

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI  
ORIGINAL APPLICATION NO.451 OF 2015**

**DISTRICT : PUNE**

1. Shri Shivaji Haribhau Ghadge, )  
Age 45 years, occ. Service, )  
R/at M.P. Belwadi, Tal. Indapur, Pune )
  
2. Shri Shankar Maruti Waghmode, )  
Age 45 years, occ. Service, )  
R/at Taluka Indapur, Pune )..Applicants

Versus

1. The Secretary, )  
Irrigation Department, )  
Mantralaya, Mumbai 400 032 )
  
2. The Superintending Engineer, )  
Irrigation Division, )  
Research and Development Section, )  
8, Moledina Road, Pune 411001 )



3. The Executive Engineer, )  
Irrigation Division, Khadakwasla, )  
New Administrative Building, )  
Sadhu Vaswani Chowk, Pune 411001 )
4. The Executive Engineer, )  
Irrigation Division, Nira Ujwa Canal, )  
Vibhag Phaltan, District Satara )..Respondents

Shri V.V. Joshi – Advocate for the Applicants

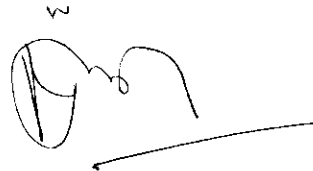
Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Shri R.B. Malik, Member (J)

DATE : 29<sup>th</sup> March, 2016

### J U D G M E N T


1. By this Original Application (OA) the applicants seek higher scale of pay under the GR of 1.4.2010 viz. Assured Career Progression Scheme (ACP). According to the applicants the determination of this issue is now governed by the order of this Tribunal (Hon'ble Vice-Chairman) in **OA No.560 of 2012 (Shri Mahadev Shivaji Jagtap and Another Versus The Secretary, Irrigation Department and Another, 30.7.2013,** to be called Mahadev Jagtap's case.



2. I have perused the record and proceedings and heard Shri V.V. Joshi, the learned Advocate for the Applicants and Shri A.J. Chougule, the learned Presenting Officer (PO) for the Respondents.

3. The two applicants herein ala the applicants duo in Mahadev Jagtap's case were appointed on Converted Regular Temporary Establishment (CRTE). They were as such appointed as messengers w.e.f. 21.4.1990 (by the order dated 8.6.1994) and w.e.f. 30.6.1990 respectively. Just like Mahadev Jagtap's case where the applicants were Mukadams the present applicants were also granted Time Bound Promotion (TBP) on completion of twelve years of service because though they became eligible to be promoted they could not be actually promoted and thereby becoming entitled to the benediction of the GR dated 8.6.1995. In this OA the applicants who were messengers got TBP w.e.f. 21.4.2002 and 30.6.2002 respectively. The order in that behalf however was made on 27.4.2004. The OA sets out the details of the pay scale etc.


4. Exactly like Mahadev Jagtap's case the present applicants have been denied the benefit of ACP Scheme under 2010 GR which in practical terms would mean denial of second promotion. Now in Mahadev Jagtap's case as well as in this OA the applicants got regular promotion to the post of Canal Inspector which was cited by the respondents as a ground to

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justify the denial of the benefit of ACP (vide 2010 GR). The gist of the case of the respondents in Mahadev Jagtap's case and in this OA also is that the occasion to grant such a benefit would arise only after 12 years service as Canal Inspector.

5. The applicants have pleaded that they do not have any promotional avenue available to them from the post of Messenger and they are, therefore, stagnating. As a matter of fact some other colleagues of the applicants who were granted higher scale of pay as per the ACP scheme did not even pass the competitive examination for the post of Canal Inspector and in effect it is the case of the applicants that the anomaly is such that despite their better performance and achievement of success they have suffered and in this way discriminated against. According to them the post of Canal Inspector is not a promotional post for them. They have cited the instance of one Shri Uttam Hariba Markad. Incidentally the case of this Shri U.H. Markad also was referred in Mahadev Jagtap's case (supra). The applicants seek parity with him. They have also referred to the common order in Mahadev Jagtap's case.

