

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.225 OF 2020

DISTRICT : SINDHUDURG
Sub.:- Time Bound Promotion

Shri Prakash Motiram Teli.)
Age : 50 Yrs, Working as Laboratory)
Scientific Officer, Rural Hospital,)
Vaibhavwadi, District : Sindhudurg,)
R/o. Parabwadi, A/P/T Kankavali,)
District : Sindhudurg.)...**Applicant**

Versus

The Deputy Director.)
Health Services, Kolhapur Circle,)
Kolhapur, having Office at Central)
Administrative Building, Kasaba-Bawada)
Road, Kolhapur – 3.)...**Respondent**

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

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 30.03.2023

JUDGMENT

1. The Applicant has challenged the impugned communication dated 30.07.2013 whereby benefits of Time Bound Promotion Scheme given to him was withdrawn and also challenged the order dated 22.10.2019 whereby his claim for deemed date of promotion is rejected, invoking

jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated following are uncontroverted facts to be borne in mind while deciding the O.A.

- (i) Applicant joined as Lab Assistant (Group 'C') on 21.11.1994.
- (ii) On completion of 12 years' service, he was given the benefit of Time Bound Promotion (TBP) in terms of G.R. dated 08.06.1995 w.e.f.21.11.2006 (Page No.26 of Paper Book).
- (iii) Later, Applicant was promoted as temporary promotion on the post of Lab Technician and was posted at Rural Hospital, Vaibhavwadi, District Sindhudurg.
- (iv) Accordingly, Applicant joined promotional post on 18.06.2013.
- (v) However, within 8 days, he made an application on 28.06.2019 stating that though he had accepted temporary promotion and joined, now because of family difficulties, he is denying the promotion and he be posted in his post of Lab Assistant at Kankavali where he was serving before promotion.
- (vi) In view of refusal to accept promotion, the Respondent – Deputy Director, Health Services by order dated 30.07.2013 withdrew the benefit of TBP given to him and he was reverted back to the post of Lab Assistant and reposted at Kankavali, District Sindhudurg.
- (vii) However, Applicant on 04.12.2013 again made representation that he is repenting for refusing the promotion and sought apology. He, therefore, made request

to cancel the order of withdrawal of TBP benefit and be again posted on the promotional post as Lab Technician.

- (viii) Thereafter, he was again promoted as Lab Technician by order dated 10.04.2019.
- (ix) Then he again made representation on 28.05.2019 for claiming deemed date of promotion.
- (x) His representation came to be rejected by order dated 22.10.2019 stating that he is not eligible for deemed date of promotion in terms of G.R. dated 12.09.2016.

3. It is on the above background, the Applicant has challenged the order dated 30.07.2013 as well as 22.10.2019.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the order dated 30.07.2013 as well as 22.10.2019 inter-alia contending that it is only in case of regular promotion and its refusal by the employee, such employee may invite disqualification to lose the benefit of TBP Scheme. He has pointed out that by order dated 26.03.2013, the Applicant was promoted on the post of Lab Technician as temporary promotion and it being not regular promotion, the question of withdrawal of benefit of TBP granted to him by order dated 16.07.2011 did not survive. He further raised grievance that denial of deemed date of promotion on the basis of G.R. dated 12.09.2016 is also unsustainable, since basic requirement is that there must be refusal to accept regular promotion. Thus, the sum and substance of his submission is that the promotion order dated 26.03.2013 being temporary promotion, the Applicant was justified in refusing the same.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer sought to justify the impugned orders and pointed out that in terms of G.R. dated 08.06.1995 where benefit of TBP Scheme is granted, but later

employee refused the promotion, in that event, he would not be entitled to the benefit of TBP Scheme and it has to be cancelled and withdrawn. He has further pointed out that in terms Clause No.5 of G.R. dated 12.09.2016, where Government servant refused promotion, in that event, his name is required to be deleted from select list.

6. Facts as set out in Para No.2 above are not in dispute. Indisputably, Applicant was granted the benefit of TBP Scheme in terms of G.R. dated 08.06.1995 which *inter-alia* provides for non-functional promotion on completion of 12 years' service by giving monetary benefits of the promotional post. Notably, in order of benefit of TBP Scheme dated 16.07.2011, there is reference of G.R. dated 08.06.1995 and there is also specific mention vide Condition No.5 that where promotion is denied, the benefit of TBP Scheme would be withdrawn, but monetary benefits will not be recovered. Condition No.5 of order dated 16.07.2011 is as under :-

“नियमित पदोन्नती नाकारलेल्या तसेच पदोन्नतीस अपात्र ठरलेल्या कर्मचा-यांना या योजनेचा लाभ मिळणार नाही. वरिष्ठ वेतन श्रेणी लागू केल्यानंतर नियमित पदोन्नती नाकारलेल्या किंवा नियमित पदोन्नतीस अपात्र ठरलेल्या कर्मचा-यांना देण्यात आलेला लाभ काढून घ्यावयाचा आहे. मात्र दिलेल्या लाभांची वसुली करण्यात येणार नाही.”

7. At this juncture itself, it would be apposite to see Condition No. 'Y' (य) from G.R. dated 08.06.1995 which is as under :-

“(य) या योजनेअंतर्गत पदोन्नती मिळाली तरी कर्मचा-यांचे नाव कनिष्ठ (मूळ) संवर्गाच्या ज्येष्ठता सूचित राहिल आणि सेवा प्रवेश नियमातील तरतुदीनुसार उपलब्ध रिक्ततेत योग्यवेळी नियमित पदोन्नतीसाठी (Functional Promotion) त्याचा विचार करण्यात येईल. नियमित पदोन्नतीस अपात्र ठरलेल्या कर्मचा-यास या योजनेचा लाभ मिळणार नाही. त्याचप्रमाणे नियमित पदोन्नती नाकारलेल्या कर्मचा-यास देखील या पदोन्नतीचा लाभ मिळू शकणार नाही.या आधीच त्यांना (In-Situ) पदोन्नती दिली असल्यास मूळच्या पदावर पदावन करण्यात येईल. तशा आशयाचे बंधपत्र कर्मचा-यांना लिहून द्यावे लागेल. मात्र देण्यात आलेल्या आर्थिक लाभांची वसुली केली जाणार नाही.”

