

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1012 OF 2017

DISTRICT : NASHIK

Shri Pandharinath V. Metkar.)
Age : 62 Yrs., Occu.: Nil, Retired as)
Deputy Accountant from the office of)
District Planning Officer, having office)
in the campus of District Collector Office,)
Dhule and R/o. 9, Maniklal Apartment,)
Wadala Pathardi Road, Vinay Nagar,)
Nashik.)...**Applicant**

Versus

1. The Directorate,)
Accounts and Treasuries,)
[Through Joint Director (Admn.)],)
Having Office at Thakarsi House,)
Mumbai Board Trust, 3rd Floor,)
Ballard Estate, Mumbai – 1.)
2. The Treasury Officer.)
Nashik, having office in the)
compound of District Collector)
Office, Nashik.)
3. The State of Maharashtra.)
Through Principal Secretary,)
Finance Department, Mantralaya,)
Mumbai – 400 032.)...**Respondents**

Mr. B.A. Bandiwadekar, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 05.11.2020

JUDGMENT

1. The Applicant has challenged the orders dated 21.06.2017 and 11.08.2017 whereby the date of giving benefit of first Time Bound Promotion (TBP) was postponed resulting into downgrading of pay and retiral benefits.

2. Shortly stated undisputed facts for the decision of present O.A. are as under :-

(i) The Applicant was appointed on 29.07.1982 as Clerk temporarily on permanent substantive post after interview/selection process.

(ii) After service of one year and four months, he was given break.

(iii) The Government took policy decision by Ordinance dated 18.06.1983 to regularize the services of the employees temporarily appointed till 18.06.1983 in Group 'C' and in pursuance of it, the services of the Applicant were regularized by order dated 28.03.1995 w.e.f.29.07.1992 (Page No.28 of Paper Book).

(iv) Later, the Government by order dated 20.08.1997 permitted the Applicant to appear in Post Recruitment Examination (Departmental Examination) within four years from the date of order of regularization of service i.e.28.03.1995 (Page No.32 of P.B.).

(v) The Applicant has passed Post Recruitment Examination for the post of Clerk in terms of Post Recruitment (Ministerial) Examination Rules, 1969 in May, 1997 within time given to him.

(vi) Thereafter, the benefit of first TBP on completion of 12 years was given to him w.e.f.17.11.1994 (treating his continuous service from initial date of appointment 29.07.1982).

(vii) The Applicant accordingly availed all service benefits promoted to the post of Senior Clerk and Deputy Accountant, and thereafter, retired on 31.05.2013 and pension and retiral benefits were extended.

(viii) However, the Respondent No.1 – Directorate of Accounts & Treasuries by order dated 21.06.2017 revised the decision stating

that as the Applicant had passed Post Departmental Examination in May, 1997 in terms of G.R. dated 15.10.2009 he will be entitled for the benefit of first TBP from the date of passing Post Recruitment Examination (Page No.20 of P.B.)

(ix) Consequently, the Respondent No.2 – Treasury Officer by order dated 11.08.2017 revised pay scale of the Applicant postponing his date of benefit of first TBP resulting into down-grading of pay as well as pension and recovery of Rs.19,762/- was sought.

(x) Accordingly, the sum of Rs.19,762/- was recovered from the Applicant.

3. It is on the above background and admitted facts, the Applicant has challenged impugned orders dated 21.06.2017 as well as 11.08.2017 questioning the postponement of date of benefit of first TBP as well as action of down-grading pay and pension and also sought refund of Rs.19,762/-.

4. Shri B.A. Bandiwadekar, learned Advocate for the Applicant advertent to the aforesaid admitted facts vehemently urged that even if, initially, the Applicant was appointed temporarily, his service was regularized with initial date of appointment and not only that, the Respondent No.2 – Treasury Officer by order dated 20.08.1997 granted permission to the Applicant to pass Departmental Examination within four years and he passed in May, 1997. Accordingly, the benefit of first TBP was extended and availed till retirement. He, therefore, contends that now the Respondents cannot be allowed to retract and postponed the date of grant of benefit of first TBP to the detriment of the Applicant and action of down-grading of pay and pension after retirement is unsustainable in law.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer submits that the action taken by the Respondents is in pursuance of G.R. dated 15.10.2009 which *inter-alia* provides that in case where the employee failed to clear Post Recruitment Examination within stipulated time and had completed 12 years' complete service, he would be entitled for the

benefit of first TBP after completion of 12 years from the date of passing of examination. He also sought to place reliance on the decision rendered by this Tribunal in **O.A.1520/2009 (Sudhakar Pagar Vs. Treasury Officer) decided on 26.09.2016.**

