

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.103 OF 2019

DISTRICT : NASHIK

Shri Baldeosing L. Patil.)
Age : 68 Yrs., Retired from the post of)
Refrigeration Operator from the office of)
Dairy Manager, Government Milk Scheme,)
Nashik.)...**Applicant**

Versus

1. The Regional Dairy Development)
Officer, having office at Trymbak Road,)
Nashik.)
2. The State of Maharashtra.)
Through Principal Secretary,)
Dairy Development Department)
Animal Husbandry, Dairy Development)
& Fisheries Department, Mantralaya,)
Mumbai – 400 032.)...**Respondents**

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

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 20.06.2019

JUDGMENT

1. In the present Original Application, the challenge is to the impugned order dated 27.04.2018 whereby the benefit of 2nd Time Bound Promotion (TBP) was

rejected on the ground that the Applicant did not work on the next promotional post nor qualified for the said post for which the benefit was claimed.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant joined as Mazdoor with Dairy Manager, Government Milk Scheme, Nashik on 01.11.1872. The benefit of 1st TBP in terms of G.R. dated 08.06.1995 was granted to the Applicant for the promotional post of Refrigerator Operator w.e.f.01.10.1994 in the pay scale of Rs.1200-1800 and enjoyed the said benefit till retirement on 31st October, 2008. However, after retirement, the benefit of 1st TBP was cancelled by the Department by order dated 17th October, 2011 on the ground that he was not entitled to the said benefit. The Applicant has challenged the order dated 17.11.2011 by filing O.A.No.102/2014 which came to be allowed by this Tribunal on 12.01.2015. No appeal was preferred against the said order and it attained finality. The Respondents implemented the said order belatedly on 27th September, 2016. Simultaneously, the Dairy Manager, Government Milk Scheme, Nashik by his letter dated 15th October, 2016 had forwarded the proposal to Respondent No.1 soliciting direction for grant of benefit of 2nd TBP to the Applicant, as he had completed 24 years' service on 30.09.2006. However, the Respondent No.1 by impugned order dated 27.04.2018 rejected the proposal stating that the Applicant has not practically worked on the next promotional post of Refrigerator Operator and worked on the post of Mazdoor only for 24 years. He was further informed that he did not possess prescribed qualification for the promotional post of Junior Engineer (Refrigeration). The Applicant contends that the benefit of 2nd TBP was granted to his colleagues, but he is subjected to discrimination.

3. The Respondents resisted the application by filing the Affidavit-in-reply (Page Nos.57 to 68 of P.B.) *inter-alia* denying the entitlement of the Applicant to the relief claimed. It is not in dispute that earlier the benefit of 1st TBP was

granted to the Applicant for the promotional post of Refrigeration Operator which was withdrawn, but later in view of Judgment in O.A.102/2014, it was restored. The Respondents sought to justify the impugned order contending that the Applicant worked on the post of Mazdoor, though for 24 years, but he did not possess prescribed qualification for the next promotional post Chageman (Refrigeration)/Junior Engineer) as per Recruitment Rules of 21st August, 1958, and therefore, not entitled to the benefit of 2nd TBP. The Respondents denied that the Applicant has been subjected to discrimination. With these pleadings, the Respondents prayed to dismiss the O.A.

4. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. A.B. Kololgi, learned Presenting Officer for the Respondents.

5. The issue posed for consideration in the O.A. is whether the Applicant is entitled for the benefit of 2nd TBP in terms of G.R. dated 01.04.2010 having completed 24 years continuous service.

