

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 85/2018 (D.B.)**

Sampat Lahanuji Sambare,
Aged about 56 years,
Occ. Service,
R/o Plot No. 66, Chatrapati Nagar, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
- 2) Divisional Commissioner,
Nagpur Division,
Nagpur.
- 3) The Collector,
Nagpur.

Respondents.

Shri G.N.Khanzode, Id. Advocate for the applicant.

Shri S.A.Deo, Id. C.P.O. for respondents.

**Coram :- Hon'ble Shri Shree Bhagwan, Vice Chairman &
Hon'ble Shri M.A.Lovekar, Member (J).**

Date of Reserving for Judgment : 22nd Nov., 2021.

Date of Pronouncement of Judgment : 30th Nov., 2021.

Per:-Member (J)

(Delivered on this 30th day of Nov., 2021)

Heard Shri G.N.Khanzode, learned counsel for the applicant
and Shri S.A.Deo, learned C.P.O. for the respondents.

2. By the impugned order dated 06.05.2017 (A-6) R.D.C., Nagpur, acting on behalf of the respondent no. 3, rejected prayer of the applicant for grant of first and second time bound promotional scale w.e.f. 06.02.1997 and 06.02.2009, respectively.

3. UNDISPUTED FACTS:-

(i) The applicant was appointed as Talathi on 06.02.1985.

(ii) He completed 12 years of services as Talathi on 05.02.1997 that being the main pre-requisite for grant of first time bound promotional scale.

(iii) By order dated 03.09.2005 (A-2) respondent no. 3 granted him first time bound promotional scale not w.e.f. 06.02.1997 but w.e.f. 26.10.1999.

(iv) In order dated 03.09.2005 it was specifically mentioned that in earlier meeting dated 01.02.2003 A.C.Rs. of some employees, including the applicant, were not available, hence, question of grant of first time bound promotional scale to them was deferred but kept open, in a subsequent meeting held for the purpose on 02.09.2005 A.C.Rs. were available for perusal and considering the same (as well as other relevant factors) first time bound promotional scale was granted to the applicant and other similarly situated employees.

(v) By order dated 04.03.2015 (A-3) respondent no. 3 granted second time bound promotional scale to the applicant w.e.f. 01.10.2014.

(vi) Being aggrieved by the order dated 04.03.2015 the applicant filed O.A. No. 270/2016.

(vii) In O.A. No. 270/2016 the applicant contended that the second time bound promotional scale ought to have been granted to him w.e.f. 26.10.2011 i.e. on completion of 12 years from grant of first time bound promotional scale, and not from 01.10.2014.

(viii) In O.A. No. 270/2016 the applicant didn't challenged grant of first time bound promotional scale w.e.f. 26.10.1999.

(ix) In O.A. No. 270/2016 the applicant assailed correctness of rejection of his representation by respondent no. 3 by order dated 20.04.2015, rejection of appeal by respondent no. 2 which was communicated to him vide letter dated 03.11.2015, and rejection of his review application by order dated 30.01.2016.

(x) This Tribunal, by Judgment and order dated 23.06.2017 (A-4) allowed O.A. No. 270/2016 and directed respondent no. 3 to grant benefit of second time bound promotional scale to the applicant w.e.f. 26.10.2011.

(xi) On 19.04.2017 i.e. during pendency of O.A. No. 270/2016 the applicant made a representation dated 19.04.2017 (A-5) before

respondent no. 3 and prayed that the first and second time bound promotional scale be granted to him w.e.f. 06.02.1997 and 06.02.2009, respectively.

(xii) In support of representation dated 19.04.2017 the applicant relied on G.Rs. dated 08.06.1995, 01.11.1995, 04.06.1998 and 01.04.2010. He further relied on circular dated 28.02.2017 issued by the Law and Judiciary Department. He also relied on the Judgment and order dated 04.10.2016 passed by this Tribunal in O.A. No. 330/2015.

(xiii) The primary reason for allowing O.A. No. 330/2015 was stated thus by this Tribunal in para no. 3 of the Judgment:-

"3. The respondents' case is that the ACRs for the year 1997-1998 to 1999-2000 were not available when the D.P.C. was held. Anyhow fact remains that for no fault of the applicant, his case was not considered. It is not the case of the respondents that the applicant was not entitled for any such relief. Consequently, the applicant cannot be deprived of the benefit."

(xiv) The applicant then challenged the order dated 06.05.2017 (A-6) by filing instant O.A.. It was heard and decided on 06.11.2019. The O.A. came to be rejected primarily on the ground that it was barred by constructive *Res Judicata*.

(xv) The applicant called in question sustainability of the judgment and order dated 06.11.2019 by filing W.P.No. 406/2020.

