

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.412 OF 2019

DISTRICT : Ratnagiri

Shri Suresh Rama Kadam)
Age : 69 years, Retired as Sectional)
Engineer, R/at Sawali, Plot No.5, Suyog)
Society, Kuwarbaw, Ratnagiri.)...**Applicant**

Versus

1. The State of Maharashtra, through)
the Secretary, Water Resources Dept.,)
Mantralaya, Mumbai 32.)
2. The Chief Engineer, Water Resources,)
Kokan Region, Marzaban Patrawala Rd.)
Fort, Mumbai.)
3. The Project Director & Superintendent)
Engineer, Salt Land Development Circle)
Sinchan Bhavan, 4th floor, Kopri Colony,)
Thane (E).)
4. The Executive Engineer, Raigad, PWD,)
Kolad, Tal. Roha, Dist. Raigad.)
5. The Executive Engineer, South Ratnagiri)
South Ratnagiri, Salt Land Development)
Circle, Kuwarbaw, Ratnagiri.)...**Respondents**

Shri K. R. Jagdale, Advocate for Applicant.

Shri A. J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 27.10.2020.

JUDGMENT

1. The Applicant has challenged the communication dated 21.04.2018 whereby his request for pay scale of Rs.8000-275-13500 has been rejected.

2. The Applicant retired as Sectional Engineer on 31.05.2009. After retirement, he made various representations dated 05.07.2012, 09.08.2012, 21.11.2013 and 29.01.2018 and 05.03.2018 for revision pay scale and consequential pensionary benefits contending that he was wrongly denied pay scale of Rs.8000-275-13500. His basic contention was that though he served more than 12 years on the post of Section Engineer, he did not get promotion, and therefore, entitled for non functional promotion in the terms of benefit of Time Bound Promotion in terms of G.R. dated 23.04.2002. However, he was found not eligible for the promotion post of Sub-Divisional Officer carrying pay scale of Rs.8000-275-13500. It is on this background, when his representations were finally turn down by impugned communication dated 21.04.2018, he has filed present O.A.

3. Shri K.R. Jagdale, learned Counsel for the Applicant sought to contend that the Applicant is subjected to discrimination as the similar relief of higher pay scale was granted to his colleague Shri Jagtap. He further submits that the contention raised by the Respondents that Applicant does not hold required qualification and eligibility criteria for promotion to the post of Sub-Divisional Officer is incorrect and discriminatory.

4. Per contra, Shri A.J. Chougule, learned P.O. sought to support the impugned communication contending that the Applicant does not possess requisite eligibility criteria for promotional post of Sub Divisional Officer, and therefore, he was granted pay scale of Rs.7450-225-10500 and not the pay scale of Rs.8000-275-13500. As regard discrimination, he submits that Shri Jagtap is from different division and even if wrong pay scale was granted to Shri Jagtap that cannot be the ground to accept the claim of the Applicant as it would amounts to perpetuate illegality.

5. In view of the submission advanced at bar, the issue posed for consideration is whether the Applicant was entitled to promotional pay scale of Rs.8000-275-13500 at the time of retirement and the answer is in negative.

6. At the very outset, it needs to be stated that the Applicant stands retired as Sectional Engineer on 31.05.2009. It is only after retirement, he made various representations in 2012 and 2013 as stated above. His first representation was made on 05.07.2012. However, there was no communication to him and it is only by communication dated 21.04.2018, he was informed not entitled to pay scale of Rs.8000-275-13500. This being the position, O.A. itself is not within limitation.

7. True, the Respondents have not raised plea of limitation. It is common experience that the replies are not filed with due diligence and often legal contentions are not raised. However, that would not abstain the Tribunal from taking note of legal aspects. The issue of limitation is involved and it goes to root of the matter. As per Section 21 of the Administrative Tribunal Act, the Applicant ought to have filed O.A. before expiration of eighteen months period but he did not avail legal remedy and it is only after receipt of communication dated 21.04.2018, he has filed the O.A.

