

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No.744 of 2021 (S.B.)

- (1) Mangal Sadashiv Karunakar,
Aged about 66 years, Occupation: Retired,
R/o Plot No.22, Durga Nagar, Manewada Road, Nagpur.
- (2) Kamlakar Okuji Semaskar,
aged 67 years, Occupation Retired,
R/o Plot No.10, Dinprajahit Society, Narendra Nagar,
Nagpur.
- (3) Ramesh Dewaji Kharabe,
aged 63 years, R/o Plot No.37,
Sawarkar Nagar, Nagpur-05.

Applicants.

Versus

- (1) State of Maharashtra,
through its Principal Secretary,
Revenue & Forest Department, Mantralaya, Mumbai-32.
- (2) The Principal Chief Conservator of Forest Head of Forest Force,
M.S., Civil Lines, Nagpur-01.

Respondents.

**S/ Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicants.
Shri V.A. Kulkarni, learned P.O. for respondents.**

WITH

ORIGINAL APPLICATION No.326 of 2022 (S.B.)

Rekhram Bakaram Bhendarkar,
Aged about 70 years,
R/o Subhedar Layout, Nagpur

Applicant.

Versus

- (1) State of Maharashtra,
through its Principal Secretary,
Revenue & Forest Department, Mantralaya,
Mumbai-32.

(2) The Principal Chief Conservator of
Forest Head of Forest Force,
M.S., Civil Lines, Nagpur-01.

Respondents.

**S/ Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.
Shri V.A. Kulkarni, learned P.O. for respondents.**

WITH

ORIGINAL APPLICATION No.327 of 2022 (S.B.)

Shamsundar Jagan Meshram,
Aged about 68 years,
R/o Jaitwan Ganeshpur, Bhandara.

Applicant.

Versus

(1) State of Maharashtra,
through its Principal Secretary,
Revenue & Forest Department, Mantralaya,
Mumbai-32.

(2) The Principal Chief Conservator of
Forest Head of Forest Force,
M.S., Civil Lines, Nagpur-01.

Respondents.

**S/ Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.
Shri V.A. Kulkarni, learned P.O. for respondents.**

WITH

ORIGINAL APPLICATION No.328 of 2022 (S.B.)

Waman Baliram Gondhale,
Aged about 68 years,
R/o Shakti Nagar, Khat Road, Bhandara,

Applicant.

Versus

(1) State of Maharashtra,
through its Principal Secretary,
Revenue & Forest Department, Mantralaya,
Mumbai-32.

(2) The Principal Chief Conservator of
Forest Head of Forest Force,
M.S., Civil Lines, Nagpur-01.

Respondents.

**S/ Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.
Shri V.A. Kulkarni, learned P.O. for respondents.**

WITH

ORIGINAL APPLICATION No.329 of 2022 (S.B.)

Umakanth Bhauraoji Mahakalkar,
Aged about 64 years, R/o Mahal, Nagpur,

Applicant.

Versus

(1) State of Maharashtra,
through its Principal Secretary,
Revenue & Forest Department, Mantralaya,
Mumbai-32.

(2) The Principal Chief Conservator of
Forest Head of Forest Force,
M.S., Civil Lines, Nagpur-01.

Respondents.

**S/ Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.
Shri V.A. Kulkarni, learned P.O. for respondents.**

WITH

ORIGINAL APPLICATION No.330 of 2022 (S.B.)

Pandurang Sakharamji Musale,
Aged about 67 years R/o 82, Anjaney Society, Yeotmal

Applicant.

Versus

(1) State of Maharashtra,
through its Principal Secretary,
Revenue & Forest Department, Mantralaya,
Mumbai-32.

(2) The Principal Chief Conservator of
Forest Head of Forest Force,
M.S., Civil Lines, Nagpur-440 001.

Respondents.

**S/ Shri D.M. Kakani, G.K. Bhusari, Advocates for the applicant.
Shri V.A. Kulkarni, learned P.O. for respondents.**

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

Dated :- 08/02/2024.

COMMON JUDGMENT

Heard Shri G.K. Bhusari, learned counsel for applicants
and Shri V.A. Kulkarni, learned P.O. for the respondents.

2. All the applicants approached to this Tribunal for directing
the respondents to grant 1st time bound promotion as per the G.R.
dated 08/06/1995 with effect from the date on which they have
completed 12 years of service. It is thus their contention that they
were appointed as Range Forest Officer (In short "R.F.O."). They were
sent for training, but their training period is not counted as a duty
period. Therefore, they have prayed that direction be given to the
respondents to count the training period as a duty period as per the
G.R. dated 14/08/2018.

