

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.670 OF 2015

DISTRICT : PUNE

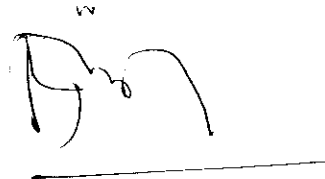
Shri Jagannath Chaban Ghone.)
Occ.: Retired as Typist-cum-Clerk,)
Age : 59 years, Residing at 5/75, Netaji)
Subhash Nagar, Yerawada, Near Shitala)
Devi Temple, Navi Khadki, Pune 411 006.)...**Applicant**

Versus

1. The Secretary,)
Water Resource Department,)
Mantralaya, Mumbai - 400 032.)
2. The Secretary,)
Finance Department, Mantralaya,)
Mumbai 400 032.)
3. The Superintending Engineer,)
Mechanical Circle (C.P),)
Central Building, Pune 411 001.)
4. The Executive Engineer,)
Planning & Design Division, Dapodi,)
Pune 411 012.)...**Respondents**

Shri V.V. Joshi, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondents.



P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 07.06.2016

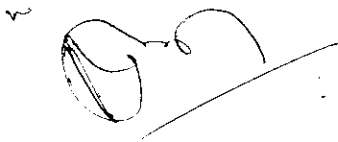
JUDGMENT

1. This Original Application (OA) came to be made by a Typist-cum-Clerk who has since retired and it is directed at appropriate application of the Rules relevant for the Time Bound Promotion (TB) and Assured Career Progression Scheme (ACP).

2. I have perused the record and proceedings and heard Mr. V.V. Joshi, the learned Advocate for the Applicant and Shri A.J. Chougule, the learned Presenting Officer for the Respondents.

3. The Applicant came to be appointed to the post of Typist under the Respondent No.3 - Superintending Engineer, Mechanical Circle w.e.f. 2.1.1984 for which the orders were issued on 20.12.1983.

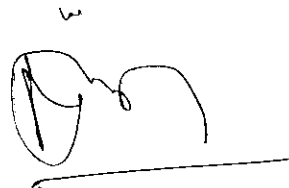
4. By the G.R. of 8.6.1995, the State Government framed the Rules for what has come to be known as Time Bound Promotion. A copy thereof is at Annexure 'A-6' to the OA (Page 20 of the paper book). The preface thereto in



Marathi would show that in as much as the promotional avenues were not readily available even to the deserving candidates, there were pressing demands for putting to place an appropriate scheme. There was a reference to a Central Government Scheme as well. The Government took a decision on 22nd September, 1994. The said Scheme in Marathi has been referred to as, "पदोन्नती तपशीलवार योजना". It applied to the Class III and Class IV employees who apparently were the equivalents of what is now known as Group 'C' and Group 'D' employees. It *inter-alia* laid down that the said Scheme would be applicable to the employees who had put 12 years of regular service. They were entitled, if found fit to draw the salary of the promotional posts and provisions were made accordingly for those employees for whom such promotional posts were not available. The said Scheme came into force w.e.f. 10th October, 1994. Clause 2(b) in Marathi read as follows :

“२(ब) या योजनेअंतर्गत वरिष्ठ वेतनश्रेणी मिळण्यासाठी पदोन्नतीसाठी विहित कार्यपध्दती, ज्येष्ठता, पात्रता अर्हता परीक्षा, विभागीय परीक्षा या बाबींची पूर्तता करणे आवश्यक आहे.”

When translated in English Clause 2(b) would convey that in order to be eligible and entitle for the benefit thereof, the procedure in vogue for promotion, seniority, eligibility,



eligibility test, departmental examination, etc. should be fulfilled.

5. Clause (c) and the subsequent Clauses provide for the applicability of the said Scheme even to those who came to be appointed either by nomination or promotion as a one-time measure. It would not be available to those employees who were promoted twice or more than that in their career. Other provisions are not relevant for the purposes hereof.

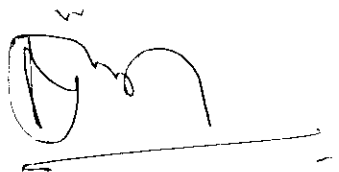
6. Now, as far as the present facts are concerned, the case of the Applicant is that he had cleared the required Typing Test for which also there are Rules which shall be discussed presently. According to the Respondents, the Applicant did it after the stipulated time limit. The fact of the matter is that having been appointed in 1984, the Applicant claims to be entitled to the Time Bound Promotion from 1996 and ACP from 2008 (After 12 years and 24 years respectively). According to the Respondents, however, the Applicant cleared the Typing Test not earlier than the year 2000 and during 2000-2004, his ACRs were not up to the required standards, and therefore, he was not found eligible for being conferred with the benefit of this Scheme. He was found eligible in

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2004 and that is how, he was given that benefit. He retired in the year 2014 before he could complete 10 years post 2004, and therefore, there was no scope for ACP being given to him. The Applicant has retired in the year 2014.

