

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.572 OF 2019**

**DISTRICT : PALGHAR**

Shri Anil Yadavrao Shrigiriwar. )  
Age : 67 Yrs., Occu.: Nil, Retired as Clerk )  
from Tribal Development Department, )  
Mantralaya and residing at Room No.5, )  
Pitruchaya Building, Manikpur, )  
Vasai (W), District : Palghar. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Principal Secretary, )  
Tribal Development Department, )  
Mantralaya, Mumbai – 400 032. )
2. The State of Maharashtra. )  
Through Principal Secretary )  
(Revenue), Revenue & Forest )  
Department, Mantralaya, )  
Mumbai – 400 032. )...**Respondents**

**Mr. Arvind V. Bandiwadekar, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondents.**

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

**DATE : 11.10.2021**

**JUDGMENT**

1. The Applicant has challenged the order dated 25<sup>th</sup> February, 2019 passed by Government whereby his request for grant of benefit of Time

Bound Promotion (TBP) in terms of G.R. dated 07.10.2016 has been rejected invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this O.A. are as under :-

The Applicant was appointed by order dated 19.02.1975 as purely temporary appointee on the post of Clerk. Later, his services were regularized in terms of G.R. dated 01.03.1980 whereby policy decision was taken by the Government to continue the services of non-MPSC candidate appointed in between 1<sup>st</sup> January, 1971 to 31<sup>st</sup> December, 1977 subject to fulfillment of required educational qualification. Since Applicant was eligible in terms of qualification, his services were regularized in terms of G.R. dated 01.03.1980 by issuance of order dated 9<sup>th</sup> July, 1980. The Applicant was required to pass PRT Examination (Post Recruitment Training Examination) in three attempts, but he failed to do so, and therefore, his increment was withheld till the passing of examination. The Applicant was granted benefit of TBP for the next promotional post of Assistant w.e.f.01.04.2005 by order dated 09.08.2006. The Applicant availed the said benefit and retired on 31.05.2010.

3. Later, the Government of Maharashtra issued G.R. dated 07.10.2016 whereby the decision was taken to consider previous temporary services/ad-hoc continuous service for the purposes of grant of TBP scheme. It is on the basis of this G.R. dated 07.10.2016, the Applicant made representations on 17.10.2016 and 25.10.2016 *inter-alia* contending that he was entitled to the benefit of 1<sup>st</sup> TBP w.e.f.01.10.1994, but he was granted the said benefit belatedly w.e.f.01.04.2005 which has caused severe financial loss to him and requested to extend the benefit of G.R. dated 07.10.2016 to him. However, the Government by impugned order dated 25.02.2019 rejected his claim.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to contend that even if temporary service of the Applicant from 1975 to 1980 is excluded and his services considered from the date of regularization dated 09.07.1980, in that event also, in terms of G.R. dated 08.06.1995, the Applicant was entitled for the benefit of TBP having completed more than 12 years' period on or before 1<sup>st</sup> October, 1994 from which date the scheme of TBP has been introduced. He further sought to assail the impugned order for want of recording of reasons in the impugned order. As regard non-passing of PRT Examination in three attempts, he submits that in view of Judgment of this Tribunal in **O.A.No.1493/2009 decided along with other connected O.As (Shantaram Gaikwad Vs. Treasury Officer, Nashik) decided on 30.10.2015**, even in case a Government servant failed to pass PRT Examination within three attempts but cleared the examination before completion of 12 years' period, then the benefit of 1<sup>st</sup> TBP cannot be denied. On this line of submission, he submits that the impugned order is unsustainable in law and facts.

5. Per contra, learned P.O. has pointed out that on account of serious lapses, unauthorized absence and alleged misconduct, a conscious decision was taken by DPC to extend the benefit of TBP to the Applicant w.e.f. 01.04.2005. The learned P.O. has produced on record the reasons recorded to that effect in filing noting, which is at Page Nos.28 to 30 of Paper Book on the basis of which impugned order has been passed.

6. Whereas, the learned Advocate for the Applicant sought to contend that in absence of record of DPC minutes before the Tribunal, the statement recorded in file noting (Page Nos.28 to 30 of P.B.) cannot be accepted as a gospel truth.

7. As regard non-production of minutes of DPC, the learned P.O. submits that since record was gutted in fire in Mantralaya, the same cannot be produced.

