

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.166 OF 2016

DISTRICT : KOLHAPUR

Shri Avinash Sitaram Garware.)
Age : 56 Yrs, Working as Talathi, Village)
Dugad, Tal. Bhiwandi, Dist : Thane and)
R/o. B-305, Triveni Garden, Jail Road,)
Adharwadi, Kalyan (W), Dist : Thane.)...**Applicant**

Versus


The District Collector, Thane having)
Office at Thane.)...**Respondent**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondent.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 15.12.2016


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JUDGMENT

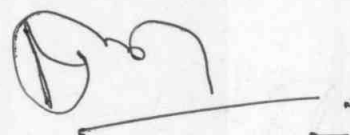
1. This Original Application (OA) raises a dispute about the date from which the benefit of the Time Bound Promotion should accrue to the Applicant in the context of whether it should be from the date of clearing a particular departmental examination or from the date of his initial appointment. As a matter of fact, this controversy is now fully governed by a common Judgment rendered by me in deciding four OAs, the leading one being **OA 1493/2009 and 3 others (Shri Shantaram H. Gaikwad Vs. The Treasury Officer, dated 30.10.2015)**.

2. I have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant and Shri A.J. Chougule, the learned Presenting Officer for the Respondent.

3. The facts are not much in dispute. The Applicant joined Government service as a Talathi on 7.10.1981. He cleared the Sub-service Departmental Examination in September, 1986, but he could not pass the Revenue Qualifying Test Examination (to be hereinafter called the said examination) in the requisite time and chances and in the meanwhile, having completed 45 years of age, he was



granted exemption from passing that examination and as a matter of fact, by the impugned order, the benefit in question was given to him from the date on which he was granted exemption and not from the date of initial appointment. However, an intervening event that took place was momentous. The Applicant got embroiled in a prosecution under Prevention of Corruption Act. He was placed under suspension on 28.08.1991. He was convicted and sentenced by the Trial Court on 14.5.1996 but in appeal, the Hon'ble Bombay High Court was pleased to acquit him by the Judgment and Order dated 2.11.2007. The Applicant came to be reinstated on 29.1.2008 and thereafter, the SDO Bhivandi Division by his Order of 7.5.2008 treated the entire suspension period of the Applicant to have been spent on duty for all purposes. The Applicant brought OA 751/2011 whereunder he had been declared unfit for the grant of Time Bound Promotion. By an order of 11.6.2012, the then Hon'ble Chairman was pleased to allow the said OA and directed the Assured Career Progression Scheme benefit to be granted to the Applicant from, "appropriate date". In that background, by the impugned order of 26.12.2012, the benefits were granted to the Applicant as already mentioned above from 10.10.2004 which was the date on which he was granted exemption from passing the said examination after



attaining the age of 45 years. The Applicant claims that he should have been granted the said benefits in accordance with the G.R. of 8.6.1995 from 1.10.1994 on which he had completed 12 years of regular service. In this factual set of events, the relief of quashing and setting aside of the impugned order to the extent hereinabove mentioned is sought.

4. I decided four OAs detailed hereinabove by an order of 30.10.2015 in which in so far as the fact at issue is concerned, the present Applicant is exactly so similarly placed as were those Applicants. I relied upon the Judgment of the Hon'ble Bombay High Court in **Writ Petition No.5494/2000 (The State of Maharashtra and others Vs. Shri Uttam V. Pawar, dated 20th October, 2000 (DB) (Bombay)**. Para 4 from that particular Judgment was quoted by me in Para 3 of my common Judgment. The same may be reproduced hereinbelow.

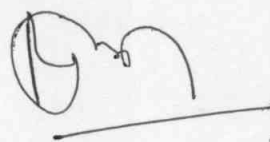
“3. At this stage, the 1995 G.R. above referred to may be dealt with. This G.R. has been fully quoted in an unreported judgment in **Writ Petition No.5494/2000 (The State of Maharashtra and others Vs. Shri Uttam V. Pawar, dated 20th October, 2000)**



(DB)(Bombay). The gist thereof can be quoted from Para 4 of **Uttam V Pawar's** case (supra).

