

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 338 OF 2022  
(Subject:- 2<sup>nd</sup> Benefit of T.B.P & A.C.P.S. )**

**DISTRICT:-NANDED**

**Khwaja Munneruddin s/o Mohammad Naseeruddin**

Age : 71 years, Occu: Retired as Cost Accountant,  
R/o: 9/6/810, Baitulman, Khusaro Nagar Chunabhatti,  
Deglur Naka (Itwara) Tq. & Dist. Nanded.  
Mo. No. 9096802243

**)APPLICANT**

**V E R S U S**

- 1. The State of Maharashtra,**  
Through it's Principal Secretary,  
Medical Education & Drugs Department,  
G.T. Hospital, Mumbai, 9<sup>th</sup> Floor,  
Mantralaya, Lokmanya Tilak Path,  
Mumbai – 32.
- 2. The Director,**  
Directorate of AYUSH,  
St. Georges Hospital Campus, 4<sup>th</sup> Floor,  
Government Dental College Building,  
Mumbai CST, Mumbai-1.
- 3. The Dean,**  
Government Ayurvedic & Unani Pharmacy,  
Vazirabad Nanded,  
Dist. Nanded.

**)RESPONDENTS**

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**APPEARANCE** : Shri I.D. Maniyar, learned Counsel  
for the applicant.  
: Smt. M.S. Patni, learned Presenting  
Officer for the respondent authority.  
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**CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)**

**RESERVED ON : 14.12.2023.**

**PRONOUNCED ON : 24.01.2024.**

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## **ORDER**

Heard Shri I.D. Maniyar, learned counsel for the applicant and Smt. M.S. Patni, learned Presenting Officer for the respondent authorities.

2. By this Original Application the applicant is challenging the order dated 25.01.2019 passed by the respondent No.2 thereby rejecting the proposal for 2<sup>nd</sup> benefit of Time Bound Promotion Scheme/Assured Career Progression Scheme of the applicant by giving reason that the Confidential Reports of the applicant for last five years are not upto the benchmark.

3. Brief facts giving rise to the Original Application are as follows:-

(i) The applicant has joined the service in the year 1982 as Cost Accountant with the respondent No.3 and till his

retirement the applicant has worked with the respondent No.3 on the said post.

(ii) It is the further case of the applicant that in terms of the Government Resolution dated 08.06.1995 certain guidelines and procedures are framed for giving next higher pay scale to the Government employees who had completed 12 years of service on the same post. The Government has framed the said policy of Assured Career progression Scheme in order to remove stagnation of the employees under the State Government who are working from years together and there are no promotional chances for said employees.

(iii) It is the case of the applicant the respondents have granted 1<sup>st</sup> benefit of Time Bound Promotion Scheme/ Assured Career Progression Scheme (in short "T.B.P.S/A.C.P.S") to the applicant on 01.10.1994 in terms of G.R. dated 08.06.1995. In continuations of the said scheme as per the G.R. dated 08.06.1995, the Government has issued the G.Rs. dated 01.04.2010 and 05.07.2010 respectively and issued certain guidelines directing the concerned department that the employees who had completed 24 years of service are entitled for the 2<sup>nd</sup> benefit of T.B.P.S./A.C.P.S.

(iv) However, the applicant was not granted 2<sup>nd</sup> benefit of T.B.P.S./A.C.P.S. Thus the applicant has filed an application on 06.11.2017 with respondent No.2 about his entitlement of the said scheme. The applicant has also filed the reminder application on 11.01.2019. However, without considering the Government policy as discussed above, the respondent No.2 behind the back of the applicant on 25.01.2019 has communicated the respondent No.3 that the applicant is not entitled for 2<sup>nd</sup> benefit of T.B.P.S./A.C.P.S. because of the Confidential Reports (hereinafter referred as C.R. ) of the applicant for last five years are not upto marks i.e. B+. The said communication is received by the applicant on 08.02.2019. The applicant has thus challenged the said order dated 25.01.2019 passed by the respondents in this regard. Hence, this Original Application.

4. Learned counsel for the applicant submits that immediately on 08.02.2019 the applicant has filed the application before the respondent No.3 requesting therein to provide the copy of C.Rs. of the year 2002 to 2007. However, the respondent No.3 has informed to the applicant on 06.03.2019 that before 2011 there was no provision to

provide the copies of C.Rs. to the employees, therefore, the copies cannot be provided of the year 2002 to 2007.