8. At the very outset, it needs to be stated that the Applicant was aware and known that he was given the benefit of 1<sup>st</sup> TBP w.e.f. 01.04.2005 instead of from 01.10.1994 and availed the benefit of TBP granted to him on 01.04.2005 till the date of retirement i.e. 31.05.2010 and no such grievance was raised about the denial of benefit of TBP during the period of service till retirement. It is only after six years from retirement, on the basis of G.R. dated 07.10.2016, he made representation. In fact, the said G.R. dated 07.10.2016 pertains to only counting of previous continuous service for grant of TBP, which is not the issue in the present matter, since the benefit of TBP was rejected to the Applicant because of his lapses, misconduct and continuous unauthorized absence. This being the position, the G.R. dated 07.10.2016 has absolutely no application in the present situation, which is made foundation for raising the grievance of non-extending the benefit of 1<sup>st</sup> TBP belatedly by filing this O.A. 9 years after retirement.

9. True, technically speaking, in view of impugned order passed by Government on 25.02.2019, he has filed O.A. within limitation of one year but there is no denying that he did not raise any such grievance during the entire service period about non-grant of benefit of TBP w.e.f. 01.10.1994. Suffice to say, the Applicant is raking up the issue of benefit of TBP much belatedly. Indeed, when benefit was granted to him w.e.f. 01.04.2005, that time itself, he had cause of action to claim the said benefit from 01.10.1994. However, he accepted the benefit of TBP w.e.f. 01.04.2005 without any demur and now tried to create fresh cause of action on the basis of rejection by the Government. Needless to mention, making of representation after lapse of limitation and decision thereof, if any, would not create fresh cause of action in service matters, otherwise it will be unending.

10. Be that as it may, even assuming for a moment that O.A. is within limitation and Applicant has right to raise grievance in this manner, in that event also, in view of conscious decision of DPC to grant the benefit

of TBP w.e.f. 01.04.2005 for the elaborate reasons mentioned in file noting, the Applicant is not entitled to the relief claimed.

11. Needless to mention that for entitlement of the benefit of TBP, a Government servant is required to fulfill all necessary conditions to occupy promotional post. As such, he must be eligible and fit for promotion. Mere completion of 12 years' service in the cadre is not sufficed. Whereas, in the present case, the DPC found that in 1990, because of continuous unauthorized absence, the punishment of withholding of two increments without cumulative effect was imposed which had attained the finality. Then in 1996 again, he was unauthorized absent for 443 days and his request to grant *ex-post-facto* sanction to such huge leave period was rejected and the said period was treated without pay and allowances by way of punishment. Then again in 2000, he remained unauthorized absent for 484 days and again, the said period was treated without pay and allowances by way of punishment. It is thus explicit that the Applicant was unauthorized absent frequently and despite the order of punishment for unauthorized absence, he did not mend his ways. He seems to be cantankerous and incorrigible Government servant. Taking into consideration all these lapses and misconduct and service record of the Applicant, the DPC had taken a conscious decision that he is not fit for promotion, and therefore, granted the benefit of TBP w.e.f. 01.04.2005 only. This decision is based on the objective assessment of the service record of the Applicant which was admittedly not challenged by the Applicant at any point of time. On the contrary, he accepted it as explicit from his silence and ultimately, retired on 31.05.2010.

12. Thus, where a DPC has taken conscious and objective decision that the Applicant is not fit for promotion having regard to his previous service record, he cannot be said entitled to the benefit of TBP and the decision taken by the DPC in 2005, now cannot be allowed to assail by filing this proceeding in 2019.

13. In so far as passing of PRT Examination belatedly is concerned, undoubtedly, even if a Government servant clears PRT Examination within 12 years though not within three attempts, he is entitled to benefit of TBP. However, in the present case, the benefit of TBP was not rejected on the ground of non-passing of PRT Examination within prescribed chances but it was refused on the ground of punishment imposed upon him time to time and ultimately found not suitable for promotion which was condition precedent for grant of benefit of TBP.

14. The totality of aforesaid discussion leads me to sum-up that no exception could be taken to the legality of impugned order and challenge to the impugned order is devoid of law. Hence, the following order.

**ORDER**

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

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

Mumbai  
Date : 11.10.2021  
Dictation taken by :  
S.K. Wamanse.

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