

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**AURANGABAD BENCH, AURANGABAD.**

**ORIGINAL APPLICATION NO.701/2015.**

Mohan Ramdas Choudhari,  
Aged about 59 years,  
Occ- Jr. Engineer (Retired),  
R/o Changdeo, Tehsil-Muktainagar,  
District Jalgaon.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Principal Secretary,  
Department of Water Resources,  
Mantralaya, Mumbai-32.
2. The Superintending Engineer & Administrator,  
Command Area Development Authority,  
Jalgaon.
3. The Executive Engineer,  
Jalgaon Irrigation Division, Jalgaon.
4. The Accountant General,  
Indian Audit & Accounts Department,  
Old Pratiksha Bhavan (Old CGO Bldg.),  
101, Maharshi Karve Marg,  
Mumbai-400 020.

**Respondents.**

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Shri A.G. Sugdare, the Ld. Advocate for the applicant.

Shri D.R. Patil, the Ld. P.O. for the respondents.

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

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**JUDGMENT**

(Delivered on this 22<sup>nd</sup> day of September 2017.)

Heard Shri A.G. Sugdare, the learned counsel for the applicant and Shri D.R. Patil, the learned P.O. for the respondents.

2. The applicant has claimed that the pay fixation done earlier by respondent No.4 vide letter dated 6.8.2014 be treated as correct and the applicant be paid pension and pensionery benefits accordingly. He is also claiming directions to respondent No.3 to pay arrears of original pension from November 2014 onwards and also regular provisional pension every month till the pension case is finalized and not to reduce the pension amount. He is also claiming payment towards Death-cum Retirement Gratuity (D.C.R.G.) amount sanctioned by the Accountant General vide letter dated 2.3.2015.

3. The applicant was appointed as a Technical Assistant as per order dated 8.10.1980. On 6.10.1989, he was appointed as Civil Engineering Assistant and thereafter was promoted as Junior Engineer vide order dated 21.11.2008 w.e.f. 2.7.2007. He got retirement on superannuation on 30.5.2014.

4. The applicant has received first time bound promotion as per order dated 1.10.1994 and the second time bound promotion w.e.f. 1.10.2006. His pension case was also forwarded by respondent No.3 to respondent No.4 on 6.8.2014.

5. Vide letter dated 10.9.2014, the Accountant General returned the pension papers of the applicant, taking objection to the effect that the applicant was not entitled to time bound promotion on 1.10.1994. On 9.3.2015, only provisional pension was granted by respondent No.3 and, therefore, the applicant was constrained to file this O.A. The learned counsel for the applicant submitted that the Accountant General has taken objection and showed its inability to process pension case for want of following:-

1. This case was earlier closed pointing out error in determination of 12 years period for granting the time bound promotion and ACP benefits to those who were initially engaged on worked charge establishment. Now, the Water Resources Department vide last para of letter dated 9.5.2014 addressed to the office (copy enclosed) has clearly stated that the period of work charged employment should not be considered for determination of 12 years for granting TBP and ACP.

2. This letter has been issued after obtaining opinion of Finance Department. Hence, you are requested to take appropriate action vis-à-vis directions issued by the Govt. vide letter dated 19.5.2014 and submit the proposal accordingly.

Pension papers/Sr. Book of Shri Mohan Ramdas Choudhari is returned herewith for want of above compliance, with a request to re-submit the same, duly complied, so as to enable this office to finalize the pension case. Please note that the case is treated as closed for the present and will be re-opened on receipt of information / document from your department. In case, any delay is anticipated in complying with the remarks raised above, Provisional

pension/DCRG as applicable under rules may be sanctioned to the Govt. Servant.+

6. From the aforesaid communication, it seems that the service period of the applicant prior to his appointment as Civil Engineering Assistant was not considered as admissible for time bound promotion.

7. In reply affidavit, the respondents have submitted that the applicant was initially appointed as Mokadam on work charge establishment from 16.7.1979 and thereafter as Technical Assistant vide order dated 8.10.1980 on work charge establishment for six months and the said service was extended from time to time. He was appointed as Sub-Overseer on regular temporary establishment vide order dated 24.6.1985 and he joined his duty on 15.7.1985.

