

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION No. 835/2019 (S.B.)**

Vishwanath Bhagoji Dahe,  
Aged about 53 years, Occ. Service,  
R/o Flat No.A-102, "Amarja" in Aarohi Apartment,  
Bharat Nagar, Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Principal Secretary,  
Urban Development Department,  
Mantralaya, Mumbai-32.
- 2) The Director,  
Town Planning and Valuation Department,  
Ground Floor Pune Central Building,  
Opp. Sasoon Hospital,  
Sasoon Road, Pune-411 001.
- 3) The Divisional Commissioner,  
Nagpur Division, Nagpur-440 001.

**Respondents.**

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**Shri R.M. Fating, Advocate for the applicant.**

**Shri A.M. Khadatkar, P.O. for the respondents.**

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**Coram :- Hon'ble Shri Shree Bhagwan,  
Vice-Chairman.**

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**Date of Reserving for Judgment : 29<sup>th</sup> October, 2020.**

**Date of Pronouncement of Judgment : 5<sup>th</sup> November, 2020.**

**JUDGMENT**

**(Delivered on this 5<sup>th</sup> day of November,2020)**

Heard Shri R.M. Fating, Id. Counsel for the applicant and Shri A.M. Khadatkar, learned P.O. for the respondents.

2. The applicant was working as Assistant Town Planner with the respondents. The Respondent No.2 vide order dated 14.06.2000 (Annexure A-2, page 19) granted temporary promotion to the applicant on the post of 'Town Planner' alongwith 46 other Assistant Town Planners against the vacant posts to be filled up by way of nomination. Consequent to promotion, the applicant joined on the post of 'Town Planner' in the office of Assistant Director, Town Planning, Solapur on 28.06.2000.

3. Upon completion of 12 years regular service on the post of 'Town Planner' the applicant was considered for extending the second benefit of Assured Career Progression Scheme (ACPS) w.e.f. 28.06.2012 by the Respondent No.2 in Departmental Promotion Meeting (DPC) held on 17.09.2012 (Exhibit-3, Page 72). The period of second benefit of Assured Career Progression Scheme (ACPS) was between 28.06.2000 to 28.06.2012. During this period or till the date of DPC, no departmental enquiry or court matter was pending against the applicant and the applicant was fulfilling all the norms/ingredients required for the said benefit at the time of DPC. However, the applicant's claim was kept pending for the reason that

he was temporarily promoted on the post of 'Town Planner' (Page 81, sr.no.4).

4. The applicant was implicated in bribery case and Departmental Enquiry was initiated against him w.e.f. 14.03.2014, which is in process. Subsequently the applicant has been reinstated in service w.e.f. **27.12.2017**. In the meantime, the Departmental Promotion Committee meeting was held on 28.12.2015 wherein the said claim of the applicant kept pending for the reason that Departmental Enquiry is in process against him (Page 89, sr.no.18).

5. Thereafter, the Departmental Promotion Committee meeting was held on 31.10.2018 wherein similarly situated persons, who were temporarily promoted along with the applicant, were granted the second benefit under ACPS w.e.f. 28.06.2012, as per provision in G.R. dated 01.07.2011 and the applicant's claim kept pending again for the reason that Departmental Enquiry is in process against him (Exhibit 6, Page 147, sr.no.13& 14).

6. The G.R. dated 01.07.2011 was referred in the proceeding of Departmental Promotion Committee held on 17.09.2012 at reference no.14 (page 73). The said G.R. clearly provides to extend the second benefit of ACPS to the temporary persons also. On the basis of this G.R. the Respondent No.2 granted benefit to the similarly situated persons in the DPC meeting held on 31.10.2018.

7. The Respondent No.2, Director, Town Planning did not appreciate the express provision in G.R. dated 01.07.2011 in the DPC meeting held on 17.09.2012 and kept the applicant's claim pending on the ground of temporary promotion. Had the Respondent No.2 been appreciated the provision in G.R. dated 01.07.2011 in the said DPC meeting, the applicant would have received the benefit in the year 2012 itself.

8. As the applicant was fulfilling all criteria required to extend second benefit of ACPS on the date of DPC meeting held on 17.09.2012, the applicant is entitled to get benefit w.e.f. 28.06.2012 upon completion of 12 years.

9. The promotional benefit under ACPS is non-functional wherein only review of previous service of 12 years needs to be reviewed/considered and not for subsequent period/event.

10. The Hon'ble Tribunal, Principal Bench, Mumbai passed judgement on 04.10.2019 in O.A. No.157 of 2019, wherein the Hon'ble Tribunal held that the subsequent registration of crime cannot be a ground to deprive him of the promotional post. The para 14 of the said judgement is reproduced here –

*“14. For the aforesaid reasons, I have no hesitation to sum-up that the impugned action of not implementing promotion order of the Applicant is not sustainable in law and the Applicant is required to be given posting having*

*cleared by DPC in 2014 itself. Subsequent registration of crime cannot be a ground to deprive him of the promotional post. Needless to mention that the Department is at liberty to conclude the D.E. and to take further action as permissible in law.”*

11. The Respondent No.2 while deciding the case of the applicant in DPC meeting held on 17.09.2012, erred in appreciating the express provision in G.R. dated 01.07.2011, which allow the temporary persons also to extend the benefit under ACPS. Only because of mistake on the part of the Respondent No.2, the applicant has been deprived from getting the legitimate benefit under ACPS and suffered great financial loss from last 8 years. Therefore, the applicant is also entitled for interest as per provision in para 2 of G.R. dated **22.11.1994**, as has been prayed by the applicant in para 16 (ii) of O.A.

12. In view of opinion expressed by the Principal Bench of MAT, Mumbai in O.A. No. 157 of 2019, delivered on 4/10/2019 in para-14 the grievance of the applicant is squarely covered by it. The first date 17/9/2012 on which first DPC took place, there was no case against the applicant and applicant cannot be denied benefit of that DPC by subsequent cases. So in this situation, the O.A. requires to be allowed as per reliefs clause in para-16 (i) and (ii) (page no.13) Hence, the following order –

**ORDER**

- (i) The O.A. is partly allowed.
- (ii) In terms of relief clause 16 (i) and (ii) except interest part.
- (iii) The above order be complied within 60 days from the date of this order.
- (iv) No order as to costs.

**Dated** :- 05/11/2020.

dnk..

**(Shree Bhagwan)  
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 : 05/11/2020.  
and pronounced on

Uploaded on : 05/11/2020.

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