6. In view of submissions at the Bar, the crux of the matter is whether the impugned action of postponing the benefit of first TBP already availed by the Applicant and down-grading pay and pensionary benefits is sustainable in law.

7. True, in terms of Rule No.4 of Post Recruitment (Ministerial) Examination Rule, 1969, the Director of Accounts and Treasuries for the incumbent on the post of Junior Clerk, Clerk-cum-Typist, Typist (herein under referred as 'Rules of 1969'), every Junior Clerk-cum-Typist should pass the examination within four years of his joining the service and within three chances. A candidate, who fails in all the three chances, shall be discharged from service.

8. Whereas, considering the difficulties of the employees in passing Departmental Recruitment Examination within stipulated period and their loss of seniority, the Government through Finance Department by G.R. dated 15th October, 20098 clarified its earlier G.R. dated 20.03.1997 and to some extent, the difficulties faced by such employees are taken care of, which is as under :-

शासन निर्णय दिनांक २०/०३/१९९७ मधील स्पष्टीकरण क्र. २	सुधारीत स्पष्टीकरण
या संदर्भात मूळ निर्णयामधील परि. २ (ब) मध्ये स्पष्ट केल्याप्रमाणे अर्हता परीक्षा किंवा विभागीय परीक्षा विहित संधीत/मुदतीत उत्तीर्ण न झाल्यामुळे ज्येष्ठता गमावली असेल अशा कर्मचा-यांस त्याची सुधारीत ज्येष्ठता निश्चित करून त्या ज्येष्ठता सूचीवरील त्याच्या कनिष्ठास जर कालबद्ध पदोन्नती म्हणून वरची वेतनश्रेणी मिळत असेल तर अन्यथा पात्र ठरत	या संदर्भात मूळ निर्णयामधील परित्र २ (ब) मध्ये स्पष्ट केल्याप्रमाणे अर्हता परीक्षा किंवा विभागीय परीक्षा विहित संधीत/मुदतीत उत्तीर्ण न झाल्यामुळे ज्येष्ठता गमावली असेल अशा कर्मचा-याने १२ वर्षांच्या कालावधीत सदर परीक्षा उत्तीर्ण केल्यास त्याला नियमित सेवेची १२ वर्षे पूर्ण झाल्यानंतर अथवा १२ वर्षानंतर विभागीय/अर्हता परीक्षा पास झाल्यास त्या

असल्यास त्या कनिष्ठास दिलेल्या तारखेपासून वरची वेतनश्रेणी देण्यात यावी.	तारखेपासून, अन्यथा पात्र ठरत असल्यास त्याच्या सुधारीत ज्येष्ठता सूचीतील स्थानात बदल न करता कालबध्द पदोन्नती/सेवांतर्गत आशवासित प्रगती योजनेअंतर्गत वरिष्ठ वेतनश्रेणी देण्यात यावी.
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9. Thus, as per the revised clarification, in case of loss of seniority by the employee, if such employee completes 12 years' of service, and thereafter, pass Post Recruitment Examination, in that event, he would be entitled for the benefit of first TBP from the date of passing of examination, if otherwise eligible in terms of G.R. of TBP dated 08.06.1995.