8. The respondents have referred to the order passed by this Tribunal dated 2.12.2015 and particularly para No.13 as under:-

From these clarifications, it is crystal clear that the service on daily wages or before regularization could not be counted for T.B.P. Similarly, for the persons appointed as C.E.A., were given upgradation in the pay scale (पैकीकात), they were not eligible to be given T.B.P., unless they have completed 12 years as C.E.A. and has upheld the Govt. letter dated 19.5.2014.+

9. According to the respondents, order passed in O.A No. 617/2014 on 2.12.2015 as referred to above has been confirmed by the Honble Supreme Court and it has been laid down that the work charge service cannot be counted for time bound promotion. In view of the observations of the Supreme Court, pay scale seems to have been relieved and reduced.

10. Similar issue was involved before this Tribunal again in O.A. Nos. 363 to 377 of 2016. In the said case, this Tribunal relied upon a case **State of Maharashtra V/s Smt. Meena A. Kolekar and others decided on 20.4.2016**. In para 24 of the said judgment, it was observed as under:-

The respondents in this fasciculus of O.As are directed to reconsider the case of all the applicants herein in the matter of grant of Time Bound Promotion / Assured Career Progression Scheme by counting the services of the applicants from the date of their initial appointments in whichever capacity and take the steps consequent thereupon so as to extend the benefit of this judgment based on **Meena Kuwalekar's** case. The authorities shall bear in mind the principles laid down in **Meena Kuwalekar's** case and also in this O.A. Compliance be made within eight weeks from today. A copy hereof be forwarded to the Chief Secretary, Govt. of Maharashtra with a

request to comply with directions in para 22 of this judgment. These O.As stand allowed to this extent with no order as to costs.+

11. The learned counsel for the applicant has placed reliance on one G.R. issued by the State of Maharashtra on 7.10.2016.

Vide the said G.R. the Govt. has taken a following decision:-

महाराष्ट्र लोकसेवा आयोगाच्या कोर्टाल मंालयातील तसेच बृहमंुंबईतील राय शासकय कायालयात लामकवगय संवगा तसेच अय संवगात महाराष्ट्र लोकसेवा आयोग अपुरकृत उमेदवार ढहणून ङयुत झालेया व सामाय शासन ढभागाया ढढध शासन आदेशावये ढ. ३१.३.१९९९ पयत सेवा ङयमत केलेया कमळायाची, सेवा ङयमत झायाया ढनांकापुवणी, तापुरती अखंडत सेवा, तसेच महाराष्ट्र लोकसेवा आयोग पुरकृत उमेदवार ढहणून मंालय तसेच बृहमंुंबईतील राय शासकय कायालयात लामक संवगात अथवा अय तसम संवगात ङयुत झालेया कमळायाची पदोनीया कोयातील तापुरया पदोनीची अखंडत सेवा देखील कालबध पदोनी/ सेवांतगत आवाप्त ङती योजना / सुधारत सेवांतगत आवाप्त ङती योजनेया योजनासाठ १२ वषाया ङयमत सेवेची गणना करताना ढचारात घेयात यावी. तसेच संबधत कमळायाकडून संबधत योजनेबाबतया अय अटंणी पूतता झायानंतर यांना अनुेय योजनेअंतगत यथाथिती कालबध पदोनी / सुधारत सेवांतगत आवाप्त ङती योजना / सुधारत सेवांतगत आवाप्त ङती योजनाचा पहला / दुसरा लाभ मंजूर करयात यावा.

