

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH : NAGPUR
ORIGINAL APPLICATION NO.444/2021

1. Vijay Narayan Nair,
Aged about 57 years, Occupation : Service,
(PWSI- Special Action Group), R/o Plot No.63,
Radke Lay out, Balaji nagar, Hingna Road, Nagpur.
2. Arjunan Poovelu Pillai,
Aged about Adult, Occu. Retired (ASI- Radio Mechanic),
R/o 506-B Wing, Mahalaxmi Complex, Behind Prestige Public School,
NDA road, Shivane, Pune.
3. Muijamil Ismail Saudagar,
Aged about - 60 years, Occu. Retired (Head Constable- Electrician),
R/ o Row House No. 103, Beside Chandtara Masjid, Pathan road, Latur.
4. Sidharth Sambhaji Gajarmal,
Aged about - 61 years, Occu. Retired (ASI Radio Mechanic),
R/o House NO. 712, Near Kalubai Mandir,
Vidhya Valley road Susgaon, Tah. Mulsi Dist. Pune.
5. Sharad Narayan Marathe,
Aged about 58 years, Occ.: Retired (ASI Radio Mechanic),
R/o Plot No. 67, Bahubali nagar, Near Agrasen High School,
road, Dhule.
6. Waman Raghunath Jawale(Dead),
through its legal representative Smt. Lata Waman Jawale,
Aged about adult , Occ.: House wife,
R/o F- 402, Chaitanya Vihar society, Behind Aditya · Birla Hospital,
Thergaon, Chichwad, Pune.

7. Pandurang Gyanuji More,
Aged about 60 years , Occ.: Retired (ASI Radio Mechanic),
R/o Plot No. 109, Near Cidco Office, Bajaj nagar, Waluj, Aurangabad.

8. Bharat Bansi Sangale,
Aged about 58 years , Occ.: Retired (ASI Radio Mechanic),
R/ o Bhagwan Shree Krushna Niwas, Swaraj nagar, Beed.

9. Chandrakant Bhikaji Chouthmal,
Aged about 57 years , Occ.: Service (ASI Radio Mechanic),
R/o Bulding No. 40 Room No. 8 Police Quarter,
Hadco No.-10 Aurangabad.

10. Nagnath Tatya Bhosale,
Aged about 68 years , Occ.: Retired (ASI Radio Mechanic),
R/o Block No. 12- Mahalaxmi Housing Society, Shelgi, Solapur.

11. Dattray Murlidhar Joshi (Dead)
through it's legal representative, Smt. Sarmistha Dattray Joshi,
Aged about 72 years , Occ.: (ASI Radio Mechanic),
R/o 517 / old, 1302/new, Shri. Krushneshwar Housing Society,
Sadashivpeth, Pune.

12. Nishikant Sadashiv Salvi,
Aged about 64 years , Occ.: Retired (Head Constable Electrician),
R/o Mohan Pam-IV 601, Badalapur (East), Thane

13. Prabhakar Krushnarao Kulkarni,
Aged about 78 years , Occ.: Retired (ASI Radio Mechanic),
R/o F- 28, Bulding No. 3, Gopinath nagar,
Co-operative Housing Society, Pune.

14. Shivcharan Govind Chavan,
Aged about 58 years , Occ.: Retired (Head Constable Electrician),
R/ o Gajanan nagar, Yashodhan Apts, Old MIDC road, Amravati.
15. Shivdath Shankar Bharati,
Aged about 61 years, Occ.: Retired (PWSI),
R/o Choudhari Park, Police Line-I, Wakad road, Pune-57.
16. Sanjay Maruti Pujari,
Aged about 54 years , Occ.: Service (ASI Radio Mechanic),
R/o Survey No. 70, Ganesh nagar New Sangwi Pune.
17. Adhar Kashinath Patil,
Aged about 65 years , Occ.: Retired (Head Constable Electrician),
R/o Plot No. 14, Shrikrushna Coloney, Chikol road,
Dhule. Tah. & Dist. Dhule.
18. Suryakant Daji Patil,
Aged about 51 years, Occ.: Service (ASI Radio Mechanic),
R/o 60/C, H.K. Daruwala Chal, Room No.64, Tadipitha,
Hill road, Sain, Chunbhati, Mumbai-22
19. Dilip Chotusing Raghuvanshi,
Aged about 65 years , Occ.: Retired (ASI Radio Mechanic),
R/ o H ouse No. 536, Pardesipura, Dr. Hedgewar road,
Nandurbar, Tah. & Dist. Nandurbar.
20. Ajay Vaman Rajguru,
Aged about 55 years, Occ.: Service (ASI Radio Mechanic),
R/ o A-wing, Flat No. 201, Rishabh Apartment, Sanghavi nagar,
Mira road (East), Thane.