6. Undisputedly, the Applicant was appointed as Mazdoor (Class-IV) on 01.11.1972 and the benefit of 1st TBP to the promotional post of Refrigerator Operator was granted to him w.e.f.01.10.1994 by order dated 23.02.2004 which he enjoyed till retirement. However, later it was withdrawn and again restored in view of decision rendered by this Tribunal in O.A.102/2014 decided on 12.01.2015. As such, there is no denying that the Applicant was appointed on the post of Mazdoor and retired on the same post. For Mazdoor first promotional post was Refrigerator Operator and thereafter next promotional post was Chageman (Refrigeration)/Junior Engineer (Refrigeration). The Applicant was granted the benefit of 1st TBP for the next promotional post of Refrigerator Operator having completed 12 years' service on the post of Mazdoor without getting functional promotion to the post of Refrigerator Operator. Now, the material question is whether he was eligible for the benefit of 2nd TBP for the

next promotional post of Chargeman (Refrigeration)/Junior Engineer (Refrigeration) because of non-getting functional promotion to the said post even after completing 12 years on 01.10.2006 from the date of grant of benefit of 1st TBP. As stated above, the benefit of 1st TBP was granted to the Applicant w.e.f.01.10.1994, and therefore, he claims to be eligible and entitled to the benefit of 2nd TBP w.e.f.01.10.2006.

7. Here, it would be useful to reproduce the relevant portion of the impugned order dated 27.04.2018, which is as follows :

“प्रति,

श्री. बी. एल. पाटील,
मजूर (सेवानिवृत्त),
शासकीय दूध योजना, नाशिक

विषय : दुसरी कालबद्ध पदोन्नती /आश्वासीत प्रगती योजना मंजूर करणेबाबत.

उपरोक्त विषयान्वये आपणांस कळविण्यांत येत की, आपण दुग्धशाळा मजूर या पदावर कार्यरत होते. प्रशितन विभागात १२ वर्षे सेवा पूर्ण केल्यानंतर आपणांस मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण मुंबई येथे आदेशानुसार प्रशितन यंत्रचालक वेतनश्रेणी रुपये १२०००.१८००(सुधारीत वेतनश्रेणी रुपये ९२००-२०२०० ग्रेड पे २४००) अशी कालबद्ध पदोन्नती मंजूर करण्यात आली आहे.

प्रशितन यंत्रचालक या पदास पुढील पदोन्नतीचे पद कनिष्ठ अभियंता (प्रशितन) हे असून सदरचे पदाचे सेवाप्रवेश नियम दि. २१.८.१९९८ नूसार खालीलप्रमाणे विहित केलेले आहे.

Designation	Scale of Pay Rs.	Recruitment Rules	
		Qualification prescribed	Mode of Recruitment proposed
Chargemen (Refrigeration)/Jr. Engineer	220-15400	Diploma in refrigeration of a recognized institution or matriculate with 6 yrs. Experience in an Ice Factory or Air-conditioning plant.	Appointment shall be made by 1. Promotion from lower cadre in the refrigeration section possessing the minimum prescribed qualification OR 2. By selection. The age of a candidate should not be more than 30 years. The appointment shall be on probation for 6 months.

उपरोक्त सेवाप्रवेश नियमानुसार आपणांस कनिष्ठ अभियंता (प्रशितन) पदाची दुस-या कालबद्ध पदोन्नती अंतर्गत पदोन्नती द्यावयाची झाल्यास वरीलप्रमाणे सेवाप्रवेश नियम धारण करणे आवश्यक आहे. कनिष्ठ अभियंता पदावर दुसरी कालबद्ध पदोन्नती देण्यासाठी आपण प्रशितन यंत्रचालक या पदावर प्रत्यक्ष काम करणे आवश्यक असून आपण दुग्धशाळा मजूर (वर्ग

४) या पदावर सलग २४ वर्षे सेवा पूर्ण केलेली आहे. तसेच कनिष्ठ अभियंता पदासाठी आवश्यक असलेली अर्हता म्हणजे पदविका व त्या पदाच्या संलग्न असलेला अनुभव धारण करित नाहीत.

उपरोक्त बाबींचा विचार करीता आपण वर्ग ४ पदावर कार्यरत असल्याने २४ वर्षांची दुसरी कालबद्ध पदोन्नती कनिष्ठ अभियंता या पदाची अर्हता धारण करित नसल्याने आपणांस मंजूर करता येत नाही.”

