

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1125 OF 2019**

**DISTRICT : NASHIK**

1. Shri Satish V. Lolge. )  
Age : 60 Yrs, Occu.: Retired )  
ASI (Radio Mechanic), )  
Residing at Ashish Co-op.Hsg.Soc, )  
Plot No.65, Omkar Nagar, Peth Road,) )  
Nashik – 422 004. )
2. Shri Arvind V. Patil. )  
Age : 64 Yrs., Occu.: Retired ASI )  
(Radio Mechanic), R/o. Anjanisut )  
Row Houses, R.H.No.13, )  
Behind Ambika Paradise, )  
Apartment near Comfort Zone, )  
Edkant Nagar, Datir Mala, Ambad, )  
Nashik – 422 010. )
3. Shri Dilip S. Panchbhai. )  
Age : 69 Yrs, Occu.: Retired )  
ASI (Radio Mechanic), )  
Residing at Flat No.6, Sanskar )  
Residency, S.No.17, Pakhal Road, )  
Wadala Shivar, Behind Devare )  
Petrol Pump, Nashik – 422 006. )
4. Shri Sudhir G. Bendre. )  
Age : 62 Yrs, Occu.: Retired )  
Wireless ASI (Radio Mechanic), )  
Residing at C/o. Rohit S. Bendre, )  
Building No.1A, Room No.001, )  
Ground Floor, Survodaya Mangal )  
Co-op.Hsg.Soc.Ltd, Near Sairaj )  
Park, 90 Ft. Road, )  
Thakurli (E) – 421 201. )
5. Shri Juzer E. Soni. )  
Age : 60 Yrs, Occu.: Retired )  
ASI (Radio Mechanic), )  
Residing at A/703, Jupiter Co-op. )  
Hsg.Soc, Oppo. Tanwar Hospital, )

- P.K. Road, Deepak Hospital Lane, )  
Mira Road (E) – 401 105. )
6. Shri Bhalchandra B. Chatre. )  
Age : 57 Yrs, Occu.: Retired )  
ASI (Radio Mechanic), )  
Residing at 1055, Shreepad )  
Apartment, Opp. Gaobhag Police )  
Chowky, Sangli – 416 416. )
7. Shri Vinod S. Panchbhai. )  
Age : 60 Yrs, Occu.: Retired )  
ASI (Radio Mechanic), )  
Residing at 1/3B, Tapowan Society, )  
Tapodham Road, Near Jijai Garden )  
Hall, Warje, Pune – 411 058. )
8. Shri Shivaji N. Chavan. )  
Age : 57 Yrs, Occu.: Retired )  
ASI (Radio Mechanic), )  
Residing at At & Post : Varunji )  
Tal.: Karad, Near New Koyana Mala )  
Bridge, Near Mauli Hotel, )  
NH-4 Highway, )  
District : Satara 415 110. ) **...Applicants**

**Versus**

1. The State of Maharashtra. )  
Through Addl. Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )
2. The Director General of Police. )  
Shahid Bhagat Singh Road, Mumbai)
3. The Addl. Director General of Police )  
and Director of Police (Wireless), )  
Dr. Homi Bhabha Road, Chavan )  
Nagar, Pune – 411 008. ) **...Respondents**

**Mr. Rajesh M. Kolge, Advocate for Applicants.**

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

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

**DATE : 28.01.2021**

**JUDGMENT**

1. The Applicants have challenged the communication dated 03.02.2018, 23.10.2019, 28.03.2019, 01.10.2018 and 23.10.2019 issued by Respondent No.3 – Additional Director General of Police and Director of Police (Wireless) thereby rejecting the claim of the Applicants for the benefit of Time Bound Promotion Scheme on completion of 45 years of age invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

Applicants were in service on the post of Assistant Sub-Inspector of Police Wireless (Radio Mechanic) and except Applicant Nos.6 and 8, all are retired in between 2009 to 2018. Following Chart shows the details of Applicants viz. date of birth, date of appointment, date of completion of 12 and 24 years' service, date of completion of 45 years of age, retirement, etc.

