

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.555 OF 2021

DISTRICT : RATNAGIRI

Sub.:- 2nd T.B.P.

Shri Subhash Namdev Rane.)
Age : 50 Yrs, Occu.: Awal Karkoon,)
Tahasil Office, Chiplun and residing at)
218, Tirupati Bhavan, Near Uttapam)
Mandir, Chiplun, District : Ratnagiri.)...**Applicant**

Versus

The District Collector.)
Ratnagiri.)...**Respondent**

Mr. K.R. Jagdale, Advocate for Applicant.

Smt. S.P. Manchekar, Chief Presenting Officer for Respondent.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 17.03.2023

JUDGMENT

1. The Applicant has challenged the order dated 07.06.2021 issued by Respondent – Collector, Ratnagiri thereby rejecting his claim for 2nd benefit of Assured Career Progression Scheme, invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Following are the uncontroverted facts giving rise to the O.A. which have bearings to decide the issue involved in the present matter.

- (i) Applicant was appointed as Clerk by order dated 15.01.1996 by Collector, Ratnagiri and accordingly joined. He was appointed from Scheduled Tribe Reserved Category.
- (ii) He got promotion of Awal Karkoon from Reserved Category on 14.07.2002.
- (iii) He was reverted to the post of Clerk because of non-submission of Caste Validity Certificate on 11.08.2006.
- (iv) On 01.03.2008, he was removed from service by Respondent on the ground of failure to submit Caste Validity Certificate.
- (v) Being aggrieved by order of removal from service dated 01.03.2008, the Applicant filed Writ Petition No.1243/2008 before Hon'ble High Court, Bench at Nagpur, which was disposed of on 29.07.2008 with direction to the Applicant to submit second set of Caste Certificate issued by Competent Authority as well as copies of document, on which he intends to rely to substantiate his caste claim and Caste Scrutiny Committee was directed to decide the case within a period of six months from the date of receipt of documents.
- (vi) However, nothing happened in the matter and no further steps were taken by the Applicant as well as by Caste Scrutiny Committee.
- (vii) Applicant then again filed 2nd Writ Petition No.2930/2014 before Nagpur Bench challenging termination order dated 01.03.2008. Hon'ble High Court allowed the Petition with the observation that though Petitioner had submitted documents to the Caste Scrutiny Committee, it was not decided and therefore, termination without decision of Caste Scrutiny Committee is invalid. That apart, Applicant had also gave up his claim of belonging to Scheduled Tribe Caste

(Koli-Mahadev). It is on this background, Hon'ble High Court allowed Writ Petition on 08.08.2014 and Para Nos.4 & 5 of the order are important, which are as under :-

“4. The petitioner though has sent the necessary documents for verification of his claim to the Scrutiny Committee, the Committee has not decided the same. The petitioner should not be penalised for inaction on the part of the respondent no.1- Committee. We find that the termination of the petitioner unless his caste claim was invalidated, was not justified. In any case now the petitioner has decided to give up his claim of belonging to Koli Mahadeo Scheduled Tribe. In that view of the matter and taking into consideration the long period of service rendered by the petitioner, the petition deserves to be allowed.

5. The impugned order dated 01.03.2008 is quashed and set aside. The respondent no.2 is directed to reinstate the petitioner within a period of two weeks from today. It is, however, made clear that the appointment of the petitioner be treated as having been made for a candidate belonging to open category and not the reserved category. Though it is directed that the petitioner is entitled to continue in service, he shall not be entitled to any back wages for the period during which he was out of employment.”

- (viii) Accordingly, Respondent – District Collector, Ratnagiri by order dated 20.10.2014 passed order of re-appointment / reinstatement in terms of order passed by Hon'ble High Court in Writ Petition No.2930/2014.
- (ix) Applicant then filed O.A.No.1189/2016 before this Tribunal challenging communication dated 13.10.2015 and 31.08.2016 whereby he was denied the benefit of 1st Time Bound Promotion Scheme (TBPS). O.A. was allowed on 08.03.2019 with the specific finding that Applicant had already completed 12 years' service before his removal, and therefore, was entitled for the benefit of 1st TBPS. Accordingly, Judgment of Tribunal was implemented and he was given benefit of 1st TBPS w.e.f.18.01.2008 (since he had completed 12 years' service from 18.01.1996 to 17.01.2008).

3. It is on the above background, Departmental Promotion Committee in its meeting dated 10.03.2021 declined to grant 2nd TBPS to the Applicant on the ground that he was not in service from 01.03.2008 to 20.10.2014 and secondly, Hon'ble High Court while deciding Writ Petition No.2930/2014 clarified that he will be entitled to continue in service, but not entitled to any back-wages for the period during which he was out of employment.

4. Shri K.R. Jagdale, learned Advocate for the Applicant sought to challenge the decision of DPC dated 07.06.2021 *inter-alia* contending that Hon'ble High Court while deciding Writ Petition No.2930/2014 protected the Applicant by giving continuity in service, and therefore, impliedly, he was entitled to all consequential service benefits including 2nd benefit of TBPS. Thus, according to him, though Applicant was out of service from 01.03.2008 to 20.10.2014, he is entitled to the benefit of 2nd TBPS because of order of continuity in service.

5. Per contra, Smt. S.P. Manchekar, learned Chief Presenting Officer submits that Hon'ble High Court only granted continuity in service with specific clarification that he will not be entitled to any backwages for the period during which he was out of employment, and therefore, the question of granting benefit of 2nd TBPS did not survive.

6. The facts as stated above are not in dispute. The order of Hon'ble High Court as reproduced above makes it quite clear that since Applicant has given up his claim of Koli-Mahadev (Scheduled Tribe Caste), Writ Petition was allowed and directions were given to reinstate the Applicant in service and that the appointment be treated as having been made from Open Category. It has been further clarified that "though it is directed that the Petitioner is entitled to continue in service, he shall not be entitled to any backwages for the period during which he was out of employment".

7. In view of this specific order, the submission advanced by the learned Advocate for the Applicant that his client is entitled to all consequential service benefits, particularly benefit of 2nd TBPS is totally fallacious, misconceived and unsustainable in law. The aim and object of TBPS is to remove stagnation and to give the benefit of next promotional post to the Government servant who completed 12 years' service and eligible for next promotional post in the light of TBPS. Whereas in the present case, Applicant is claiming benefit of 2nd TBPS for completing 12 years from 01.08.2020 to 2020. Admittedly, out of this period, he was not in service from 01.03.2008 and 20.10.2014. As such, he was not in continuous service for 12 years which is one of the condition precedent for such benefit. Consequently, he was not at all eligible for the benefit of 2nd TBPS. Only because he was granted continuity in service, that *ipso-facto* does not include the benefit of 2nd TBPS, the entitlement of which is required to be decided independently considering 12 years' performance, eligibility and Annual Confidential Reports, etc. If the contention of learned Advocate for the Applicant is accepted, it would have disastrous effect of giving benefit of TBPS to a person who was not in service for about 50% period out of 12 years' service period, which is not at all intended in the scheme. Such claim is totally untenable. Filing such claim is nothing but abuse of process of law.

8. The totality of aforesaid discussion leads me to sum-up that the challenge to the impugned communication dated 07.06.2021 is totally devoid of merit. The Applicant was not at all eligible for the benefit of 2nd TBPS and his claim is rightly rejected. Hence, the order.

ORDER

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

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

Mumbai

Date : 17.03.2023

Dictation taken by :

S.K. Wamanse.

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