5. Learned counsel for the applicant submits that the applicant is retired from the service on 30.04.2007 on attaining the age of superannuation. He had received 1<sup>st</sup> benefit of T.B.P.S./A.C.P.S. on 01.01.1994 and in terms of the G.R. dated 11.05.2017, he is entitled for 2<sup>nd</sup> benefit of the said scheme. Learned counsel for the applicant submits that infact the adverse C.Rs. of the employees are required to be communicated to him within the period of six months of the said order. However, till today not a single C.R. before retirement was communicated to the applicant. Learned counsel for the applicant submits that the post on which the applicant has worked was a isolated post and there was no possibility of promotion.

6. Learned counsel for the applicant submits that under the Right To Information Act, 2005 the applicant has received the copies of the C.Rs. from the year 2002-2003 to 2006-2007 in which the Review Officer's remark was 'B-' for 2002-2003 to 2003-2004 two years, C.Rs. of the applicant was not upto the marks which was adverse remarks. For the

year 2004-2005 the remarks was 'B+', for the year 2005-2006 the remarks was 'A' and for the year 2006-2007 the remarks was 'B+'.

7. Learned counsel for the applicant submits that in terms of the Rules, out of five years C.Rs., average of the C.Rs. should be satisfactory and the C.Rs. of the applicant for three years are 'B+'. In view of same, the applicant is entitled for 2<sup>nd</sup> benefit of T.B.P.S./A.C.P.S.

8. Learned counsel for the applicant submits that the General Administration Department has issued G.Rs. dated 01.02.1996 and 01.11.2011 formulating the guidelines as to how to write the C.Rs. of the employees. In these G.Rs. it is specifically mentioned that all the adverse remarks should be communicated to the employees and if not communicated then these remarks cannot be considered for promotion and other benefits. The 2<sup>nd</sup> benefit was rejected on the ground that the C.Rs. of the applicant are not upto the marks. However, the C.Rs. of the applicant from 2002-2007 were never communicated to him as per the Rule framed by the State Government.

9. Learned counsel for the applicant submits that un-communicated C.Rs. should not be considered while granting of 2<sup>nd</sup> benefit of A.C.P.S. The Hon'ble Apex Court in case **Sukhdev Singh Vs. Union of India and Ors. reported in (2013) 9 SCC 566** and in case **Abhijit Ghosh Dastidar Vs. Union of India and Ors. reported in (2009) 16 SCC 146** held that the action of non-communication of adverse C.Rs. is in violation of Article 14 of the Constitution of India and should not be taken into consideration for promotion.

10. Learned counsel for the applicant submits that in view of above, the applicant is very much eligible for grant of benefit of 2<sup>nd</sup> T.B.P.S. but the respondents have wrongly and illegally rejected his claim. The Original Application thus deserves to be allowed by quashing and setting aside the order dated 25.01.2019.

11. The respondent Nos. 1 to 3 have filed their affidavit in reply. Leaned Presenting Office submits that the applicant came to be retired on 30.04.2007 and all the necessary benefits have been paid to him. Learned P.O. submits that the G.R. dated 08.06.1995 prescribes the guidelines in respect of A.C.P.S. and also the eligibility criteria

of the Government servant to avail the said benefit. In terms of the said G.R. the respondents have awarded the benefit of 1<sup>st</sup> T.B.P.S./A.C.P.S. on 01.09.1994.

12. Learned P.O. submits that the applicant does not fulfill the norms of the said scheme as his C.Rs. are not upto the marks. Learned P.O. submits that in terms of the aforesaid G.R., the C.Rs. of the last five years must be upto the marks for awarding the benefits and as the applicant does not fulfill the norms, the authorities have rightly taken the decision in terms of the said G.R.

13. Learned P.O. submits that the applicant is retired on 30.04.2007 and direction in terms of G.R. dated 01.01.2011 had no retrospective effect to the extent of the case of the applicant. Learned P.O. submits that prior to 2011 there was no provision to communicate the C.Rs. to the Government Servant and the applicant cannot claim any benefit so also direction retrospectively as the applicant retired on 30.04.2007.