21. Shankar Vitthobaji Lambhate,
Aged about 56 years, Occupation : Service (ASIRM O),
R/o 201- Jayshree Apts., Nandanvan main road, Nagpur.

22. Arun Ram Jadhav,
Aged about 67 years,
Occ.: Retired (Head Constable Electrician),
R/o Survey No. Gurukrupa Niwas, Lane No. 5,
Rutuja Park, Baner, 1 Pune.

23. Tejram Paushuramji Fasate,
Aged about 66 years, Occ.: Retired (ASI Radio Mechanic),
R/o Plot No. 21-C, Gajanan Nagarm Old Pimpla road, Nagpur.

24. Rajesh Ramrao Dhage,
Aged about 48 years, Occ.: Service (ASI Radio Mechanic),
R/o Greenfiled, Flat No. 702, 2 ., Wanandongari,
Hingna road, Nagpur

.....**Applicants.**

-Versus –

1. The State of Maharashtra,
through it's Secretary, Home
Department, Mantralaya, Mumbai – 32

2. The Director General of Police, (M.S.)
Hutatma Chowk, Near Regal Cinema, Mumbai.

3. The Additional Director of Police,
Wireless Office, Pashan road, Pune-5.
Chandrapur.

4.The Superintendent of Police (Special
Action Group) , Waddhaman road, Surabaldi, Nagpur,
Tah. & Distt. Nagpur.

-----**Respondents.**

1.Shri S.N. Gaikwad ... Adv. for the applicant No.1.

2. Shri Aditya Joshi ... Adv. for Applicant Nos.2 to 24.

2.Shri A.M. Khadatkhar Presenting Officer for the Respondents.

CORAM : HON. SHRI SHREE BHAGWAN ; VICE-CHAIRMAN

&

HON. SHRI M.A. LOVEKAR : MEMBER (J)

DATED : 09 /12/2022

Judgment is reserved on this 05th December,2022

Judgment is pronounced on this 9th December, 2022

JUDGMENT

Per : Member (J)

Heard Shri S.N. Gaikwad, Id. Counsel for the applicant No.1
and Shri A.M. Khadatkhar, Id. P.O. for the Respondents. None for applicants
No.2 to 24.

2. Grievance of the applicants, whose details are given below, is that
they have been unjustifiably and arbitrarily deprived of benefits of G.Rs.
dt.1/11/1977 & 28/11/1979 (Annex.- A-4 collectively) as well as G.Rs.

dt.08/06/1995, 20/07/2001 & 1/04/2010, which deal with Time Bound Promotion Scheme and Assured Career Progressive Scheme.

