

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.171 OF 2015

DISTRICT : Hingoli

Shivgir Hansgir Giri)
Age: 57 years, Occ: Service)
O/o. Executive Engineer, Purna)
Irrigation Division, Vasmatnagar,)
Dist. Hingoli.).....**Applicant**

VERSUS

1. The State of Maharashtra, through)
Chief Presenting Officer, Maharashtra)
Administrative Tribunal, Aurangabad.)
2. The Superintendent Engineer,)
Nanded Irrigation Circle, Nanded.)
3. The Executive Engineer, Purna)
Irrigation Division, Vasmatnagar,)
Dist. Hingoli.).....**Respondents**

Shri A.S. Deshmukh, the learned Advocate for the Applicant.
Mrs. Deepali S. Deshpande, learned Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal, Vice-Chairman
Shri B. P. Patil, Member (J)**

DATE : 08.03.2017

PER : Shri Rajiv Agarwal, Vice-Chairman

ORDER

1. Heard Shri A.S. Deshmukh, the learned Advocate for the Applicant and Mrs. Deepali S. Deshpande, learned Presenting Officer for the Respondents.
2. This O.A. has been filed by the Applicant challenging the order dated 12.03.2015 issued by the Respondent No.2, cancelling the promotion granted to the Applicant in the post of Dafter Karkoon.
3. Learned Counsel for the Applicant argued that the Applicant was appointed as Canal Inspector on 06.11.1981 by the Respondent No.3. The Applicant was promoted as Junior Dafter Karkoon by order dated 01.12.1989 issued by the Administrator, Command Area Department Authority, Aurangabad. However, by order dated 16.09.2002 the same authority gave instructions that if some employees were promoted irregularly, the pay fixation on promotion may be cancelled and they may on completion of 12 years of service, be granted Time Bound Promotion as per G.R. dated 8.6.1995. Accordingly, the Applicant's pay was re-fixed and a total of Rs.17471/- was recovered from him by order dated 04.12.2012. The Applicant was granted Time Bound Promotion w.e.f. 01.10.1994. In 2001 and 2003, certain posts were declared surplus in some offices of the Irrigation Department and such employees were absorbed in equivalence posts in other offices of Irrigation Department.

The Applicant was absorbed in the post of Dafter Karkoon on 19.04.2006 in the office of the Respondent No.3. The Applicant has been working as Dafter Karkoon since then. He retired from service on 30.06.2015. The Applicant was granted second benefit of second Assured Career Progression Scheme on completion of 24 years of service on 03.10.2011 with effect from 01.10.2006. By order dated 12.03.2015, the Respondent No.2 has withdrawn promotion given to the Applicant in the post of Dafter Karkoon and also cancelled second benefit of the Assured Career Progression Scheme. This order has been passed behind the back of the Applicant and is violative of the principles of natural justice.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Applicant was appointed as Canal Inspector on 06.11.1981. As per Recruitment Rules notified on 30.05.1977 for appointment to the post of Daftar Karkoon, there is no provision to promote a Canal Inspector to that post. The Applicant was wrongly promoted as Daftar Karkoon by order dated 01.12.1989. Even under the old rules of 19.09.1962, which were superseded by rules of 1977 there was no provision for promotion of a Canal Inspector to the post of Dafter Karkoon. The pay fixation of the Applicant was revised in 2002, but he continued to hold the post of Dafter Karkoon. The Applicant was absorbed as Dafter Karkoon in the year 2006 in the office of the Respondent No.3. The post of Canal Inspector has no channel of promotion and the Applicant was not entitled to be given Time Bound Promotion/benefit of Assured Career

Progression Scheme in the posts, which are in the chain of promotion of Dafter Karkoon. Learned P.O. stated that the Applicant was given benefit of ACP Scheme and given the pay scale of Dafter Karkoon and his designation was also changed to that of Dafter Karkoon. He should have remained in the post of Canal Inspector. The Applicant was given benefits which he was not entitled to as per rules, and the excess payments made to him have been recovered by impugned order dated 12.03.2015.

5. This case makes a very strange reading. The Applicant was appointed as Canal Inspector on 06.11.1981. He was promoted as Junior Dafter Karkoon by order dated 01.12.1989, under Rules contained in G.R. dated 19.09.1962. This G.R. has the provision for appointment to the post of Dafter Karkoon. No post of Junior Dafter Karkoon is mentioned in the said rules, however apparently the post of Dafter Karkoon is mentioned as Junior Dafter Karkoon. The post of Dafter Karkoon could be filled by nomination or by promotion from amongst suitable sectional and mustering Karkoons. Obviously, a Canal Inspector was not eligible to be promoted as Dafter Karkoon. The order dated 01.12.1989 promoting the Applicant to the post of Junior Dafter Karkoon has obviously no legal basis and is completely illegal. It appears that by order dated 16.09.2002, for the persons like the Applicant, who were wrongly promoted in 1989-90, and whose pay was fixed in the promoted post, the pay was re-fixed in the lower scale and they were given Time Bound Promotion in terms of G.R.

dated 08.06.1995 after completion of 12 years of service. The Applicant states that a total of Rs.17471/- were recovered from him. He admits that he was granted Time Bound Promotion w.e.f. 01.10.1994. It appears that the Applicant was granted Time Bound Promotion in the pay scale attached to the post of Dafter Karkoon, taking that post as the promotional post from the post of Canal Inspector. However, there is no promotional avenue for the post of Canal Inspector and his pay should have been fixed treating his post as isolated one.

