

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.07 OF 2021

**DISTRICT: Ratnagiri
SUBJECT : Time Bound Promotion**

Shri Sanjay G. Joshi, Age:- 55 yrs, Occ.)
Occ. Rtd. Civil Engineer Assistant,)
R/o. Bramhan Wadi, Jalgaon, Dapoli,)
Dist. Ratnagiri 415 712.)... **Applicant**

Versus

- 1) The State of Maharashtra,)
through the Secretary, Water Resources)
Department, Mantralaya, Mumbai 400 032.)
- 2) The Assistant Superintending Engineer,)
Ratnagiri Irrigation Circle, Kuwarbav,)
Dist. Ratnagiri 415 629.)
- 3) The Executive Engineer, Ratnagiri)
Irrigation Division, Ratnagiri Kuwarbav,)
Post MIDC, Mirjole, Tal. & Dist.)
Ratnagiri 415 639.)
- 4) The Sr. Accounts Officer/PR-7, Office of)
the Accountant General, Pratishta Bhavan)
2nd Floor, 101, Maharashi Karve Marg,)
Mumbai 400 020.)...**Respondents**

Ms Darshana Kambali holding for Shri A. D. Sugdare, learned Advocate for the Applicant.

Smt. Archana B. K., learned Presenting Officer for the Respondent.

CORAM : A.P. Kurhekar, Member (J)

DATE : 03.04.2023

ORDER

1. The Applicant has challenged the communication dated 07.01.2020 issued by the office of the Accountant General (A.G.),

Mumbai whereby pension papers of the Applicant were remitted back to his department with following objections :-

" This office is unable to process the pension case for want of following:

- 1. Shri Joshi appointed on Civil Engineering Assistant as on 19.12.1989. Hence, he will be eligible for 1st ACP as only after 19.12.2001 (after completion of 12 years service) but it was given on 02.12.1997 which is incorrect. Subsequently, he will be eligible for 2nd ACP only after 19.12.2013 (after completion of 24 years). Please check and resubmit the case along with revised Form-6 and taking revise note in service book under proper attestation.*
- 2. You are also requested to refer Govt. of Maha. Water Resources Dept. Mantralaya, Mumbai clarification letter no.1213 dated 19.05.2014 in which Govt. of Maharashtra clearly stated that 1st ACP is admissible only after completion of 12 years service from CEA appointment date.*
- 3. For further queries you may approach Govt. of Mah. or obtain Govt. sanction from Mantralaya to finalize the case with current facts.*

2. The facts in brief are that Applicant was initially appointed by appointment order dated 22.11.1985 as Technical Assistant on work charged establishment temporarily for six months. Accordingly, he joined on 01.12.1985 and continued in service. Later, he was appointed as Civil Engineer on 19.12.1989. The department by order dated 14.08.1998 granted 1st benefit of Time Bound Promotion for the post of Junior Engineer w.e.f. 02.12.1997 meaning thereby considering his service rendered from 01.12.1985 on Work Charged Establishment. Later, he was again granted 2nd benefit of ACPS by order dated 03.06.2011 on completion of further 12 years. Thus, he was granted benefit of Time Bound Promotion Scheme considering his initial service from 01.12.1985 on Work Charged Establishment. He accordingly availed benefits and later availed voluntary retirement w.e.f. 31.08.2019.

3. It is on above background, when the department sent proposal to A.G. for pension, the A.G. by impugned communication dated 07.01.2020 raised objection as reproduced above stating that since the Applicant was appointed on the post of Civil Engineer on 19.12.1989, the benefit of 12 years and 24 years ought to have been given considering his service from 19.12.1989 and not from 01.12.1985 that is the period he served on Work Charged Establishment. The Applicant has

therefore, challenged the communication dated 07.01.2020 *inter-alia* contending that the orders of Time Bound Promotion given to him considering his service in Work Charged Establishment from 01.12.1985 are correct and objections raised by A.G. are unwarranted. He, therefore, sought directions to release his retiral benefits by setting aside the communication dated 07.01.2020.

4. The Respondents resisted the O.A. by filing reply *inter-alia* contending that since the Applicant was appointed initially on Work Charged Establishment, his services rendered on Work Charged Establishment was not required to be counted for the benefit of Time Bound Promotion Scheme but it was wrongly granted. According to Respondents since the Applicant was appointed as Civil Engineer on 19.12.1989, he is entitled to service benefits in terms of 1st and 2nd Time Bound Promotion Scheme from 19.12.1989 only

5. Heard Ms Darshana Kambali holding for Shri A. D. Sugdare, learned Counsel for the Applicant and Smt. Archana B. K., learned Presenting Officer for the Respondents.

6. The issue posed for consideration in O.A. is whether the Applicant's services rendered on Word Charged Establishment has to be counted for the benefit of Time Bound Promotion Scheme and the issue is no more *res-integra* in view of the decision of the Hon'ble Supreme Court in Civil Appeal No.1985/2022 decided on 21.03.2022. In that matter, O.A.No.238/2016 was filed by one Shri Madhukar Antu Patil challenging communication dated 06.10.2015 and 21.11.2015 thereby down grading his pay scale and pension. The Tribunal allowed the O.A. and granted benefit of Time Bound Promotion Scheme considering his initial period of service rendered on Work Charged Establishment in the light of approval granted by Government by order dated 18.03.1998 and subsequent approval of the Finance Department. The Government being aggrieved by order passed by the Tribunal preferred W.P. before the Hon'ble High Court which was dismissed and the judgment of the Tribunal was maintained. However, Government challenged the decision

of Tribunal as well as the Hon'ble High Court in Civil Appeal No.1985/2022 before the Hon'ble Supreme Court. The Hon'ble Supreme Court allowed the appeal partly with conclusion that period rendered by Applicant therein on Work Charged Establishment cannot be considered for the benefit of Time Bound Promotion Scheme and the order of re-fixation was confirmed. However, the Hon'ble Supreme Court directed that there shall not be any recovery from the Applicant therein in view of re-fixation of pay scale. In that case also the Applicant was initially appointed on Work Charged Establishment in the year 1982 and considering his services on Work Charged Establishment, benefits of Time Bound Promotion was granted but later cancelled. Para Nos.4, 5 and 6 of the judgement of the Hon'ble Supreme Court are important which are as under :-

