

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.301 OF 2020**

**DISTRICT : THANE**

**Sub.:- Time Bound Promotion**

Shri Shridhar Shamsundar Kangane. )  
Age : 58 Yrs, Ex-Superintendent from the )  
Office of Chief Presenting Officer, MAT, )  
Mumbai and R/o. Dream Home, C-Wing, )  
Room No.502, Gauripada, Kalyan (W), )  
District : Thane. )...**Applicant**

**Versus**

1. The Chief Presenting Officer, )  
MAT, having office at Maker Tower, )  
E-Wing, 3<sup>rd</sup> Floor, Cuffe Parade, )  
Mumbai – 400 005. )
2. The State of Maharashtra. )  
Through Principal Secretary, )  
Law & Judiciary Department, )  
5<sup>th</sup> Floor, Main Building, M.K. Marg, )  
Mantralaya, Mumbai – 400 032. )
3. The State of Maharashtra. )  
Through Additional Chief Secretary, )  
Finance Department, Mantralaya, )  
Mumbai – 400 032. )
4. The Government Pleader, )  
High Court [A.S], Bombay. )...**Respondents**

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

**Smt. K.S. Gaikwad, Presenting Officer for Respondents.**

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

**DATE : 28.02.2023**

**JUDGMENT**

1. The Applicant has challenged the communication dated 25.11.2019 issued by Respondent No.2 whereby his claim for benefit of Time Bound Promotion Scheme (TBPS) has been rejected on the ground that he has refused the promotion to the post of Superintendent when he was due for promotion for the said post.

2. Shortly stated facts lies in narrow compass are as under :-

The Applicant joined as Peon on the establishment of Respondent No.1 on 14.11.1994. Thereafter, he was regularly promoted as Clerk on 03.08.1998. Then again, he was given second promotion on the post of Supervisory Senior Clerk on 20.10.2006. In 2014, he was due for promotion to the next promotional post of Superintendent. However, Applicant by letter dated 22.07.2014 informed to the Departmental Promotion Committee (DPC) that because of illness of his wife as well as his personal illness of Blood Pressure, he is not mentally well and could not be in a position to discharge the duties for the post of Superintendent and requested to keep his promotion on hold for select list of 2015. Thereafter, DPC was convened on 05.09.2014. The Advocate General, State of Maharashtra was the Head of DPC. DPC observed that Applicant was at Serial No.7 in seniority list and was due for promotion to the post of Superintendent, but he refused the promotion, and therefore, the next candidates were considered. The candidate at Serial No.8 Mr. Yadav already retired on 31.08.2014. Therefore, the next candidate Shri Rathod, who was at Serial No.9 was considered and having found that he fulfills all requirement, the DPC unanimously resolved to promote him to the post of Superintendent w.e.f.01.10.2014. The Applicant continued in service on the post of Supervisory Senior Clerk and stands retired on 30.06.2019. Before his retirement, he made an application on 09.10.2018 claiming the benefit of TBP on completion of 12 years' service on the post of Supervisory Senior

Clerk. His claim has been rejected by impugned order dated 25.11.2019 stating that since he has refused the promotion, he cannot claim the benefit of TBP Scheme as clarified in G.R. dated 08.06.1995 which communication he challenged in the present O.A.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned communication dated 25.11.2019 *inter-alia* contending that by his application dated 22.07.2014, he requested to get his promotion on hold till next year and it cannot term refusal to accept promotion. According to him, unless Government servant is actually promoted by issuing promotion orders and then he refused the promotion, in that event only, there would be question of denying the benefit of TBP Scheme to him. He has pointed out that Applicant was promoted on the post of Supervisory Senior Clerk on 30.10.2006 and had completed 12 years' service in the said post on 20.10.2018. Therefore, his claim for the benefit of TBP ought to have been considered so as to give him the benefit from 20.10.2018 till his date of retirement i.e. upto 30.06.2019.

4. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer in reference to pleas taken in Affidavit-in-reply submits that once a Government servant has refused promotion, he is not entitled to the benefit of TBP Scheme. In this behalf, she placed reliance on G.Rs. dated 08.06.1995, 01.11.1995 as well as 20.07.2001 which *inter-alia* provides where a Government servant refused promotion, he will not be entitled to the benefit of TBP Scheme amongst other things.

5. In view of submissions advanced, the issue posed for consideration is whether Applicant was entitled to the benefit of TBP Scheme and it was wrongly denied to him.

6. The facts as narrated above are not in dispute. The Applicant joined as Peon on 14.11.1994 and got promotion on 03.08.1998 on the

post of Clerk-cum-Typist and again got promotion on the post of Supervisory Senior Clerk on 20.10.2006. Thus, admittedly, he got two promotions even before completion of 12 years' period. He was given promotion as Supervisory Senior Clerk on 20.10.2006. True, he worked as Supervisory Senior Clerk for more than 12 years in view of his retirement on 30.06.2019. But here, the question comes about the terms and conditions mentioned in various G.Rs. referred to above and interpretation of his letter dated 22.07.2014.

7. At this juncture, it would be apposite to see the contents of application dated 22.07.2014 (Page No.50 of Paper Book), which are as under :-

“मी, श्रीधर श्यामसुंदर कांगणे आपणांस नम्र विनंती करतो की, दिनांक ११.०७.२०१४ रोजी माझी पत्नी सौ. निता श्रीधर कांगणे या घरांमध्ये काम करीत असताना पाय सरकून फरशीवर पडल्या आता त्यांचा डावा खांदा फ्रॅक्चर झाला आहे. त्यांनी सिविल हॉस्पिटल, ठाणे येथे उपचार घेतले आहेत. त्यांना डॉक्टरांनी दोन महिने विश्रांती घेण्यात सांगितले आहे. सोबत सिविल हॉस्पिटल, ठाणे यांचा केस पेपर जोडत आहे. तसेच मला उच्च रक्तदाबाचा त्रास आहे. सध्या माझी मनःस्थिती बरी नाही. अशा परिस्थितीत सदर पदाचे कर्तव्य पूर्ण कार्यक्षमतेने पार पाडता येईल किंवा नाही याबद्दल मी साशंक आहे. तरी आपणांस नम्र विनंती करतो की माझी अधीक्षक या पदासाठी निवड २०१५ अखेरपर्यंत सार्वजनिक हिताच्या दृष्टीने स्थगित ठेवावी.”

8. The submission advanced by the learned Advocate for the Applicant that letter dated 22.07.2014 is misinterpreted by the Respondents and unless there is specific actual order of promotion, there could be no question of denial of promotion by the Applicant is totally misconceived and fallacious. The contents of letter dated 22.07.2014 as reproduced above clearly indicates the intention of the Applicant that he was not willing to accept the post of Superintendent. He was apprehensive of his capability to discharge the duties for the post of Superintendent because of his mental condition and illness of his wife. True, at the end of letter, he requested to keep it on hold upto next select list of 2015. He cannot dictate the Department to keep promotion on hold which would be prejudicial to next deserving person and functioning of Office. Promotion cannot be kept in abeyance for his wish. The perusal of minutes of DPC (Page No.68 of Paper Book) also reveals that

Applicant was at Serial No.7, but because of his letter dated 22.07.2014, DPC gave promotion to next candidate. True, in DPC minutes, there is no reference of fulfilling all the conditions for promotion by the Applicant, as pointed out by learned Advocate for the Applicant. However, that hardly matters. The Applicant in unequivocal and clear terms informed to the Department that he will not be in a position to discharge the duties for the promotional post of Superintendent. It is nothing but clear denial of promotion and nothing else. The submission advanced by learned Advocate for the Applicant that in the first place, there has to be actual promotion order and then only the letter could be termed as a denial of promotion is totally misconceived. Here, one need to see the intention of the Applicant which is clearly borne out from letter dated 22.07.2014. It certainly amounts to refusal to accept the promotion, though it was on the rider to consider it in 2015.