Sr. No.	Names of Applicants	Date of Birth	Date of Appointment as ASI	12 Years completion in the post of ASI (Radio Mechanics)	24 Years completed	Date of completion of 45 years of age	How many exam passed	Date of Retirement
1	Shri Satish V. Lolge	22.02.1958	10.01.1980	10.01.1992	10.01.2004	22.02.2003	Class IV - 1997 Class III - 1990 Class II - 2014	29.02.2016
2	Shri Arvind V. Patil	09.01.1955	10.06.1978	06.10.1990	06.10.2002	09.01.2000	Class V - 1988	31.08.2013
3	Shri Dilip S. Panchbhai	19.07.1951	12.01.1972	09.12.1984	09.12.1996	19.07.1996	NIL	31.07.2009
4	Shri Sudhir G. Bendre	06.03.1958	15.03.1979 as PSI(W)	15.03.1991	15.03.2003	06.03.2003	Class III - 2011 Class II -	30.06.2016

							2012 Class I - 2013	
5	Shri Juzer I. Soni	12.05.1959	02.01.1983	01.02.1995	01.02.2007	12.05.2004	Class IV - 1979 Class III - 1992 Class II - 2012 Class I - 2013	31.12.2017
6	Shri Balkrishna B. Chatre	17.10.1962	02.01.1983	01.02.1995	01.02.2007	17.10.2007	Class I - 2014 Class II 2012 Class III Class IV - 1988	31.10.2020
7	Shri Vinod S. Panchbhai	06.05.1960	27.12.1979	27.12.1993	27.12.2005	06.05.2005	Class I - 2014 Class II 2013 Class III - 2011 Class IV - 2000	30.06.2018
8	Shri Shvaji N. Chavan	16.02.1962	02.04.1983	04.02.1995	04.02.2007	16.02.2007	Class II - 2014 Class I - 2017	29.02.2020

3. In this O.A, the Applicants have raised the grievance for not getting the benefits of Time Bound Promotions in terms of G.Rs. dated 08.06.1995 and 20.07.2001. They claimed to have been entitled for the benefit of this G.R. for accelerated promotion but the same is denied to them for the reason that they have not passed departmental examination in terms of Para 191 of Bombay Police Manual. The Applicant Nos.5 and 6 have only passed the examination but not within time. In this behalf, the Applicants contend that they have been exempted from passing departmental examination on attaining 45 years of age in view of G.R. dated 01.11.1977. In the first round of litigation i.e. in O.A.95/2008 filed by the Applicants along with others, the Tribunal by Judgment dated 10.06.2008 directed the Respondents to hold the DPC meeting within three months and to consider the claim of the Applicants for Time

Bound Promotion, keeping in mind the exemption granted to Government servants from passing the departmental examination on attaining the age of 45 years in terms of G.R. dated 01.11.1977. However, Respondent No.3 by order dated 08.10.2008 rejected their claim for benefit of Time Bound Promotion on the ground that they have not passed the departmental examination as required for the benefit of non-functional promotion/Time Bound Promotion Scheme. Thereafter, the Applicants made various representations to Respondent No.3, but in vain.

4. In the meantime, one Mukund S. Daima, ASI of Police Wireless (Radio Mechanic) filed O.A.No.749/2008 for grant of benefit of Time Bound Promotion on attaining the age of 45 years in terms of G.R. dated 01.11.1977 but the same was rejected by Aurangabad Bench of the Tribunal. Being aggrieved by it, he had filed Writ Petition No.3643/2009 before Hon'ble High Court, Bench at Aurangabad which was allowed by Judgment dated 21.11.2017 thereby quashing the order passed by the Tribunal and directions were given to extend the benefit of Time Bound Promotion without insisting upon the departmental examination on attaining 45 years of age. The Respondents have implemented the said decisions by extending the benefit to him. However, the Applicants though similarly situated persons, they have deprived of the said benefit and are subjected to discrimination. The benefit of Time Bound Promotion on attaining the age of 45 years were again extended to their counter-parts in view of decisions rendered by the Tribunal in O.A.Nos.422/2016, 431 to 434/2016 and 473/2016 decided by common order dated 18.09.2019 and in O.A. Nos.294 to 304/2020 with O.A.Nos.311 & 315/2020 decided by common order on 24<sup>th</sup> December, 2020. The Applicants, therefore, claimed the benefit of Time Bound Promotion on the ground of parity and decisions referred to above.

5. Shri R.M. Kolge, learned Advocate for the Applicant submits that in view of various decisions referred to above, the Applicants being similarly

situated persons are entitled to the benefit of Time Bound Promotion on attaining the age of 45 year and exemption from passing the departmental examination in terms of G.R. dated 01.11.1977. He has pointed out that the only reason mentioned in the impugned communication that the decision given in the matter of **Mukund Daima** is applicable to the individual case of Mukund Daima and not others, is absolutely erroneous and arbitrary.

6. Per contra, Shri A.J. Chougule, learned Presenting Officer made feeble attempt to justify the impugned communication contending that the decisions referred by the Applicants are applicable to the parties to the said litigation and Applicants cannot claim parity.