Sr. No	O.A. No.	Joined Service	Name	Present Appointment/ Retirement	Date/Year of passing Examination	Date of Birth	Date of Attending the age of 45 years.
1	444/2021	20.07.1984	1.Vijay Narayan Nair	PWSI (Engg.)	Class-I-2010	19.03.1964	19.03.2009
		19.10.1979	2.Arjunan Poovelu Pillai	ASI Wireless	Class-I-2008	17.02.1953	17.02.1998
		10.01.1986	3.Mujjamil Ismail Saudagar	HC-Electrician	Class-III-2014	05.07.1960	05.07.2005
		10.09.1988	4.Sidarth Sambhaji Gajarmal.	ASI Wireless	Class-I-2014	02.06.1959	02.06.2004
		08.02.1983	5.Sharad Narayan Marathe	ASI Wireless	Class-IV-1987	07.09.1962	07.09.2007
		31.07.1979	6.Waman Raghunath Jawale (Dead) through its Lrs Lata Waman Jawale.	ASI Wireless	-----	29.12.1955	29.12.2000
		31.01.1987	7.Pandurang Gyanuji More	ASI Wireless	Class-I-2013	08.03.1961	08.03.2006
		29.08.1988	8.Bharat Bansi Sangale	ASI Wireless	Class-I-2018	01.01.1963	01.01.2008
		17.11.1989	9.Chandrakant Bhikaji Choutmal.	PWSI (Engg.)	Class-I-2013	05.02.1964	05.02.2009
		11.09.1995	10.Nagnath Tatya Bhosale	ASI Wireless	Class-IV-1997	01.06.1953	01.06.1998
		18.12.1969	11.Datray Murlidhar Joshi (Dead) (Lrs Sarmistha D. Joshi)	ASI Wireless	-----	04.04.1943	04.04.1988

		04.01.1986	12.Nishikant Sadashiv Salvi	HC-Electrician	Class-I-2006	01.06.1957	01.06.2002
		08.08.1968	13.Prabhakar Karushnarao Kulkarni	ASI Wireless	Class-II-1978	31.12.1943	31.12.1988
		09.12.1988	14.Sivcharan Govind Chavan.	HC-Electrician	Class-III-1997	06.04.1963	06.04.2008
		31.01.1983	15.Shivdath Shankar Bharati.	PWSI (Engg.)	Class-I-2007	28.01.1961	28.01.2006
		20.06.1991	16.Sanjay Maruti Pujari.	ASI Wireless	Class-I-2014	17.12.1966	17.12.2011
		06.12.1985	17.Adhar Kashinath Patil	HC-Electrician	Class-I-2006	29.02.1956	19.02.2001
		22.10.2003	18.Suryakant Daji Patil	ASI Wireless	Class-I-2015	09.01.1970	09.01.2015
		11.03.1997	19.dilip Chotusing Raghuvanshi	ASI Wireless	Class-I-2013	01.06.1959	01.06.2004
		24.08.1991	20.Ajay Vaman Rajguru	ASI Wireless	Class-I-2013	05.09.1966	05.09.2011
		20.10.1989	21.Shankar Vitthobaji Lambhate.	ASI Wireless	Class-I-2014	12.12.1966	12.12.2011
		05.12.1974	22.Arun ram Jadhav.	HC-Electrician	-----	23.02.1955	23.02.2000
		14.10.1980	23.Tejram Parshiramji Fasate.	ASI Wireless	Class-I-2005	10.03.1956	10.03.2001
		12.11.2003	24.Rajesh Ramrao Dhage.	ASI Wireless	Class-IV-2008	27.06.1973	27.06.2018

2. Factual background is this. The State Govt. had issued a G.R. dt.01/11/1977 through General Administrative Department directing all departments of the State to amend the rules both for continuation and

confirmation and also for promotion to higher posts, providing for exemption to employees from passing departmental examination on attaining 45 years of age. The Govt. of Maharashtra had issued a G.R. dt.28/11/1979 as well as a Circular for this purpose providing for granting exemption from passing departmental qualifying examination for getting promotion and Time Bound Promotion.

3. Though the respondents have initially resisted contention of the applicants, during the course of final hearing, it was conceded that the claim of the applicants is founded on a legal position which is now well settled.