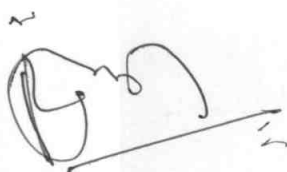
“4. From a bare reading of the aforesaid Government Resolution, it is clear that the Resolution has come into force with effect from 8th June, 1995 and all ‘C’ and ‘D’ category employees who were to complete 12 years of service would be entitled to higher pay scale in their normal channel of promotion. It is also clear from the said Government Resolution that in order to become eligible for higher pay scale under the scheme, the procedure to be followed is seniority, fitness, qualifying departmental examination and the person who has been directly recruited or promoted to the post shall be entitled to have the scale only once after completion of 12 years of service.”

5. There also, the contention of the Respondents was that the Applicant having failed to clear the examinations within the time limit prescribed and within the number of attempts, the entitlement to the said benefit would accrue from a date of twelve years from passing the

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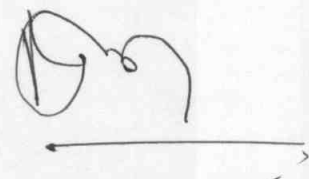
said examination which in this particular case will be from the date of grant of exemption from passing the said examination. I then referred to two earlier Judgments of this Tribunal in **OA 347/2006 (Shri Jayaprakash T. Barve Vs. Commissioner of Sales Tax, dated 8th August, 2006)** and **OAs 510, 573 and 587/2007 (Shri Parmeshwar P. Bawiskar Vs. The State of Maharashtra and others, dated 17.12.2007)**. I noted that in **Barve's** case, reliance was placed on another order of this Tribunal in **OA 22/2005 (Smt. Hemlata Chaudhari Vs. The Commissioner of Sales Tax, dated 17.2.2006)**. There a distinction was clearly drawn between the Time Bound Promotion and the Regular Promotion. All those facts and the principles therein are clearly applicable to this matter also. I then relied upon a Judgment of the Hon'ble Supreme Court in **K.C. Sharma and others Vs. Union of India and others, (1997) 6 SCC 721** and after completing the discussion of **Uttam Pawar** (supra), I found in Para 13 as below.

“13. It is, therefore, very clear that the principle is that for Time Bound Promotion, the period is to be counted from the date of initial appointment and even if the concerned employee did not clear the examinations within the time



and attempts, etc. that might give rise to any other consequence with regard to his service conditions, but as far as Time Bound Promotion is concerned, that would be no circumstance against him.”

6. It is, therefore, quite clear that bound by the above Judgment which in turn relied on a number of earlier Judgments of the Tribunal as well as the Hon'ble Supreme Court and the Hon'ble Bombay High Court, this OA will have to be decided exactly in the same manner as the above referred one was. There is no factual distinction at all and I am not particularly happy with pointless protraction of the trial by the Respondents who in their Affidavit-in-reply sworn by Shri V.P. Patil, Tahsildar (Revenue) in the office of Collector, Thane has not squarely faced this very momentous aspect of the matter. It appears to be their case that in OA 751/2011, they had been directed only to consider the case of the Applicant which was accordingly considered. In the first place, they should have read the soul of the order rather than running away at a tangent and further my Judgment was subsequent in point of time and it was already holding the field when the Affidavit-in-reply was filed on 20th July, 2016. The fact that the SDO had treated the entire period



of suspension as 'spent on duty' removes all hurdles and clears the way for granting relief to the Applicant. I am very clearly of the view that even the final order should be in the line of my order in **Shantaram Gaikwad** (supra).

7. The Applicant is hereby held eligible to be considered for the said benefit from the date of completion of 12 years of service from initial appointment and not from the date of grant of exemption from passing the said examination. The Respondents shall, however, make sure that the Applicant was otherwise entitled to the said benefits. The Applicant shall be entitled to all consequential benefits arising out of this particular Judgment. The Respondents shall make compliance in every respect including arrears, if any, payable within eight weeks from today. The Original Application is accordingly allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
15.12.2016

Mumbai

Date : 15.12.2016

Dictation taken by :

S.K. Wamanse.