

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.400 OF 2016

DISTRICT : SOLAPUR

Shri Digambar Tukaram Joshi.)
Age : 58 Yrs., Occu. : Awal karkoon (Retired),)
Residing at Aditya Nagar, Vijapur Road,)
Solapur – 413 004.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Chief Secretary,)
Mantralaya, Mumbai - 400 032.)
2. The Additional Chief Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai - 400 032.)
3. The Divisional Commissioner.)
Maharashtra State, Pune Division,)
Council Hall, Pune - 411 001.)
4. The Collector.)
Collector Office Compound,)
Main Building, Siddheshwar Peth,)
Solapur - 413 003.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicant.

Ms. S.T. Suryawanshi, Presenting Officer for Respondents.

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

DATE : 24.01.2019

JUDGMENT

1. In this Original Application, the challenge is to the order dated 15.02.2016 whereby, the benefit of 2nd Time Bound Promotion has been refused to him and further sought direction to grant 1st Time Bound Promotion w.e.f. 11.05.2003 as well as 2nd Time Bound Promotion w.e.f. 11.05.2015 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant was appointed as Clerk-cum-Typist on 24.06.1982. He had completed 12 years of service on 23.06.1994. His date of birth is 11.05.1958. He had completed 45 years of age on 10.05.2003. However, he was granted exemption from passing Revenue Qualifying Examination (hereinafter referred to as 'R.Q. Examination') on completion of 45 years of age w.e.f. 09.11.2003. He was granted 1st Time Bound Promotion w.e.f. 08.11.2003. He had submitted an application for voluntary retirement and stood retired w.e.f. 31.07.2015. After retirement, he made representations for 2nd Time Bound Promotion. However, he was informed by letter dated 15.02.2016 that he has not completed 12 years from the date of 1st Time Bound Promotion which was given to him w.e.f. 08.11.2003, and therefore, he had not completed 12 years of service till his date of retirement i.e. 31.07.2015. He made representations seeking benefit of 2nd Time Bound Promotion under Assured Career Progression Scheme (ACPS) w.e.f. 10.05.2003 i.e. the date, he deemed to have been exempted from passing R.Q. Examination on completion of 45 years of age. However, the Respondents did not respond. He, therefore, approached this Tribunal. He contends that, he has been exempted from passing R.Q. Examination, the date on which he crossed 45 years of age and the passing of order to that effect by the Department is a mere formality. Therefore, he is entitled to 1st Time Bound Promotion w.e.f. 11.05.2003 and consequently, he is also entitled for 2nd Time Bound Promotion

on completion of 12 years from 11.05.2003 that is w.e.f. 11.05.2015. He took voluntary retirement on 31.07.2015. As such, he had already completed 12 years' service even before retirement. He, therefore, contends that, in terms of G.R. of Revenue and Forest Department dated 21st March, 1979, he is entitled to the relief prayed for.

3. The Respondents resisted the application by filing Affidavit-in-reply *inter-alia* denying the entitlement of the Applicant for the relief claimed. The Respondents objected maintainability of the application on the ground that the Applicant had not exhausted alternative remedy, and therefore, he cannot approach the Tribunal without availing the said remedy. The Respondents have also raised plea of limitation contending that the O.A. is barred by limitation. Admittedly, the Applicant had joined the service on 24.06.1982 in the Office of Respondent No.4. The Applicant was required to pass R.Q. Examination for promotion to the post of Awal Karkoon in three chances within nine years of his continuous service. However, the Applicant has not passed R.Q. Examination within the prescribed limit, and therefore, he was not promoted till his attaining age of 45 years. In terms of G.R. dated 08.06.1995, he was exempted on completion of 45 years of age. Therefore, in view of G.R. dated 06.06.1981, the issue was considered by the Department. In view of G.R. dated 06.06.1981, the Applicant was deemed to be exempted from passing R.Q. Examination w.e.f. next date of last paper i.e. from 08.11.2003 and accordingly, the benefit of 1st Time Bound Promotion was given to him. The Applicant was eligible for 2nd Time Bound Promotion w.e.f. 08.11.2015 and not from 11.05.2015. However, the Applicant took voluntary retirement w.e.f. 31.07.2015 and as such, he had not completed 12 years for 2nd Time Bound Promotion. On these pleadings, the Respondents prayed to dismiss the application.

4. Mrs. Punam Mahajan, learned Advocate for the Applicant pointed out that the sole ground for denial of the relief is based on the G.R. dated 06.06.1981, which

is apparently not applicable to the present case. After going through the said G.R, it is quite clear that it pertains to the employees who have joined the service after the prescribed age limit fixed under the Rules. In the present case, the Applicant joined the service on 24.06.1982. His date of birth is 11.05.1958. Thus, admittedly, he joined the service well within prescribed age limit at the age of 24 years. This being the position according to learned Advocate for the Applicant, there is no question of applicability of G.R. dated 06.06.1981.

5. Per contra, Ms. S.T. Suryawanshi, the learned P.O. sought to place reliance on G.R. dated 06.06.1981 but was not able to convince how the said G.R. is applicable to the present facts.

6. As regard limitation, the Tribunal has already condoned the delay as per order passed in M.A.No.202/2016 with the finding that it is continuous cause of action. Therefore, now, it is open to the Respondents to challenge the point of limitation again.

7. In so far as the availment of alternative remedy is concerned, the Applicant has already filed representations dated 17.02.2016 and 14.03.2016 seeking the relief of 2nd Time Bound Promotion which was accrued to him before the date of retirement. However, the Respondents did not pay any heed. Ultimately, he approached this Tribunal by filing the present O.A. Suffice to say, the objects raised in this behalf holds no water.