4. In the present case, as observed hereinabove, his initial appointment in the year 1982 was in the post of Technical Assistant on work charge basis, which was altogether a different post than the newly created post of Civil Engineering Assistant in which he was absorbed in the year 1989, which carried a different pay scale. Therefore, the department was right in holding that the contesting respondent was entitled to the first TBP on completion of twelve years from the date of his absorption in the year 1989 in the post of Civil Engineering Assistant. Therefore both, the High Court as well as the Tribunal have erred in observing that as the first TBP was granted on the approval of the Government and the Finance Department, subsequently the same cannot be modified and/or withdrawn. Merely because the benefit of the first TBP was granted after the approval of the Department cannot be a ground to continue the same, if ultimately it is found that the contesting respondent was entitled to the first TBP on completion of twelve years of service only from the year 1989. Therefore both, the High Court as well as the Tribunal have committed a grave error in quashing and setting aside the revision of pay scale and the revision in pension, which were on re-fixing the date of grant of first TBP from the date of his absorption in the year 1989 as Civil Engineering Assistant.

5. However, at the same time, as the grant of first TBP considering his initial period of appointment of 1982 was not due to any misrepresentation by the contesting respondent and on the contrary, the same was granted on the approval of the Government and the Finance Department and since the downward revision of the pay scale was after the retirement of the respondent, we are of the opinion that there shall not be any recovery on re-fixation of the pay scale. However, the respondent shall be entitled to the pension on the basis of the re-fixation of the pay scale on grant of first TBP from the year 1989, i.e., from the date of his absorption as Civil Engineering Assistant.

6. In view of the above and for the reasons stated above, the present appeal succeeds in part. The impugned judgment and order passed by the High Court as well as that of the Tribunal quashing and setting aside orders dated 6.10.2015 and 21.11.2015 down-grading the pay scale and pension of the contesting respondent are hereby quashed and set aside. It is observed and held that the contesting respondent shall be entitled to the first TBP on completion of twelve years from the year 1989, i.e., from the date on which he was absorbed on the post of Civil Engineering Assistant and his pay scale and pension are to be revised accordingly. However, it is observed and directed that on re-fixation of his pay scale and pension, as observed hereinabove, there shall not be any recovery of the amount already paid to the contesting respondent, while granting the first TBP considering his initial appointment from the year 1982."

7. As such, in view of the aforesaid decision of the Hon'ble Supreme Court, it is no more *res-integra* that the services rendered by the Applicant from 1985 on Work Charged Establishment cannot be counted for the benefit of Time Bound Promotion Scheme. He was appointed as Civil Engineer on 19.12.1989 and from that date only he would entitle for benefit of Time Bound Promotion Scheme on completion of 12 years and 24 years respectively. Suffice to say, the objection raised by A.G. by communication dated 07.01.2020 are correct and challenge to the said communication holds no water. However, there shall not be recovery in view of revision of pay and allowances of the Applicant.

8. Apart, the Tribunal needs to take judicial notice of G.R. dated 02.03.2019 whereby benefits of Time Bound Promotion Scheme is revised in the form of 10, 20 and 30 years benefit and it is made applicable from 01.01.2016. In present case, the Applicant stands retired on 31.08.2019. As such, the Respondents will have to consider the effect of G.R. dated 02.03.2019 and shall extend the benefit to the Applicant if applicable to the Applicant subject to fulfillment of requisite conditions. At the time of retirement, the Applicant was serving on the establishment of Respondent No.2 namely Assistant Superintending Engineer. Ratnagiri Irrigation Circle, Kuwarbav, Dist. Ratnagiri. He is, therefore, required to take necessary steps in the matter and to release retirement benefits to the Applicant within reasonable time.

9. The totality of the aforesaid discussion and effects of law and facts leads me to sum up that challenge to communication dated 07.01.2020 issued by A.G. holds no water. The Applicant is entitled to the benefit of Time Bound Promotion Scheme from the date of joining of his service as Civil Engineer. However, there shall not be recovery in view of revision of pay scale. In addition to it, the Respondent No.2 is also required to examine the case of the Applicant for applicability of G.R. dated 02.03.2019 and shall take necessary steps. Hence the following order:-

ORDER

- (A) The challenge to impugned communication dated 07.01.2020 holds no water.
- (B) The Applicant is entitled to the benefit of Time Bound Promotion Scheme/ ACPS Scheme considering his service on the post of Civil Engineer only.
- (C) The Respondent No.2 is directed to resubmit pension papers of the Applicant to the office of A.G. in terms of above.
- (D) The Respondent No.2 is further directed to consider the - applicability of G.R. dated 02.03.2019 to the Applicant's case and if he found entitled to the benefit then it be considered while submitting pension papers to the office of A.G.
- (E) The Respondent Nos.1 to 3 are jointly and severally liable to comply the aforesaid direction and it be complied with within three months from today to ensure release of retiral benefit to the Applicant as per his entitlement.
- (F) No order as to costs.

Sd/-

(A.P. Kurhekar)
Member (J)