

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 803 of 2021 (S.B.)

Mohd. Farooque S/o Mohd. Jafar,
Aged about 60 years, Occupation: Retired,
R/o.Noor Tower, Flat No.306, Nirmal Nagar-1, Ganga Nagar,
Washim Bypass, Akola, Dist. Akola.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary, Water Resources Department,
Mantralaya, Mumbai – 400 032.
- 2) Chief Engineer,
Water Resource Department,
Sinchan Seva Bhawan, Shivaji Nagar, Amravati - 444603.
- 3) Superintending Engineer,
Water Resources Department,
Sinchan Seva Bhawan, Shivaji Nagar, Amravati - 444603.
- 4) Executive Engineer,
Water Resources Department,
Irrigation Project and Water Resource Investigation Division,
Irrigation Colony, Jail Road, Amravati-444 602.

Respondents.

Shri R.M. Fating, Advocate for the applicant.
Shri A.P. Potnis, learned P.O. for respondent no1.
Shri H.D. Marathe, learned Advocate for respondent nos.2 to 4.

**Coram :- Hon'ble Shri Justice M.G. Giratkar,
Vice Chairman.**

Dated :- 24/04/2023.

J U D G M E N T

Heard Shri R.M. Fating, learned counsel for the applicant,
Shri A.P. Potnis, learned P.O. for respondent no.1 and Shri H.D.
Marathe, learned counsel for respondent nos.2 to 4.

2. The case of the applicant in short is as under –

The applicant was appointed as a Clerk on 20/06/1986. He was absorbed as a Civil Engineering Assistant (CEA) w.e.f. 01/01/1989. The next promotional post is Junior Engineer. The applicant has completed 12 years' service on the post of CEA from 01/01/1989 and therefore he is entitled for 1st Time Bound Promotion on 01/01/2001. Thereafter, he is entitled for 2nd Time Bound Promotion on 01/01/2013 and 3rd benefit of Time Bound Promotion / Assured Career Progression Scheme (ACP) on 01/01/2019 as per the G.Rs. dated 08/06/1995 and 02/03/2019.

3. It is the contention of the applicant that the respondents have not granted 1st Time Bound Promotion w.e.f. 01/01/2001, but it is granted from 30/06/2011. Therefore, he challenged the impugned order dated 03/11/2017 and prayed to direct the respondents to grant 1st Time Bound Promotion w.e.f. 01/01/2001.

4. The O.A. is strongly opposed by the respondents. It is submitted that the applicant has not passed the Computer examination / departmental examination and therefore he is not entitled for Time Bound Promotion as per G.R. dated 20/03/1997. At last, it is submitted that O.A. is without any merit and liable to be dismissed.

5. The learned Counsel for applicant during the course of argument pointed out the G.R. dated 05/05/2007 and submitted that the period for passing of Computer examination was extended from time to time.

6. The learned Counsel for the applicant has pointed out the Judgment of M.A.T., Bench at Aurangabad in O.A. No.631/2003. He has submitted that similarly situated employees were granted relief by the M.A.T., Bench at Aurangabad. The Government of Maharashtra had challenged the decision before the Hon'ble Bombay High Court, Bench at Aurangabad. The said decision was upheld. The Government of Maharashtra has granted Time Bound Promotion to those similarly situated employees as per the direction of M.A.T., Bench at Aurangabad. He has also pointed out the Judgment of M.A.T., Principal Bench, Mumbai in O.A.No.1493/2009 with connected matters.

7. The learned Counsel for respondent nos.2 to 4 Shri H.D. Marathe has pointed out the G.R. dated 20/03/1997 and submitted that without passing the Computer/ departmental examination, the applicant cannot claim the benefit of Time Bound Promotion.

8. From the perusal of the Judgment of M.A.T., Bench at Aurangabad, it appears that similarly situated employees approached

to the M.A.T., Bench at Aurangabad. Same contentions were raised in the said O.A. The para nos.33,35,36 and 37 observed as under –

“ (33) In the Circular dated 06/11/2000 the only ground shown by the Irrigation Department is that, as there is no provision in the Public Works Department Manual of 6th Edition, 1984 for granting exemption to the Civil Engineering Assistants on their crossing age of 45 years, such benefit cannot be extended to the Civil Engineering Assistants.

(35) Secondly, the said circular is discriminating the Civil Engineering Assistants from the other government employees. The other government employees of Class III and Class IV are getting the benefit of exemption from appearing departmental / professional examination on crossing 45 years of age in view of the Govt. Resolution dated 1.11.1977 and the Notification of Public Works Department dated 8.8.2001; and by giving effect to Circular dated 6.11.2000 the Civil Engineering Assistants are deprived of getting benefit of exemption from appearing the professional / departmental examination on crossing the age of 45 years. The Govt. circular dated 6.11.2000 is not in conformity with the Govt. resolution issued by General Administrative Department dated 1.11.1977 and the Govt. Notification issued by Public Works Department dated 8.8.2001 the said circular of dated 6.11.2000 will have to be ignored as not valid and in conformity with the policies of the Government.