10. Thereafter again, recently, the Government of Maharashtra had issued one more G.R. dated 01.02.2020 cancelling G.R. dated 15.10.2009 and issued amended clarification, which is as follows :-

शासन निर्णय, सामान्य प्रशासन विभाग दिनांक २०.३.१९९७ मधील मुद्या क्रमांक २ समोरील स्पष्टीकरण	सुधारीत स्पष्टीकरण
या संदर्भात मूळ निर्णयामधील परि. २ (ब) मध्ये स्पष्ट केल्याप्रमाणे अर्हता परीक्षा किंवा विभागीय परीक्षा उत्तीर्ण होणे आवश्यक आहे. अर्हता परीक्षा किंवा विभागीय परीक्षा विहित संधीत/मुदतीत उत्तीर्ण न झाल्यामुळे ज्येष्ठता गमावली असेल अशा कर्मचा-यांस त्याची सुधारीत ज्येष्ठता निश्चित करून त्या ज्येष्ठता सूचीवरील त्याच्या कनिष्ठास जर कालबध्द पदोन्नती म्हणून वरची वेतनश्रेणी मिळत असेल तर अन्यथा पात्र ठरत असल्यास त्या कनिष्ठास दिलेल्या तारखेपासून वरची वेतनश्रेणी देण्यात यावी.	अ) अर्हता परीक्षा किंवा विभागीय परीक्षा विहित संधीत/मुदतीत उत्तीर्ण न झाल्यामुळे ज्येष्ठता गमावली असेल अशा कर्मचा-याने १२ वर्षांच्या नियमित सेवा कालावधीत सदर परीक्षा उत्तीर्ण केल्यास त्याला नियमित सेवेची १२ वर्षे पूर्ण झाल्यानंतरच्या लगतच्या तारखेस अथवा ब) १२ वर्षांच्या नियमित सेवेनंतर, विभागीय/अर्हता परीक्षा उत्तीर्ण झाल्याच्या तारखेस उपरोक्त (अ) यापैकी कोणत्याही प्रकारात मोडणा-या कर्मचारी/अधिकारी यांना विभागीय पदोन्नती समितीच्या बैठकीतील पात्रतेनुसार, त्यांच्या (त्याच्या सुधारीत ज्येष्ठता सूचीतील स्थानात बदल न करता) कालबध्द पदोन्नती योजनेअंतर्गत/सेवांतर्गत आशवासित प्रगती योजनेअंतर्गत वरिष्ठ वेतनश्रेणी देण्यात यावी.

11. Thus, by G.R. dated 01.02.2020, the stringent conditions existing earlier were modified in case the employee has lost seniority for non-passing of post Recruitment Examination. He too, is held entitled for

the benefit of TBP, if he has passed Post Recruitment Examination in the meantime and such benefit will be available on completion of 12 years' service. And in case the employee passes Post Recruitment Examination after 12 years' service, then he would be entitled for the benefit of TBP from the date of passing of examination.

12. Now turning to the facts of the present case, admittedly, the Applicant was appointed as Clerk on temporary basis on 29.07.1982. But later, his services were regularized in view of Ordinance dated 18.06.1983. Material to note that during the period of temporary appointment before regularization, the Applicant was not allowed to appear in Post Recruitment Examination. There is specific mention about the same in order dated 20.08.1997, the contents of which are crucial and the same are as follows :-

“श्री. पी.व्ही. मेटकर, कनिष्ठ लिपीक, कोषागार कार्यालय, नाशिक यांची उपरोक्त संदर्भिय आदेश क्र ३ अन्वये दिनांक २९.०७.१९८२ पासूनची खंडीत सेवा नियमित करणेत आली आहे. कोषागारातील कर्मचा-याने नेमणुक तारखेपासून चार वर्षात तिन संधीत महाराष्ट्र कोषागार नियम परि-१४(८) अन्वये सेवा प्रवेशात्तर परिक्षा उत्तीर्ण होणे आवश्यक आहे. श्री. मेटकर यांची सेवा नियमित नसल्याने त्यांना आतापर्यंत सेवा प्रवेशोत्तर परिक्षेस बसण्यासाठी परवानगी देण्यात आली नव्हती. तथापि त्यांची सेवा उपरोक्त संदर्भिय क्र. ३ चे आदेशान्वये नियमित झाल्याने कोषागार अधिकारी, नाशिक हे संदर्भिय क्र. २ मध्ये नमूद केल्याप्रमाणे सक्षम अधिकारी असल्याने व तसेच उप संचालक, लेखा व कोषागारे, नाशिक विभाग नाशिक यांचे संदर्भिय क्र. १ मधील पत्रान्वये स्पष्ट झाल्याने कोषागार अधिकारी, नाशिक हे पी.व्ही. मेटकर, कनिष्ठ लिपीक यांना त्यांची सेवा नियमित केलेल्या आदेशाच्या दिनांकापासून सेवा प्रे. परिक्षा चार वर्षात तीन संधीत उत्तीर्ण होण्यास परवानगी देत आहेत. उपरोक्त संधीत हे परीक्षा उत्तीर्ण न झाल्यास नियमाप्रमाणे त्यांची वार्षिक वेतनवाढ रोखण्यात येईल.”