9. Indeed, the situation is clearly covered by G.Rs. dated 08.06.1995, 01.11.1995 and 20.07.2001. Clause No.2(y) of G.R. dated 08.06.1995, as mentioned in the impugned order is as under :-

“(य) या योजनेअंतर्गत पदोन्नती मिळाली तरी कर्मचा-याचे नाव कनिष्ठ (मूळ) संवर्गाच्या ज्येष्ठता सूचित राहिल आणि सेवा प्रवेश नियमातील तरतुदीनुसार उपलब्ध रिक्ततेत योग्य वेळी निर्गमित 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-Sity) पदोन्नती दिली असल्यास मूळच्या पदावर पदावनत करण्यात येईल. तथा आशयाचे बंदपत्र कर्मचा-यांना लिहून द्यावे लागेल. मात्र देण्यात आलेल्या आर्थिक लाभांची वसुली केली जाणार नाही.”

10. The Government also clarified the doubt by giving detail clarification by G.R. dated 01.11.1995, since Departments raised several queries about the implementation of G.R. dated 08.06.1995. In clarification, the Government clearly stated that the object of giving the benefit of TBP scheme is to take care of stagnation and to give benefit to the employee though deserve for promotion, but because of less posts, could not get promotion. In the said clarification, it is again clarified that once a Government servant refused promotion, thereafter he can be

considered for promotion only on the basis of seniority whenever vacancy would arise, but he will not be entitled to the benefit of TBP scheme.

11. Later, Government by G.R. dated 20.07.2001 introduced Assured Career Progressive Scheme in place of TBP Scheme. By the said G.R, in Para No.2, Clause 3 and Clause 8 again it is reiterated as under :-

- “(३) सेवेत दोन किंवा त्याहून अधिक वेळा पदोन्नती मिळालेल्या कर्मचा-यांना या योजनेचा लाभ अनुज्ञेय होणार नाही.
- (८) नियमित पदोन्नती नाकारलेल्या तसेच नियमित पदोन्नतीस अपात्र ठरलेल्या कर्मचा-यांना या योजनेचा लाभ देय होणार नाही. या योजनेअंतर्गत वरिष्ठ वेतनश्रेणी दिल्यानंतर नियमित पदोन्नती नाकारलेल्या वा नियमित पदोन्नतीस अपात्र ठरलेल्या कर्मचा-यांना देण्यात आलेला लाभ काढून घेण्यात येईल. मात्र दिलेल्या लाभांची वसुली करण्यात येणार नाही.”

12. It is thus explicit from G.R. dated 20.07.2001 particularly Clause No.2(3) that Government servant who got two or more actual promotions would not be entitled to the benefit of TBP Scheme. It again further clarified under Clause 2(8) that the Government servant who refused regular promotion, he would not be entitled to the benefit of TBP Scheme.

13. As such, in view of aforesaid conditions mentioned in G.R, the Applicant himself invited disqualification for grant of benefit of TBP Scheme. True, he was continued on the post of Supervisory Senior Clerk from 2016 upto his retirement i.e. 30.06.2019. However, since he got two promotions i.e. in 1998 and 2016, the question of getting benefit of TBP Scheme again does not survive. Apart, he also refused the promotion on the post of Superintendent by his letter dated 22.07.2014.

14. The totality of aforesaid discussion leads me to sum-up that the challenge to the impugned order holds no water and I see no reason to interfere in the decision taken by the Department, which is in pursuance of G.Rs mentioned above. O.A. is, therefore, liable to be dismissed. Hence, the order.

**ORDER**

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

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

Mumbai

Date : 28.02.2023

Dictation taken by :

S.K. Wamanse.

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