

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR.**

**ORIGINAL APPLICATION NO.52/2017.** (S.B.)

Sunil Shamrao Chakre,  
Aged about 49 years,  
Occ. Service,  
R/o Indreshesh Nagar,  
Behind Gurukrupa Colony, Dental College,  
Wadali Camp, Amravati.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Home Department,  
Mantralaya, Mumbai-32.
2. The Additional Director General of Police,  
State Reserve Police Force, Hutatma Chowk,  
Near Regal Cinema, Mumbai.
3. The Commandant,  
State Reserve Police Force, Group-IX,  
Wadali Camp, Amravati.

**Respondents.**

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**ORIGINAL APPLICATION NO.111/2017.**

Rajendra Manoharrao Awatade,  
Aged about 57 years,  
Occ. Service,  
R/o Gaglani Nagar,  
Behind Shriram Vidyalaya,  
Wadali Naka, Amravati.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Home Department,  
Mantralaya, Mumbai-32.
2. The Additional Director General of Police,  
State Reserve Police Force, Hutatma Chowk,  
Near Regal Cinema, Mumbai.
3. The Commandant,  
State Reserve Police Force, Group-IX,  
Wadali Camp, Amravati.

**Respondents.**

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Shri S.N. Gaikwad, Ld. Advocate for the applicants.  
Shri H.K. Pande, Ld. P.O. for the respondents.

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**Coram:- Shri J.D. Kulkarni,  
Vice-Chairman (Judicial)**

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**JUDGMENT**

(Delivered on this 5<sup>th</sup> day of May, 2018.)

Heard Shri S.N. Gaikwad, the learned counsel for the applicants in both the O.As and Shri H.K. Pande, the learned P.O. for the respondents.

2. With consent of the parties, both these Original Applications are being disposed of by this common order, since they involve similar issue.

3. The applicant in O.A.No.52/2017 Sunil Shamrao Chakre was appointed as Police Constable on 1.12.1986. He passed the departmental examination of Writer in the year 1991 and was promoted on regular basis to the post of Assistant Sub-Inspector of Police (ASI) (Writer) on 28.4.1994. The applicant was shown as Havaldar, though he was posted as a Writer. The respondents thereafter vide letter dated 19.12.2000 granted deemed promotion on the post of ASI (Writer) w.e.f. 28.4.1994.

4. On 13.3.2012, the applicant filed representation for grant of first benefit of Assured Progressive Scheme on completion of 12 years' continuous service and respondent No.3 granted him such benefit vide order dated 5.1.2015. It was, however, mentioned that the benefit was released on the basis of completion of 24 years' of service. In fact, the applicant has already completed 12 years' of service on 28.11.2006 and, therefore, as per G.R. dated 20.7.2001, he was entitled to the next higher pay scale in the scale of Police Sub-Inspector (PSI) i.e. in the pay scale of Rs. 9300-34800 plus grade pay of Rs.4300/-.

5. The respondent No.2, however, issued impugned order dated 1.12.2015, whereby the order granting Assured

Progressive Scheme benefit dated 5.1.2015 was cancelled on the ground that the applicant has not passed the departmental qualifying examination. In view of that order dated 1.12.2015, the respondent No.3 issued a consequent order dated 28.1.2016 and directed recovery of the amount paid to the applicant. The order dated 1.12.2015 issued by respondent No.2 and dated 28.1.2016 issued by respondent No.3 are under challenge in this O.A. and the applicant is claiming that both these orders be quashed and set aside and the respondent No.2 be directed to grant and provide the entire benefit of higher pay scale of PSI as per the Assured Progressive Scheme and vide G.Rs dated 20.7.2001 and 1.4.2010 to the applicant.

6. In O.A. No.111/2017, the applicant was appointed as Police Constable on 16.8.1980 and he cleared the departmental examination of Writer and received regular promotion of ASI (Writer) on 19.10.1992. The respondent No.3 maintained the seniority list of ASIs (Writers) in which the applicant's name stands at Sr. No.1.

7. The D.P.C. has recommended on 13.3.2012 that the applicant is entitled to first benefit of Assured Progressive

Scheme. However, the respondent Nos.2 and 3 have not taken any steps till 2015. On 5.1.2015, the respondent No.3 issued an order granting first benefit of Assured Progressive Scheme. But it was mentioned that the benefit has been released on the basis of completion of 24 years of service. In fact, the applicant has completed the service of 12 years in 2004 i.e. on 16.8.2004 and he was entitled to the pay scale of Rs. 9300-34800 plus grade pay of Rs.4300/-. It was wrongly held that the post of ASI (Writer) was an isolated post.

8. The applicants immediately filed representation on 22.4.2015 and asked for the benefits. On 24.1.2017, the respondent No.3 issued an order whereby the benefit of Assured Progressive Scheme, which was earlier granted to the applicants from 1.10.2006, was cancelled. On 28.1.2016, the applicant's pay was re-fixed and earlier pay fixation dated 22.7.2015 was cancelled. The applicant has, therefore, claimed that the order dated 24.1.2017 issued by respondent No.3 i.e. the Commandant, State Reserve Police Force, Group-IX, Amravati be quashed and set aside and the respondent No.2 i.e. the Additional Director General of Police, State Reserve Police Force, Mumbai be directed

to grant and provide the entire benefit of the Assured Progressive Scheme as contemplated under the G.Rs dated 20.7.2001 and 1.4.2010 and the pay of the applicants be re-fixed accordingly.