संबधत कमळायांना अनुेय ठरणारा पहला लाभ हा यांनी यापूव घेतलेया पहया लाभाया रकमेशी समायोजित कन (readjust) संबधतास फरकाची रकम अनुेय ठरेल, तसेच पहला लाभ मंजुरया तारखेपासून १२ वषाणी सलग सेवा

पूण झाल्यानंतर आवश्यक अटीची पूर्तता केल्यानंतर संबंधितास सुधारित सेवांतर्गत आवासात गती योजनेचे दुसरे लाभ मंजूर करता येईल. तथापि याहून ठिकाणी ज्यांना दुसरे लाभ यापूर्वीच मिळालेला आहे, ज्यांचा सदर लाभाशी रकम सुधारित दुसऱ्या लाभाशी समायोजित करून (readjust) संबंधितास फरकाची रकम अनुषंग ठरेल अशा प्रकारे सुधारित दराने लाभ मंजूर झाल्यानंतर, नवीवृत्त धारकांच्या / नजीकच्या काळात नवीवृत्त होणाऱ्या कर्मचाऱ्यांच्या नवीवृत्त, उपदान, रजा रोखीकरण यांच्या रकमांची पुढा पडणाना करून ज्यांना सुधारित दराने नवीवृत्त प्रषयक लाभ मंजूर करण्यात यावेत.”

12. The learned counsel for the applicant has also placed reliance on various judgments of the Bombay High Court such as in **W.P. Nos. 3815, 3866 and 3807 of 2012 in case of Subhash Ambadas Cheke V/s State of Maharashtra and others** decided by the High Court of Judicature at Bombay, Bench at Nagpur on 29.8.2013. In para 6 of the said judgment, the High Court has held that the petitioners are entitled to the benefit of pay scale in the cadre of Junior Engineer upon completing 12 years from the date of their entry in the cadre of Technical Assistant / Mistri / Karkun etc. Similar view has been taken by the High Court of Judicature at Bombay, Bench at Nagpur while deciding Writ Petition Nos. 5185/2014 with 5732/2014 with 5838/2014 and other Writ Petitions decided on 8.6.2015 and thereafter by this Tribunal in O.A. No. 586/2016 in case of

**Ramchandra Murlidhar Bawiskar V/s State of Maharashtra and others on 9.7.2017.**

13. It seems that the issue regarding counting of earlier service of C.E.A. for the purpose of time bound promotion was also considered in a group of Writ Petitions bearing No. 9051/2013 and other 32 Writ Petitions. In the said case, the Honble Bombay High Court has referred to various decisions in this regard and has come to the conclusion that the State Government has adopted selective approach while considering the past service of the employees prior to absorption in the cadre of C.E.A. and has observed that upon cumulative consideration of all such factors including the selective approach being adopted by the State Government, the Honble High Court was satisfied that these are not fit cases to exercise extraordinary jurisdiction under Articles 226 & 227 of the Constitution of India and, therefore, all writ petitions filed by the State of Maharashtra on these counts were dismissed.

14. As already stated, as per G.R. dated 7.10.2016, the Government has taken a conscious decision while granting benefit of time bound promotional scale, earlier service of employees prior to absorption shall be considered.

15. Perusal of the order dated 6.8.2014 vide which proper pay scale has been granted to the applicant, clearly shows that while



granting first time bound promotion to the applicant, his earlier service such as Technical Assistant etc. was considered for granting time bound promotion and there was no reason for the Accountant General to take objection for such inclusion of service for considering the grant of time bound promotional pay scale to the applicant. In view of the various decisions delivered by this Tribunal as well as by the Hon'ble High Court from time to time and also considering the fact that the Govt. has now taken a conscious decision to consider earlier service of employees for grant of time bound promotion, I am satisfied that there was no need to review the order granting time bound promotion to the applicant by the Accountant General.

16. In view of discussion in foregoing paras, following order is passed:-

**ORDER**

- (i) The O.A. is allowed.
- (ii) It is hereby declared that the pay fixation done earlier and the pension case submitted vide letter dated 6.8.2014 to respondent No.4 is correct.
- (iii) The respondent No.4 is directed to clear the pension case of the applicant submitted by the competent authority to it vide letter dated 6.8.2008.

- (iv) The applicant shall also be entitled to consequential financial benefits including regular pension, arrears of pension etc.
- (v) All the exercise for such payment to the applicant shall be completed **within a period of six months from the date of this order.**
- (vi) No order as to costs.

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

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