6. This trend of passing wrong orders, it appears, continued unabated. The Applicant was continued as Dafter Karkoon, though his designation should have been Canal Inspector, even after he was granted Time Bound Promotion. He was said to have become surplus in the cadre of Dafter Karkoon in his earlier office. The Respondents in para 12 of the affidavit in reply dated 28.09.2015 have stated that :-

‘As regards to contents in para No.6 (ix) I say that G.R. dated 11/7/2001, 19/4/2003 are matter of record. Further, as the applicant though initially appointed as Canal Inspector which has no promotional channel, but got the promotion on the post of Junior Dafter Karkoon (Dafter Karkoon) and hence was held as surplus in the cadre of Dafter Karkoon and accordingly was absorbed on the said post.’

It appears that the Applicant was treated as a Daftar Karkoon (though he was actually a Canal Inspector, drawing pay of Dafter Karkoon on Time Bound Promotion, which was given to him wrongly in violation of G.R. dated 08.06.1995)

and was declared surplus in one office and absorbed in the same post in another office i.e. from C.A.D.A. Aurangabad to Maharashtra Water & Irrigation Commission, Aurangabad by order dated 19.04.2006. The Applicant's pay was fixed from 01.01.2006 as per Sixth Pay Commission and he was granted second benefit of Assured Career Progression Scheme by order dated 03.10.2011 w.e.f. 01.10.2006. This also resulted in the Applicant getting pay scale of the post to which a Dafter Karkoon is promoted. In fact it should have been considered whether the Applicant was entitled to get second benefit of Assured Career Progression Scheme from the post of Canal Inspector at all. If he was found eligible, he should have been given that benefit as for an isolated post.

7. This issue has been examined at great length in O.A. No.1033/2014 and 644/2015 by judgment dated 20.01.2017 by the Mumbai Bench of this Tribunal. It is observed by this Tribunal as follows in the aforesaid judgment.

“7. During the course of argument, learned Counsel for the Applicants placed on record G.R. dated 19.9.1962 which are about the recruitment to the post of Dafter Karkoon etc. For Dafter Karkoon, the appointment could be made by nomination or promotion from amongst suitable sectional and Mustering Assistant. These rules were replaced by rules of 30.5.1977 which were framed under Article 309 of the Constitution. Even under these rules of 1962, Canal Inspector- Measurer were not eligible to be promoted as Dafter Karkoon. The present Applicants were all appointed from 1977 to 1980. The Rules of 1977 would apply to them as far as appointment to the post of Dafter Karkoon is concerned. They are/were in

no way eligible for promotion to the post of Dafter Karkoon.

8. The Applicants have not been able to substantiate their claim that the post of Canal Inspector / Measurer is not an isolated post. In our opinion, they were given first and second benefits of A.C.P. scheme correctly as per relevant G.R.s.

9. The Applicants have placed on record an office order dated 36 of 1982 said to be issued by Administrator Command Area Development Authority for Kakadi and Mula Projects in Ahmednagar. The order does not bear any date. We are not able to ascertain whether it is an authentic document. Even if, for the sake of argument, this document is assumed to be authentic, it is obviously issued in violation of the Recruitment Rules for the post of Dafter Karkoon. The same is the case with other orders on which the Applicants are relying. Hon'ble S.C. has held in the case of Chandigarh Administration Vs. Jagjit Singh: 1995 AIR S.C. 705 as below :-

“Generally speaking, the mere fact that the Respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination.”

It is further held that:-

“-----it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order.”

In view of the law laid down by Hon'ble Supreme Court, we are unable to give any order to grant illegal promotion/ Time Bound Promotion to the Applicants, even if in the past some authorities might have issued such illegal orders.”

8. Considering all these facts, the order dated 12.03.2015 issued by the Respondent No.2 cannot be faulted. Only the order should have been issued after giving due notice to the Applicant and his say should have been considered. In our view, this situation can be remedied, if the Applicant is given opportunity to represent against the aforesaid order and the Respondent No.2 is directed to consider the said representation and pass a fresh reasoned order in this matter. Accordingly, if the Applicant files a representation against the order dated 12.03.2015 within one month from today, the Respondent No.2 shall consider the issue raised by him and pass a reasoned order within a further period of one month. If any recovery of excess payment is found due from the Applicant, the Respondents shall act in accordance with the judgment of Hon'ble S.C. in the case of **Sate of Punjab and Others etc. V/s. Rafiq Masih (White Washer) etc. reported in AIR 2015 SC 696**, and any subsequent judgments of Hon'ble S.C. This O.A. is disposed of accordingly with no order as to costs.

(B. P. PATIL)
MEMBER (J)

(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 08..03.2017

Place : Aurangabad

Dictation taken by : VSM

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