

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.735/2015.

Gopal Balaji Zade,
Aged about 75 yrs.,
Occ-Retired,
R/o Plot No.8, Purohit Layout,
Ambazari, Nagpur-33.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Animal Husbandry,
Dairy Development and Fisheries,
Mantralaya, Mumbai-440 032.
- 2) The Dairy Development Commissioner,
Govt. of Maharashtra, Administrative Building,
Khan Abdul Gaffar Khan Road,
Worli Sea Face, Mumbai-18.

Respondents

Shri S.M. Khan, Advocate holding for Shri P.C. Marpakwar, the learned counsel for the applicant.

Shri A.M. Ghogre, the learned P.O. for the respondents.

Coram:- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).

JUDGMENT

(Delivered on this 9th day of August 2017.)

Heard Shri S.M. Khan, Advocate holding for Shri P.C. Marpakwar, the learned counsel for the applicant and Shri A.M. Ghogre, the learned P.O. for the respondents.

2. The applicant was appointed in the year 1961 to the post of Milk Procurement Supervisor and was promoted to various posts. He was finally posted as General Manager, Government Milk Scheme, Nagpur and joined the said post on 7.6.1990. According to the applicant, he was awarded with certificate of excellence on 10.4.1996 and was having excellent confidential reports (CRs) for the year 1995-1996. He made representations for grant of two advance increments on 22.4.1996 and 19.12.1997. The applicant got retired on 31.1.1998. It is his case that he is entitled to two advance increments in view of the Circular of General Administration Department (GAD) dated 14.12.2006, 19.11.2007, 4.12.1979 and also 19.1.1996. Respondent No.1, however, rejected his claim for grant of advance increments. The applicant is, therefore, claiming the following reliefs:-

(i) Direct the respondents to declare the C.Rs of the applicant as A+ / excellent instead of very good / goods for the concerned years after deciding the representations dated 22.12.2010 and 6.10.2012 as per G.R. dated 1.2.1996.

(ii) Quash and set aside the order dated 27.2.2015 passed by respondent No.1 whereby the relief of granting of advance increments has been turned down on the ground that the ACRs of the applicant are not excellent and upto the mark as per the G.R. dated 4.12.1979 and the circular dated 19.11.2007.

(iii) To grant two advance increments and thereafter grant revision of pay fixation and payment of difference

of salary, pension and leave encashment etc., consequent upon grant of two advance increments with interest from the date it was due.+

3. Respondent No.1 filed affidavit in reply and submitted that the applicant has filed O.A. No. 74/2013 before this Tribunal for almost similar reliefs. The reliefs claimed in the said O.A. were as under:-

(i) To declare the C.Rs of the applicant as A+ for concerned years.

(ii) To grant two advance increments from 1.10.1996.

(iii) To grant revision of pay fixation etc., consequent upon grant of advance increments.

(iv) To grant any further relief.

4. It is stated that the representations on which the applicant is claiming i.e. dated 22.12.2010 and 6.10.2012, were the subject matter of O.A. No. 74/2013 and, therefore, the application is not tenable. Respondent No.1 has also stated that as per the directions given in the order dated 11.11.2014, applicant's ACRs of two years preceding 1991-1992 were obtained from Dairy Commissioner's office and a proposal for grant of advance increments was placed before the Advance Increment Committee for consideration. The Committee

considered the fact of representation dated 22.11.2014 filed by the applicant and also the order of this Tribunal dated 11.11.2014, five

yearsqACRs of the applicant etc. in the meeting dated 24.2.2015. Since the applicant did not fulfil the prescribed criteria for grant of advance increments, it was not granted. Therefore, the claim of the applicant is not tenable.

5. The applicant has also filed rejoinder and again tried to justify his claim.

6. The claims made by the applicant in O.A. No. 74/2013 as well as that is made in this O.A. are almost similar and, therefore, on the similar set of facts, the present O.A. is not tenable as stated by the learned P.O. I have perused the claim made in the earlier O.A. as well as in the present O.A. and to my mind, the claim is almost similar. The representations made by the applicant in the year 2010 were also subject matter of the earlier O.A. In O.A. No. 74/2013, this Tribunal was pleased to observe in para 16 to 19 as under:-

16. The learned counsel for the applicant has placed reliance on a case of **B.R. Aggarwal V/s The Chairman, Haryana (Judgment delivered on 27.7.2004)** (unreported). In this case, the ACRs of the petitioner, the Executive Engineer were not recorded for the years 1991-92, 1992-93 and 1994-95, since he

was under suspension. Eventually, his suspension was revoked and his suspension period was treated as a duty period. His Lordships of the Punjab and Haryana High Court observed that it is necessary for the respondents to re-consider the entire matter after finalizing the ACR and the Writ Petition was disposed of holding that the respondents are at liberty to re-consider the entire matter after finalising the ACRs.

17. Reliance is also placed on a case of **P.K. Sarin V/s Union of India and others (Judgment delivered on 25.2.2009)** (unreported.). In this case, the Executive Engineer was under suspension and his ACRs for 1991-92 were not written during the said period of suspension. His case was to be considered for promotion as the Executive Engineer for vacancies pertaining to the years of 1995-96 and 1996-97. Therefore, the ACRs from 1984-1991 were taken into consideration. The ACRs of some years were not communicated, hence the direction was given to communicate the same and the applicant will be at liberty to make the representation and the representation be considered within two months and if the entries in the ACRs are upgraded the petitioner be considered for promotion by the Review D.P.C.

18. In the above state of affairs, since the ACRs for requisite period of five years were not considered by the Advance Increment Committee in the meeting dated 4.10.2010, it is necessary to consider the ACRs at least for five years including two years preceding to 1991-92, (making total period of five years). Thereafter, the Committee can decide the case of the applicant afresh.

19. As a sequel of these reasons, the O.A. is partly allowed with a direction to reconsider the case of the applicant, according to law afresh for grant of advance increments by the appropriate committee on the basis of five years ACRs, in the light of above directions. The order be complied with within six months. The respondents to communicate the decision to the applicant.+

7. The respondents have placed on record the documents to show that the claim of the applicant was considered by the competent committee in its meeting held on 24.2.2015 and it was found that the applicant was not entitled for advance increments. The minutes of the meeting are placed on record by the respondents and the Tribunal is not expected to go into the merits of the said minutes of the meeting, since *prima facie* it seems that the representation of the applicant as well as the decision of this Tribunal in earlier O.A. has been considered by the competent committee. In such circumstances, it will not be in the interest of justice and equity to re-open the issue which has already been considered by this Tribunal in the earlier order.

8. The learned counsel for the applicant has placed reliance on the judgment reported in **(2008) 8 SCC 725 in case of Dev Dutt V/s Union of India and others**. I have carefully gone through the said judgment. In the present case, the respondents have stated about consideration of the ACRs of the applicant and its communication to the applicant from time to time. The minutes of the meeting are self explanatory and, therefore, there is absolutely no reason to interfere in the decision taken by the competent committee. The applicant has failed to bring on record any additional evidence to show that his claim was not properly considered by the competent committee. In view

thereof, I do not find any merit in the O.A. Hence, I pass the following order:-

ORDER

The O.A. stands dismissed with no order as to costs.

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

pdg