant is entitled to claim pay scale admissible to the post of Head Clerk ?

10. It must be accepted that when the applicant accepted and joined the post of Laboratory Assistant, his relations with the Dairy Development Office came to an end. Now, he cannot equate him with the Clerks Junior to him, serving on the establishment of Dairy Development Office. The applicant himself accepted the post of Laboratory Assistant, it was voluntary act, he was not forced to accept the post. The applicant was aware of the fact that the post of Laboratory Assistant was not having promotional channel with this knowledge he accepted the post, therefore, principle of estoppel operates. In this background, in absence of promotional channel, the applicant cannot directly claim pay scale admissible to the post of Head Clerk. The learned counsel for the applicant was unable to point out any GR which says that the employee is entitled

to claim promotional post which was available to the post before his absorption and in absence of such Govt. directions, the respondent No.2 refused the prayer of the applicant to grant him pay scale admissible to the post of Head Clerk which was Rs. 9300-34800 plus grade pay of Rs. 4200/-. As claim of the applicant is not supported by any Govt. G.R., merely because in the past, the applicant was employee of the Dairy Development Department, he cannot claim the pay scale admissible to the post of Head Clerk.

11. In the result, I do not find any merit in this application. Hence, I proceed to pass the following order:-

ORDER

O.A. is dismissed with no order as to costs.

(A.D.Karanjkar)
Member(J)

Dt. 4.12.2018.

pdg.