9. In both the O.As, the respondent No.3 i.e. the Commandant, State Reserve Police Force, Group-IX, Amravati has filed reply affidavit. According to the respondent No.3, the applicants are not entitled to be granted benefit of Assured Progressive Scheme as per G.Rs dated 20.7.2001 and 1.4.2010, since they have not cleared / passed the departmental qualifying examination, which was mandatory either to get promotion as PSI or to get the benefit under the Assured Progressive Scheme. The applicants were granted benefit of Assured Progressive Scheme after completion of 12 years of service as ASI. But it was beyond the scope of law and when this fact came to the knowledge of respondent authorities, order granting such benefit was cancelled.

10. The learned counsel for the applicants submits that before passing the order of cancellation of benefit granted under the Assured Progressive Scheme to the applicants, no opportunity was given to the applicants. The competent authority earlier considered the cases of both the applicants in the D.P.C.

meeting and it was held that they were entitled to get the benefit under the Assured Progressive Scheme and, therefore, the orders granting them such benefit were passed. However, subsequently, the said order has been cancelled as per order dated 1.12.2015 issued by respondent No.2 in O.A. No.52/2017 and vide order dated 24.1.2017 issued by respondent No.3 in O.A. No.111/2017. It is the case of the applicants that, in both the O.As, they have already crossed the age of 45 years. Therefore, they were exempted from passing the departmental qualifying examination and the requisite departmental examination is already cleared by them. The applicants have placed on record the judgment delivered in W.P. No. 3643/2009 in case of **Mukund Shankarlal Daima V/s State of Maharashtra and others delivered by the High Court of Judicature at Bombay, Bench at Aurangabad on 21.11.2007**, wherein it was observed in paras 18 and 19 as under:-

“18. In the circumstances, we consider it expedient to follow suit in the decision given by the Division Bench in W.P. No. 6212 of 2011 and other companion matters. Having regard to the observations therein, that decision of G.A.D. of Government would be binding on all the

departments of the State and a department of Govt. would not be permitted to take a different stand as it appears only 'Wireless Section' of Police Department has not been extended the benefit.

**19.** In view of aforesaid, it would be appropriate that the petitioner employed in Wireless Section of Police department is given benefit of promotion to the next level post without insisting upon departmental or class-I and II examination, on attaining the age of 45 years by giving deemed date of promotion. Since it is stated that petitioner is no longer in service having retired on superannuation, as such, he shall be given deemed date of promotion from the date of promotion of his junior, along with all consequential benefits.

11. The learned counsel for the applicants, therefore, submits that the applicants should have been exempted, since they have attained the age of 45 years.

12. The learned counsel for the applicants also placed reliance on the judgment delivered by this Tribunal at Aurangabad Bench on **22.9.2017 in O.A. No. 241/2017 in case of Sudhakar Dagadu Mangalkar and others V/s State of**



**Maharashtra and one another**, wherein such benefit was cancelled without giving an opportunity to the applicant and the respondents were directed to issue a show cause notice to the applicant before taking any action as regards withdrawal of benefit of Assured Progressive Scheme.

13. The learned counsel for the applicants submits that the benefit of Assured Progressive Scheme was granted to the applicants as per decision taken in the D.P.C. meeting, since the applicants were found eligible. But all of a sudden, the said benefit has been cancelled. Admittedly, no show cause notices were issued to the applicants before cancelling the benefit and this is definitely against the principles of natural justice and equity. The order of rejection of Assured Progressive Scheme is, therefore, no legal and proper. In view thereof, it is necessary to give an opportunity to the applicants before passing any such order against them. Hence, I proceed to pass the following order:-

**ORDER**

- (i) The O.A. No. 52/2017 and 111/2017 are partly allowed.

- (ii) The impugned order dated 1.12.2015 (Annexure A-8) issued by respondent No.3 whereby the benefit under the Assured Progressive Scheme granted to the applicants in O.A. No. 52/2017 vide order dated 5.01.2015 stands quashed and set aside.
- (iii) In O.A. No. 111/2017, impugned order dated 24.1.2017 (Annexure A-8) issued by respondent No.3 i.e. the Commandant, State Reserve Police Force, Group-IX,, Amravati, stands quashed and set aside.
- (iv) In both the O.As., the respondents are directed to issue show cause notices to the applicants before taking any action as regards withdrawal of the benefit of Assured Progressive Scheme to the applicants and after giving an opportunity to the applicants and to submit their cases and after giving an opportunity of hearing to the applicants, the respondent No.2 may pass any order, as may deem fit and necessary, as per rules.
- (v) The respondent No.2 shall also take into consideration various G.Rs as regards

grant of benefit under the Assured Progressive Scheme including the G.R. dated 20.7.2001 and 1.4.2010 and shall also consider the fact that the applicants have already crossed the age of 45 years.

- (vi) Recovery of arrears already paid to the applicants for grant of such benefit of Assured Progressive Scheme is stayed till final decision to be taken on the issue by respondent No.2.
- (vii) No order as to costs.

(J.D.Kulkarni)  
Vice-Chairman(J)

Dated :- 05/05/2018.

pdg.