

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.199 OF 2017

DISTRICT : SANGLI

Shri Sharad V. Kulkarni.)
Retired Talathi, R/o. 403, Snehankit Apartment,))
Hiremath Galli, Brahmanpuri, Miraj, Tal.: Miraj,))
District : Sangli.)...Applicant

Versus

1. The S.D.O. Jath, Tal.: Jath,))
District : Sangli.))
2. The District Collector.))
Sangli Rajwada Chowk, Sangli,))
Tal.: Miraj, District : Sangli.)...Respondents

Mr. M.B. Kadam, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 01.03.2019

JUDGMENT

1. In the present Original Application, the Applicant is seeking direction to the Respondents to extend the benefit of 2nd Time Bound Promotion (TBP) invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant was serving as Talathi in Tal.: Jat, District : Sangli. He joined service on 19.11.1981 and stands retired on 30.04.2010. While in service, the 1st TBP benefit was extended to him having completed 12 years of service on 01.10.1994. The 1st TBP was granted vide order dated 26.09.1997. He contends that he was entitled to 2nd TBP having completed another 12 years' service from 01.10.1994. He, therefore, claims to have been entitled for 2nd TBP on 01.10.2006. However, his case was not considered by the Respondents for 2nd TBP till his retirement. After retirement, he made representations on 13.02.2011 and 06.02.2017, but in vain. Ultimately, he approached this Tribunal by filing present O.A. for direction to the Respondents to extend the benefit of 2nd TBP to him.

3. The present O.A. was filed along with M.A.No.407/2017. The delay was condoned and O.A. was taken up for hearing.

4. The Respondents resisted the application by filing Affidavit-in-reply (Page Nos.22 to 27 of Paper Book) *inter-alia* denying the entitlement of the Applicant for benefit of 2nd TBP. It is not in dispute that the Applicant joined service on 19.11.1981 and 1st TBP was granted to him on 01.10.1994. As regard 2nd TBP, the Respondents contend that, though the Applicant has completed further 12 years' service in 2006, his ACRs were not up to the mark, and therefore, he was not eligible for the benefit of 2nd TBP. His ACRs from 01.10.2006 upto his retirement were not confirming to the eligibility criteria, and therefore, his claim of the benefit of 2nd TBP is not tenable.

5. The Applicant has filed Rejoinder thereby contending that, none of the ACRs of the relevant period have been communicated to him, and therefore, the decision, if any, refusing the benefit of 2nd TBP is unsustainable in law. He further

contends that the ACRs were not written year to year, but those were written backdated at one time and he has been deprived of getting benefit of 2nd TBP.

6. During the course of hearing, the directions were issued to the Respondents to place on record an extract of ACRs of the Applicant as well as minutes of Departmental Promotion Committee (DPC) to appreciate the issue involved in the matter. However, the minutes of DPC are not produced. The Respondents through Presenting Officer have only produced a Chart of ACRs from the year 2001-2002 to 2009-2010.

7. Shri M.B. Kadam, learned Advocate for the Applicant strenuously urged that at no point of time, the Respondents have communicated the entries in the single ACR, and therefore, there is contravention of Government instructions which mandates communication of ACR to the employee regularly. In this behalf, he also referred to decision of Hon'ble Supreme Court in **(2015) 14 SCC 247 (Prabhu Dayal Khandelwal Vs. Chairman, Union Public Service Commission & Ors.)** wherein it has been held that the denial of promotion on the basis of uncommunicated entries in ACR is not permissible.

8. Whereas all that, the learned P.O. submitted that the ACRs were not fulfilling the criteria required for grant of 2nd TBP, and therefore, the claim is not maintainable. As regard the communication of ACR, she fairly stated that no record is available to ascertain the communication of ACR to the Applicant.

9. At this juncture, it would be apposite to refer the Judgment of Hon'ble Supreme Court, which highlighted the necessity of communication of entries in the ACRs to the employee and its implications. In **AIR 2008 SC 2513 (Dev Dutt Vs. Union of India & Ors.)** in Para Nos.9, 19, 39 & 41 held as follows :

“9. We do not agree. In our opinion every entry must be communicated

to the employee concerned, so that he may have an opportunity of making a representation against it if he is aggrieved.

19. In our opinion, every entry in the A.C.R. of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) Had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future (2) He would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in *Maneka Gandhi vs. Union of India* (supra) that arbitrariness violates Article 14 of the Constitution.

39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders.

41. We, however, make it clear that the above directions will not apply to military officers because the position for them is different as clarified by this Court in *Union of India vs. Major Bahadur Singh* 2006 (1) SCC 368. But they will apply to employees of statutory authorities, public sector corporations and other instrumentalities of the State (in addition to Government servants)."

10. Thereafter again, same view has been reiterated by the Hon'ble Supreme Court in **(2015) 14 SCC 447 (Prabhu Dayal Khandelwar Vs. Chairman, Union Public Service Commission & Ors.)** wherein it has been again held that the claim of the Government employee for promotion could not be denied by taking into consideration uncommunicated ACRs wherein he was not assessed as per his expectation and directions were given to consider the matter for promotion considering communicated ACRs only.