7. Even before going further, it will be appropriate to mention a fact which is significant. There is a document at Page 30 of the paper book which quite clearly shows that by correspondence of 14.3.2001, the concerned authorities had recorded that the Applicant never refused to accept the promotion nor was he held eligible for promotion.

8. In the above background, turning to the Rules framed under the proviso to Article 309 of the Constitution of India, copies whereof have been submitted by both the sides (Annexure 'A-5' to the OA, Page 14 of the paper book). It was issued on 6th May, 1991. It is in Marathi and it deals with the Tests to be cleared by the Clerk-Typist, Steno-Typists (English & Marathi). Rule 2 is the dictionary clause. Rule 3 contains the details of the examinations to be cleared. Rule 4 enshrines the duration fixed for such a clearance for those who were in employment on the date these Rules came into force. They would have to clear the examination within 4 years and those that came to join



thereafter, would have to clear it within 4 years of their joining the Government service. There were provisions for those who had cleared their SCC examination in Marathi Higher Standard. Rule 5 was with regard to the training. Rule 6 was with regard to the examination. Rule 7 deals with the issue of the consequences of not clearing the examination and that needs to be fully quoted in Marathi.

“७. परीक्षा उत्तीर्ण न झाल्यास होणारे परिणाम :-

१) जो इंग्रजी लघुलेखक / इंग्रजी टंकलेखक उपरोक्त नियम ४ मध्ये विहित केलेल्या मुदतीत उपरोक्त परीक्षा उत्तीर्ण होणार नाही, तो / ती परीक्षा उत्तीर्ण होईपर्यंत किंवा त्यास / तिला अशी परीक्षा उत्तीर्ण होण्यापासून सूट मिळेपर्यंत त्याची / तिची वार्षिक वेतनवाढ रोखून धरली जाण्यास पात्र होईल.

२) परीक्षा ज्या तारखेस संपली असेल त्या तारखेच्या लगतनंतरची तारीख ही परीक्षा उत्तीर्ण झाल्याची तारीख असल्याचे समजण्यात येईल.

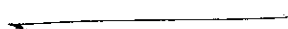
३) अशा प्रकारे रोखून धरलेल्या वेतनवाढी, शासकीय कर्मचारी ज्या तारखेला परीक्षा उत्तीर्ण होईल किंवा त्याला / तिला अशा प्रकारे परीक्षा उत्तीर्ण होण्यापासून सूट देण्यात येईल त्या तारखेला देय होतील आणि जणूकाही त्यांच्या वेतनवाढी रोखल्या नव्हत्या असे समजून त्या उपार्जित होतील परंतु वेतनवाढी रोखून धरल्यामुळे थकबाकी मिळण्यासाठी त्याला / तिला हक्क असणार नाही.”

9. It appears from Rule 7(1) that those failing to clear the examination within the time limit would be liable to get their annual increment held up. Pertinently, the words in Marathi, “पात्र होईल” convey that they would be liable to. It is not as if this must inevitably happen and this

when read along with last Rule viz. Rule 10 would make it clear that the Government had residuary powers to relax these conditions. But it must at the same time be clearly understood that the reasons for relaxation have got to be clearly mentioned and in actual practice, it should not so happen that while the Rule exists, its effectuation ceases to be there in place. There has to be a fine blending of the requirement of Rules and exception, if any, which in my view is the import of the said Rules.

10. Rule 8 lays down that there would be general exemption from clearing the said examinations once the employee attained the age of 50. It seems that in case of several other Departments, this age limit is 45. From the record, it is not clear as to whether the age limit of 45 has been made applicable to the Department which one is concerned herewith.

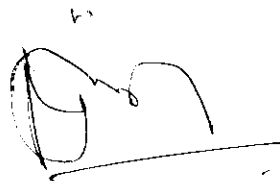
11. Now, it seems to be a clearly indisputable factual position that the Applicant cleared the examination even on Respondents' own showing in the 2000. Thereafter, according to the Respondents till the year 2004, the ACRs of the Applicant were not such as to prove to be a passport for promotion of the Applicant. Now, at this stage itself, this issue can be determined. It is not at all clear as to

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whether the "adverse remarks" were communicated to the Applicant. In fact, one can without any hesitation hold that they were not communicated to him. For this reason, it is not necessary for me to examine in detail the state of the ACRs of the Applicant which are on the record. In adversity relating to adverse remarks in order to become a *terafirma* for an adverse action has got to be communicated because on un-communicated remarks, the employee cannot be put to disadvantage. Therefore, it is not possible for me to hold that the so called adverse remarks during 2000-2004 can provide any justification to the Respondents to cause prejudice to the Applicant. Further, and most importantly as discussed in Para 7 above, the Applicant was hailed as eligible for promotion. It could not have been so had the Applicant been recipient of adverse report.