8. Undisputedly, the date of birth of the Applicant is 11.05.1958. He joined service on 24.06.1982 and has completed 12 years' service on 23.06.1994. In terms of G.R. dated 08.06.1995, he was entitled to be exempted from R.Q. Examination on attaining 45 years of age i.e. on 11.05.2003. However, he was declared eligible for 1st Time Bound Promotion on 08.11.2003. If his completion of first 12 years' service is considered, he was entitled for 1st Time Bound Promotion on 11.05.2003 and consequently, was entitled for 2nd Time Bound

Promotion after completion of 12 years from 11.05.2003 which comes to 11.05.2015. He took voluntary retirement w.e.f. 31.07.2015. The Respondents have rejected his claim for 2nd Time Bound Promotion considering the date of entitlement as 08.11.2003. According to Respondents, if 12 years is counted from 08.11.2003, then it comes to 08.11.2015. Whereas, the Applicant retired w.e.f. 31.07.2015.

9. As such, the crux of the matter is whether the Applicant is entitled for 1st Time Bound Promotion w.e.f. 11.05.2003 i.e. the date when he had completed 45 years of age. Merely because, the Respondent No.4 has issued order of Time Bound Promotion belatedly, that cannot deprive the Applicant of getting his legitimate right of the benefit of Time Bound Promotion Scheme. In other words, the entitlement of 1st Time Bound Promotion deemed to be on completion of 45 years of age regardless of the passing of formal order belatedly. The entitlement should be from the date of completion of 45 years of age i.e. 11.05.2003.

10. Now, let us see the reply and the contents of G.R. dated 06.06.1981 which is the sole ground for the denial of the relief claimed. The relevant text of G.R. is as follows :

“After consideration of the issue, Government is pleased to direct that the exemption from passing the Revenue Qualifying Examination granted under Government Resolution, Revenue and Forests Department No.EXM.1079/E-7(I) dated 21/03/1979 should be subject to the condition that the incumbent concerned is eligible according to the minimum length of service prescribed for the said examination and is senior to take up the said examination. In other words, the revenue subordinate who are appointed to the posts of Clerks after the prescribed age limit, should not be exempted only on the ground of their attaining the age of 45 years but such persons should be deemed to have been exempted from passing the Revenue Qualifying Examination w.e.f. the immediate next day of the last paper of the examination in which they would have been allowed to appear for the examination.”

11. With reference to above G.R, the contents of Para No.7.1 of reply, which are material as follows :

“7.1 I say that in view of G.R. dated 06.06.1981 Petitioner is not entitled for exemption from passing of the R.Q.E. w.e.f. 11/05/2003 i.e. on completion of 45 years of age. In the present case the fact reveals that Petitioner has attained his age of 45 years on 10/05/2003. In the year 2003, R.Q.E. examination was held in the month of November 2003 and the last paper of R.Q.E. examination was held on 07/11/2003. Therefore as per G.R. dated 06/06/1981, the Petitioner was deemed to be exempted from passing the R.Q.E. examination w.e.f. the next day of the last paper i.e. from 08/11/2003. To that effect detailed order has been passed by the Respondent No.4 on 09/09/2004.”

12. Thus, the Respondents seem to have applied the analogy, which is applicable to the candidates who have joined the service after attaining the age of 45 years. The object of G.R. dated 06.06.1981 seems to be that the Government servants who have joined the service after attaining the age of 45 years, they should not be directly exempted from passing the departmental examination by virtue of their entry in the service after the age of 45 years. By the said G.R, they are deem to have been exempted from passing R.Q. Examination w.e.f. immediate next date of the last paper of examination in which they would have been allowed to appear in the examination. In the present case, as the Applicant has entered the service at the age of 24 years, there would be no question of applicability of G.R. dated 10.06.1981. As such, the stand taken by the Respondents referring to G.R. dated 06.06.1982 is obviously erroneous being contrary to the G.R. dated 21.03.1979.

13. Once the Rules confer certain rights upon the Applicant on attaining 45 years that has to be given effect to on the date he completes the age of 45 years and it cannot be deferred to some other date. As such, the Applicant's entitlement for 1st Time Bound Promotion from 11.05.2003 instead of 08.11.2003 is totally incorrect and without any basis or justification. Thus, no justification or reasons much less valid one is forthcoming to justify the date of conferment of Time Bound Promotion as 08.11.2003.

14. Once the G.R. dated 06.06.1981 found not relevant to the present case, there remains hardly anything to deny the entitlement of the Applicant to the reliefs claimed.

15. The necessary corollary of the aforesaid discussion leads me to sum-up that the Applicant is entitled to the relief claimed and O.A. deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned order dated 06.05.2004 granting exemption from Revenue Qualifying Examination w.e.f. 08.11.2003 is set aside. It is hereby declared that the Applicant was entitled for exemption to Revenue Qualifying Examination on completion of 45 years of age i.e. 11.05.2003.
- (C) Consequently, the impugned order dated 15.02.2016 is also quashed and set aside.
- (D) The Applicant is entitled for 2nd Time Bound Promotion w.e.f. 11.05.2015 with all consequential benefits subject to fulfillment of other criteria or eligibility as per relevant Rules.
- (E) The Respondents are directed to complete the exercise of giving the aforesaid benefits to the Applicant within two months from today.
- (F) No order as to costs.

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

Mumbai
Date : 24.01.2019
Dictation taken by :
S.K. Wamanse.