8. Now, turning to the facts of the case, it is an admitted position that after promotion as Lab Technician, the Applicant joined promotional post, but by application dated 28.06.2013 again refused the promotion and requested to revert him on the post of Lab Assistant at Kankavali citing family difficulties. The contents of letter dated 28.06.2013 are relevant, which are as under :-

“उपरोक्त विषयानुसार मी पदोन्नती स्वीकारली होती परंतु माझ्या घरगुती अडचणीमुळे व माझा मुलगा १२ वी ला असल्याने त्याचे महत्वाचे वर्ष असल्याने त्याचेकडे पूर्णतः लक्ष देणे जरूरीचे आहे. यास्तव मला देण्यात आलेली पदोन्नती मी नाकारत असून पुढील पदोन्नतीच्यावेळी कृपया माझा जरूर विचार व्हावा.

तसेच माझ्या मुळ पदी कणकवली या ठिकाणी रिक्त पदी असलेल्या ठिकाणी जाण्यास मी तयार आहे. तरी माझ्या अर्जाचा सहानुभूतिपूर्वक विचार व्हावा ही विनंती.”

9. Thus, Applicant worked on promotional post for hardly 8 to 10 days and then refused the promotion. Accordingly, he was reposted as Lab Assistant at Kanakavali and the benefit of TBP Scheme was cancelled by order dated 30.07.2013.

10. True, in promotion order dated 26.03.2013, it is stated that Applicant is promoted temporarily. However, fact remains that though promotion was temporary, he was placed in higher pay scale of Rs.9300-34800 + GP 4200 from existing pay scale of Rs.5200-20200 + GP 2000. The learned Advocate for the Applicant was much harping upon the word ‘temporary promotion’ mentioned in order dated 26.03.2013 and sought to justify the refusal to accept the promotion, since it was temporary. In my considered opinion, this submission is totally fallacious and unsustainable. Even if it was temporary promotion as mentioned in the order for all other purposes, particularly working on promotional post as well as for financial purposes, it was promotion. It is not that because of temporary promotion he was given less pay scale. For all purposes, it was promotion though it is styled and worded as ‘temporary promotion’. There is practice to issue temporary promotion in the first place and then to regularize it at later point of time. Therefore, the submission advanced by the learned Advocate for the Applicant that Applicant was justified in refusing promotion, since it was shown temporary promotion is totally untenable.

11. Indeed, the order of benefit of TBP Scheme dated 30.07.2013 was not challenged by the Applicant by availing legal recourse at that time. True, he made representation on 04.12.2013 and thereafter also made representations. However, the fact remains that Applicant got cause of

action on 30.07.2013 and this being so, he ought to have filed O.A. within the period of limitation, if he was aggrieved by order dated 30.07.2013. Needless to mention, mere making of representation would not extend the period of limitation. This is also one of the aspect of the matter to be borne in mind.

12. That apart, notably, in representation dated 04.12.2013 Applicant stated that he is regretting his decision of refusing the promotion. He apologizes for the mistake and requested the Department to consider his request sympathetically. In representation, he further added that because of family difficulties, he refusing promotion and to continue to work on promotional post, though he in fact joined on promotional post and worked for 8 to 10 days. It needs to be stated here that before promotion, the Applicant was serving as Lab Assistant at Kanakavali and on promotion, he was posted at Vaibhavwadi, District Sindhudurg. He joined at Vaibhavwadi, District Sindhudurg, but after 8 to 10 days refused to work on promotional post by refusing promotion. Thus, it seems that he was not willing to stay at Vaibhavwadi and wanted to come back to Kankavali for his convenience. Be that as it may, the fact remains that he refused to work on promotional post. Curiously, in his letter dated 28.06.2013 as well as 04.12.2013, he did not mention the ground that it was temporary promotion, and therefore, he is refusing the same. It is now only in O.A, he raised that ground obviously with the advice of Lawyer. Be that as it may, once Applicant refused to work on promotional post, though it was mentioned as 'temporary promotion', he invites disqualification for withdrawal of benefit of TBP Scheme availed by him before promotion.

13. Now comes the issue of denial of deemed date of promotion, as claimed in his representation dated 28.05.2019 which is rejected by order dated 22.10.2019. Indeed, in terms of G.R. dated 12.09.2016 where Government servant refused promotion, his name will be considered only after 3 years. It further provides that where Government

servant refused promotion, his name needs to be deleted from the waiting list. This being so, the claim of the Applicant for deemed date of promotion is totally unsustainable. Indeed, he was promoted in 2019 again as Lab Technician and it was also captioned as temporary promotion which he accepted without any demur and worked on promotional post.

14. At the time of 2nd promotion by order dated 10.04.2019, he did not raise grievance that it is temporary promotion, and therefore, he is refusing it. On the contrary, he accepted the promotion and joined the promotional post. This again shows hollowness in the contention raised by him that his earlier promotion was temporary, and therefore, he was justified to refuse the same. He cannot be allowed to take the benefit of the scheme as per his own convenience.

15. The totality of aforesaid discussion leads me to sum-up that the challenge to the order dated 30.07.2013 as well as 22.10.2019 holds no water and O.A. is liable to be dismissed. Hence, the order.

ORDER

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

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 30.03.2023

Dictation taken by :

S.K. Wamanse.

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