8. Needless to mention that mere filing of representation will not extend the period of limitation. He retired on 31.05.2009, and therefore, ought to have filed O.A. within one year from the date of retirement or latest within eighteen months from the date of filing of representation dated 05.07.2012. However, he remains silent for almost ten years and filed the present O.A. on 22.04.2019. This being the position, O.A. is hopelessly barred by limitation. In this in would be apposite to refer the judgment of the Hon'ble Supreme Court in ***State of Tripura & Ors. V/s Arabinda Chakraborty & Ors.,(2014) 6 SCC 460*** wherein it has held that the period of limitation

commences from the date on which cause of action arises for the first time and simply making representations in absence of any statutory provisions, the period of limitation would not get extended. This being the settled legal position, the representations made by the Applicant would not extend the period of limitation and communication dated 21.04.2018 would not revive the old, stale and dead cause of action.

9. Even assuming for a moment that O.A. is within limitation being filed within one year from communication dated 21.04.2018, in that event on merit also the Applicant is not entitled to the relief claimed.

10. As stated above, the Applicant was working as Sectional Engineer, he was claiming the pay scale of promotion post of Sub Divisional Officer carrying pay scale of Rs.8000-275-13500. He was communicated that he was not possessing requisite qualification for the post of Sub Divisional Officer as he did not complete the requisite course in terms of Rules called Maharashtra Service of Engineers, Class-II (Recruitment by promotion of certain Junior Engineers as Sub Divisional Officers) Rules 1975. Rule 3 is important, which is as follows :-

“Rule 3. Every person :

- (a) Who has put in the ten years service as Junior Engineer in the aggregate, including service as Sub-Overseers in the Irrigation Department, the Public Works and Housing Department or Urban Development and Public Health Department of the Government of Maharashtra or any corresponding Department or that Government or of the Governments of the former states of Bombay, Madhya Pradesh and Hyderabad, and*
- (b) Who has passed the two years, Course of Purnmal Lahoti Smarak Technical College, Latur, or of the Government Polytechnic, Aurangabad, or one and half year Sub-Overseers Course of Government Polytechnic, Nagpur or Amravati.*

Shall also be eligible for promotion to the post of Sub-Divisional Officer belonging to the Maharashtra Service of Engineers, Class-II and for the purport of determining the seniority of persons holding the posts of Junior Engineers on the commencement of these rules interse, he treated on par with the Junior Engineers holding the Upper Sub-ordinate Certificate awarded by the Osmania University. “

11. Thus for promotion, the Sectional Engineer was required have to qualification as mentioned in Rule 3(b) of Rules 1975. However, admittedly the Applicant has not obtained qualification from these institutes specified in Rules 1975. The Applicant possess diploma of ITI, Ratnagiri and on that basis he was appointed as Civil Draftsman and then he was promoted to Jr. Engineer, the nomenclature of which was changed as Sectional Engineer and accordingly he retired from the post of Section Engineer on 31.05.2009. However, he was claiming benefit of Time Bound Promotion for the post of Sub Divisional Officer which inter-alia requires that such candidates must have passed additional course from the institutes specified in Rule 3(b) of Rules 1975. The object of benefit of Time Bound Promotion is to give benefit of pay scale of promotional post and to take care of stagnation which is known as non functional promotion placing the employee in pay scale of next promotional post. However, such employee must possess required qualification and fulfill the eligibility criteria prescribed for promotional post. Thus, mere continuation on one post for more than twelve years is not enough and the employee must possess requisite qualification required for promotional post.

12. Whereas in the present case, the Applicant admittedly does not possess the requisite qualification for the promotional post of Sub Divisional Officer in terms of Rules 1975, and therefore, he was rightly held not entitled to pay scale of promotional post.

13. As regard discrimination, it appears that Shri Jagtap was given benefit of pay scale to the post of Sub Divisional Officer though he did not possess requisite qualification in terms of Rules 1975. However, that hardly would render the claim of the Applicant acceptable in law. If some other employee was granted benefit of higher pay scale wrongly then itself could not be the ground of discrimination. Needless to mention, there is no concept of negative discrimination. If the department has committed illegality in promoting some of the employees then that could not be the ground to ask for same benefit by others as it would amount to perpetuate illegality which is not permissible in law. I, therefore, see no substance in the ground of discrimination which is heavily relied by the learned Counsel for the Applicant.

14. The totality of the aforesaid discussion leads me to sum up that the challenge to the impugned communication is devoid of merit as stated above. O.A. itself is barred by limitation and even assuming for a moment that O.A. is within limitation in that that event also the Applicant has no case on merit and O.A. deserves to be dismissed. Hence the following order:-

ORDER

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

Sd/-

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