6. The discussion in para 5 in Mahadev Jagtap's case would show that the bench of the Hon'ble Vice-Chairman took note of the various facts and factors which in good measure were in substance the same as in this OA including pay scale

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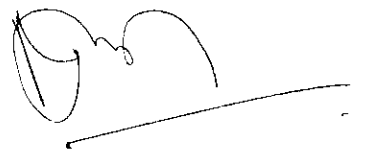
etc and then made observations which in fact can best be reproduced for facility:

“5. .... In the affidavit in reply filed by the Respondent No. 2 in paragraphs 5 and 7, these facts are not denied. It is seen that the Applicants’ pay after they got first Time Bound Promotion was fixed in the scale of pay of Rs. 3050-4590, which is the scale of pay attached to the post of Canal Inspector. The Applicants were promoted to the post of Canal Inspector after passing the necessary Departmental Examination. However, those Mukadams who did not pass the Departmental Examination for promotion to the post of Canal Inspector and as a result, who were not given regular promotion as Canal Inspector were given benefit of Assured Career Progression Scheme second time. In other words, a Mukadam was given benefit of first Time Bound Promotion / Assured Career Progression Scheme on completion of 12 years of service and benefit of second A.C.P after completion of 24 years, if he was not promoted to the post of Canal Inspector. This happened in the case of one Shri Uttam Hariba Markad, Mukadam, who has been given benefit of A.C.P second time. The Applicants have produced a copy of office order dated 834 of 2011 issued by Executive Engineer, Khadakwasla Irrigation Division, Pune in support of this contention. It is seen that said Shri Markad, was given



benefit of second A.C.P on 29.10.2008 on completion of 12 years from the date of grant of first benefit under A.C.P scheme. The designation of Shri Markad is Mukadam and he is on Converted Regular Temporary Establishment. His pay has been fixed in the scale of pay of Rs. 5200-20,200 and grade pay of Rs. 1800 + 300 after second A.C.P benefit. It is crystal clear from the above that if a Mukadam has not been promoted to the post of Canal Inspector, he is given benefit of A.C.P scheme second time after 24 years of service. It is also clear that the scale of pay given to a Mukadam on getting first Time Bound Promotion is identical to the scale of pay attached to the post of Canal Inspector. A Mukadam getting promoted on regular basis to the post of Canal Inspector, does not get a higher scale of pay, if he has already got the benefit of Time Bound Promotion. In the circumstances, it will be totally illogical to deny the benefit of second A.C.P to a Mukadam, who was 'promoted' to the post of Canal Inspector."

7. In para 6 of Mahadev Jagtap's case the judgments of **DWIJEN CHANDRA SARKAR AND ANOTHER Vs. UNION OF INDIA AND ANOTHER, AIR 1999 SC 598(1), UNION OF INDIA Vs. V.N. BHAT, AIR 2004 SC 3200** and **STATE OF MAHARASHTRA & ORS Vs. UTTAM VISHNU PAWAR 2008 AIR SCW 937**, came to be cited for the proposition that the



past service will count for benefits like TBP though it may not count for seniority.

8. In view of the foregoing, therefore, it is very clear that in the facts and circumstances hereof and parity in facts with Mahadev Jagtap's case the same course of action will have to be adopted. The applicants in this OA must be and are hereby held eligible for grant of benefit of the second ACP Scheme.

9. The applicants are held eligible and entitled for being granted benefit of second ACP Scheme from the date of completion of 12 years from the grant of first TBP in accordance with the GR of 1.4.2010. The respondents are directed to consider the case of the applicants for the said benefit within a period of four weeks from today and convey to them the result thereof within one week. This OA is allowed to this extent with no order as to costs.

Sd/-  
**(R.B. Malik)**  
**Member (J)**  
**29.3.2016**

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Date : 29<sup>th</sup> March, 2016

Dictation taken by: S.G. Jawalkar.