3. All the O.As. are strongly opposed by the respondents. In
para-4 of the reply it is submitted as under –

“(4) It is submitted that the Government of Maharashtra introduced the scheme of giving T.B.P to the employees of Group-C and Group-D (earlier Class-III and Class-IV) vide GR. dated 08.06.1995 and clarification to this G.R. issued vide GR. dated 01.11.1995 in which it is mentioned in the Point No.II that "The employee whose present status and pay scale is increased by way of upgradation of the posts will get the benefit of time bound promotion, as applicable vide GR. dated 08.06.1995, with effect from the date of upgradation of the posts.”

4. The short contention of the respondents is that applicants were upgraded and therefore they are entitled for 1st time bound promotion from the date of up-gradation and not from the date of initial appointment. It is submitted that because of up-gradation of the applicants, they become Gazetted Officer, Group-B and therefore G.R. of 1995 is not applicable to the applicants.

5. During the course of submission, the learned counsel for applicants has pointed out the Judgment of the M.A.T., Principal Bench, Mumbai in O.A.No.233 / 2013 with connected O.As., decided on 21/04/2015. He has pointed out the Judgment of the Hon'ble Bombay High Court in Writ Petition No.2605/2017, decided on 06/02/2019.

6. The learned counsel for applicants has submitted that the up-gradation is not a ground to deny 1st time bound promotion from the date of initial appointment. Hence, the respondents be directed to

grant the same to applicants after completion of 12 years of service from the date of their initial appointments.

7. The Hon'ble Bombay High Court in Writ Petition No.2605/2017, decided on 06/02/2019 held in para-20,23,36 and material portion are reproduced below –

“(20) In Kawalkar’s case, a Division Bench of this Court upheld the order passed by the Tribunal in OA No.636, 733 and 599 of 2013. The Division Bench, inter alia, observed as under:

“On hearing the learned Counsel for the parties and on a perusal of the impugned order, it appears that the Tribunal was justified in allowing the original application filed by the respondents. It was the case of the petitioners before the Tribunal that the petitioners had granted the first time bound promotion to the respondents in the year 1988 in pursuance of the Government Resolution dated 1.1.1986. We, however, find on a reading of the Government Resolution of the year 1986 that by the said Government Resolution, the State Government had merely revised the pay of the employees working in the milk scheme. The Tribunal rightly held that the case of the petitioners that they had granted time bound promotion to the respondents three times and therefore, the time bound promotion granted to them on the third occasion was withdrawn by the orders that were challenged before the Tribunal, was not correct. The Tribunal rightly held that the assured progressive scheme was framed by the policy of the Government in the year 1995 for the first time and hence, the petitioners could not have been granted the first time bound promotion in the year 1988. The Tribunal rightly held that the reliance placed by the petitioners on the Government Resolution revising the pay scale of the employees could not be considered as a time bound promotion. The Tribunal held that the respective respondents were granted time bound promotion by the petitioners only on two occasions firstly in the year 1995 w.e.f. 1.10.1994 and secondly in the year 2006 and 2008 after completion of 12 years of service from 1994. We find that the order of the Tribunal is

just and proper and the Tribunal has rightly set aside the action on the part of the State Government of withdrawing the second time bound promotion, granted to the respondents."

(23) We have referred to the aforesaid proceedings, in detail, as the question involved in all these proceedings, evidently, arose out of similar facts/situation. It is pertinent to note that in all the three sets of Original Applications, referred to above, there was a revision in the pay-scale of certain categories of employees after putting in seven years of service in a specified cadre. In the case at hand also, the erstwhile under-qualified and/or unqualified junior engineers were given the designation and pay-scale of section engineers after putting in specified years of service. In all the above original applications, different Benches of the Tribunal found that revision in pay-scale at an anterior point of time, without there being any change in duties and responsibilities, could not have been construed as the benefit akin to non-functional pay-scale relatable to the prescription contained in Clause 2(b)(3) of the MACP Scheme. The Tribunals also found such revision of pay-scale, when the Assured Career Progression Scheme was not in force, could not be pressed into service to deny the benefit under the ACP/ MACP Scheme, the object of which was to redress stagnation.

(36) It is now well neigh recognised that the terms "promotion" and "upgradation" far from being identical and interchangeable are distinct and have specific meaning and connotation in service jurisprudence. Promotion, in common parlance, connotes advancement to a higher position. Ordinarily promotion entails both enhanced position and pay. In legal parlance, promotion can be to a higher position as well as to a higher pay -scale. There can be promotion to a higher pay scale without there being an advancement to a higher position. Upgradation, on the other hand, is mere increase in the scale of pay, without any corresponding increase in position. There are shades to upgradation also. It may be upgradation simplicitor, available to all who satisfy the eligibility criteria. It may be preceded by selection. If upgradation involves a process of selection, as distinct from mere elimination, it may have the trappings of promotion, and in that event may be subject to quota rule or principle of reservation, wherever applicable.

(37) A profitable reference, in this context, can be made to a judgement of the Supreme Court in the case of Bharat Sanchar Nigam Limited Vs. R. Santhkumari

Velusamy and others." wherein in the context of applicability of reservation. after a survey of the rulings relating to the promotion and upgradation, the following principles were expounded.