14. Learned counsel for the applicant has filed the affidavit in rejoinder. Learned counsel submits that in Original Application No. 658/2018 in case **Raosaheb s/o**

**Shripati Bangar Vs. the State of Maharashtra & Ors.** this Tribunal by judgment and order dated 10.08.2022 allowed the O.A. and directed to grant benefit of A.C.P.S. to the applicant therein by ignoring the un-communicated adverse C.R.

15. This O.A. pertains to grant of 2<sup>nd</sup> benefit of T.B.P.S./A.C.P.S. It is the case of the applicant that despite continuous persuasion by the applicant, the respondents have not considered his representation/application submitted in this regard and finally by impugned order dated 25.01.2019 the respondent No.2 has informed that the applicant is not entitled for 2<sup>nd</sup> benefit of T.B.P.S./A.C.P.S. because the C.Rs. of the applicant disclosing that the applicant has not received remark 'B+' as Average remark for the said period of 5 years.

16. It is not disputed that the respondent have awarded 1<sup>st</sup> benefit of the said scheme on 01.10.1994 and in terms of the G.Rs. dated 01.04.2010 and 05.07.2010 subject to the guidelines issued by the concerned department, the Government servant who has completed 24 years of service is entitled for 2<sup>nd</sup> benefit of T.B.P.S./A.C.P.S.

17. It further appears that in terms of the said guidelines the employees who are retired from service from the period of 01.06.2006 to 01.04.2010, they are not entitled for the said benefit. However, the said condition was challenged by some of the Government servants before the Hon'ble High Court by filing Writ Petitions. Those Writ Petitions came to be allowed with certain observations. In terms of the said orders the Government of Maharashtra issued circulars dated 09.12.2016 and 11.05.2017 and struck down the said condition and granted the benefit from 01.06.2006. It is not out of place to repeat here that the applicant came to be retired on the post of Cost Accountant on 30.04.2007.

18. According to the applicant he was not provided with the C.Rs. for the period of 2002-2007 by the respondents. However, he has obtained the said information under the Right To Information Act, 2005. It is the case of the applicant that in terms of the said information received from the respondents about the C.Rs. for the period of 2002-2003 to 2006-2007, for the year 2004-2005 the remarks was 'B+', for the year 2005-2006 the remark was 'A', for the year

2006-2007 the remark was 'B+' but for earlier two years i.e. 2002-2003 and 2003-2004 his Review Officer's remark was 'B-'. It is the case of the applicant that since those all adverse C.Rs. were never communicated to the applicant, those are required to be ignored. It is the also contention of the applicant that even if his average of the said remarks for the said period of 5 years is considered, then 'B+' would come as an average remark which is sufficient to grant him the benefit of 2<sup>nd</sup> T.B.P.S./A.C.P.S.

19. As against this it is the contention of the respondents that the Government Resolution dated 01.11.2011 had no retrospective effect and decision has been taken in respect of the applicant as per Rules and regulations enforced at the time of passing of the said orders.

20. In this regard on careful perusal of the G.R. dated 08.06.1995 the eligibility criteria for grant of T.B.P.S./A.C.P.S. is as per regular procedure prescribed for grant of promotion. However, in terms of the G.R. dated 01.02.1996 regarding the writing of C.Rs. of the Government Servants and preservation thereof it has been specifically stated that the same is required to be done in terms of the

schedule 'A'. On perusal of the schedule 'A' of the aforesaid G.R. in terms of Clause No. 33, Average, Below Average, Good, Poor, Fair which are considered to be adverse remarks, which are required to be communicated to the concerned Government servants. Even as per Clause No. 40 procedure is prescribed that the manner in which those adverse remarks are to be communicated to the concerned Government servant. However, in terms of the G.R. dated 01.11.2011 all the C.Rs. are required to be communicated to the concerned Government Servant by giving him the Xerox copies of the said C.Rs.

21. Learned counsel for the applicant is placed his reliance in case **Abhijit Ghosh Dastidar Vs. Union of India and Ors.** wherein the Government Servant was not considered for promotion as he was not having bench mark of average and according to Government Servant /appellant in the said matter the adverse entry is namely 'good' were not communicated. In the background of these facts, in paragraph No. 8 the Hon'ble Supreme Court has made the following observation.