8. Thus, for the post of Chargeman (Refrigeration)/Junior Engineer (Refrigeration) as per Recruitment Rules, the candidate must have Diploma in Refrigeration of recognized institution or matriculate with six years' experience in an Ice Factory or Air-conditioning Plant. The mode of recruitment is by promotion from lower cadre in the Refrigeration Section possessing the minimum prescribed qualification or by selection.

9. In so far as the qualification of the Applicant is concerned, he seems to have Diploma from Kohinor Technical Institute in refrigeration as seen from photo-state copy but has not produced any other material to show that the institute from which he had obtained diploma is a recognized institution, as required in Rules referred to above. In Certificate also there is nothing to show that it is recognized institution. Therefore, the Diploma Certificate from Kohinor Technical Institute cannot be considered.

10. True, one of the reason given in the impugned order is that the Applicant has not in reality worked on the post of Refrigeration Operator for refusal to deny the benefit of 2nd TBP. In so far as this reason of non-working on the promotional post for which relief is sought is concerned, the said ground is illogical and irrational, as there could be no occasion for the employee to actually work on the promotional post and that is why, the scheme of benefit of TBP is introduced. The object of scheme is to give non-functional promotion by giving salary of the said promotional post subject to fulfillment of the educational

qualification, as required for the said promotional post. As such, the Applicant must fulfill the eligibility criteria or must be qualified for the promotional post of Junior Engineer (Refrigeration).

11. Now, the question comes whether the Applicant fulfilled alternate qualification for the post of Junior Engineer (Refrigeration). As per Recruitment Rules dated 21.08.1958 as reproduced above for the post of Junior Engineer (Refrigeration), the candidate must have Diploma in Refrigeration of recognized Institution or Matriculate with six years' experience in an Ice Factory or Air-Conditioning Plant. The Applicant does not possess Diploma in Refrigeration of recognized Institution. In so far as alternate qualification Matriculate with six years' experience in an Ice Factory or Air-Conditioning Plant is concerned, the Applicant is admittedly Matriculate. However, the question comes where he possess six years' experience in an Ice Factory or Air-Conditioning Plant. The Applicant is admittedly working on the post of Mazdoor. The benefit of 2nd TBP was refused by the Respondents on the ground that the Applicant does not fulfill eligibility criteria for the post of Junior Engineer (Refrigeration) which is the next promotional post available, which the Applicant is claiming benefit of 2nd TBP.

12. Here, it would be apposite to refer the eligibility criteria for the entitlement to the benefit of 2nd TBP in terms of G.R. dated 1st April, 2010, which is as follows :-

“(ड) योजनेच्या दुस-या लाभासाठी पात्रतेच्या अटी व शर्ती :

१. पहिला लाभ घेतलेल्या व त्यानंतर प्रत्यक्ष पदोन्नती मिळालेल्या कर्मचा-यास दुसरा लाभ मंजूर करताना तो पहिल्या लाभाप्रमाणेच दिनांक २० जुलै २००९, च्या आदेशामधील व यासंबंधी वेळोवेळी निर्गमित करण्यात आलेल्या स्पष्टीकरणात्मक आदेशातील तरतुदीच्या अधिन मंजूर करण्यात यावा. म्हणजेच, ज्या पदाची वेतनसंरचना मंजूर करण्यात येणार आहे, त्या पदावर प्रत्यक्ष पदोन्नती मिळण्यासाठी विहित केलेल्या अटी व शर्तीची पूर्तता करणे आवश्यक राहिल.

२. पहिल्या लाभांतर्गत पदोन्नतीच्या ज्या पदाची वेतनसंरचना मंजूर करण्यात आली आहे त्या पदावर प्रत्यक्ष पदोन्नती न मिळालेल्या कर्मचा-यांच्या बाबतीत, दुसरा लाभ मंजूर करण्यासाठी, त्याला ज्या पदाची वेतनसंरचना मंजूर करण्यात येणार आहे त्या पदावरील पदोन्नतीसाठी विहित केलेली गोपनीय अहवालाची किमान सरासरी प्रतवारी प्राप्त करणे आवश्यक राहिल.”