4. The applicants have relied on the judgment dtd.21/11/2017 of the Hon'ble Bombay High Court in W.P. No.3643/2009, wherein it is held :-

“ It has been argued on behalf of petitioner, even in the Police department, save Wireless section, the General Administration Department’s directions and instructions have been applied and quite a few persons have been given promotions who have attained age of 45 years without requiring them to pass departmental examination for promotion. This particular aspect has not been met with by any counter argument on behalf of the respondent. Further, benefit of promotions appears to have

been given to quite a few departments of the Government including Engineering department, as referred to above without there being suitable amendments to promotional rules. Thus, it appears that so far as Wireless section of Police department is concerned, the authorities are taking a rather hyper-technical view under the plea that as the rules have not yet undergone amendment pursuant to the instructions issued thus far. The Tribunal's order in the present case, particularly looking at that another technical post has been given benefit of Government's refusal to extend the same to petitioner who was working in Wireless Section of Police Department of the State is unjustifiable.

In the circumstances, we consider it expedient to follow suit in the decision given by Division Bench in Writ Petition no.6212 of 2011 and other companion matters. Having regard to observations therein, that decision of General Administrative Department of Government would be binding on all departments of the State and a department of Government would not be permitted to take a different stand as it appears only 'Wireless Section' of Police Department has not been extended the benefit."

5. The applicants have further relied on the common judgment of the Hon'ble Bombay High Court dt. 25/01/2022, whereby a batch of W.Ps. was

disposed of. In this judgment, aforequoted observations made in the judgment dt.23/11/1979, were considered, and it was observed :-

“Perusal of the aforesaid observations clearly indicates that even in the Police Department, the directions issued by the General Administrative Department in the matter of grant of time bound promotion had been followed except the Wireless Section. The Court therefore held that the decision of the General Administrative Department would be binding on all departments and it would not be permissible for the Police Department to take a different stand with regard to the Wireless Section. It is not in dispute that this judgment of the High Court has attained finality. The State has not challenged the same before the Hon’ble Supreme Court. It is further informed that the petitioner therein has been granted necessary benefit of time bound promotion.”

Similar is the case with regard to the adjudication of Original Application No.422/2016 and connected applications. The Tribunal followed the decision of this Court in Mukund Shankarlal Daima(supra) and granted relief to the applicants therein. The State Government has accepted this decision and has thereafter on 17.06.2020 granted necessary benefit of time bound promotion to the applicants therein. In other words, the employees of the Wireless Section of the Police Department who had approached the Tribunal or this Court have been extended benefit of time bound promotion by not requiring them to pass the requisite examination. The learned counsel for the respondents are justified in relying upon the decision in Arvind Kumar Srivastava(supra). Paragraph 22.3 thereof reads as under:-

“ However, this exception may not apply in those

cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence”.

The aforesaid observations clearly apply to the present facts inasmuch as the earlier adjudication in Mukund Shankarlal Daima (supra) was one in rem and not in personam. It was thus the duty of the State to extend the benefit of time bound promotion to all members of the Wireless Section of the Police Department without insisting for specific orders in that regard from the Court. The aforesaid observations also take care of the submission that the claims made before the Tribunal were barred by limitation. It has been rightly observed by the Tribunal that as a model employer the State ought to have extended such benefit to all members of the Wireless Section of the Police Department. Having failed to do so, the State cannot be permitted to raise a grievance regarding bar of limitation in these cases. Admittedly, the State has granted benefit to the employees who approached the Court and there is no reason to exclude the petitioners who are similarly situated. We therefore

find that the aspect of limitation would not result in denying the respondents the benefit of time bound promotion.”

6. This Bench while deciding three batches of O.As. by common judgments dt.19/07/2021, 19/03/21 & 24/12/2020 has relied upon the judgment dt.21/11/2017 in W.P. No.3643/2009.

7. For the reasons discussed hereinabove, the respondents are directed to verify cases of the applicants and extend to them benefit of Time Bound Promotion/Assured Progressive Scheme from the date of completion of 45 years of age. All consequential benefits flowing from this determination shall be paid within 3 months from today.

The O.A. is allowed in the aforesaid terms with no order as to costs.

M.A. Lovekar
Member (J)

Shree Bhagwan
Vice-Chairman.

DATE : 09/12/2022

Skt.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Smt. S.K. Thombre.