11. Now, turning to the facts of the present case, as stated above, pathetic to note that the Respondents have no record to show that any of the ACRs for the period from 2001-2002 to 2009-2010 was communicated to the Applicant. Whereas, the Applicant has made a categorical statement on Affidavit that not a single ACR was communicated to him till his retirement. This being the position, it is crystal clear that there was no communication of any of the ACR in the period from 2001-2002 to 2009-2010.

12. Furthermore, the minutes of DPC Committee is not forthcoming despite specific direction from this Tribunal. This leads to the conclusion that no such DPC meeting was actually held to consider the claim of Applicant for 2nd TBP and no such decision was recorded. Had any such meeting held, the Respondents would have placed no record the minutes of the meeting. It seems that, as ACRs of the Applicant were found not fulfilling the criteria for grant of 2nd TBP, it was left out without taking decision in black and white. As such, there is complete failure on the part of Respondents to comply with the mandate of the law, which is nothing but appalling and classic instance of mal-administration.

13. Admittedly, for grant of 2nd TBP, the Applicant was required to have Average 'B+' grading in the preceding 5 years ACRs. There is no denying that the Applicant was entitled for benefit of 2nd TBP on 01.10.2006 having completed another 12 years' service for grant of first benefit. Therefore, Applicant's case ought to have been examined and considered by the Respondents year to year regularly considering ACRs of preceding 5 years so that, if he found eligible, the benefit could be extended from that particular date. However, it being not done now, it is necessary to undue injustice meted out to the Applicant by giving suitable directions.

14. The position of ACRs of Applicant is as follows :

Date of ACRs	Remarks
1.4.2001 to 10.1.2002	B
1.4.2002 to 31.3.2003	B-
25.5.2003 to 6.3.2004	B-
1.9.2004 to 30.11.2004	B
21.12.2005 to 31.3.2006	C
1.4.2006 to 31.3.2007	B+
15.10.2008 to 31.3.2009	B+
1.4.2009 to 8.12.2009	A
17.12.2009 to 16.3.2010	B+

15. The perusal of Chart reveals that, for the period 2003-2004, the ACRs were written partly i.e. for the period 25.05.2003 to 06.03.2004, which was graded 'B-' and for the period from 01.09.2004 to 30.11.2004, it was graded 'B'. Then, the ACRs written for the period 31.5.2005 to 31.3.2006 was graded 'C'. Then again, the ACRs for the period 15.10.2008 to 31.03.2009 was graded 'B+' and again for the period from 01.04.2009 to 08.12.2009 was graded 'A'. Lastly, the ACRs for the period 17.12.2009 to 16.03.2010 was graded 'B+'. Thus, apparently, the ACRs were not written year to year as per financial year i.e. from 1st April to 31st march of the next year and it was being written in piecemeal. It was incumbent on the part of Respondents to consider preceding 5 years' ACR for grant of 2nd TBP which admittedly not done till the date of retirement. Therefore, to render complete justice and to give opportunity to the Applicant to direct the Respondents to communicate the ACRs of last 5 years preceding the date of retirement to the Applicant, so that the Applicant can make his representation against the grading given to him and can file representation for upgradation of the same, if desired. If representations are accepted and grading is changed, the DPC should re-examine such change grading to consider eligibility of the Applicant for grant of 2nd TBP and if found entitle, necessary orders for grant of

benefit can be issued. This is the only course of action left in view of the irregularities committed by the Respondents, so that the Applicant also should get fair opportunity to consider his case by DPC in appropriate manner.

16. In this behalf, I am guided by the Judgment of Hon'ble Supreme Court in ***Dev Dutta's*** case (cited supra) wherein 4 years ACRs of the Applicant were upto bench-mark for promotion, but one ACR was not communicated for promotion to the post of Superintending Engineer. The Hon'ble Supreme Court held that, even if the Applicant had already retired from service, the ACR which was not upto the mark be communicated to him within two months giving opportunity to the employee to make representation, if he chooses against the said entry, and thereafter, the said representation was directed to be decided within stipulated time for consideration of promotion. In the present case also, an opportunity needs to be given to the Applicant to make representation, so as to consider his case for 2nd TBP, if found eligible.

17. The upshot of aforesaid discussion leads me to sum up that the application deserves to be allowed partly with suitable direction. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The Respondents are directed to communicate the ACRs of preceding five years of the date of retirement to the Applicant within one month from today.
- (C) On receipt of ACRs, the Applicant shall make representation to the concerned authority within two weeks, if chooses. On receipt of such representation, the concerned authority shall decide the same within a month thereafter. If entry is upgraded

or even maintained as it is, it shall be placed before DPC within two weeks from the date of decision on representative for consideration which shall decide the issue of 2nd TBP of the Applicant and if found entitle as per existing criteria, then the same shall be granted with all consequential service benefits.

- (D) The decision, as the case may, be communicated to the Applicant within two weeks from the decision of DPC.
- (E) No order as to costs.

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

Mumbai

Date : 01.03.2019

Dictation taken by :

S.K. Wamanse.

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