13. Thus, for the benefit of 2nd TBP, the Applicant is required to fulfill eligibility criteria for the post of Junior Engineer (Refrigeration) subject to required gradation in Annual Confidential Report. As such, only because the employee is completed 24 years' service that itself will not qualify him for the benefit of 2nd TBP. The object of grant of TBP is to give non-functional promotion to the employees who are stagnated subject to fulfillment of prescribed qualification for the promotional post. In the present case, the Applicant is claiming non-functional promotion i.e. 2nd TBP benefit for the post of Junior Engineer (Refrigeration) for which he must have Diploma in recognized Institution or matriculate with six years' experience in an Ice Factory or Air-Conditioning Plant. The Applicant is Matriculate, but admittedly working as Mazdoor and his experience is of Mazdoor only and not experience relating to the post of Junior Engineer (Refrigeration) in Ice Factory or Air-Conditioning Plant about refrigeration work. The working on the post of Mazdoor is totally different from working in refrigeration relating to the post of Junior Engineer (Refrigeration). As such, the criteria that the person must have six years' experience in an Ice Factory needs to be understood in the sense that such experience must be of refrigeration work and not of Mazdoor. This being the position, the Applicant cannot be said to have fulfilled required qualification for promotion to the post of Junior Engineer (Refrigeration) and consequently, cannot be said entitled to the benefit of 2nd TBP for the promotional post of Junior Engineer (Refrigeration).

14. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to contend that the similar benefit of 2nd TBP was granted to several colleagues of the Applicant and raised the issue of discrimination. He has produced Office Order dated 30.08.2011 in respect of said employees and has also produced the extract of Service Books of those employees, which are at Page Nos.42 to 53 of P.B. However, the perusal of extract of Service Books clearly indicates that all those candidates viz. S/Shri D.A. Joshi, R.A. Bhandare, D.B. Nikam, Anil Karad, Anil Ranarkar, S.G. Ghuge, Mahendra Singh Pardeshi and G.R. Bhandare reveals that

all these candidates possess Diploma in Refrigeration from I.T.I. Thus, after Matriculation, they have completed Diploma in Refrigeration from I.T.I, and therefore, found qualified for the next promotional post of Junior Engineer (Refrigeration) in terms of Rules dated 21.08.1958 referred to above. Whereas, in the present case, the Applicant has no such qualification in I.T.I. and Diploma Certificate produced by him is not of recognized Institution. Therefore, the ground of discrimination holds no water.

15. In so far as the Judgment delivered by this Tribunal in O.A.102/2014 is concerned, in that case, the benefit of 1st TBP was granted to the Applicant, but was withdrawn after his retirement and recovery was ordered. It is in that context, the O.A. was allowed restoring his pay scale and directions were issued to refund the amount by quashing the order of recovery on the basis of Judgments of Hon'ble Supreme Court that the excess payment made to the employee for no fault on his part cannot be recovered. As such, it is in that context, the recovery order was quashed and the benefit of 1st TBP was maintained. Whereas, in the present case, the issue relates about the fulfillment of qualification to the post of Junior Engineer (Refrigeration), so as to claim the benefit of 2nd TBP. As concluded above, the Applicant found not qualified for the post of Junior Engineer (Refrigeration). Therefore, the Judgment in O.A.102/2014 is of little assistance to the Applicant for grant of benefit of 2nd TBP.

16. For the aforesaid discussion, what emerges that the Applicant is working as Mazdoor and have no six years' experience in Ice Factory or Air-Conditioning Plant relating to Refrigeration work as contemplated in Rules dated 21.08.1958. This being the factual position, the refusal to the benefit of 2nd TBP cannot be faulted with. The impugned order passed by the Department is in consonance with Rules dated 21.08.1958.

17. The totality of aforesaid discussion leads me to sum-up that the Applicant is not entitled to the benefit of 2nd TBP and O.A. being devoid of merit deserves to be dismissed. Hence, the following order.

ORDER

The Original Application is dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 20.06.2019

Dictation taken by :

S.K. Wamanse.

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