"8. Coming to the second aspect, that though the benchmark "very good" is required for being considered

for promotion admittedly the entry of "good" was not communicated to the appellant. The entry of 'good' should have been communicated to him as he was having "very good" in the previous year. In those circumstances, in our opinion, non-communication of entries in the annual confidential report of a public servant whether he is in civil, judicial, police or any other service (other than the armed forces), it has civil consequences because it may affect his chances for promotion or getting other benefits. Hence, such non-communication would be arbitrary, and as such violative of [Article 14](#) of the Constitution. The same view has been reiterated in the abovereferred decision (Dev Dutt Case, SCC p.738, para 41) relied on by the appellant. Therefore, the entries "good" if at all granted to the appellant, the same should not have been taken into consideration for being considered for promotion to the higher grade. The respondent has no case that the appellant had ever been informed of the nature of the grading given to him.”

22. In a case **Sukhdev Singh Vs. Union of India and Ors.** in view of the earlier judgment, the Hon'ble Supreme Court has taken similar view.

23. In a case **Dev Dutt Vs. Union of India & Ors. reported in 2008 DGLS (SC) 740** in paragraph Nos. 36, 39 and 40

the Hon'ble Supreme Court has made the following observations.

“36. In our opinion, fair play required that the respondent should have communicated the 'good' entry of 1993-94 to the appellant so that he could have an opportunity of making a representation praying for upgrading the same so that he could be eligible for promotion. Non-communication of the said entry, in our opinion, was hence unfair on the part of the respondent and hence violative of natural justice.

39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

40. We further hold that when the entry is communicated to him the public servant should have a

right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.

24. In view of above discussion and in terms of the ratio laid down by the Hon'ble Supreme Court and considering the G.R. pertaining to writing of the C.R. of the Government Servants and the preservation thereof, I am of the considered opinion that the applicant has made out case for grant of 2<sup>nd</sup> T.B.P.S./A.C.P.S. mainly for two reasons; (i) the average of the Confidential Reports of the applicant for the year 2002-2003 to 2006-2007 indicates that the applicant has obtained B+ i.e. positively good and as such, complied the eligibility criteria for the 2<sup>nd</sup> benefit of T.B.P.S./A.C.P.S.; and (ii) Even if it is considered that the C.Rs. of the applicants are

not upto marks, however, the adverse remarks in the form of B- (adverse) were never communicated to the applicant, they need to be ignored for considering the grant of 2<sup>nd</sup> benefit of said scheme to the applicant.

25. It further appears that in terms of the order passed by the Hon'ble Bombay High Court in various Writ Petitions filed by some of the Government servants against the condition that the Government employee who is retired from the service during the period of 01.06.2006 to 01.04.2010 is not entitled for the said benefit, the Government of Maharashtra by issuing circulars dated 09.12.2016 and 11.05.2017 struck down the said condition and granted the benefit from 01.06.2006. On perusal of the said corrigendum which prescribes the grant of benefit of 2<sup>nd</sup> T.B.P.S. to the Government servants who retired during the period of 01.10.2006 to 31.03.2010, certain clarifications has been offered and further guidelines also prescribed as to how the retired Government servant during the said period is entitled for 2<sup>nd</sup> benefit of T.B.P.S./A.C.P.S. and which deemed date of his 2<sup>nd</sup> benefit of said scheme is required to be considered. In view of same, the applicant is entitled for the

2<sup>nd</sup> benefit of Time Bound Promotion Scheme/ Assured Career Progression Scheme in terms of the circulars dated 09.12.2010 and 11.05.2017 respectively. Hence the following order:-

**ORDER**

The Original Application No. 338/2022 is hereby allowed with the following terms:-

- (A) The order dated 25.01.2019 passed by the respondent No.2 is hereby quashed and set aside and the applicant is entitled to the 2<sup>nd</sup> benefit of Time Bound Promotion Scheme/ Assured Career Progression Scheme and also the applicant is entitled for the consequential benefits strictly in terms of the guidelines prescribed in the circulars dated 09.12.2016 and 11.05.2017.
- (B) In the circumstances there shall be no order as to costs.
- (C) The Original Application stands disposed of in aforesaid terms.

**MEMBER (J)**

**Place:-Aurangabad**

**Date : 24.01.2024**

SAS O.A. 338/2022(S.B.) VKJ 2<sup>nd</sup> benefit of TBP/ACPS