(xvi) By judgment and order dated 21.01.2020 W.P. No. 406/2020 was allowed. It was held that bar of constructive *Res Judicata* was not attracted. In view of this determination the matter was remanded back to this Tribunal to decide it afresh on merits expeditiously.

4. SUBMISSIONS OF THE APPLICANT:-

(i) The impugned order is contrary to what is expressly stipulated in G.R. dated 08.06.1995.

(ii) Only because A.C.Rs. were not available in the meeting dated 01.02.2003 the decision of granting first time bound promotional scale to the applicant (and others similarly situated) was deferred. The meeting to consider the issue was eventually held on 02.09.2005. This deferment ought not to have resulted in extending the date for grant of this benefit from 06.02.1997 to 26.10.1999. This was arbitrary and illegal.

(iii) In O.A. NO. 330/2015 this Tribunal had, by Judgment and order dated 04.10.2016, held that for non-availability of A.C.Rs. the employee could not be blamed and deprived of time bound promotional scale immediately on completion of stipulated period. These observations were squarely applicable to the case of the applicant.

(iv) By denying the benefit of the first and second time bound promotional scale to the applicant w.e.f. 06.02.1997 and 06.02.2009, respectively what is laid down in G.Rs. dated 08.06.1995 and 20.07.2001 was ignored.

5. REPLY OF THE RESPONDENT NO. 3:-

(i) On the basis of Rule 4 of Revenue Qualifying Examination Rules, 1998 the benefit of first time bound promotional scale was granted to the applicant w.e.f. 26.10.1999.

(ii) In G.R. dated 08.06.1995, in addition to completion of 12/24 years of service, other criteria like eligibility, passing qualifying and Departmental Examination are also laid down. In a meeting held on 25.05.1999 which was chaired by respondent no. 3, decision was taken to defer grant of first time bound promotional scale to the applicant as he had not passed Revenue Qualifying Examination nor had he sought and availed exemption in this respect.

(iii) In a meeting dated 02.09.2005 decision was taken to grant first time bound promotional scale to the applicant w.e.f. 26.10.1999. This decision was based, *inter alia*, on the date on which the applicant had passed Revenue Qualifying Examination i.e. 24.10.1999.

(iv) In the impugned order it was clearly mentioned that completion of 12 years service was not the sole criterion for granting the

benefit of first time bound promotional scale and there were other criteria as well viz eligibility, passing qualifying examination and passing departmental examination.

6. CONCLUSION AND REASONS:-

Clause 2 (b) of G.R. dated 08.06.1995 lays down criteria for grant of time bound promotional scale viz seniority, eligibility, passing qualifying examination and passing departmental examination. It is not the case of the applicant that so far as these criteria are concerned, he had sought and availed any exemption. Contents of order dated 03.09.2005 granting first time bound promotional scale to the applicant w.e.f. 26.10.1999 do not support contention of the applicant that the date for grant of this benefit was extended mechanically on account of non-availability of relevant A.C.Rs. The decision was deferred on earlier occasion by keeping the issue open and it was then taken in the meeting dated 02.09.2005. This decision was based on the A.C.Rs. as well as the fact of the applicant having passed Revenue Qualifying Examination on 24.10.1999. This was completely in conformity with the G.R. dated 08.06.1995. These circumstances shows that the applicant would not derive any benefit from what was held, on facts, by this Tribunal in O.A. No. 330/2015. In O.A. NO. 330/2015 this Tribunal found that the only reason for extending the date of granting time bound promotional scale was non-availability of relevant A.C.Rs. Such is not the case in this

matter. It is a matter of record that the applicant accepted order dated 03.09.2005 fixing date of grant of first time bound promotional scale as 26.10.1999, without demur. In fact, while challenging the order of grant of second time bound promotional scale he relied on this order and prayed for granting the benefit of second time bound promotional scale w.e.f. 26.10.2011 i.e. on completion of 12 years from grant of first time bound promotional scale.

In his representation dated 19.04.2017 (A-5) the applicant prayed for refixing the date for grant of first and second time bound promotional scale. In O.A. No. 270/2016 the applicant prayed for refixing the date of second time bound promotional scale on the basis of date of grant of first time bound promotional scale. O.A. No. 270/2016 was allowed by order dated 23.06.2017. If instant O.A. is allowed, it would result in modification of order dated 23.06.2017 which is obviously not permissible since that would amount to sitting in appeal over the order passed by this Tribunal.

For all these reasons, instant O.A. deserves to be rejected. Hence, the order:-

ORDER

O.A. is dismissed with no order as to costs.

(Shri M.A.Lovekar)
Member (J)

(Shri Shree Bhagwan)
Vice Chairman.

Dated :- 30/11/2021.

*aps.

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

Name of Steno : A.P.Srivastava

Court Name : Court of Hon'ble Vice Chairman & Member (J).

Judgment signed on : 30/11/2021.

and pronounced on

Uploaded on : 01/12/2021.