"29. On a careful analysis of the principles relating to promotion and upgradation in the light of the aforesaid decisions, the following principles emerge:

(I) *Promotion is an advancement in rank or grade or both and is a step towards advancement to a higher position, grade or honour and dignity. Though in the traditional sense promotion refers to advancement to a higher post, in its wider sense, promotion may include an advancement to a higher pay scale without moving to a different post. But the mere fact that both that is, advancement to a higher position and advancement to a higher pay scale are described by the common term "promotion", does not mean that they are the same. The two types of promotion are distinct and have different connotations and consequences.*

(ii) Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation. the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.

(III) *Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where the advancement to a higher pay-scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay-scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simplicitor can be said to be a promotion in its wider sense that is advancement to a higher pay scale.*

(iv) *Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service.*

Upgradation, can also be restricted to a percentage of posts in a cadre with reference to seniority (Instead of being made available to all employees in the category) and it will still be an upgradation simplicitor. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation simplicitor. Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though termed as upgradation.

(v) Where the process is an upgradation simplicitor, there is no need to apply rules of reservation. But where the upgradation involves selection process and is therefore a promotion, rules of reservation will apply.

(vi) Where there is a restructuring of some cadres resulting in creation of additional posts and filling of those vacancies by those who satisfy the conditions of eligibility which includes a minimum period of service, will attract the rules of reservation. On the other hand, where the restructuring of posts does not involve creation of additional posts but merely results in some of the existing posts being placed in a higher grade to provide relief against stagnation, the said process does not invite reservation." (emphasis supplied)

The propositions expounded at Serial Nos. (ii), (iii) and (iv), if read cumulatively, govern facts of the case. The designation as section engineers was available to all the junior engineers who satisfied the eligibility condition i.e. putting in a specified years of service. Secondly, there was no change in the duties and responsibilities but they were given a revised pay-scale. There was no element of selection except the process of elimination."

8. The Hon'ble Bombay High Court has held that up-gradation is not a promotion. Though the pay scale was revised, it

cannot be said that it is a promotional post, because, there was no change in duty and the pay scale of promotional post also not granted. Therefore, the Hon'ble Bombay High Court has recorded its findings that up-gradation is not a promotion and therefore employees who have completed 12 years of service from the date of their initial appointments, are entitled to get 1st time bound promotion after completion of 12 years of service.

9. The respondents have not granted 1st time bound promotion to the applicants from the date of their initial appointments as R.F.O. It is the contention of the respondents that they were upgraded, their pay scales were revised, they become the Group-B Officer and therefore they are not entitled for time bound promotion from the initial date of appointment.

10. The same issue was considered by the Hon'ble Bombay High Court in the above cited Judgment. The Hon'ble Bombay High Court has recorded its findings that up-gradation cannot be a ground to deny the time bound promotion. The issues involved in the present O.As. are the same as like the issue in Writ Petition No.2605/2017 in the above cited Judgment of the Hon'ble Bombay High Court. Hence, the respondents are bound to grant 1st time bound promotion to all the applicants after completion of 12 years of service from the date of their initial appointments as R.F.O.

11. The next prayer of the applicants is that the respondents have not treated their training period as a duty period. The Government of Maharashtra has issued G.R. dated 14/08/2018. The para-5 of the G.R. is reproduced below –

“(५) सरळसेवेने नियुक्त सहाय्यक वनसंरक्षक व वनक्षेत्रपाल यांची आशवासित प्रगती योजनेसाठी बारा वर्षांची, गणना करताना त्यांची सेवा केंद्र शासनाने मान्यता दिलेल्या प्रशिक्षण संस्थेतील प्रशिक्षण सूरू झालेल्या दिनांकापासून ग्राह्य धरावी.”

12. The Government has taken decision that the training period of the R.F.O. shall be treated as a duty period for the purpose to grant 1st time bound promotion after completion of 12 years of service. In other Judgments of this Tribunal, it was directed to the respondents / Government of Maharashtra to treat the training period of the R.F.O. as a duty period. In view of the G.R. dated 14/08/2018, the respondents shall treat the training period of the applicants as a duty period. Hence, the following order –

ORDER

(i) The O.As. are allowed.

(ii) The respondents are directed to grant 1st time bound promotion to all the applicants after completion of 12 years of service from the date of their initial appointments as R.F.O.

(iii) The respondents are directed to treat the training period of the applicants as a duty period as per the G.R. dated 14/08/2018.

(iv) The respondents are directed to pay all the monetary / consequential benefits to the applicants within a period of three months from the date of receipt of this order.

(v) No order as to costs.

Dated :- 08/02/2024.

**(Justice M.G. Giratkar)
Vice Chairman.**

*dnk.

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

Name of P.A. : D.N. Kadam

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 08/02/2024.