7. Indeed, the matter in issue is no more *res-integra* in view of decision of Hon'ble High Court in **Writ Petition No.3643/2009 (Mukund S. Diama Vs. State of Maharashtra & 6 Ors.) decided on 21.11.2017** (cited supra). The Petitioner in the said Writ Petition Shri Mukund Daima was Assistant Police Inspector in Wireless Section and joined service in the year 1980. He cleared Class-III and Class-IV examinations, but unable to clear remaining examination as per norms fixed by the Department. The Hon'ble High Court referred to its earlier decision in Writ Petition No.6212/2011 and other companion matters and allowed the Writ Petition. Para Nos.18 and 19 of the Judgment of Writ Petition No.3643/2009 is material, which is as under :-

**“18.** In the circumstances, we consider it expedient to follow suit in the decision given by Division Bench in Writ Petition No.6212 of 2011 and other companion matters. Having regard to observations therein, that decision of General Administration Department of Government would be binding on all departments of the State and a department of Government would not be permitted to take a different stand as it appears only ‘Wireless Section’ of Police Department has not be extended the benefit.

**19.** In view of aforesaid, it would be appropriate that the petitioner employed in Wireless Section of Police Department is given benefit of promotion to the next level post without insisting upon departmental or Class-I and II examination, on attaining age of 45 years by giving deemed date of promotion. Since it is stated that petitioner is no longer in service

having retired on superannuation, as such, he shall be given deemed date of promotion from the date of promotion of his junior, along with all consequential benefits.”

8. The decision rendered by Hon'ble High Court in Writ Petition No.3643/2009 was further relied upon by the Tribunal, Nagpur Bench in O.A.No.422/2016 decided with connected O.A. on 18.09.2019 as well as O.A.No.294/2020 decided along with connected matters on 24<sup>th</sup> September, 2020 and directions were given to extend the benefit of TBP without insisting upon passing of departmental examination on attaining the age of 45 years. The learned P.O. fairly concedes that these Judgments had attained finality without challenging the same and are implemented.

9. Indeed, in view of aforesaid decisions which had attained finality, the Respondents ought to have extended the said benefit being similarly situated persons to the Applicants. However, their request is turned down on the specious ground that the Judgment in **Mukund Diama's** case is applicable to that particular case only, which is totally unsustainable in service jurisprudence.

10. In this behalf, significant to note that the Government of Maharashtra itself had issued Circular on 28<sup>th</sup> February, 2017 acknowledging legal position about parity in service jurisprudence and the contents are as follows :-

“1. The Hon'ble Maharashtra Administrative Tribunal, Mumbai vide order dated 14.12.2016 in O.A. Nos.59, 61 and 90 of 2016 has expressed displeasure over rejection of the claim of the applicants therein, for grant of Time Bound Promotion on the ground that the applicants had declined to accept temporary promotions, though in similar matters Hon'ble Tribunal has allowed the O.As and order of the Tribunal has attained finality.

2. The Hon'ble Tribunal in Para 8 of aforesaid Judgment has observed as under :-

***“If a principle of general applicability is capable of being culled out from a particular pronouncement of this Tribunal, then***

***similarly placed employees, though not before the Tribunal should be given the benefit thereof without actually moving this Tribunal for relief. If on the other hand, the relief is person specific, then of course, this direction will not apply.”***

Therefore, the Hon'ble Tribunal has directed the undersigned to inform all the concerned departments regarding applicability of general judicial principle as explained in Para 8 of the aforesaid Judgment.

3. The Hon'ble Supreme Court in the case of ***State of Uttar Pradesh & Ors Vs. Arvind Kumar Srivastava*** reported in ***2015 (1) SCC 347*** has laid down similar principle, thus :

***“Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.”***

4. In view of the above, all the departments are hereby directed to take action according to the above directions given by the Hon'ble Maharashtra Administrative Tribunal, reiterating the legal position expounded by the Hon'ble Supreme Court.

5. The aforesaid directions be also brought to the notice of the offices under the administrative control of the departments.”

11. Regret to note that despite issuance of Circular dated 28.02.2017 which is based upon the principles laid down by Hon'ble Supreme Court, the Respondents have taken stand that the decision in ***Diama's*** case is not applicable to the Applicants. Indeed, the Respondents were under obligation to extend the same benefit to the Applicants being similarly situated persons.

12. The totality of aforesaid discussion leads me to conclude that the impugned orders rejecting the claim of the Applicants are totally unsustainable in law 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 03.02.2018, 23.10.2019, 28.03.2019, 01.10.2018 and 23.10.2019 issued by Respondent No.3 are quashed and set aside.
- (C) The Respondents are directed to extend the benefit of Time Bound Promotion/Assured Career Progression Scheme benefit to the Applicant from the date they have completed the age of 45 years.
- (D) The Respondents are further directed to extend the monetary benefits and other consequential service benefits within three months from today.
- (E) No order as to costs.

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

Mumbai

Date : 28.01.2021

Dictation taken by :

S.K. Wamanse.

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