(36) When the respondents in their additional affidavit in reply have taken a stand that, there are no rules for promotion on the post of Jr. Engineer, in such circumstances, the stand of the respondents that, applicants are not entitled to get the next pay fixed in promotional post on completion of 12 years continuous service cannot be considered as a valid stand to contest the claim of the applicants. Had there been any rule framed by the respondents

that, for the Civil Engineering Assistants to become eligible for the promotion to the Junior Engineer passing of departmental / professional examination is a condition precedent, then in that event the defence of the respondents would have been just and proper. When as per the own pleadings of the respondents in additional affidavit there are no rules for promotion to the post of Junior Engineers from the cadre of Civil Engineering Assistants, in that event denying the claim of the applicants for getting next pay scale in the promotional post on completion of 12 years continuous service will be nothing but causing injustice on the applicants. The defence of the respondents do not appear to be convincing and acceptable in view of the Govt. Resolutions and Circulars dated 1.11.77 and 8.8.2001. The respondents cannot deny granting of next pay scale in the promotional post to the applicants on completing their 12 years continuous service. The objection of the respondents that as applicants have not passed professional / departmental examinations, they are not eligible for getting next pay to the promotional post of Junior Engineer, has no merit in view of all the applicants getting exemption from passing departmental / professional examination owing to crossing of 45 yrs. of age. The letter dated 23.2.2005 issued by Joint Secretary Irrigation Department has no meaning because the said letter is contrary to the Govt. Resolution G.A.D. dated 1.11.1977.

(37) In view of above directions. I am of the considered opinion that, there appears substance in the applications for considering the claim of the applicants. As the applicants have completed continuous service as Civil Engineering Assistants for more than 12 years and as they have crossed the age of 45 years in the year 1998 and in the year 2000, direction will have to be issued to the respondents to consider favourably the claims of the applicants for getting next pay scale in the promotional post of Junior Engineer, if

they fulfill the other criteria enumerated in Govt. Resolution dated 8.6.1995. In the result, the applications are allowed.”

9. The Judgment of M.A.T., Bench at Aurangabad was challenged before the Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No.3777/2008 with Civil Application No.100/2012. The Hon'ble Bombay High Court, Bench at Aurangabad in para nos.2&3 has held as under –

“(2) Subsequently, it appears that similarly placed persons had been before the Tribunal seeking exemption from passing requisite departmental examination on completion of 45 years of age and consequently for grant of promotional pay scale under the TBP Scheme. The Tribunal decided those Original Applications in favour of the applicants and challenge to the orders of the Tribunal before this court in Writ Petition No. 6212 of 2011 and companion petitions at the instance of the State failed. Matter was carried further to the Supreme Court, however, such a challenge before the Supreme Court also failed.

(3) Consequently, the State government has issued resolution dated 31-07-2013 in conformity with the decision rendered by the Maharashtra Administrative Tribunal and the benefit of promotional pay scale under TBP scheme has been made available to the employees who have completed 45 years of age without requiring them to pass requisite examination. A copy of resolution is produced across the bar today which is taken on record and marked Exhibit "X" for identification.”

10. The Hon'ble Bombay High Court, Bench at Aurangabad has observed that the Judgment in one of the similarly matter was

challenged before the Hon'ble Supreme Court. However, the SLP was dismissed. The Hon'ble Bombay High Court, Bench at Aurangabad has observed that the State Government has issued G.R. dated 31/07/2013 in conformity with the decision rendered by the Maharashtra Administrative Tribunal and the benefit of promotional pay scale under TBP scheme has been made available to the employees who have completed 45 years of age without requiring them to pass the requisite examination.

11. The M.A.T., Principal Bench, Mumbai has observed in the Judgment that G.R. of 1995 and 1997 both are contradictory. It is observed that so far as TBP is concerned, it is right of employee that after completion of 12 years from date of his initial appointment, he is entitled for TBP and that cannot be taken away from the employee. In para-13, it is observed that " it is, therefore, very clear that principle is that for Time Bound Promotion, the period is to be counted from the date of initial appointment and even if the concerned employee did not clear the examinations within time and attempts, etc. that might give rise to any other consequence with regard to his service conditions, but as far as Time Bound Promotion is concerned, that would be no circumstances against him."

12. In view of above cited Judgment, the applicant is entitled for Time Bound Promotion after completion of 12 years' service.

Hence, the following order –

ORDER

(i) The O.A. is allowed.

(ii) The applicant is held eligible to be considered for benefit of Time Bound Promotion / ACPS from the date of completion 12 years of service from initial date of absorption i.e. 01/01/1989 on the post of CEA as per G.R. dated 08/06/1995, regardless of the fact, as to whether he cleared departmental / computer examination within the time limit and attempts etc., but the respondents shall make sure that applicant is otherwise entitled to the said benefit. The compliance shall be made in every respect including all consequential benefits within a period of six months from the date of receipt of copy of this order. No order as to costs.

Dated :- 24/04/2023.

dnk.

(Justice M.G. Giratkar)
Vice Chairman.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 24/04/2023.