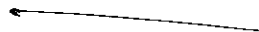
12. I, therefore, hold quite unhesitatingly that there is no merit in the case of the Respondents that from 2000 to 2004, the Applicant suffered from any such disability as to block him from being promoted or any benefit in lieu of the promotion.

13. Proceeding further in the light of the foregoing, the only vital aspect of the matter which now remains for

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adjudication is as to whether the fact that the Applicant cleared the examination in the year 2000 can be a cause enough to deny to him the Time Bound Promotion from 1996 and the ACP consequently from 2008. It must have become clear that according to the Respondents until and unless the Applicant cleared the departmental examination which by Rules was imperative, he could not have been eligible for promotion and, therefore, no benefit in lieu of the promotion as well.

14. Shri V.V. Joshi, the learned Advocate for the Applicant made a submission which in all fairness is thought provoking. He told me that neither in the Rules of 1991 nor G.R. of 1995 is there any provision which can put an embargo on the right of the Applicant to be considered for promotion even if he did not clear the Typing examination. According to Shri Joshi, the consequences were provided in the Rules themselves in the event the concerned Government employee failed to clear the said examination within the duration fixed by the said Rules and the consequence was to deny to him the increments. According to Shri Joshi, nothing beyond that could be read as a disability when the matter is governed by express Rules.



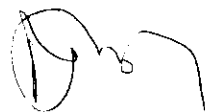
15. I have already indicated that it is not as if Shri Joshi's submission can just be brushed under the carpet. However, in dealing with the present matter on its own facts and reading the Rules and the G.Rs harmoniously and in conjunction with each other, it should become clear that the claim for Time Bound Promotion as well as ACP has got a clear nexus with the eligibility of the concerned Government employee for being promoted. It so happens that because of reasons not ascribable to a deserving and meritorious Government servant eligible for promotion, actually and functionally, cannot be promoted. Therefore, next best thing is offered to him viz. money worth of the higher post without functionally promoting him. But then, *sine-qua-non* is his unquestioned eligibility for promotion.

16. The question to ask in the above background is as to whether the Applicant who could not till 2000 clear the Typing Test can claim entitlement till he cleared it for promotion. I do not think he could. No doubt by 2006 or may be 2001 (50 years or 45 years of age) as discussed, he would have become entitled for promotion because he would have got cleared of the clouds that gathered around his promotional prospects because of failure to clear Typing Test. But then, that would be in the realm of "ifs and buts" and hence, uncertain. And why, he in fact,

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surmounted that difficulty anyway at his age of 44 in the year 2000.

17. Mr. Joshi's contention was that in the self-contained code that the Rules are, the consequences are provided for failure to clear the Typing Test and blocking promotion being not there in those Rules, I cannot read it there into. No doubt, the adverse circumstance and their consequences which naturally have an element of being adverse cannot be lightly read against any party especially, if he is more vulnerable of the two. But here, it is quite clear by providing for withholding of increments what is protected on express language of the Rules and/or G.R. is the post which in the context can be protection and again on the express language unbridled entitlement to promotion cannot be read. And if that be so, any benefit in lieu of promotion can also not be inferred. Therefore, it is clear that the Applicant would be entitled for Time Bound Promotion from the year 2000 in which connection, it may be recalled that the denial thereof by the Respondents for the period 2000-2004 has been rejected by me (See Paras 11, 12 above). Once he got entitled to Time Bound Promotion in the year 2000, he would be eligible for being considered for ACP in 2012. He retired in 2014.



18. The Respondents are directed to revise the case of the Applicant in the matter of the grant of Time Bound Promotion and ACP from the years 2000 and 2012 respectively. If the Applicant is found eligible, then the Respondents shall pay to him the quantum of the sum representing the difference between what he will be found entitled to and whatever was paid to him. The Applicant's pension and other retiral benefits be also revised as a result of compliance herewith. Compliance within three months from today. This OA is allowed in these terms with no order as to costs.

Sd/-
(R.B. Malik)
Member-J
07.06.2016

Mumbai
Date : 07.06.2016
Dictation taken by :
S.K. Wamanse.