

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 552 OF 2015

DISTRICT : MUMBAI

Shri Eknath Jairam Barshinge,)
Working as Clerk in the office of the)
below named Respondent,)
R/o : Worli B.D.D Chawl, Mumbai-18.)...**Applicant**

Versus

The Charity Commissioner,)
[M.S], having office at 83, Dr. A.B Road,))
Worli, Mumbai – 400 018.)...**Respondent**

Shri A.V Bandiwadekar, learned advocate for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 02.08.2016

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents



2. This Original Application has been filed by the Applicant challenging the order dated 12.11.2014 issued by the Respondent rejecting his request for Time Bound Promotion as average gradation of his Annual Confidential Reports (ACRs) for preceding five year was found to be below 'B'.

3. Learned Counsel for the Applicant argued that the Applicant had earlier filed O.A no 837/2012 before this Tribunal (along with others) and by order dated 13.12.2013, this Tribunal directed that the case of the Applicant (and others) may be placed before the appropriate Departmental Promotion Committee (D.P.C) for considering grant of Time Bound Promotion as per G.R dated 13.12.2013. The case of the Applicant was placed before the D.P.C in its meeting held on 21.2.2015 and the Committee did not find the Applicant eligible for grant of Time Bound Promotion. Learned Counsel for the Applicant argued that the Applicant completed 12 years of continuous service on 1.8.1995 and his ACRs from 1990-91 to 1994-95 were required to be considered. As ACR of 1994-95 with gradation of 'C' was not communicated to the Applicant, that A.C.R should have been ignored. As the Applicant belongs to Backward Class, he is entitled to special sympathy in the matter of promotion. If that fact is considered, the Applicant was definitely eligible for promotion.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondent that G.R dated 8.6.1995 regarding Time Bound Promotion has to be read with subsequent G.Rs dated 20.7.2001 and 23.12.2002. This G.R dated 23.12.2002

provides that for granting Time Bound Promotion, ACRs for previous five years should not be below 'B'. The Applicant did not meet this bench mark and therefore, D.P.C did not find him eligible for Time Bound Promotion.

5. The Respondent has placed on record, minutes of the Departmental Promotion Committee meeting held on 21.2.2015, where the case of the Applicant for grant of Time Bound Promotion on completion of 12 years of continuous service was considered. The Applicant had joined service on 1.8.1983 and had completed 12 years of service on 1.8.1995. D.P.C considered his ACRs for the years 1990-91 to 1994-95. It was found that for the year 1994-95, his gradation was 'C', but the same was not communicated to the Applicant. The Committee, therefore, considered earlier ACRs. The Committee considered the following ACRs:-

Sr. No	Year	Gradation
1.	1988-89	B
2.	1989-90	B- (not communicated, so not considered)
3.	1990-91	C
4.	1991-92	B
5.	1992-93	B-
6.	1993-94	B
7.	1994-95	C (not communicated, so not considered)

The Applicant had two 'B' and two 'B-' and one 'C' (not considering ACRs not communicated to him). This Tribunal noted contradictions in the affidavit in reply filed by the Respondent in its order dated 26.2.2016 and therefore directed the Respondent to place ACR file of the Applicant for

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perusal. Copies of relevant ACRs are taken on record. It is seen that for the year 1990-91, the overall grading of the Applicant is held to be 'Most Ordinary hand'. This was communicated to the Applicant. However, in the column Fitness for Promotion, he is found fit. For the year 1991-92, there is no overall grading written. It is observed that "मन लावून एकाग्रतिने काम करणे आवश्यक". This was not communicated. For the year 1992-93, his performance was found satisfactory by Reporting Officer. However, the Reviewing Officer, downgraded it to ordinary and it was communicated. For 1993-94, his performance was found satisfactory. For 1994-95, though overall grading is not given, adverse remarks are there, which were not communicated to the Applicant.

6. Taking the five ACRs as 'B', 'C', 'B', 'B-' and 'B', as considered by the D.P.C as given in para 4 above, overall grading will slightly be above 'B-' and and sympathetic consideration will make it one grade above, i.e. above 'B'. It is not understood as to how the D.P.C considered it below 'B', even after G.R dated 7.1.1961 providing for upgradation of ACR for backward class candidates on special sympathy was taken into account. It is noted that the Applicant belongs to S.C category.

7. Learned Counsel for the Applicant relied on the judgment of Hon'ble Supreme Court in the case of **PRABHU DAYAL KHANDELWAL Vs. CHAIRMAN, UNION PUBLIC SERVICE COMMISSION & ORS : (2015) 14 SCC 427**. Hon'ble Supreme Court has held that if any ACR for the previous 5 years was not communicated, the rest of the ACRs



need to be considered. On that basis, ACRs of 1990-91 to 1993-94 only needs to be considered. On that basis also, result would be almost the same that average gradation would be 'B-', which will have to be upgraded to 'B' on special sympathy.

8. The Respondent is directed to consider the case of the Applicant for grant of Time Bound Promotion from 1.8.1995 in the light of the observation in the preceding paragraph within a period of three months from the date of this order. This Original Application is disposed of accordingly with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 02.08.2016
Dictation taken by : A.K. Nair.