13. Thus, there is no denying that the temporary services of the Applicant were regularized with retrospective effect from 29.07.1982 and not only that permission was granted to the Applicant to pass Post Recruitment Examination within four years from the date of order and failing which, his increment will be withheld. Thus, it is not the case that the Applicant appeared in the examination and failed, so as to incur some disability of losing seniority, etc. He was in temporary appointment, and therefore, he was not allowed to appear in examination. As such, he cannot be blamed for this situation. Apart, when specific permission was granted while regularizing the service to

allow the Applicant to appear in Post Recruitment Examination within four years which he did and passed, then the Respondents cannot be allowed to retract and to withdraw the benefits already availed by the Applicant on the basis of order dated 20.08.1997.

14. Thus, the Respondents' stand to postpone the grant of benefit of TBP from the date of passing Post Recruitment Examination run counter to order dated 20.08.1997. If the stand adopted by the Respondents is accepted, it would be amounting to denial of the period of temporary service for consideration of grant of TBP, which is not permissible in law. It is no more *res-integra* in view of series of decisions by this Tribunal and confirmed by Hon'ble High Court that the temporary service of the employee needs to be considered for grant of benefit of TBP.

15. Indeed, as learned Advocate for the Applicant has pointed out in one decision given by this Tribunal in **O.A.1493/2009 (Shantaram Gaikwad Vs. Treasury Officer) decided on 30.10.2015** along with other connected O.As reveals that the Tribunal held that the benefit of TBP/Assured Career Progression Scheme has to be given from the date of completion of 12 years of service from initial appointment regardless of the fact as to whether he has cleared departmental examination within the time and attempt, etc. Para No.15 of Judgment is as under :-

“15. These Original Applications are allowed and the Applicants are held eligible to be considered for the benefit of Time Bound Promotion / Assured Career Progression Scheme from the date of completion of 12 years of service from initial appointment, regardless of the fact, as to whether they cleared the departmental examinations within the time limit and attempts, etc., but the Respondents shall make sure that the Applicants are otherwise entitled to the said benefit. The compliance shall be made in every respect including the payment of arrears and refund in case of Shri Shakhpal within eight weeks from today. No order as to costs.”

16. In the present case, the issue is slightly different, as the Applicant has passed Post Recruitment Examination in 1997 though he was

initially appointed in 1982. However, as stated above, his initial service was temporary and it was regularized with retrospective effect and in addition to it, the permission was specifically granted to pass departmental examination within four years from 28.03.1995, which the Applicant complied with. Accordingly, the benefit of first TBP was given and the Applicant availed the pay scale till his retirement. In this scenario, the impugned action of postponing the date of benefit of first TBP and downgrade pay and pension is totally unsustainable in law.

17. Reliance placed by the learned P.O. on the decision rendered by this Tribunal in **O.A.1520/2009** (cited supra) is totally misplaced. It was second round of litigation having lost earlier round of litigation in O.A.155/2004 which was dismissed by the Tribunal. While deciding second round of litigation i.e. **O.A.No.1520/2009**, the Tribunal has specifically observed that the fate of the Applicant had already sealed in view of Judgment in O.A.155/2004 which has attained finality, and therefore, the same grievance cannot be re-agitated again. Therefore, this decision is of little help to P.O.

18. The totality of aforesaid discussion leads me to conclude that the impugned action is totally unsustainable and orders in question are indefensible and liable to be quashed. Hence, I proceed to pass the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned orders dated 21.06.2017 and 11.08.2017 are quashed and set aside.
- (C) The Respondents are directed to refund Rs.19,762/- to the Applicant within four months from today, failing which they

will be liable to pay interest at the rate of 9% p.a. from the date of order till actual payment.

(D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 05.11.2020

Dictation taken by :

S.K. Wamanse.

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